



APPENDIX D

Sample Decommissioning Agreement

Catherine Kaufman - Last update: 3/3/2026

As detailed in the “End-Of-Life” chapter of *Balancing the Books*, decommissioning planning is now a standard practice in the renewable energy and energy storage sector. To safeguard local interests and ensure responsible site restoration, developers are required to submit a decommissioning plan and provide financial assurance—often in the form of a performance bond—that empowers local governments to carry out decommissioning if the developer cannot or will not do so.

Before granting a permit, it is essential for the local government and project developer to enter into a decommissioning agreement based on the terms and procedures outlined in the developer’s plan. The sample agreement in this appendix spells out how and when a project will be decommissioned and specifies the financial mechanisms that fund decommissioning in the event of abandonment or default.

A note of caution: *This sample agreement language is intended to be a starting point for dialogue between officials, municipal attorneys, and project developers. Because decommissioning agreements are legal contracts, all proposed language should be carefully reviewed by municipal attorneys to fully consider their implications and ensure consistency with local regulations and integration within the overall legal framework. Also note that some of these terms differ from the requirements of PA 233 for decommissioning energy facilities permitted by the MPSC (see the comparison table on p. 25 and the commentary on decommissioning on page 35 [here](#)), though it is in many ways similar to the sample decommissioning agreement provided by the MPSC [here](#) (see Application Filing Instructions and Procedures, Attachment E).*

SAMPLE DECOMMISSIONING AGREEMENT

This Decommissioning Agreement (“Agreement”) is made and dated as of the _____ [e.g., 1st day of January, 2026] (“Effective Date”) by and between _____ [applicant name, e.g., ENERGY COMPANY LLC], a _____ [e.g., limited liability] corporation (the “Applicant”) and _____ [jurisdiction name], a duly formed Michigan municipal general law _____ [e.g., township] (the “Township,” and, collectively with the Applicant, the “Parties,” and each individually a “Party”).

RECITALS

WHEREAS, the Applicant desires to build a _____ [solar (“SES”), wind (“WES”), energy storage (“ESS”) system] project in _____ [jurisdiction name], Michigan (the “Project”);

WHEREAS, the _____ [e.g., Township] adopted an updated _____ Ordinance on _____, 202____, as Ordinance No. _____ (the “Ordinance”);

WHEREAS, the Applicant would like to present a signed Decommissioning Agreement to the _____ [e.g., Township] _____ [e.g., prior to, following the] issuance of a Special Land Use Permit for the Project (the "Permit");

COMMENTARY: Some communities may wish to have this decommissioning agreement executed prior to the issuance of a SLUP. Others may condition the SLUP upon the successful execution of the decommissioning agreement. Fill in the second blank above based on the situation in your community.

WHEREAS, the Applicant shall post a performance or surety bond or irrevocable self-renewing letter of credit for decommissioning costs upon the terms and conditions more fully set forth below;

WHEREAS, for purposes of this Agreement, the Project is defined to include, but not be limited to, solar panels, wind turbines, batteries, enclosures, inverters, balance-of-plant systems, piles, foundations, transformers, underground cable circuits, and associated ancillary transmission lines, buildings, and equipment.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I **RESTORATION FUND ISSUANCE**

Section 1.1 Agreement to Decommission; Restoration Fund Amount.

Applicant shall decommission the Project and related improvements pursuant to the terms of this Agreement, the Ordinance, the Permit, and as detailed in the Decommissioning Plan attached hereto as Attachment A ("Plan"). The Applicant shall decommission the Project and related improvements upon the discontinuation of use, which shall be deemed to occur upon 1) the failure of the Project to _____ (generate or store) electricity for twelve (12) consecutive months unless a plan outlining the steps and schedule for returning the Project to service is submitted and approved by the Planning Commission or designee within the twelve (12) month discontinuation period, which approval shall not be unreasonably withheld, conditioned, or delayed or 2) written notice from the Applicant to the _____ [e.g., Township] that decommissioning is otherwise commencing. Decommissioning shall restore the Property to pre-construction condition, including removal of all equipment, conduit, structures, fencing, roads, and foundations to a depth of _____ (e.g., 4 feet), or as otherwise agreed to with the affected landowner. A reasonable estimated completion date, at least twelve (12) months post-commencement of Decommissioning, shall be provided to the Planning Commission.

In the event of a force majeure or other event which results in the absence of electrical _____ (e.g., storage or generation) for twelve (12) months, by the end of the twelfth month of non-operation, Applicant shall provide a plan to the _____ [e.g.,

Township] Planning Commission for its approval setting out that the Project will be substantially operational and producing electricity within twelve (12) months of the force majeure or other event. If such a demonstration is not made to the reasonable satisfaction of the Planning Commission, the decommissioning must be initiated within twelve (12) months after the force majeure or other event. The approval of the Planning Commission of such a plan may not be unreasonably withheld or delayed. _____ [e.g., Township] considers a force majeure to be due to the following causes: acts of God, war, civil commotion, riots or damage to work in progress by reason of fire or other casualty, strikes, lock outs or other labor disputes, delays in transportation, inability to secure labor or materials in the open market, war, terrorism, sabotage, civil strife or other violence, pandemic or other public health emergency, the failure of any governmental authority to issue any permit, entitlement, approval or authorization within a reasonable period of time after a complete and valid application for the same has been submitted, the effect of any law, proclamation, action, demand or requirement of any government agency or utility, litigation contesting all or any portion of the right, title and interest of _____ [e.g., Township] or Applicant under this Agreement, or any other unforeseen events or events over which the Applicant and/or Project has no control.

Prior to the Commercial Operation Date the Applicant shall deliver to the _____ [e.g., Township] a performance or surety bond or an irrevocable self-renewing letter of credit in a form and substance reasonably satisfactory to the _____ [e.g., Township] (the "Restoration Fund") securing performance of the decommissioning obligations, which shall be equal to the estimated amount of removal costs of the Project, if any, including reasonable professional fees related thereto (the "Removal Cost"), but no less than _____ [e.g., 100-125%] of the Removal Cost. [The Applicant shall retain a licensed professional engineer with knowledge of the operation and decommissioning of _____ (e.g., solar, wind, BESS) projects (a "Professional Engineer") to provide an estimate of the Removal Cost.] Applicant shall keep the Restoration Fund, or a like replacement financial assurance, in force throughout the remainder of the term of this Agreement, as set forth in Section 1.3 below.

COMMENTARY: If your zoning ordinance includes a process for determining decommissioning costs, the bracketed text above should be edited to match the process within the ordinance.

Section 1.2 Restoration Fund Provider; Restoration Fund Beneficiaries.

At least ten (10) days prior to such delivery of the Restoration Fund to the _____ [e.g., Township], the Applicant shall submit to the _____ [e.g., Township supervisor and the Township attorney] the name of the rated provider of the Restoration Fund and a specimen security document. The _____ [e.g., Township] shall be named as the beneficiary of the Restoration Fund, or a municipality should the Project land become incorporated, provided, however, that the disbursement of and rights to the Restoration Fund shall be governed by Article II below. The Applicant represents that it has not granted, and the Applicant shall not grant to the Landowner or any other party, rights to the Restoration Fund.

Section 1.3 Restoration Fund Requirements.

[After the initial three (3) year term and each three (3) years thereafter for the duration of the operation of the Project, the Applicant shall deliver to the ____ [e.g., Township] an updated estimate of the Removal Cost prepared by a Professional Engineer.] Applicant shall thereafter amend the financial assurance if necessary to reflect the updated estimate.

COMMENTARY: If your zoning ordinance includes timing for updating decommissioning costs, the bracketed text above should be edited to match the process within the ordinance.

Section 1.4 Failure to Provide Restoration Fund.

If the Applicant fails to provide or update the Restoration Fund as provided in Sections 1.2 and 1.3, the _____ [e.g., Township] shall provide written notice to Applicant of such failure and Applicant shall be afforded sixty (60) days' notice and opportunity to cure, prior to the _____ [e.g., Township]'s declaring a default under this Agreement. If Applicant fails to provide the Restoration Fund or the certificate of continuation provided in Sections 1.2 and 1.3 after such sixty (60) days and the _____ [e.g., Township] declares an event of default hereunder, the _____ [e.g., Township] shall have the right to seek all remedies at law.

Section 1.5 Failure of Financial Assurance.

The applicant must replace any expiring financial assurance instrument meeting the requirements of this Agreement and the Commission order approving the Project (including any Estimated Decommissioning Cost updates pursuant to Paragraph 4.2.3) no less than ninety (90) days prior to the expiration date of the financial assurance instrument. If the Applicant fails to do so, then decommissioning shall commence; provided that prior to commencing decommissioning for failure to replace the expiring financial assurance instrument, the Applicant shall have at least thirty (30) days to cure such failure. If the Applicant's financial assurance is to be revoked, terminated, or otherwise ceases to meet the requirements of the Act and Commission order approving the Project certificate, the Developer must immediately notify the parties to this Agreement. If the Applicant cannot cure this inadequacy and bring the Project into conformance with the Act and Commission order approving the Project certificate within thirty (30) days, then decommissioning shall commence.

Section 1.6 PA 116 Restoration Funds.

If any land within the project is enrolled in PA 116 and if the State of Michigan (MDARD or any other state agency) is holding a decommissioning obligation for the project lands enrolled in PA 116, the Applicant shall provide written evidence to the Township of the State of Michigan holding those Restoration Funds prior to the commencement of operation. Should any part of a project enrolled in PA 116 be withdrawn from PA 116 at any time during the life of the project, the Applicant or any successor or assign shall

pay to Township the same amount of Restoration Funds as held by the State of Michigan for PA 116 decommissioning within fifteen (15) business days of the date of PA 116 withdrawal. The Applicant's failure to pay the PA 116 Restoration Funds to the Township within fifteen (15) business days from date of PA 116 withdrawal shall be considered a breach of this Agreement and the Township may pursue any and all legal remedies, including, but not limited to, initiating decommissioning of the project.

ARTICLE II **DISBURSEMENT OF SECURITY**

Section 2.1 Rights of _____ [e.g., Township].

In the event that the Applicant fails to decommission the Project in accordance with the requirements of the Ordinance, the Plan, and the Permit, the _____ [e.g., Township] may, in its sole discretion, undertake the decommissioning of the Project. Applicant hereby grants _____ [e.g., Township] an express license to enter the Project property to effectuate such decommissioning. The _____ [e.g., Township]'s election to decommission all or any portion of the Project shall not create an obligation to the Landowner, the Applicant or any other third party to complete the decommissioning of the entire Project. In the event the _____ [e.g., Township] elects to undertake the decommissioning of the Project, it may make a claim(s) upon the Restoration Fund to the Restoration Fund provider for the Removal Cost subject to the limitations set forth herein. Any claim made by the _____ [e.g., Township] upon the Restoration Fund shall be limited to such expenses incurred by the _____ [e.g., Township] for the removal of all structures and the restoration of the soil and vegetation within the Project Property, as set forth in the Ordinance, Plan, and Permit, including reasonable professional fees (the "Decommissioning Obligations").

Section 2.2 Landowner Agreements. The Applicant represents and agrees that all Project Landowner Agreements shall contain terms that provide that the Project improvements be properly decommissioned upon expiration or earlier termination of the Project (except as otherwise allowed under Section 1.1 hereof or specifically provided in a Landowner Lease); provided, however, delivery of such terms of the Landowner Agreements shall not relieve the Applicant of any of its obligations under this Agreement.

Section 2.3 Release of Restoration Fund.

The Restoration Fund provider shall release the Restoration Fund when the Applicant has demonstrated to the reasonable satisfaction of the Zoning Administrator and Building Inspector that the Decommissioning Obligations have been satisfied. If the _____ [e.g., Township] completes the Decommissioning Obligations, then _____ [e.g., Township] shall release any remaining Restoration Fund amount (if any) to the Applicant.

ARTICLE III
OTHER RIGHTS OF _____ [e.g., Township]

Section 3.1 Other Relief

In addition to any other rights and remedies granted herein, the _____ [e.g., Township] shall have the right to seek any injunctive relief available under applicable law to effect or complete the decommissioning of the Project. In addition, the _____ [e.g., Township] shall have the right to seek reimbursement from Applicant, its successors or assigns, for any costs of decommissioning the Project incurred by the _____ [e.g., Township] in excess of the funds available under the Restoration Fund or file a lien against any Project real estate owned by the Applicant (and successors) for the amount of the excess, and to take all steps allowed by law to enforce the lien.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations, Warranties and Covenants of _____ [e.g., Township].

The _____ [e.g., Township] represents and warrants to the Applicant as follows:

- a. The _____ [e.g., Township] has full power and authority to deliver and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement.
- b. This Agreement has been duly executed and delivered by the _____ [e.g., Township] and constitutes the legal, valid, and binding obligation of the _____ [e.g., Township], enforceable against the _____ [e.g., Township] in accordance with its terms.
- c. The execution, delivery, and performance of this Agreement by the _____ [e.g., Township] will not, to the best of _____ [e.g., Township]'s knowledge, violate any applicable law of the State of Michigan.

Section 4.2. Representations, Warranties and Covenants of Applicant.

The Applicant represents and warrants to the _____ [e.g., Township] as follows:

- a. The Applicant has full power and authority to execute, deliver and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement.
- b. This Agreement has been duly executed and delivered by the Applicant and constitutes the legal, valid, and binding obligation of the Applicant and any successors, assignees, or heirs, enforceable against the Applicant in accordance with its terms.

ARTICLE V **DISPUTES; DETERMINATIONS**

Section 5.1 Default; Disputes.

Prior to the _____ [e.g., Township] declaring a default under this Agreement, written notice shall be provided to Applicant together with a reasonable time to cure, not to exceed sixty (60) days (except to the extent that a cure cannot reasonably be completed in such 60-day period, so long as Applicant has started to cure the default and diligently pursues to cure the default to completion), for good faith negotiations to attempt to resolve the alleged default(s). The breach of or default under this Agreement by the Applicant (after appropriate written notice from the _____ [e.g., Township] and opportunity to cure by the Applicant) shall invoke the remedies set forth in this Agreement.

ARTICLE VI **TERM**

Section 6.1 Term.

The term of this Agreement shall commence on the date of this Agreement, and this Agreement and _____ [e.g., Township]'s rights hereunder shall terminate upon the completion of the decommissioning of the Project in accordance with the terms of this Agreement. Upon termination of this Agreement, the _____ [e.g., Township] shall execute all documentation necessary or reasonably required in order to release and waive all claims to the Restoration Fund upon the request of the Applicant. In the event of abandonment of the Project by Applicant, Applicant shall provide an affidavit to the Planning and Zoning Department representing that all Landowner Agreements provide for financial assurance, to allow for proper decommissioning pursuant to the terms of this Agreement.

ARTICLE VII **MISCELLANEOUS**

Section 7.1 No Waiver; Remedies Cumulative.

No failure on the part of any party hereto to exercise, and no delay in exercising, any right, power or remedy shall operate as a waiver thereof. No single or partial exercise by any party hereto of any such right, power or remedy hereunder shall preclude any other further exercise of any right, power or remedy hereunder. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies available under applicable law.

Section 7.2 Notices.

All notices, requests and other communications provided for herein (including any modifications, or waivers or consents under this Agreement) shall be given or made in writing (including by telecopy) delivered to the intended recipient at the address set forth below or, as to any party, at such other address as shall be designated by such party in a notice to the other party. Except as otherwise provided herein, all notices and communications shall be deemed to have been duly given when transmitted by telecopier with confirmation of receipt received, personally delivered, or in the case of a mailed notice, upon receipt, in each case given or addressed as provided herein.

If to Applicant:

NAME OF APPLICANT
ADDRESS
CITY, STATE ZIP
ATTN: General Counsel
EMAIL
TELEPHONE

With a copy to Chief Development Officer at the same address.

If to the _____ [e.g., Township]:

JURISDICTION NAME
ADDRESS
CITY, STATE ZIP

All notices to the _____ [e.g., Township] shall include a copy to _____ [e.g., Township] Attorney(s):

NAME
ADDRESS
CITY, STATE ZIP

Section 7.3 Amendments.

This Agreement may be amended, supplemented, modified or waived only by an instrument in writing duly executed by each of the parties hereto.

Section 7.4 Successors and Assigns.

(a) This Agreement shall (i) remain in full force and effect until the termination hereof pursuant to Section 6.1 herein; and (ii) be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

(b) Except as provided in subsections (a), (b) (c) and (d) below, no Party to this Agreement shall assign, transfer, delegate, or encumber this Agreement or any or all of its rights, interests, or obligations under this Agreement without the prior written consent of the other Party. In those instances in which the approval of a proposed assignee or transferee is required or requested: (i) such approval shall not be unreasonably withheld, conditioned, or delayed; and (ii) without limiting the foregoing, the _____ [e.g., Township]'s approval may not be conditioned on the payment of any sum or the performance of any agreement other than the agreement of the assignee or transferee to perform the obligations of the Applicant pursuant to this Agreement. For the avoidance of doubt, no direct or indirect change of control of the ownership interests of Applicant, or any other sale of direct or indirect ownership interests in the Applicant (including any tax equity investment or passive investment) shall constitute an assignment requiring the consent of the _____ [e.g., Township] under this Agreement.

(c) Applicant may, without the consent of the _____ [e.g., Township], but upon notice to _____ [e.g., Township], assign or transfer this Agreement, in whole or in part, or any or all of its rights, interests, and obligations under this Agreement to any affiliate or subsidiary or, with the consent of the _____ [e.g., Township] (not to be unreasonably withheld), a company or other entity that acquires substantially all of the assets of the Applicant. So long as an assignee assumes in writing all assigned obligations under this Agreement, Applicant may (with the consent of the _____ [e.g., Township], not to be unreasonably withheld) be released from liability for the assigned obligations hereunder. Notwithstanding the above, with prior written notice to the _____ [e.g., Township] but without the need for consent of the _____ [e.g., Township], Applicant may assign or transfer this Agreement, in whole or in part, or any or all of its rights, interests, and obligations under this Agreement, to a (i) public utility regulated by the MPSC or its equivalent in another state or (ii) any other company or other entity, provided in either instance that such assignee or an affiliated company shall have comparable experience to the Applicant in constructing and operating a _____ [e.g., SES, WES, ESS] project in the United States and a net worth of a minimum of \$10,000,000 as confirmed by audited financial statements as of the most recent fiscal year.

(d) Applicant will not be required to obtain consent of the _____ [e.g., Township] for or in connection with (i) a corporate reorganization of Applicant or any of its direct or indirect affiliates, or (ii) a sale or transfer of equity interest of any direct or indirect affiliate of Applicant.

(e) Any transfer or assignment pursuant to this Section shall be subject to the assignee agreeing in writing to be bound by the terms of this Agreement.

(f) Applicant may, also, without the prior approval of the _____ [e.g., Township], by security, charge or otherwise, encumber its interest under this Agreement and any amendments thereto for the purposes of financing the development, construction, operation of or investment in the Project, including entering into any partnership or contractual arrangement, including but not limited to, a partial or conditional assignment of equitable interest in the Applicant or its parent to any person or entity, including but not limited to tax equity investors, or by security, charge or otherwise encumber its

interest under this Agreement for the purposes of financing the development, construction and/or operation of the Project (any of the foregoing actions, a "Collateral Assignment") and _____ [e.g., Township] shall agree to execute and deliver any reasonably requested estoppels related to a Collateral Assignment. Promptly after making such encumbrance, Applicant shall notify the _____ [e.g., Township] in writing of the name, address, and telephone and facsimile numbers of each party in favor of which Applicant's interest under this Agreement has been encumbered (each such party, a "Financing Party" and together, the "Financing Parties"). Such notices shall include the names of the account managers or other representatives of the Financing Parties to whom all written and telephonic communications may be addressed. After giving the _____ [e.g., Township] such initial notice regarding either an Assignment or a Collateral Assignment, Applicant shall promptly give the _____ [e.g., Township] notice of any change in the information provided in the initial notice or any revised notice. The Applicant shall, in the event of any such Collateral Assignment, remain bound to the terms of this Agreement unless otherwise agreed by the _____ [e.g., Township].

Section 7.5 Counterparts: Effectiveness.

This Agreement constitutes the entire agreement and understanding among the parties hereto with respect to matters covered by this Agreement and supersedes any and all prior agreements and understandings, written or oral, relating to decommissioning of the Project.

Section 7.6. Severability.

If any provision hereof is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by applicable law: (a) the other provisions hereof shall remain in full force and effect in such jurisdiction in order to carry out the intentions of the parties hereto as nearly as may be possible; and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

Section 7.7 Headings.

Headings appearing herein are used solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

Section 7.8 Governing Law.

This Agreement shall be governed by, and construed in accordance with the laws of the State of Michigan, without regard to its conflicts of laws provisions. Venue for any action related to this Agreement shall be in a court of appropriate jurisdiction located in _____ County, Michigan and/or the _____ District of Michigan.

_____ Township, Michigan

By: _____

Name: _____

Title: _____

Date: _____

Acknowledgement

STATE OF MICHIGAN)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this _____ [e.g., 1st day of January, 2026], by _____, in their official capacity as _____ of _____ [jurisdiction name], a duly formed Michigan municipal general law _____ [e.g., township], personally known to me or proven to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that they executed the same for the purposes stated therein.

Signature

[SEAL]

Name

Notary Public, State of Michigan, County of _____

My Commission expires: _____

This agreement prepared by
and after recording return to:

ATTACHMENT

PROJECT NAME – DECOMMISSIONING PLAN