



# Guide to County Regulation of Renewable Energy and Data Center Projects 2026



A joint publication of the Wisconsin Counties Association and Attolles Law, s.c.



**A Guide to County Regulation of  
Renewable Energy and Data Center Projects  
2026**

Produced by Attolles Law, s.c., WCA General Counsel

Approved August 2026 by the WCA Board of Directors

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## **PREFACE**

The issues and concerns surrounding a county's role in regulating renewable energy, battery energy storage and data center projects are complex. From a policy perspective, communities across the state are struggling with questions surrounding whether such projects have a place in their long-term land use plans and, if so, where the projects should be located. From a regulatory perspective, state law has preempted county regulation of large-scale solar and wind projects, but left battery energy storage and data center projects to local governments to regulate. Finally, from a legal perspective, there is a need to address a county's regulatory response in a reasonable fashion to ensure that any measure of regulation is legally defensible and avoids difficult litigation.

While the WCA is happy to engage with its member counties on policy issues surrounding these projects and has encouraged the state to work with local governments on a strategic plan for the projects, the WCA's most immediate concern is ensuring counties are provided with resources to guide the discussion on the appropriate legal means by which to regulate the projects. Therefore, the WCA and its General Counsel, Attolles Law, s.c., created this *Guide to County Regulation of Renewable Energy and Data Center Projects*. The *Guide* consists of the following:

1. The Issue Paper the WCA's Board of Directors adopted at its August 28, 2026, meeting. The Issue Paper provides an overview of the reasons the WCA is providing the *Guide* and the WCA's desire to engage the state and other local government stakeholders in a meaningful discussion about the state's strategic plan for renewable energy, battery energy storage and data center regulation.
2. The template Local Operating Agreement. This Agreement template is designed to guide a county's discussion of how to address the impacts associated with a renewable energy project in the context of a contractual relationship with a project developer.
3. The template Battery Energy Storage Systems Ordinance. The template BESS Ordinance addresses land use issues unique to battery energy storage systems and contemplates a conditional use permitting process for such projects under a county's zoning authority set forth in Wis. Stat. § 59.69.
4. The template Data Center Notice Ordinance. Recognizing that all data center developments in Wisconsin to date have occurred within cities or villages (because of the need for municipal water supply), this template ordinance requires a developer to notify the county of a proposed data center development. The notice requirement serves two (2) purposes. First, it allows the county to be fully informed of projects before the projects happen. Second, and most importantly, a county receiving notice of a planned development will have an opportunity to contact the developer and the municipality in which the project is proposed to discuss impacts the project may have on county resources and interests. Ultimately, it provides the county with a mechanism by which to demand a seat at the table when a development agreement is negotiated between the developer and municipality.
5. The template Data Center Ordinance. As indicated above, current technology limits the location of data center projects to incorporated areas within a county. However, technology may advance to the point where data centers are able to be located within a county's unincorporated areas. In this circumstance, a county would be

wise to ensure data centers are addressed within the county's zoning code. This template ordinance is designed to guide a county's discussion of what should be regulated if a data center is determined to be a permitted or conditional use under a county's zoning code.

Each of the templates contained within the *Guide* is preceded by introductory comments discussing the reasons behind the proposed regulation and the topics addressed.

Importantly, the templates provided in the following *Guide* are not legal advice nor are they intended as such. As indicated on each template, counties must work with their corporation counsel or special counsel in using the templates. It is important to remember that the templates are *not* models. They should not be used as a "cut and paste" regulatory solution. Each of the templates has many identified decision points where counties can customize the extent to which they desire to regulate a particular matter, if at all. Similarly, there may be issues, concerns or topics that a county wants to address that are not in the templates. In other words, use the templates as a guide to engage in the meaningful discussions necessary to create meaningful regulations.

Finally, it is important to note that several counties have not adopted a general zoning ordinance. In those counties, the template Battery Energy Storage Systems Ordinance and the template Data Center Ordinance will be of limited value. However, those counties without zoning may consider using the concepts addressed in those templates in a licensing ordinance, which is a non-zoning ordinance recognized and upheld as a valid regulatory mechanism in *Zwiefelhofer v. Town of Cooks Valley*, 2012 WI 7. The legal issues associated with a licensing ordinance are too complex to address in this *Guide*. In the event a county that has not adopted a general zoning ordinance wants to consider a licensing ordinance, the county should consult with corporation counsel and perhaps special counsel to ensure compliance with legal requirements. The WCA is happy to assist with those discussions as needed.

To the code administrators, planners, county board members, county administration, corporation counsel and other interested parties, we hope the *Guide to County Regulation of Renewable Energy and Data Center Projects* serves as a valuable resource as you determine how to best regulate these projects in your county. Thank you to all of the county officials and employees that have worked with the WCA on this topic and who will continue the difficult work associated with this complex regulatory arena. Please let the WCA know if we can assist your county further!

## **SOLAR DEVELOPMENTS, BATTERY ENERGY STORAGE SYSTEMS AND DATA CENTERS**

### **Background**

In conjunction with this Issue Paper, the Board has been presented with: (1) a template Local Operating Agreement regarding Solar Developments, which is also referred to as a Joint Development Agreement (“LOA Template Agreement”); (2) a template Zoning Ordinance regarding Utility Scale Standalone Battery Energy Storage Systems (“BESS Template Ordinance”); (3) a template Zoning Ordinance regarding Data Centers (“Data Center Template Ordinance”); and (4) a template Ordinance imposing a Notice Obligation on Data Centers (“Data Center Notice Template Ordinance”). Subject to thorough review and consideration by corporation counsel, planning and zoning staff and other interested persons, counties with general zoning ordinances may consider using all four of these documents to the extent applicable within a county. However, not all counties in Wisconsin have elected to exercise the general zoning set forth in Wis. Stat. § 59.69.<sup>1</sup>

### **Special Considerations for Counties That Do Not Have Comprehensive Zoning**

The LOA Template Agreement addresses concerns related to the development of solar electric generating facilities, such as road use and repair, decommissioning of the solar development, and emergency response planning and training. Because this is not a zoning document, it can be used (once appropriately tailored for the county) by counties that have not exercised general zoning authority and adopted a comprehensive zoning ordinance pursuant to Wis. Stat. § 59.69.

Likewise, the Data Center Notice Template Ordinance is intended to assist counties plan for the consequences of data center construction (particularly with respect to road use, and repair and the public safety impacts of increased traffic) prior to the start of construction. Because these consequences can apply regardless of whether a data center is developed within a city or village or within a town, the Notice Obligation is drafted to apply to any data center development within the county, regardless of zoning authority. Because the Notice Obligation is not a zoning ordinance, it can be used (once appropriately tailored) by counties that have not exercised general zoning authority and adopted a comprehensive zoning ordinance pursuant to Wis. Stat. § 59.69.

As noted above, the LOA Template Ordinance and the Data Center Notice Ordinance are not zoning ordinances, and therefore counties that do not exercise general zoning authority may immediately utilize these tools for customization and consideration in their county. However,

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<sup>1</sup> Fifteen counties have not elected to exercise the general zoning authority by adopting comprehensive zoning ordinances pursuant to Wis. Stat. § 59.69: Brown, Clark, Crawford, Fond du Lac, Juneau, Kewaunee, Ozaukee, Pepin, Rock, Sheboygan, Taylor, Vernon, Washington, and Wood. Milwaukee County does not have general zoning because there are no unincorporated areas in Milwaukee County to which a general zoning ordinance may apply.

the BESS Template Ordinance and the Data Center Template Ordinance are intended to be zoning ordinances, and therefore the documents cannot be adopted as zoning ordinances by a county that does not exercise general zoning authority.<sup>2</sup>

### **County Involvement in the Future Regulation of Solar Facilities, BESS and Data Centers**

The issues addressed in the four documents described above—solar power, BESS, and data centers—are issues that counties across the state are trying to address in order to protect the health, safety, and general welfare of the public. The current statutory scheme preempting county regulation of large scale solar projects and no state regulation whatsoever (from a land use perspective) of BESS and data center projects places counties (and other municipalities) in the difficult position of adopting ordinances to address certain aspects of a broader integrated development and attempting to negotiate a LOA, with no recognized seat at the regulatory table, for other aspects of the project. In other words, the regulatory system is misaligned in terms of recognizing the important role of local government in such developments.

To address this situation, the WCA urges the State, in consultation with its local government partners, to consider adoption of a comprehensive strategic plan addressing renewable energy, battery energy storage and data center regulation. To be sure, the WCA's member counties have varied policy positions relating to these developments. Nonetheless, every county is concerned about the impacts these developments cause on the public's health, safety and welfare. Therefore, the WCA believes the State should develop a comprehensive plan for a regulatory framework that meaningfully recognizes the important role counties and local governments play in promoting local health, safety and welfare.

### **RECOMMENDED ACTION:** WCA Staff recommends the Board adopt the following positions:

1. Counties are encouraged to work with their corporation counsel and utilize the (1) LOA Template Agreement; (2) BESS Template Ordinance; (3) Data Center Template Ordinance; and (4) Data Center Notice Template Ordinance.
2. The State, in consultation with its local government partners, should develop a statewide strategic plan addressing renewable energy, battery energy storage and data center regulation and provide counties with a meaningful opportunity to address public health, safety and welfare impacts associated with the projects.
3. To the extent the Legislature addresses renewable energy, battery energy storage or data center regulation without a strategic plan, the legislation should provide counties with a meaningful opportunity to address public health, safety and welfare impacts associated with the projects.

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<sup>2</sup> Counties exercising general zoning authority should work closely with the county's zoning administrator and corporation counsel to ensure all requirements set forth in Wis. Stat. § 59.69 are met. For counties without general zoning, it is important to recognize that Wisconsin law may provide an opportunity for counties without a general zoning ordinance to use these template ordinances as a starting point for a licensing structure under the framework the Wisconsin Supreme Court described in *Zwiefelhofer v. Town of Crooks Valley*, 2012 WI 7. Such a licensing structure would need to fit within a county's non-zoning police powers, which are narrower than those available to towns, villages, and cities. Considerations associated with the use of a licensing ordinance are complicated and present numerous legal issues and concerns. Therefore, it is imperative that counties work closely with corporation counsel or outside counsel to develop any such ordinance.

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**THIS TEMPLATE IS NOT AND SHALL NOT BE CONSTRUED AS LEGAL ADVICE. THE TEMPLATE IS DESIGNED AS A START TO DISCUSSIONS SURROUNDING THE APPROPRIATE REGULATORY FRAMEWORK. COUNTIES MUST CONSULT WITH CORPORATION COUNSEL IN THE IMPLEMENTATION OF THIS TEMPLATE.**

**WISCONSIN COUNTIES ASSOCIATION  
TEMPLATE LOCAL OPERATING AGREEMENT<sup>1</sup>  
REGARDING SOLAR DEVELOPMENTS**

Wisconsin law requires large solar generating facilities to obtain a Certificate of Public Convenience and Necessity (CPCN) from the Public Service Commission of Wisconsin (PSC) prior to commencement of construction of the facility.<sup>2</sup> The CPCN largely preempts local involvement from a zoning perspective.

Based on the provisions of Wis. Stat. Ch. 196 and accompanying caselaw, counties have little to no say in where large solar developments are placed. However, counties may have significant concerns regarding the environmental and operational impacts of large solar developments, including: (1) road use and repair; (2) decommissioning; and (3) emergency response planning and training. In the past, impact mitigation and operational concerns like these were often addressed through a joint development agreement – which is now being referred to as a Local Operating Agreement to avoid confusion regarding a county’s role in the “development” of a large solar development – between the solar developer and a county.<sup>3</sup>

As the number and complexity of large solar developments continues to grow, counties often seek assistance in preparing an agreement to address the general environmental and operational concerns, and to address unique impacts the development will have on the county. A developer may present a draft agreement to the county, and assistance is sought to navigate negotiation of the agreement’s details. This Template is intended to provide a starting point for counties to use when discussing possible mitigation efforts to offset a development’s impacts. It includes provisions addressing the concerns most often raised by counties, while also taking into

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<sup>1</sup> An agreement between a solar developer and a county to offset the impacts of a solar development is often referred to as a “Joint Development Agreement.” However, that name can and did sometimes lead to confusion about the extent of a county’s role with a large renewable energy project. Therefore, the title been modified to “Local Operating Agreement” in this Template.

<sup>2</sup> Wis. Stat. § 196.491(1)(g) defines “large electric generating facility” as “electric generating equipment and associated facilities designed for nominal operation at a capacity of 100 megawatts or more.” *See also* Wis. Stat. § 196.491(3)(a)1.

<sup>3</sup> Because counties are not preempted from a zoning perspective regarding solar generating facilities with a capacity of fewer than 100 megawatts (“Small Solar Development”), agreements between a county and a solar developer regarding the environmental and operational impacts of a Small Solar Development are uncommon. With that said, counties could seek to enter into agreements with developers of Small Solar Developments, and this framework could be used by counties that have not elected to exercise the general zoning set forth in Wis. Stat. § 59.69.

account the need for compliance with a CPCN. The Template is based on agreements that have been previously entered into by counties and solar developers in Wisconsin.

A Local Operating Agreement requires particularly close attention to all details to ensure that the county's concerns are properly addressed in a way that also complies with Wisconsin law and ensures consistency with the CPCN. Accordingly, this Local Operating Agreement template should be reviewed closely and specifically tailored by the county's corporation counsel and, if applicable, outside counsel to address the unique characteristics of the county and any unique impacts of the development.

## LOCAL OPERATING AGREEMENT

This Local Operating Agreement (Agreement) is made by, among, and between **[SOLAR COMPANY]**; and **[COUNTY]** Wisconsin (County), on this \_\_\_\_\_ day of \_\_\_\_\_, 20XX (Effective Date). The County and **[SOLAR COMPANY]** are referred to individually as a “Party” and collectively referred to as the “Parties”.

### RECITALS

1. **[SOLAR COMPANY]** desires to develop, construct and operate a **XXX**-megawatt (MW) (at the point of interconnection) solar photovoltaic electrical generating facility with necessary associated facilities such as a generation tie line (Gen-Tie Line), a new substation, power collection lines, an operations and maintenance facility, a battery energy storage system, and access roads in the County (Project), as depicted on the Project map attached hereto as Exhibit A. The size of the Project components may sum to up to **XXX** MW (alternating current) to allow for commercial delivery of no more than **XXX** MW to the transmission system. **[SOLAR COMPANY]** obtained a Certificate of Public Convenience and Necessity (CPCN) from the Public Service Commission of Wisconsin (PSCW) on **DATE**. On that date, the PSCW rendered their Final Decision in Docket No. **XXXXX** granting the Project a CPCN subject to the conditions and as modified by the Final Decision. The Parties may access public electronic copies of **[SOLAR COMPANY]**'s CPCN application, including all filed exhibits, subsequent modifications, notices, and/or plans via the PSCW's electronic records filing system for such docket.
2. The Parties agree that it is in the best interests of each to memorialize the rights, obligations, and responsibilities of the Parties, to supplement the CPCN Order, with respect to the Project and the Project's use of, among other things, County roads **[and TOWN roads IF APPLICABLE]**, rights-of-way, and drainage systems during construction, operation, and decommissioning of the Project.
3. The Parties agree that the Project is under the jurisdiction of the PSCW by virtue of the Project's need for a CPCN pursuant to Wis. Stat. § 196.491(3), and that the County has the statutory authority to negotiate the terms and conditions set forth herein, and **[SOLAR COMPANY]** has the authority to accept the terms and conditions set forth herein.
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, and to further the public health, welfare and safety.

### 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. **Recitals.** The Parties acknowledge and accept that the facts set forth in the Recitals above are true and are hereby incorporated into this Agreement.

2. **Planning.** The Parties understand and agree that approval of the Project is under the jurisdiction of the PSCW by virtue of the Project's need for a CPCN pursuant to Wis. Stat. § 196.491(3), and that the Project's preliminary site plans are subject to approval from the PSCW for substantive site design changes. The County further agrees that the County may not require changes to the Project to the extent that any authority of the County has been preempted by state law. The County does not waive any authority it has under Wisconsin law and **[SOLAR COMPANY]** understands and recognizes that this Agreement shall not be construed in any fashion to constitute a waiver of any rights or authority by the County beyond those rights and authority expressly addressed in this Agreement or that are preempted by state statutes, regulations, or orders, including but not limited to the CPCN. **[SOLAR COMPANY]** recognizes the benefits of sharing information with the County with the goals of minimizing detrimental impacts to existing infrastructure, managing costs, promoting good working relationships, and protecting non-participating property owners. Each Party agrees to support the Project CPCN and application in a manner consistent with the terms of this Agreement. The County further agree that the Project, in consideration with the terms of this Agreement, is generally consistent with the County's land use plans and [zoning ordinance], and that the County may not require changes to the Project to the extent such requirements are preempted by any Applicable Laws.
- a. The County has adopted a draft emergency response plan related to the Project (Emergency Response Plan), a copy of which is attached to this Agreement and labeled Exhibit X, which shall be incorporated as part of the final Emergency Response Plan, subject to modifications incorporating **[SOLAR COMPANY]**'s final selection of components and Project design. The **[COUNTY]** Local Emergency Planning Committee shall review and approve any update to the Emergency Response Plan proposed by **[SOLAR COMPANY]** within sixty (60) days of **[SOLAR COMPANY]**'s submission of an update, if any, and approval shall be granted unless such approval is contrary to this Agreement, arbitrary or oppressive, or unsubstantiated by the evidence presented. At least ninety (90) days prior to the start of construction, the draft Emergency Response Plan shall be deemed final and not subject to any further supplement or amendment without the written consent of **[SOLAR COMPANY]** and the County. At least thirty (30) days prior to the start of construction, **[SOLAR COMPANY]** shall hold an on-site meeting inviting local emergency responders to discuss the site construction, Emergency Response Plan, emergency response information such as meeting points and locations of emergency equipment, and construction plans. **[SOLAR COMPANY]** shall provide both electronic and hard copies of the Emergency Response Plan, other emergency action plans or information, and site maps to local emergency responders.
  - b. At least thirty (30) days prior to the start of construction, **[SOLAR COMPANY]** shall provide the construction target start date to the County.
  - c. At least thirty (30) days prior to the start of construction, representatives of **[SOLAR COMPANY]** shall meet virtually or in person with the County officials<sup>4</sup> responsible for roads and drainage and local emergency responders to present final plans for use of public

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<sup>4</sup> County representatives under this provision shall be designated by the County entity.

roads (including all town and County roads anticipated to be used during construction), public road crossings, driveway/entrance locations, 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). 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, **[SOLAR COMPANY]** shall provide the contact person for the County 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 sixty (60) days after the commercial operation date (COD), **[SOLAR COMPANY]** will schedule an on-site meeting inviting local emergency responders to discuss the operation's site-specific Emergency Response Plan, emergency response information such as meeting points, locations of emergency equipment, and operation plans. No later than one (1) year after the COD, an emergency response drill will be scheduled by **[SOLAR COMPANY]**, at which local emergency responders will be invited to participate.
- f. **[SOLAR COMPANY]** shall make a one-time \$XXXXXX payment to the County, which sum is to be divided amongst the responding emergency units as determined by the County based on invoiced costs, as full and complete reimbursement to the County for their reasonable expenses related to any training, training materials, and equipment necessary to implement the draft and final Emergency Response Plan, including reasonable expenses related to the emergency response drill. All such costs have been listed out in **[COUNTY]** Sheriff's Department Office of Emergency Management's Emergency Preparedness Plan in the section titled Fire Safety Impact Fee, and specifically under the Initial Impact and Annual Impact Fee subsections which are included in this Agreement in Appendix [ ]. Unless otherwise directed in the Emergency Response Plan, **[SOLAR COMPANY]** shall issue the reimbursement to the County within thirty (30) days of **[SOLAR COMPANY]**'s submission of the final Emergency Response Plan to the PSCW in accordance with Order Point X of the CPCN.

### **3. Project's Use of Roads and Road Repair Obligations.**

- a. **[SOLAR COMPANY]** will construct [\_\_\_\_\_] [(\_\_\_\_)] foot wide Project site roads (Project Roads) to provide access to public roadways and on-site equipment for construction and operation. The Project Roads will be constructed primarily at grade to maintain the site drainage characteristics. The Project Roads will be constructed to a size that ensures emergency vehicle and equipment access. **[SOLAR COMPANY]** may install culverts in areas of confined/preferential flow to maintain surface water flow under the Project Roads so long as such culverts or other modifications comply with any applicable Project permits as set forth in the CPCN Order or this Agreement. **[SOLAR COMPANY]** will begin construction of the Project 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.

- b. The Parties agree that the Project may use public roads, and that this Agreement expressly provides for such use to the extent approval is required by the County, and that no additional County permits are required for the use of public roads jurisdictional to the County given the compensation that **[SOLAR COMPANY]** shall pay to the County pursuant to Sec. 3(f) below should any damage to public roads occur. Notwithstanding the foregoing, **[SOLAR COMPANY]** agrees to apply for and obtain any required oversize or overweight permits for use of County roads or highways. **[SOLAR COMPANY]** will fill out any other road permits only for informational purposes. Additionally, the Parties acknowledge that in connection with construction, operation and maintenance of electric collection lines, communications cables and other equipment (collectively, the Facilities), that **[SOLAR COMPANY]** may, when necessary, operate vehicles, build and use additional Project Roads, and place aboveground and underground Project Facilities within Project Road rights-of-way, cross roads, and drainage systems without the need for additional approval from the County with respect to those utilities. **[SOLAR COMPANY]** shall obtain any required County permit for installation of Facilities or any other work in a County highway right-of-way.
- c. **[SOLAR COMPANY]** and the County shall prepare a road condition report to record the pre-construction condition of the portions of the County roads and related infrastructure, transportation facilities or improvements anticipated to be used or impacted during construction (collectively, the “Public Roads” and constituting the “Construction Route”). This report may include video documentation and will be provided thirty (30) days prior to the start of construction of the Project. The Public Roads that will be used will be identified by **[SOLAR COMPANY]** sixty (60) days prior to the start of construction. The Construction Route and roads constituting the Public Roads may be modified as provided in Sections 2.c and 3.g upon written notification to the County. **[SOLAR COMPANY]** shall comply with any County road weight restrictions during the period of **DATE** through **DATE**, with the possibility that such period will be shorter subject to County approval, and such approval shall not be delayed, and shall be granted unless contrary to this Agreement, arbitrary or oppressive, or unsubstantiated by the evidence presented. **[SOLAR COMPANY]** also agrees to apply for and obtain any required oversize or overweight permits for use of County roads or highways that may be added as Public Roads or the Construction Route. Approval of any such permit shall not be delayed, and shall be granted unless contrary to this Agreement, arbitrary or oppressive, or unsubstantiated by the evidence presented.
- d. **[SOLAR COMPANY]** shall take steps to ensure the road infrastructure of the Construction Route and Project site access points are used and maintained in safe conditions consistent with County standards for such Public Roads throughout the construction of the Project. **[SOLAR COMPANY]** shall work cooperatively with the County to ensure any unforeseen damage caused by the Project or its operation during the operation of the Project as reasonably documented and remedied according to County standards and at the cost of **[SOLAR COMPANY]** and pursuant to the obligations set

forth in Section 3(f). **[SOLAR COMPANY]** is not obligated to remedy or repair any damage to Public Roads that results from other public or third party use, normal wear and tear, or any other use, cause or event not directly related to the Project or its operation.

- e. In instances where a utility line for the Project must cross a Public Road, **[SOLAR COMPANY]** shall use **[DIRECTIONAL BORING]** **[FLUID-ASSISTED MECHANICAL DRILLING]** **[HIGH PRESSURE FLUID JETTING]** under the roadway instead of open cuts for trenches that affect the roadway surface. All underground borings shall commence and terminate outside of the right-of-way, unless otherwise approved by the applicable permitting entity. Limited exceptions may be requested from the County, which the County will consider in good faith and approval of such exception shall not be delayed, and shall be granted unless approval is contrary to this Agreement, arbitrary or oppressive, or unsubstantiated by the evidence presented.
- f. To the extent any damage (excluding normal wear and tear, unrelated to the Project) has occurred to Public Roads or private driveways as a result of the Project's construction, and unless waived by the local government with jurisdiction over the road or the owner of the private driveway, **[SOLAR COMPANY]** shall compensate, indemnify and hold the County harmless for damage to any Public Road affected by the Project, and shall compensate the County (or the local government, as the case may be) for the actual and direct costs incurred to restore or repair the Public Road(s) to a level equal to or better than the Public Road's pre-construction conditions. **[SOLAR COMPANY]** shall return those portions of any private driveway or private road affected by the Project to a level comparable to their pre-construction conditions. **[SOLAR COMPANY]** shall pay such compensation within forty-five (45) days following receipt of an invoice from the County or other local government for such repair costs. All invoices for repair costs shall be submitted to **[SOLAR COMPANY]** within 120 days of receipt of the subject matter expert's report. The terms of this Section 3(f) shall not be construed as a waiver of the rights and obligations set forth in Wis. Stat. § 86.02 and Wis. Stat. § 86.14.
- g. The Public Roads identified in this Section 3 will be the exclusive County **[AND TOWN IF APPLICABLE]** roads authorized to be used by construction vehicles (excluding vehicles used primarily for transporting construction employees) for the Project. If **[SOLAR COMPANY]** needs to use County roads not listed herein for construction vehicles, **[SOLAR COMPANY]** shall provide notice to the County and present an amendment to the plan identified in Section 2.c, and otherwise proceed in accordance with such section.
- h. As affected by the maintenance and operational activities and decommissioning of the Project, **[SOLAR COMPANY]** shall take steps to ensure the road infrastructure, other public infrastructure of the Construction Route and Project site access points is reasonably maintained in safe conditions consistent with County standards throughout the Project operational period and decommissioning. **[SOLAR COMPANY]** shall work cooperatively with the County to ensure any damage caused by Project operation or decommissioning is remedied according to County standards and at the cost of **[SOLAR COMPANY]** and pursuant to the obligations set forth in Section 3(f).

- i. No less than ninety (90) days prior to the start of decommissioning, **[SOLAR COMPANY]** and County shall coordinate, and where appropriate make necessary binding commitments, to ensure that all decommissioning activities have no material adverse impacts on County roads.

#### **4. Project's Drainage Repair Obligations.**

- a. **[SOLAR COMPANY]** shall develop a Stormwater Pollution Prevention Plan and Erosion Control Plan for the Project (Erosion Plan) or similar plan as required by the PSCW. **[SOLAR COMPANY]** shall provide these documents to the contact person for the County at least thirty (30) days prior to the start of construction.
- b. If not provided in the Erosion Plan, **[SOLAR COMPANY]** shall have ninety (90) days from the completion of Project construction to provide the County 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 (b) compensate the County to repair such public drainage infrastructure to a level comparable to the pre-construction level. **[SOLAR COMPANY]** shall complete all relevant drainage infrastructure repairs within sixty (60) days of the County's approval of the drainage infrastructure repair plan.
- c. **[SOLAR COMPANY]** agrees to maintain all drainage systems on the Project site to the extent necessary for proper drainage on the Project site and to prevent unreasonable drainage onto public property, roads or other private property, including rights of way, from the Project site, all in accordance with the Project's CPCN. Failures of the Project's drainage system to prevent unreasonable drainage onto public property, roads or other private property from the Project site will be corrected in a timely manner and to the County's reasonable satisfaction. The obligations set forth in this Section 4 shall apply during construction, throughout the life of the Project's operations, during decommissioning, and at the completion of decommissioning.

#### **5. Utility Shared Revenue Payments.**

- a. The Parties acknowledge that (a) commercial operation of the Project is expected to result in payment by **[SOLAR COMPANY]** of an annual license fee payable to the State of Wisconsin under Wisconsin Statutes §§ 76.28 or 76.29 (Annual License Fee), (b) pursuant to Wisconsin Statutes § 79.04, the State of Wisconsin pays certain formulaic amounts to certain counties and municipalities related to utility equipment and facilities located within their borders (Utility Shared Revenue Payment), and (c) the Utility Shared Revenue Payment is calculated and distributed by the State of Wisconsin, independent of the Annual License Fee. The Parties estimate that the Project will generate a total of \$XXXXXX over

its expected useful life in Utility Shared Revenue Payments, to be paid in the following estimated amounts annually by the State of Wisconsin to the County:<sup>5</sup>

- 1) \$XXXXXX annually to the [TOWN]
- 2) \$XXXXXX annually to the County

The Parties hereto acknowledge and agree that under current law: (1) the sole obligation of [SOLAR COMPANY] under this Section 5 is to make payments to the State of Wisconsin of the Annual License Fee; and (2) [SOLAR COMPANY] has no control over the computation of or payment by the State of Wisconsin of the Utility Shared Revenue Payment and has no obligation to pay the Utility Shared Revenue Payment on behalf of the State of Wisconsin. [SOLAR COMPANY]'s payment under the Annual License Fee is due regardless of any change to the Shared Revenue Program. This Section 5 shall automatically be updated in the event of a change in state law that modifies the parties to which a Utility Shared Revenue Payment is made, or any other change in state law relating to Utility Shared Revenue Payments, and shall be interpreted consistent with the terms of state law in effect throughout the duration of this Agreement.

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

- a. [SOLAR COMPANY] shall be responsible for performing all decommissioning activities set forth in the decommissioning plan submitted to and filed with the PSCW (as may be amended) (Decommissioning Plan) and any other decommissioning activities required to decommission the Project in accordance with the CPCN.
- b. [SOLAR COMPANY] shall provide the following assurances in support of the Decommissioning Plan:
  - 1) Within sixty (60) days of the Execution Date, [SOLAR COMPANY] shall provide the County with a Decommissioning Plan. On or around every fifth anniversary of the Project's COD, the Decommissioning Plan shall be reviewed by an independent third party having relevant industry experience and expertise chosen by [SOLAR COMPANY] with authorization to update the Decommissioning Plan's "Net Decommissioning Costs" to reflect current costs of decommissioning.
  - 2) Within ninety (90) days prior to starting construction, [SOLAR COMPANY] shall provide the County with cash, a bond, or a letter of credit (collectively and individually, Financial Assurance) to cover ten (10) percent of the total estimated "Net Decommissioning Costs" as set forth in the Decommissioning Plan.

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<sup>5</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. These amounts and recipients may change based upon final Project design and construction or changes in state law. Additional payments from the State of Wisconsin may also be made, as provided for under state law.

- 3) On or before the fifth anniversary of the Project's COD, **[SOLAR COMPANY]** shall provide the County with Financial Assurance to cover fifty (50) percent of the total estimated "Net Decommissioning Costs" as set forth in the Decommissioning Plan.
  - 4) On or before the tenth anniversary of the Project's COD, **[SOLAR COMPANY]** shall provide the County with Financial Assurance to cover one hundred (100) percent of the total estimated "Net Decommissioning Costs" as set forth in the Decommissioning Plan.
- c. If **[SOLAR COMPANY]** is acquired by a utility or cooperative with service territory in Wisconsin, no Financial Assurance shall be required. Financial Assurance shall be required if **[SOLAR COMPANY]** is acquired by any entity other than a utility or cooperative with service territory in Wisconsin (Non-Utility Acquiring Entity). A Non-Utility Acquiring Entity shall be required to maintain the Financial Assurance and decommissioning requirements set forth in this agreement and the Decommissioning Plan filed with the PSCW.
  - d. **[SOLAR COMPANY]** shall reimburse the County for its actual reasonable costs and expenses relating to the Decommissioning Plan and its implementation or as a result of Project decommissioning. For avoidance of doubt, the reimbursement obligation shall include, without limitation, actual reasonable costs and expenses incurred by the County to decommission the Project in whole or in part. Any reimbursement hereunder is due within thirty (30) days of presentment.
  - e. The Financial Assurance set forth herein and the Decommissioning Plan shall survive the termination of this Agreement until decommissioning is complete as determined by the PSCW or if the Project, **[SOLAR COMPANY]**, or Non-Utility Acquiring Entity is acquired by a utility or cooperative with service territory in Wisconsin, in which case the Financial Assurance (to the extent not previously drawn by the County,) shall be promptly returned or released by the County to **[SOLAR COMPANY]** or to the Non-Utility Acquiring Entity.

**7. Setbacks, Equipment Height, Vegetation, Fencing, Aesthetics and Sound Impacts.**

- a. Project Setbacks. The Project design shall incorporate setbacks in accordance with the CPCN Order.
- b. Equipment Height. The height of the Project's equipment shall be in accordance with the CPCN Order.
- c. Vegetation Management. **[SOLAR COMPANY]** shall comply with the vegetation management plan filed with and approved by the PSCW. **[SOLAR COMPANY]** shall also adhere to any vegetation management requirements included in the CPCN Order.
- d. Fencing.

- 1) **[SOLAR COMPANY]** 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) The Project's substation fence may utilize chain link and barbed wire, as required by electrical code.
  - 3) No fence shall cross a "navigable" waterway as defined by the Wisconsin Department of Natural Resources.
  - 4) No fencing shall be placed within the right-of-way of any road or highway maintained or controlled by the County.
- e. Aesthetics. **[SOLAR COMPANY]** 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. For non-participating landowners whose residence abuts the Project, **[SOLAR COMPANY]** shall make a good faith effort to address aesthetic concerns raised by such landowners. Good faith efforts shall include meeting with the landowner to discuss, and where appropriate, implement, reasonable mitigation.
- f. Sound Impacts. The Project shall comply will all applicable PSCW requirements for sound levels.
8. Assignment of Interest. **[SOLAR COMPANY]** 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 so long as the purchaser, assignee or other party assuming **[SOLAR COMPANY]**'s interest agrees to assume and perform all of **[SOLAR COMPANY]**'s obligations set forth in this Agreement and in the CPCN Order, including but not limited to its obligations related to the Decommissioning Plan and Indemnification. In such event, such non-Party entity shall, with **[SOLAR COMPANY]** or, in the event of total sale, assignment or lease, in lieu of **[SOLAR COMPANY]**, have the same rights and obligations as **[SOLAR COMPANY]** as set forth in this Agreement and in the CPCN Order, to operate the Project in, along, under, and across the same road rights-of-way and drainage systems. **[SOLAR COMPANY]** shall also have the sole and exclusive right (without consent from the County required) to collaterally assign its interest in this Agreement to any parties providing debt, equity, or other financing for the Project to **[SOLAR COMPANY]** or any of its affiliates so long as the assignee or other party possessing a right to assume **[SOLAR COMPANY]**'s interest agrees, upon such assumption, to assume and perform all of **[SOLAR COMPANY]**'s obligations set forth in this Agreement and its obligations set forth in the CPCN. For the avoidance of doubt, no direct or indirect change in control of the ownership interests of **[SOLAR COMPANY]**, or any sale of direct or indirect ownership interests in **[SOLAR COMPANY]** (including any tax equity investment or passive

investment) shall constitute an assignment requiring the consent of the County under this Agreement.

9. **Cooperation.** [SOLAR COMPANY] and the County 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. If, at any time after the Project's COD, [SOLAR COMPANY] brings forth a new permit application to the PSCW related to the Project, then [SOLAR COMPANY] shall provide the County with sixty (60) days' prior notice of such action and the Parties shall work together in good faith to develop and implement appropriate modifications to this Agreement to account for such action, to be determined within each Party's discretion and pursuant to the County's legal obligations.
10. **Compliance and Complaint Process.** [SOLAR COMPANY] shall identify to the contact person for the County 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 [SOLAR COMPANY] will be designated as the Project Contact. After construction completion, at least one member of [SOLAR COMPANY]'s full-time operations team will be its Project Contact. Complaints shall be submitted in writing via electronic mail at an address provided by [SOLAR COMPANY]. The Project Contact shall respond to any inquiries or complaints as soon as possible, and no later than 24 hours after the inquiry or complaint.
11. **Fee Reimbursement.** [SOLAR COMPANY] shall reimburse the County for its documented third party out-of-pocket legal fees, engineering fees, and other costs reasonably incurred in the review of this Agreement, conditioned on execution of this Agreement. Payment shall be due within 30 days of the date the County provides an invoice for such fees.
12. **Indemnification.** [SOLAR COMPANY] agrees to defend, indemnify, and hold harmless the County and its elected officials, supervisors, trustees, administrators, employees, and representatives (collectively the Indemnified Parties) against any and all losses, damages, claims, expenses, including reasonable attorneys' fees, and liabilities for physical damage to the property of the County and for physical injury to any person, to the extent the same is a result of any activities or operations of [SOLAR COMPANY], its agents and employees, or the performance or non-performance of its duties pursuant to this Agreement, except to the extent caused by the negligence or intentional misconduct, as determined by final order of a court of competent jurisdiction after all appeals are exhausted, of one or more of the Indemnified Parties. Furthermore, [SOLAR COMPANY] agrees to defend, indemnify, and hold harmless the Indemnified Parties from any third-party claims arising out of performance or non-performance of any of the terms and conditions of this Agreement except to the extent caused by the negligence or intentional misconduct, as determined by final order of a court of competent jurisdiction after all appeals are exhausted, of one or more of the Indemnified Parties. This indemnification obligation shall survive the termination of this Agreement.

### **13. Insurance.**

- a. **[SOLAR COMPANY]** shall at all times during construction, operation and decommissioning of the Project maintain insurance coverage in the following minimum amounts:
  - 1) Comprehensive General Liability Insurance, including coverage for personal injury, including death of persons resulting from injuries occurring on or in any way related to the construction, use, operation or decommissioning of the Project in a minimum amount of \$2 million per occurrence and with the combined aggregate of \$5 million.
  - 2) Workers' Compensation in the statutorily required amounts.
  - 3) Automotive liability in the amount of not less than \$1,000,000 per occurrence (owned, non-owned, and hired vehicles) for bodily injury, death of any person, and property damage.
  - 4) Employers' Liability with policy limits not less than \$500,000 per occurrence, \$500,000 per employee, and \$500,000 policy limit.
  - 5) Umbrella / Excess Liability with policy limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate.
- b. **[SOLAR COMPANY]** shall submit certificates of insurance to the County certifying that **[SOLAR COMPANY]** has obtained the minimum coverage limits as required herein and showing that the County, and each's elected officials, employees and agents are named as additional insureds on the comprehensive general liability insurance policy and the automotive liability insurance policy.

**[SOLAR COMPANY]** shall require consultants, contractors, subcontractors, or other parties performing work on the Project at any time to maintain insurance coverage consistent with the amounts set forth in Section 13(a).

- 14. Compliance with Laws.** **[SOLAR COMPANY]** 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 relevant 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 such approvals or compliance are otherwise preempted by the CPCN Order or this Agreement (collectively, "Applicable Laws").

- 15. 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 and applicable approvals of the County if not preempted by the grant of the CPCN or if agreed to by **[SOLAR COMPANY]** in this Agreement. For the avoidance of doubt, the Parties agree that **[SOLAR COMPANY]** is not required to obtain or apply for any permits from the County

other than those expressly included in this Agreement or the CPCN Order. In the event of a conflict between this Agreement, any related approvals by the County, or the requirements of 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.

16. **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.
17. **Acknowledgement of Governmental Entity Status.** [SOLAR COMPANY] acknowledges and accepts that the County is a governmental entity governed by specific provisions of the Wisconsin Statutes, including but not limited to Wisconsin State Statute Ch. 19 regarding public records. The Parties acknowledge and accept that each Party must comply with any Applicable Laws in light of the County's status as a governmental entity.
18. **No Waiver.** Nothing in this Agreement shall be construed as a waiver or forfeiture of any governmental immunity of the County, and the County hereby retains all applicable governmental immunities, defenses, and statutory limitations available. Nothing in this Agreement shall be construed as a waiver of the rights and obligations set forth in Wis. Stat. § 86.02 and Wis. Stat. § 86.14. The rights and obligations set forth in Wis. Stat. § 86.02 and Wis. Stat. § 86.14 shall apply to the Project during Project construction, Project operation, and Project decommissioning.
19. **Disputes.** [SOLAR COMPANY] will have sixty (60) days from the time in which the County 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 after steps 1) or 2) above, the County shall provide written notice of said dispute to [SOLAR COMPANY] within thirty (30) days after the occurrence of 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 County. The Parties shall endeavor to resolve the Dispute by mediation with a mediator mutually acceptable to the Parties. The costs of the mediator shall be equally shared by the Parties. In the event the Parties are unable to resolve any Dispute through mediation, the Parties consent to the Western District of Wisconsin as the exclusive venue for any Dispute arising out of this Agreement, unless it is determined by that court through a duly issued order that it lacks jurisdiction over the Dispute, in which case the Parties consent to exclusive venue in any Wisconsin state court.
20. **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

21. **Authority.** The persons executing this Agreement represent that they have the legal authority to bind the respective Party for which such signature is made.
22. **Term.** The term of this Agreement shall commence on the Effective Date and shall continue for the duration of the Project's commercial operation, unless terminated by mutual agreement of the Parties. Notwithstanding the foregoing Sections 2(f), 3(h), 5(a), 6, 12 and any other Section of this Agreement expressly intended to survive termination or expiration of Agreement shall survive and any and all such terms, obligations, covenants and undertakings shall continue in full force and effect.
23. 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.
24. **Notices.** Notices, requests, demands, and other communications shall be sent to the following addresses:

If to [SOLAR COMPANY]:

If to [COUNTY]:

NAME:  
TITLE: [TITLE]  
EMAIL:

With a copy to:

NAME:  
TITLE: [COUNTY] Corporation Counsel  
EMAIL:

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 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 certified mail, return receipt requested, or by overnight delivery.

*(Signatures appear on the following pages)*

**[SOLAR COMPANY]:**

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

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**[COUNTY] COUNTY:**

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

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**THIS TEMPLATE IS NOT AND SHALL NOT BE CONSTRUED AS LEGAL ADVICE. THE TEMPLATE IS DESIGNED AS A START TO DISCUSSIONS SURROUNDING THE APPROPRIATE REGULATORY FRAMEWORK. COUNTIES MUST CONSULT WITH CORPORATION COUNSEL IN THE IMPLEMENTATION OF THIS TEMPLATE.**

**WISCONSIN COUNTIES ASSOCIATION  
TEMPLATE ORDINANCE REGULATING  
UTILITY SCALE STANDALONE BATTERY ENERGY STORAGE SYSTEMS (BESS)**

Battery Energy Storage Systems (“BESS”) are devices that take energy from the electric grid or an electric generation facility, store that energy, and then discharge that energy at a later time. As the name suggests, batteries are a major component of a BESS. While a BESS can be useful for storing solar energy or wind energy when supply for that energy is high (i.e., when it is sunny or windy), given the large concentration of batteries in a small space, there may be critical failures and public safety risks associated with BESS.

In Wisconsin, many BESS are approved by the Public Service Commission of Wisconsin (“PSC”) as part of a Certificate of Public Convenience and Necessity (“CPCN”) issued to a large electric generating facility, as defined by Wis. Stat. § 196.491(1)(g). The PSC does not have authority to approve BESS applications that are not included with a CPCN application for a large electric generating facility or high-voltage transmission line. These BESS – known as “Standalone BESS” – are reviewed and considered at the local level.

While the public health and safety concerns regarding BESS are similar whether the BESS is a Standalone BESS or is approved by the PSC as part of a CPCN, this Template Ordinance recognizes the current state of the law in Wisconsin authorizing local regulation of Standalone BESS. As such, it applies only to Standalone BESS. Counties should work with their corporation counsel, zoning officials, public safety officials, and other relevant stakeholders to tailor the Template Ordinance to the specific facts, circumstances, goals, and objectives of their county. This tailoring may include adjusting terminology to ensure it is consistent with the county’s existing Code of Ordinances.

Please note that this Template Ordinance is intended to be a zoning ordinance and should therefore be considered as a zoning ordinance by counties having exercised the general zoning authority set forth in Wis. Stat. § 59.69.<sup>1</sup> For counties that have not exercised general zoning authority, Wisconsin law may provide an opportunity use this Template Ordinances as a starting

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<sup>1</sup> Counties exercising general zoning authority should work closely with the county’s zoning administrator and corporation counsel to ensure all requirements set forth in Wis. Stat. § 59.69 are met.

point for a licensing ordinance, the creation of which requires significant effort given the variety of legal issues and concerns.<sup>2</sup> Regardless, a county should work closely with the county's corporation counsel to ensure any ordinance regulating Standalone BESS meets the requirements set forth in Wisconsin law. Counties interested in addressing BESS that would be covered by a CPCN may attempt to enter into agreements with the developers of the BESS. These agreements are sometimes called Joint Development Agreements or Local Operating Agreements. Counties may also participate in the PSC proceedings.

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<sup>2</sup>See *Zwiefelhofer v. Town of Crooks Valley*, 2012 WI 7.

TEMPLATE ORDINANCE  
ORDINANCE NUMBER [\_\_\_\_\_]   
CREATING SECTION [\_\_\_\_\_] OF THE [\_\_\_\_\_] COUNTY CODE OF  
ORDINANCES TO REGULATE UTILITY SCALE STANDALONE BATTERY ENERGY  
STORAGE SYSTEMS

**WHEREAS**, Battery Energy Storage Systems (“BESS”) are devices that take energy from the electric grid or an electric generation facility, store that energy, and then discharge that energy at a later time;

**WHEREAS**, BESS can be useful for increasing the resilience of the overall electric grid, particularly with respect to storing renewable energy – such as solar energy or wind energy – when supply of that energy is high;

**WHEREAS**, given the large concentration of batteries in a small space, there can be critical failures associated with BESS, which can impact the public health, safety, convenience and general welfare of the residents and property owners in [\_\_\_\_\_] County (the “County”);

**WHEREAS**, while the Public Service Commission of Wisconsin (“PSC”) has jurisdiction over BESS that are included in a Certificate of Public Convenience and Necessity (“CPCN”) Application for a large electric generating facility or high-voltage transmission line, because a BESS does not meet the definition of a “large electric generating facility” or a “high-voltage transmission line” set forth in Wis. Stat. § 196.491(1), the PSC does not have jurisdiction over BESS that are not included as part of a CPCN Application for a large electric generating facility or high-voltage transmission line and are not part of a “facility” as defined by Wis. Stat. § 196.491(1)(e) (“Standalone BESS”);

**WHEREAS**, as such, approval and regulation of Standalone BESS fall within the jurisdiction of the County, including its planning and zoning authority set forth in Wis. Stat. § 59.69; and

**WHEREAS**, this Ordinance is intended to address the requirements a Standalone BESS must meet before the County may issue a [zoning permit] [land use permit] [conditional use permit] [\_\_\_\_\_].

**NOW, THEREFORE, THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF [\_\_\_\_\_] DO ORDAIN AS FOLLOWS:**

**SECTION 1:** Section [\_\_\_\_\_] of the [\_\_\_\_\_] County Code of Ordinances is hereby created as follows:

**SEC. [\_\_\_\_\_].** Utility Scale Standalone Battery Energy Storage Systems.

*A. Definitions.*

1. “Battery Energy Storage System” or “BESS” means electrochemical devices that collect energy from the electric grid or an electric generating facility, store that energy, and then discharge that energy at a later time to provide electricity or other grid services.
2. “Emergency Response Plan” means the plan developed in accordance with [Sec. \_\_\_\_\_].
3. “Facility” means a large electric generating facility or a high-voltage transmission line.
4. “High-voltage transmission line” means a conductor of electric energy exceeding one mile in length designed for operation at a nominal voltage of 100 kilovolts or more, together with associated facilities. A high-voltage transmission line does not include transmission line relocations that are within an electronics and information technology manufacturing zone designated under Wis. Stat. § 238.396, and high-voltage transmission lines excluded from the definition set forth in Wis. Stat. § 196.491(1)(f).
5. “Large electric generating facility” means electric generating equipment and associated facilities designed for nominal operation at a capacity of 100 megawatts or more.
6. “NFPA 70” means the National Electrical Code (2026), which is incorporated herein by reference. A copy of the 2026 edition of NFPA 70 is available for inspection at the office of the Zoning Administrator.
7. “NFPA 855” means NFPA 855: Standard for Installation of Stationary Energy Solar Systems (2026), which is incorporated herein by reference. A copy of the 2026

edition of NFPA 855 is available for inspection at the office of the Zoning Administrator.

8. “PSCW” means the Public Service Commission of Wisconsin.
9. “Standalone BESS” or “SA-BESS” means a BESS that is not part of a Facility.
10. “UL 1973” means the version of ANSI/CAN/UL 1973 in effect as of the date of the application, which is incorporated herein by reference. UL 1973 addresses standards for batteries in energy storage systems. A copy of the current version of UL 1973 is available for inspection at the office of the Zoning Administrator.
11. “UL 9540” means ANSI/CAN/UL 9540: Standard for Energy Storage Systems and Equipment (2025), which is incorporated herein by reference. A copy of the 2025 edition of UL 9540 is available for inspection at the office of the Zoning Administrator.
12. “UL 9540A” means ANSI/CAN/UL 9540A: Test Method for Evaluating Thermal Runaway Fire Propagation in Battery Energy Storage Systems (2026), which is incorporated herein by reference. A copy of the 2026 edition of UL 9540A is available for inspection at the office of the Zoning Administrator.

*B. Applicability.*

1. This Sec. [\_\_\_\_\_] applies to all SA-BESS, other than those SA-BESS described in subsection (b)(2) below.
2. *Exemptions.* This Sec. [\_\_\_\_\_] shall not apply to:
  - a. SA-BESS with a rated discharge capacity equal to or less than [4] megawatt-hours.
  - b. SA-BESS connected to a residential dwelling.
  - c. SA-BESS approved as part of a facility that has received a Certificate of Public Convenience and Necessity issued by the PSCW.
  - d. The general maintenance and repair of a SA-BESS which has been installed and is used as of the effective date of this Sec. [\_\_\_\_].

*C. Location.* The [Use Table] found in [Section \_\_\_\_] [Appendix \_\_\_\_] reflects the zoning districts in which SA-BESS is allowed as a [permitted use, conditional use or accessory use.]

D. *Application.* The application for a [\_\_\_\_\_] permit] related to SA-BESS shall include all information required for such [\_\_\_\_\_] permit] as set forth in [Sec. \_\_\_\_]. The application shall be reviewed in accordance with the typical process for a [\_\_\_\_\_] permit] as set forth in [Section \_\_\_\_]. The SA-BESS application shall also include the following:

1. Site plan depicting, at a minimum:
  - a. Property lines and physical features, including roads and surface waters, for the project site;
  - b. Proposed changes to the landscape of the site, grading and drainage, vegetation clearing and planting, exterior lighting, and screening vegetation or structures;
  - c. Proposed access points from any public road or private road, internal roads and connection systems,
  - d. Zoning district designation for the parcel(s) of land comprising the SA-BESS project site.
2. Commissioning plan in accordance with the standards set forth in NFPA 855 and shall include:
  - a. An electrical diagram detailing the battery energy storage system configuration, associated components, and electrical interconnection methods, which shall be compliant with applicable state or local electrical codes, including NFPA 70.
  - b. A preliminary equipment specification sheet that documents the proposed SA-BESS components, inverters and associated electrical equipment that are to be installed. A final equipment specification datasheet shall be submitted prior to the issuance of the [\_\_\_\_\_] permit.
  - c. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the SA-BESS. Such information of the final system installer shall be submitted prior to the issuance of the [\_\_\_\_\_] permit.
3. Decommissioning plan as required in [Sec. \_\_\_\_].
4. Emergency Response Plan as required in [Sec. \_\_\_\_];

5. Operations and maintenance plan;
6. Other information necessary for the County to adequately review the application for [ ] permit.

E. *Standards.*

1. *Setbacks.* SA-BESS shall comply with the greater of: (1) the setback requirements for the zoning district in which the SA-BESS is located; or (2) NFPA 855. Setbacks shall be measured from the edge of the outermost SA-BESS enclosure.
2. *Lighting Requirements.* Lighting at a SA-BESS shall comply with the greatest of: (1) the lighting requirements for the zoning district in which the SA-BESS is located; (2) the lighting requirements set forth in NFPA 855; or (3) the lighting requirements set forth in NFPA 70.
3. *Security and Screening.*
  - a. *Fences.* SA-BESS shall be surrounded by a perimeter fence to prevent unauthorized access to the SA-BESS. The perimeter fence shall comply with all requirements for a fence in the zoning district in which the SA-BESS is located. The perimeter fence shall be: (1) at least seven feet tall or (2) as tall as a fence is permitted in the zoning district in which the SA-BESS is located, whichever is less.
  - b. *Other Barriers.* SA-BESS shall comply with all applicable standards related to barriers or buffering applicable in the zoning district in which the SA-BESS is located and the specifications related to barriers and buffering established in NFPA 855.
  - c. Security barriers, fences, landscaping, and other enclosures shall not inhibit required air flow to or exhaust from the SA-BESS and its components.
4. *Noise.* SA-BESS shall comply with the noise requirements for the zoning district in which the SA-BESS is located.
5. *Other Permits.* An applicant shall apply for and receive all necessary state and federal permits, including any permits related to environmental laws, prior to commencing construction of the SA-BESS. Copies of all applicable state and

federal permits shall be provided to the Zoning Administrator within 30 days of issuance.

6. *Safety Requirements.* SA-BESS shall comply with all safety requirements set forth in NFPA 855. In addition, applicant shall submit for approval by [ ] the following information:

a. *Emergency Response Plan.*

- i. Prior to commencing operations at the SA-BESS, the applicant shall submit an Emergency Response Plan to the Zoning Administrator. Any updates to the Emergency Response Plans shall be submitted to the Zoning Administrator. The original Emergency Response Plan and any update thereto shall comply with NFPA 855 and best safety practices.
- ii. Provide for training of all emergency response personnel from the [ ]. Emergency response personnel shall be trained and equipped to the extent necessary to respond any emergency involving the SA-BESS, at the applicant's cost and expense, prior to the commencement of operation of the SA-BESS. Refresher training for all local first responders shall be required, at the applicant's expense, at reasonable intervals requested by the [County Emergency Manager] or the [emergency response unit's chief], but at a minimum on an annual basis throughout the life of the project.
- iii. The Emergency Response Plan shall be reviewed annually with [local emergency responders] throughout the lifespan of the SA-BESS, and shall modified for best safety practices or to reflect modifications in applicable law or NFPA 855.

b. *Equipment Certification.*

- i. All batteries integrated within the SA-BESS shall be listed under UL 1973.

- ii. The SA-BESS shall be listed under UL 9540. Fire and propagation testing shall be carried out in accordance with UL 9540A, including large scale fire testing.

7. *Decommissioning.*

- a. A Decommissioning Plan shall be developed, submitted, and approved by the County prior to the issuance of the [ ] permit. The Decommissioning Plan shall identify:
  - i. Steps for restoring the site of the project to pre-construction environmental and physical condition to the maximum extent possible.
  - ii. Estimated cost for restoration less the project's estimated salvage value ("Net Cost for Restoration").
- b. The applicant is responsible for decommissioning the SA-BESS pursuant to the Decommissioning Plan, including the removal of the SA-BESS and all associated equipment and improvements at the end of its useful life. The project site shall be restored to its pre-construction condition, to the greatest extent possible, within 12 months of ceasing operations.
- c. The applicant shall update the Decommissioning Plan, including the calculation of the Net Cost for Restoration, at least every five (5) years.
- d. Financial Assurance.
  - i. The applicant shall provide financial assurance in the amount of the estimated cost of decommissioning the SA-BESS, after deducting salvage or recycling value, as calculated by a third party with expertise in decommissioning, hired by the applicant (the "Decommissioning Cost").
  - ii. The financial assurance may be made, at the option of the applicant, in the form of a surety bond, a parent company guarantee, an irrevocable letter of credit, or cash. If, as a result of updates to the Decommissioning Plan, including the calculation of the cost of decommissioning, the Decommissioning Cost shall increase, the applicant shall – within 90 days of updating the Decommissioning

Plan – provide such increased financial assurance to the County. The applicant shall provide the required financial assurance to the County as follows:

- [25%] of the Decommissioning Cost prior to the commencement of operations at the SA-BESS.
- [50%] of the Decommissioning Cost within [five] years of the commencement of operations at the SA-BESS.
- [100%] of the Decommissioning Cost within [ten] years of the commencement of operations at the SA-BESS.

- e. The applicant shall notify the Zoning Administrator at least 60 days prior to commencing the decommissioning process, and shall provide a decommissioning report upon completion of the decommissioning process.

F. *Conditions.* In approving a conditional use permit related to SA-BESS, the [Zoning Committee] may impose one or more conditions of approval deemed necessary to further the intent and purposes of this Section and to reduce adverse impacts on surrounding properties. Conditions may address any factor considered by the [Zoning Committee] in the decision-making process and shall be based on substantial evidence, as such term is defined in Wis. Stat. § 59.69(5e). Such conditions may relate to, but are not limited to:

1. [setbacks]
2. [lighting requirements]
3. [security and screening]
4. [noise]
5. [safety requirements, including the Emergency Response Plan and equipment certification, which depending on the nature of the SA-BESS, might include requirements about automatic fire control and suppression systems, access roads adequate for fire department access and water for firefighting purposes]
6. [decommissioning, including the decommissioning plan and related financial assurance].

G. *Additions to or Augmentation of Approved SA-BESS.*

1. An application may include an augmentation schedule for periodic installation of additional enclosures or other improvements. The augmentation schedule shall include the following:
  - a. The timeframe upon which additional battery enclosures would be installed, either to maintain the SA-BESS capacity as batteries lose capacity or to increase the SA-BESS capacity.
  - b. Details of whether the batteries would be installed to maintain SA-BESS capacity or to increase the SA-BESS capacity and, if the batteries would increase the SA-BESS capacity, to what extent the SA-BESS capacity would be increased.
2. The Site Plan associated with the application should indicate where any battery enclosures installed pursuant to the augmentation schedule would be located.
3. Any battery enclosures shall comply with the provisions of this Section.
4. An augmentation schedule may not extend beyond [\_\_\_\_\_] years from the date the permit is issued.
5. An augmentation schedule may not increase the capacity of a SA-BESS more than [\_\_\_\_\_] % above its original stated capacity.
6. If an augmentation schedule is approved in conjunction with the approval of a permit, the applicant may install additional battery enclosures pursuant to the augmentation schedule. Any such installation shall begin within [\_\_\_\_\_] days of the date identified on the augmentation schedule. Installation more than [\_\_\_\_\_] days from the date identified on the augmentation schedule is not considered approved by the augmentation schedule, even if the augmentation schedule was approved.
7. The applicant shall provide notice of installation to the Zoning Administrator at least 30 days prior to commencing the installation of additional battery enclosures pursuant to the augmentation schedule.
8. The applicant shall provide notice of completion to the Zoning Administrator within thirty days of completing the installation of additional battery enclosures pursuant to the augmentation schedule.

H. *Severability*. Should any portion of this Section be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Section shall not be affected.

**SECTION 2:** *Repealer Clause*. Any ordinances or resolutions or parts thereof in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

**SECTION 3:** *Effective Date*. This Ordinance shall take effect upon passage and publication.

**THIS TEMPLATE IS NOT AND SHALL NOT BE CONSTRUED AS LEGAL ADVICE. THE TEMPLATE IS DESIGNED AS A START TO DISCUSSIONS SURROUNDING THE APPROPRIATE REGULATORY FRAMEWORK. COUNTIES MUST CONSULT WITH CORPORATION COUNSEL IN THE IMPLEMENTATION OF THIS TEMPLATE.**

**WISCONSIN COUNTIES ASSOCIATION  
TEMPLATE ORDINANCE REQUIRING NOTICE FOR  
LARGE-SCALE DATA CENTER DEVELOPMENTS**

As seen across Wisconsin, the construction and development of large-scale data centers involves a significant volume of heavy construction equipment, delivery vehicles, construction materials, specialized equipment and machinery, cranes, and other large vehicles carrying heavy loads traveling on County highways and highway structures. This results in increased traffic load and wear on County highways, bridges, culverts, shoulders, drainage facilities and other infrastructure. In other words, large-scale data center development presents concerns in the areas of public safety and road/highway infrastructure integrity.

From a public safety perspective, the sheriff is responsible for coordinating the countywide law enforcement effort in the manner the sheriff sees fit consistent with the sheriff's constitutional and statutory duties and authority. The traffic control and other public safety demands created through a large-scale data center development exceed what can be considered the ordinary challenges brought about through land development. Indeed, it is a rare land development project that involves multiple hundreds of acres of land disturbed and thousands of construction-related employees on the site of the development. Therefore, it is important that counties have a seat at the table when a proposed developer is discussing development impacts, and how to address those impacts, with a municipality in which the project is proposed.

Similarly, counties have a responsibility to maintain the County highways and highway structures, and to ensure that any person that damages County highways or highway structures is held responsible for the costs of repairing that damage. Section 86.02 provides that any person who damages any highway by any act is liable for three times the cost of the damage. These damages are to be recovered by the "political division" responsible for the maintenance of the damaged highway. The damages are to be placed in the highway maintenance fund. Additionally, Wis. Stat. § 86.14 provides remedies for damages to highway structures, including double damages for any person who subjects a bridge or culvert to excess load, and triple damages for any person who willfully damages any highway structure. These damages are to be recovered by the "subdivision of the state" responsible for the maintenance or repair of such structure. In the case

of County highways and bridges, the County is the political division and subdivision of the state referenced by statute. Simply put, a County may exercise its statutory authority under Wis. Stat. § 86.02 and Wis. Stat. § 86.14 to protect County highways and highway structures from the damage associated with the construction and development of large-scale data centers.

In light of the pattern across Wisconsin of road damage to County highways and highway structures resulting from the construction and development of large-scale data centers (which, to this point, have been built in cities and villages), a County should seek to work proactively with the developers of these large-scale data centers and attempt to negotiate an agreement with the developer pursuant to which the developer agrees to take financial responsibility for the impact of the construction of the large-scale data center on County services. For example, the agreement might contractually require the developer to promptly make payment to the County for the repair and restoration of County highways or highway structures affected by the construction of the large-scale data center. Such an agreement may also address other impacts the construction of a large-scale data center has on counties, such as increased calls for service requiring a response from the County Sheriff's Department.

Counties should work with their corporation counsel, sheriff, highway officials, public safety officials, and other relevant stakeholders to tailor the Template Ordinance to the specific facts, circumstances, goals, and objectives of their county. This tailoring may include adjusting terminology to ensure it is consistent with the county's existing Code of Ordinances.

TEMPLATE ORDINANCE

ORDINANCE NUMBER [\_\_\_\_\_]

CREATING SECTION [\_\_\_\_\_] OF THE [\_\_\_\_\_] COUNTY CODE OF  
ORDINANCES TO REQUIRE NOTICE TO THE COUNTY OF THE INTENT TO  
CONSTRUCT A LARGE-SCALE DATA CENTER WITHIN THE COUNTY

**WHEREAS**, Large-Scale Data Centers are industrial facilities that house servers and data storage devices;

**WHEREAS**, the construction of Large-Scale Data Centers is an immense task, often involving the transportation of heavy construction equipment, delivery vehicles, construction materials, specialized equipment and machinery, cranes, and other large vehicles carrying heavy loads on County highways and highway structures;

**WHEREAS**, the public safety demands imposed through the construction of Large-Scale Data Centers present issues that should be discussed and addressed in advance of the development;

**WHEREAS**, the increased load and wear on County highways and highway structures may result in damage or increased maintenance costs to the highways and highway structures, which is the responsibility of [\_\_\_\_\_] County (the “County”);

**WHEREAS**, the County has statutory authority under Wis. Stat. § 86.02 and Wis. Stat. § 86.14 to recover damages when a person damages the County highways or highway structures; and

**WHEREAS**, in recognition that across the state, to this point, Large-Scale Data Centers are being developed within cities and villages (rather than towns), which often means counties like the County are limited in their ability to proactively plan for the impact of the construction of a Large-Scale Data Center, it is in the County’s best interest to require developers of Large-Scale Data Centers provide notice to the County so that the County and the developer may identify and mitigate potential adverse impacts on the County and its infrastructure associated with the construction of a Large-Scale Data Center.

**NOW, THEREFORE, THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF [\_\_\_\_\_] DO ORDAIN AS FOLLOWS:**

**SECTION 1:** Section [\_\_\_\_\_] of the [\_\_\_\_\_] County Code of Ordinances is hereby created as follows:

**SEC. [\_\_\_\_\_]. *Notice For Large-Scale Data Centers.***

*A. Definitions.*

1. A “large-scale data center” is any project with one or more buildings owned, leased, or operated by the same entity or by one or more affiliates of the entity, with the primary purpose of housing computing and networking equipment in order to centralize the processing, storage, management, retrieval, communication, or dissemination of data and information, that:

*[Option A]*

- i. Consists of one or more principal buildings that aggregate at least [25,000] square feet;
- ii. Consists of a single contiguous tract of land, which may include one or more parcels, totaling [10] acres or more; and
- iii. Consists of at least [5,000] servers.

*[Option B]*

- i. Consists of one or more principal buildings that aggregate at least [10,000] square feet;
- ii. Consists of at least [5,000] servers; and
- iii. Has an electric power rating, or power draw, greater than 100 megawatts.

*[Option C]*

- i. Consists of one or more principal buildings that aggregate at least [100,000] square feet; and
- ii. Consists of a single contiguous tract of land, which may include one or more parcels, totaling [200] acres or more.

*[Option D]*

- i. Consists of one or more principal buildings that aggregate at least [\_\_\_\_\_] square feet; [and]
- ii. Consists of one or more parcels, totaling [\_\_\_\_\_] acres or more; [and]
- iii. Has an electric power rating, or power draw, greater than [\_\_\_\_\_] megawatts; [and]
- iv. Consists of at least [\_\_\_\_\_] servers.

B. *Applicability.* This Section applies to all proposed Large-Scale Data Centers in [\_\_\_\_\_] County, regardless of whether the Large-Scale Data Center is located in a [city, village, or town].

C. *County Coordination.*

- 1. Within [thirty] days of the first Planning Contact between a municipality that is either fully or partially incorporated within the County and the owner, operator, or proposed developer of a Large-Scale Data Center (“Contacting Party”), the Contacting Party shall provide notice of the preliminary Large-Scale Data Center to the [County Executive] [County Administrator] [Administrative Coordinator] [Highway Commissioner] [Sheriff] [Corporation Counsel]. Any of the following shall be considered “Planning Contact” for purposes of this Section:

- i. Email, telephone call, electronic submission, or in-person inquiry with a municipal clerk or administrator;
- ii. Email, telephone call, electronic submission, or in-person inquiry with a municipal zoning administrator;
- iii. Request for a pre-application or conceptual development meeting;
- iv. Email, telephone call, electronic submission, or in-person inquiry with the municipal planning department or planning commission;
- v. Email, telephone call, electronic submission, or in-person inquiry with an elected official;
- vi. Email, telephone call, electronic submission, or in-person inquiry with an economic development organization such as a chamber of commerce or regional planning commission;
- vii. Submission of a zoning or land-use inquiry;

- viii. Request for a conditional-use or special exception application;
  - ix. Submission of a conditional-use or special exception application;
  - x. Submission of a conceptual site plan;
  - xi. Submission of a development proposal;
  - xii. Submission of a letter of intent;
  - xiii. Submission of a request for annexation;
  - xiv. Email, telephone call, electronic submission, or in-person inquiry to any of the above through an agent (including an attorney), property landowner or the landowner's agent or representative;
  - xv. Any other communications with the municipality concerning the potential development of a Large-Scale Data Center.
2. The Contacting Party shall provide the [County Executive] [County Administrator] [Administrative Coordinator] [Highway Commissioner] [Sheriff] [Corporation Counsel] with the following information, to the extent applicable:
- i. Project location, design, and operational characteristics;
  - ii. Agricultural preservation and land use compatibility;
  - iii. Impacts to roads, drainage systems, emergency services, and public infrastructure;
  - iv. Environmental, stormwater, and natural resource impacts;
  - v. Compatibility with surrounding development and existing land uses;
  - vi. Proposed mitigation measures addressing identified local concerns;
  - vii. Any other information reasonably necessary for the County to understand the proposed Large-Scale Data Center's potential impacts on County highways, highway structures, emergency services, or other matters within the County's jurisdiction.
3. The [County Executive] [County Administrator] [Administrative Coordinator] [Highway Commissioner] [Sheriff] [Corporation Counsel] shall promptly review the notice submitted by the Contacting Party. The [County Executive] [County Administrator] [Administrative Coordinator] [Highway Commissioner] [Sheriff] [Corporation Counsel] may, to the extent permitted by applicable law, sign a non-disclosure agreement related to information provided by the Contacting Party.] If,

upon reviewing the notice, it appears reasonably likely to the [County Executive] [County Administrator] [Administrative Coordinator] [Highway Commissioner] [Sheriff] [Corporation Counsel] that the potential Large-Scale Data Center could have an adverse impact upon County highways, highway structures, or other County services, the [County Executive] [County Administrator] [Administrative Coordinator] [Highway Commissioner] [Sheriff] [Corporation Counsel] may seek to negotiate an agreement with the Contacting Party to mitigate the adverse effect the Large-Scale Data Center could have upon County highways, highway structures, or other County services.

- D. *Severability*. Should any portion of this Section be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Section shall not be affected.

**SECTION 2: Repealer.** Any ordinances or resolutions or parts thereof in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

**SECTION 3: Effective Date.** This Ordinance shall take effect upon passage and publication.

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**THIS TEMPLATE IS NOT AND SHALL NOT BE CONSTRUED AS LEGAL ADVICE. THE TEMPLATE IS DESIGNED AS A START TO DISCUSSIONS SURROUNDING THE APPROPRIATE REGULATORY FRAMEWORK. COUNTIES MUST CONSULT WITH CORPORATION COUNSEL IN THE IMPLEMENTATION OF THIS TEMPLATE.**

**WISCONSIN COUNTIES ASSOCIATION  
TEMPLATE ZONING ORDINANCE REGULATING  
DATA CENTERS**

Data centers, and the electricity and water usage that comes with those data centers, has become a part of everyday conversation in a way that was unimaginable just a few years ago. While, to this point, the large data centers – sometimes called “hyperscale” data centers –have been or are being built in incorporated areas, numerous counties across Wisconsin exercising zoning authority have adopted moratoriums related to data centers under Wis. Stat. § 59.69. In general, the idea behind these moratoriums is to stop accepting certain applications for a period of time while the county determines how best to incorporate data centers as a land use into its zoning ordinance.

This Template Ordinance is intended to be used as a starting point for counties in Wisconsin exercising zoning authority as the county determines whether to regulate data centers within its zoning ordinance pursuant to the county’s statutory authority, and if a county decides to regulate, how best to incorporate data centers into its zoning ordinance. Counties should work with their corporation counsel, zoning officials, public safety officials, and other relevant stakeholders to tailor the Template Ordinance to the specific facts, circumstances, goals, and objectives of their county. This tailoring may include adjusting terminology to ensure it is consistent with the county’s existing Code of Ordinances. It should also include careful consideration of the definition of “data center” or “hyperscale data center” to ensure that the definition makes sense in the context of the county’s goals and objectives and is consistent with its treatment of similar uses.

ORDINANCE NO. \_\_\_\_\_  
CREATING SECTION [\_\_\_\_\_] OF THE [\_\_\_\_\_] COUNTY CODE OF  
ORDINANCES TO CREATE ZONING PROVISIONS APPLICABLE TO [HYPERSCALE]  
DATA CENTERS

WHEREAS, a data center is generally considered to be a physical location that houses and runs computer networking components and infrastructure;

WHEREAS, traditionally, data centers were relatively small – often occupying less than 5,000 square feet – and were often located within existing buildings and structures;

WHEREAS, in recent years, there has been a significant increase in the construction of much larger data centers across the United States;

WHEREAS, these larger data centers – which can span hundreds or thousands of acres and millions of square feet – are sometimes called hyperscale data centers;

WHEREAS, in order to promote the public health, safety, convenience and general welfare, in order to encourage planned and orderly land development, and in order to permit the careful planning and efficient maintenance of highway systems, it is appropriate for [\_\_\_\_\_] County to address [hyperscale] data centers through zoning.

NOW, THEREFORE, THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF [\_\_\_\_\_] DO ORDAIN AS FOLLOWS:

**SECTION 1:** Section [\_\_\_\_\_] of the [\_\_\_\_\_] County Code of Ordinances is hereby created as follows:

**SEC. [\_\_\_\_\_] . [HYPERSCALE] DATA CENTERS.**

- A. Purpose. This [Sec. \_\_\_\_\_] is intended to provide a clear, comprehensive, and predictable land use and zoning framework for the siting and operation of [hyperscale] data centers within [\_\_\_\_\_] County. [Hyperscale data] [Data] centers require access to public infrastructure, including water, sewer, highways, and emergency services. This [Sec. \_\_\_\_\_] is intended to ensure that [hyperscale] data centers are evaluated, located, and developed in a manner consistent with the County’s adopted Comprehensive Plan or County Development Plan; that the infrastructure and operational impacts of a proposed [hyperscale] data center are appropriately reviewed and mitigated; and that the County can appropriately promote the public health, safety, convenience and general welfare, planned

and orderly land development, and the careful planning and efficient maintenance of highway systems.

B. Definitions.

1. “[Hyperscale] Data Center” means one or more buildings owned, leased, or operated by the same entity, or affiliates of the entity, with the primary purpose of housing computing and networking equipment in order to centralize the processing, storage, management, retrieval, communication, or dissemination of data and information that consists of: (1) one or more principal buildings that aggregate at least [125,000] square feet; (2) a single contiguous tract of land, which may include one or more parcels, of [ten (10)] acres or more; and (3) at least [5,000 servers].

C. Location. The [Use Table] found in [Sec. \_\_\_\_] [Appendix \_\_\_\_] reflects the zoning district[s] in which a [Hyperscale] Data Center is allowed as a [permitted use] [conditional use] [permitted or conditional use].

D. Application. The application for a [zoning permit] [land use permit] [conditional use permit] [\_\_\_\_\_] related to a [Hyperscale] Data Center should include all information normally required for such permit. The application shall be reviewed in accordance with the typical process for a [zoning permit] [land use permit] [conditional use permit] [\_\_\_\_\_] as set forth in [Section \_\_\_\_]. [In addition, the application related to a [Hyperscale] Data Center shall include:

1. The planned location of electric lines (both underground and overhead), project entrances, staging areas, and access roads required during construction and post construction.
2. Lighting Plan. [A lighting plan providing details of the light spread and intensity diagrams, fixture specifications, and mounting height details. Any lighting used for outdoor illumination on the property shall not allow light to shine upward or adversely impact adjoining properties.] [A lighting plan that meets the requirements of Sec. \_\_\_\_].
3. Road Use Agreement. A Road Use Agreement containing the information and conditions specified in [Sec. \_\_\_\_].
4. Pre-Construction Noise Analysis. Pre-Construction Noise Analysis shall be submitted in accordance with [Sec. \_\_\_\_].
5. Emergency Response Plan. An Emergency Response Plan containing the information and conditions specified in [Sec. \_\_\_\_].
6. Decommissioning Plan. A Decommissioning Plan containing the information and conditions specified in [Sec. \_\_\_\_].

7. Initial Financial Assurance. Initial financial assurance pursuant to the conditions specified in [Sec. \_\_\_\_].
  8. Other Necessary Permits List. A list of all other necessary federal, state, and local permits which must be obtained in connection with the [Hyperscale] Data Center.
- E. Development Agreement and Final Plans. The [Zoning Committee] [Zoning Administrator] may require applicant to enter into a development agreement to acknowledge any refinements in the plans set forth in Section D, to memorialize any agreements set forth in this [Sec. \_\_\_\_], or further describe the applicant's compliance with the requirements set forth in this [Sec. \_\_\_\_]. The final development agreement shall be approved by the applicant and [Zoning Committee] [Zoning Administrator] [County Board of Supervisors].
- F. Other Permits. An applicant shall apply for and receive all necessary federal, state, and local permits, including any permits related to environmental laws, stormwater management, and erosion and sediment control. Copies of any applicable permits issued by any issuer other than the County shall be provided to the Zoning Administrator within 30 days of issuance. Nothing herein shall be construed as waiving or limiting the applicability of any other ordinance or requirement set forth therein unless specifically addressed in this Ordinance.
- G. Standards.
1. Setbacks. A [Hyperscale Data Center] shall be setback from property lines the greater of: (a) the setback requirements for the zoning district in which the [Hyperscale] Data Center is located; or (b) [200 feet.]
  2. Street Access. The [Hyperscale] Data Center shall have physical access to a public road capable of providing safe and adequate access for the [Hyperscale] Data Center, as demonstrated by a traffic impact analysis or other information reasonably required by the [Zoning Administrator] [Zoning Committee]. Where the [Hyperscale] Data Center proposes to access a county road or highway, the applicant shall obtain all approvals required by the County Highway Department. Where the [Hyperscale] Data Center proposes to access a state or municipal road or highway, the applicant shall obtain all approvals required by the government that has jurisdiction over that road or highway. The vehicular access points between the public road and the [Hyperscale] Data Center shall be located to minimize conflict with through traffic movement.

3. Parking. [Hyperscale] Data Centers shall comply with the off-street parking and loading areas required for the zoning district in which the [Hyperscale] Data Center is located.
4. Buffers. [[Hyperscale] Data Centers shall comply with all applicable standards related to barriers or buffering applicable in the zoning district in which the [Hyperscale] Data Center is located.] [In addition to all applicable standards related to barriers or buffering applicable in the zoning district in which the [Hyperscale] Data Center is located, a buffer shall be provided when a [Hyperscale] Data Center abuts a non-industrial zoning district, unless the [Hyperscale] Data Center site is already separated from the abutting property by a natural feature that functions as an effective visual and physical barrier similar to the requirements below, such as substantial wooded areas or similar natural landforms, as determined by the Zoning Administrator or their designee:
  - i. The buffer area shall be a minimum of [ ] feet wide.
  - ii. The buffer area shall be landscaped or fenced to provide a visual screen, and shall not include any structures other than[: (1)] fencing that meets the requirements of this section [and Section \_\_\_\_ (a reference to the County's Fencing Provision)][ or (2) structures that have been approved by the [Zoning Committee], which shall be approved if the applicant presents substantial evidence that the construction of the structure will not detract from the barrier area functioning as an effective visual and physical barrier].
  - iii. Fencing may be used to meet up to [ ] percent of the length required for the buffer area. Any such fence shall comply with all requirements for a fence in the zoning district in which the [Hyperscale] Data Center is located. Any such fence shall be: (1) at least [eight] feet tall or (2) as tall as a fence is permitted in the zoning district in which the [Hyperscale] Data Center is located, whichever is less.
  - iv. Landscaping may use any combination of berms, native plants and tree species to achieve a visual buffer. Trees, at mature height, shall be no less than 25 feet in height. The 25 feet minimum height of the trees may be measured at maturity, provided that the trees have a height of at least [ ] feet when planted and at least [ ] feet within [three] years of planting. Berms must be vegetated to minimize erosion and to slow stormwater runoff.
  - v. Visual screening shall be measured under leaf-on conditions and shall be measured from the elevation of the shared property line.
  - vi. Buffer areas may include drainage swales, stormwater retention or infiltration areas, or other stormwater management areas in accordance with

an approved stormwater management plan only if landscaping and visual screening requirements are also met.

- vii. All buffer areas shall be kept free of litter, debris, noxious weeds, and species of plants identified by the Wisconsin Department of Natural Resources as exotic or invasive.

5. Impact to Public Infrastructure. [Hyperscale] Data Centers shall avoid and mitigate their impact upon public infrastructure by complying with the following, which shall be documented in a Road Use Agreement:

- i. Road Plan. Applicants shall identify all roads planned to be used for the purpose of transporting equipment for construction, operation, or maintenance of the [Hyperscale] Data Center. The applicant is responsible for obtaining applicable weight and size permits from the applicable agencies prior to commencing construction.
- ii. Existing Road Conditions. Applicants shall conduct a preconstruction roadway conditions survey, which shall be in coordination with the County Highway Department to determine baseline road conditions. The preconstruction roadway conditions survey shall adequately document the preconstruction conditions of all road, road right of way, and public drainage infrastructure that applicant intends to use during any phase of construction. The preconstruction roadway conditions survey shall be attached or otherwise incorporated into the Road Use Agreement.
- iii. Transportation Impact Analysis. Applicants shall have a professional engineer licensed in the State of Wisconsin conduct a transportation impact analysis detailing how the proposed [Hyperscale] Data Center will impact the surrounding road and highway network during and after construction. The transportation impact analysis shall include all roads or highways reasonably expected to experience material impacts. The transportation impact analysis shall address, at a minimum, capacity, delay, safety impacts, site access design, internal circulation, multimodal accommodations and anticipated trip generation based on industry-standard methodologies. The transportation impact analysis shall recommend reasonably necessary mitigation measures proportionate to the impacts attributable to the proposed development such as turn lanes, signal installation or timing adjustments, or roadway upgrades to ensure the road and highway network can safely and efficiently accommodate the added demand. The analysis shall detail the timeline of improvements needed based on construction activities and anticipated full-time traffic volumes at the end of

construction. The transportation impact analysis shall be attached or otherwise incorporated into the Road Use Agreement.

- iv. Damage to Public Infrastructure. Applicants shall be responsible for repair of damage to public infrastructure stemming from construction, operation, or maintenance of the [Hyperscale] Data Center. The manner in which the applicant shall be responsible shall be addressed in the Road Use Agreement.

- 6. Power Delivery. The applicant shall be responsible for the construction and maintenance of electrical infrastructure located on the property or otherwise owned or operated by the applicant that serves the proposed [Hyperscale] Data Center.
- 7. Noise. The [Hyperscale] Data Center shall comply with the noise requirements for the zoning district in which the [Hyperscale] Data Center is located. Equipment testing, including generator testing, and maintenance activities that generate elevated noise, shall be limited to the hours of [7:00 a.m. to 7:00 p.m.], provided that generators may be tested outside of this window to the extent necessary to comply with limits, restrictions, or prohibitions on emissions testing imposed by local, state, or federal authorities during those hours, or as required under applicable local, state, or federal laws or regulations.
- 8. Emergency Response Plan. The applicant shall submit an emergency response plan addressing emergencies associated with the proposed [Hyperscale] Data Center, and shall not commence construction until the emergency response plan is approved by the County. The emergency response plan shall be developed in coordination with local first responders and County Staff. The applicant may redact confidential or proprietary information from the emergency response plan it submits in connection with its application. The applicant shall submit any modifications to the emergency response plan necessary due to construction or operational plans. Any modifications shall be developed in coordination with local first responders and County Staff. The County shall review and approve any modifications prior to the commencement of operations. The emergency response plan shall be reviewed at least every once every two years. The emergency response plan shall include the following:
  - i. A detailed narrative of response procedures and the [Hyperscale] Data Center facility representatives responsible for management of the following reasonably foreseeable emergencies that could occur at the facility: natural disaster/severe weather, fire, security incident, electrical system failure,

environmental, chemical, pipeline (if applicable), sustained drought or water supply shortages, and medical. The narrative of response procedures shall include procedures for a site evacuation, designated egress routes, emergency staging areas, and a plan to coordinate with emergency responders if such responders are necessary.

- ii. If the [Hyperscale] Data Center contains a battery energy storage system, the emergency response plan shall include detailed emergency response protocols specific to the battery energy storage systems, which shall comply with NFPA 855 (Standards for Installation of Stationary Energy Storage Systems) (2026).

9. Discontinuance and Decommissioning.

- i. Decommissioning Plan. The applicant shall submit a decommissioning plan. The decommissioning plan shall be reviewed by the applicant at least every five years. Any changes to the decommissioning plan shall be submitted to the Zoning Administrator, who shall consider them pursuant to the standards in [\_\_\_\_\_] of this section. The decommissioning plan shall include the following:

1. A description of the anticipated operational life of the [Hyperscale] Data Center and the general approach to decommissioning, repurposing, or reuse of the site.
2. An estimate of the cost of decommissioning the [Hyperscale] Data Center, after deducting salvage or recycling value, as calculated by a third party with expertise in decommissioning, hired by the applicant (the “Decommissioning Cost”).

- ii. Changes to the Decommissioning Plan. The applicant may change the decommissioning plan after it is submitted to the County in connection with the application. Any change shall be supported by substantial evidence. The Zoning Administrator shall review the proposed changes and, if the Zoning Administrator finds that the changes are supported by substantial evidence, shall accept the changed decommissioning plan. An aggrieved party may appeal the Zoning Administrator’s decision regarding the changed decommissioning plan pursuant to the process described in [Section \_\_\_\_\_].]

iii. Decommissioning.

1. The applicant is responsible for decommissioning the [Hyperscale] Data Center pursuant to the decommissioning plan. The decommissioning obligations shall be triggered when the owner or operator ceases the use of the [Hyperscale] Data Center for a period of 12 consecutive months and does not have a documented plan to resume the use or convert the building to another use. A continuous period of non-operation greater than 12 months shall be considered evidence that the owner or operator has ceased the use of the [Hyperscale] Data Center, triggering the decommissioning obligations. The 12-month period shall exclude periods of maintenance, repair, upgrades, force majeure, tenant transitions, or any period during which the owner or operator is actively marketing the property or pursuing entitlements for an alternative use.
2. The owner may seek any necessary approvals to repurpose, adapt, or reuse any building, infrastructure, or improvement that makes up the [Hyperscale] Data Center in lieu of decommissioning.
3. Upon decommissioning, the owner shall remove unused equipment, secure the site, and place the property in a safe and stable condition suitable for future lawful use. Demolition of buildings or full restoration of the site to pre-development conditions shall not be required unless otherwise mandated by applicable law.
4. Decommissioning activities, if required to be undertaken, shall be initiated within 180 days following the trigger event and pursued with due diligence in accordance with the approved decommissioning plan or any amendment to the approved decommissioning plan. Decommissioning may be completed on a phased or building-by-building basis, and the owner shall have discretion to determine the sequencing and timing of such phases, so long as such work is consistent with the approved or amended decommissioning plan.
5. The owner shall provide written notice to the County upon permanent discontinuance of operations triggering decommissioning. Failure to provide timely notice shall not independently constitute a violation or trigger any enforcement action, provided the owner is otherwise in compliance with this section.

iv. Financial Assurance.

1. The applicant shall provide financial assurance to secure the decommissioning obligations in this Section. [The financial assurance will be limited to the maximum reasonable estimated cost of removing unused equipment, materials, and waste associated with the discontinued use of the data center; securing the site, and placing the site in a safe and stable condition.] [The financial assurance will be limited to the maximum reasonable estimated cost of removing unused equipment, materials, and waste associated with the discontinued use of the data center; securing the site, and demolishing the buildings on the site.]
2. The financial assurance may be made, at the option of the applicant, in the form of a surety bond, a parent company guarantee, an irrevocable letter of credit, or cash. If, as a result of updates to the Decommissioning Plan, including the calculation of the cost of decommissioning, the Decommissioning Cost shall increase, the owner shall – within [ ] days of updating the Decommissioning Plan – shall provide such increased financial assurance to the County. The owner shall provide the required financial assurance to the County as follows:
  - a. [25%] of the Decommissioning Cost prior to the commencement of operations at the [Hyperscale] Data Center.
  - b. [50%] of the Decommissioning Cost within [five] years of the commencement of operations at the [Hyperscale] Data Center.
  - c. [100%] of the Decommissioning Cost within [ten] years of commencement of operations at the [Hyperscale] Data Center.
3. The financial assurance shall remain in effect as long as the obligations secured by the assurance remain applicable. Upon transfer of ownership of the facility, the new owner shall assume the decommissioning obligations and provide replacement assurance to the County. The County shall release the previously held assurance only upon receipt and acceptance of the newly held assurance, unless the obligations secured by the assurance have otherwise been satisfied.
4. Upon completion of decommissioning obligations, removal of equipment, or other circumstances that reduce the reasonable costs

of decommissioning, the owner or operator may provide substantial evidence to the County regarding the current Decommissioning Cost and may request a reduction in financial assurance from the Zoning Administrator. The Zoning Administrator shall review the request and, if the Zoning Administrator finds that the request is supported by substantial evidence, shall accept the changed Decommissioning Cost. An aggrieved party may appeal the Zoning Administrator's decision regarding the changed decommissioning plan pursuant to the process described in [Section \_\_\_\_\_.]

5. If decommissioning obligations are triggered, and the owner does not perform the appropriate decommissioning obligations after written notice from the County which provides at least 90 days notice to commence decommissioning obligations, the County may draw upon the financial assurance to the extent authorized by the financial assurance instrument and applicable law. The County shall use the financial assurance exclusively for decommissioning obligations related to that financial assurance.
6. Upon completion of the decommissioning obligations secured by the financial assurance, or upon approval of an alternative use of the [Hyperscale] Data Center that supersedes the need of such decommissioning obligations, the County shall release the financial assurance corresponding to the obligation satisfied.

H. Conditions. In approving a conditional use permit related to a [Hyperscale] Data Center, the [Zoning Committee] may impose one or more conditions of approval deemed necessary to further the intent and purposes of this [Sec. \_\_\_\_] and to reduce adverse impacts on surrounding properties. Conditions may address any factor considered by the [Zoning Committee] in the decision-making process and shall be based on substantial evidence, as such term is defined in Wis. Stat. § 59.69(5e). Such conditions may relate to, but are not limited to:

1. [lighting]
2. [setbacks]
3. [street access]
4. [parking]
5. [buffers]
6. [impact to public infrastructure]
7. [cooling system]
8. [power delivery]
9. [noise]
10. [emergency response plan]

11. [discontinuance and decommissioning]

**SECTION 2: Repealer.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

**SECTION 3: Severability.** If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

**SECTION 4: Effective Date.** This ordinance shall take effect upon passage, approval and publication as provided by law.

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