

This Toolkit is intended to assist New York State municipalities in leasing their underutilized land, such as landfills and brownfields, for solar development. This Toolkit includes step-by-step instructions on how to lease municipal land for solar development, a template Request for Proposals (RFP), a template Lease Agreement, and a Model Law for Counties subject to New York County Law § 215.

Municipalities are encouraged to review and consider modifying this toolkit, specifically the template RFP and Lease Agreement, to ensure it addresses all the needs of the municipality by deleting, modifying, or adding any other sections or provisions that would be necessary in the leasing jurisdiction.

Depending on the type of land the municipality plans on leasing, there are specific requirements within the template RFP and Lease Agreement that will need to be updated. The template RFP and Lease Agreement provide specific requirements for landfills and brownfields that will need to be adjusted for the project. All language that may need to be modified by the municipality is highlighted grey.

The Templates in this Toolkit are not intended for use exactly as written. This Toolkit is intended to be advisory only, and users should not rely upon it as legal advice. A municipality is not required to utilize these templates exactly as written. Municipal officials are urged to seek legal advice from their attorneys before issuing an RFP or signing a Lease Agreement.

Step 1: Planning and Early Stage Goal-Setting

Leasing land for solar development requires the active participation of multiple government departments. All relevant local government stakeholders should be included at the beginning of the process, in order to ensure that all potential project barriers are identified early and that critical municipal departments are fully informed about the project in advance. Relevant local government stakeholders may include elected leaders, legal counsel, planning and zoning staff, sustainability coordinator, or local State Environmental Quality Review (SEQR) authority. Frequently, the municipal authority or executive authorizes the creation of an advisory committee to investigate the feasibility of a solar project. This committee should be responsible for coordinating the process details and serving as a review committee for selecting the solar developer. In addition to managing the solar land lease process, committee members may wish to arrange project updates with local government leaders and the public. Local government project proponents should also consider developing strategies for communicating information about proposed solar projects to external stakeholders, particularly if the project involves developing large tracts of open space, as large projects have raised concerns among adjacent landowners and other stakeholders in some jurisdictions. External stakeholders may include the community members, utility representatives, or NYS Department of Environmental Conservation (if a landfill or brownfield, or near a wetland).

It is a necessary step to get support from your community members. Pursuant to state law, for example New York Town Law § 64, municipal land leases or solar procurements may be subject to permissive referendums. A permissive referendum is a legal mechanism available for a community to vote on a decision directly, rather than having the issued decided solely by governing board. In addition, certain actions of the governing board that raise or expend money can be subject to a permissive referendum. If an action is determined to be subject to permissive referendum, such act shall be subject to a referendum on petition, unless the proposition has been adopted at an election.

As an example, Town Law Article § 7 lays out the process for town referendums:

- Within ten days after the adoption by the town board, the town clerk shall post and publish a notice which shall set forth the date of the adoption of the act and contain an abstract of such act concisely stating the purpose and effect thereof.
 - > The notice shall specify that the resolution that was adopted is subject to a permissive referendum.
- The resolution cannot take effect until thirty (30) days after its adoption.
 - > If within 30 days of the adoption, there is a petition filed and signed by the electors of the town protesting against such act and requesting that it be submitted to the electors of the town for approval or disapproval, then this resolution needs to go to a public vote.
- If the petition is filed between 60-75 days prior to a biennial town election, a proposition for the approval of the resolution can be submitted at the election.
- If the petition is filed at any other time, the proposition for the approval of the resolution shall be submitted at a special town election to be held between 60-75 days after filling the petition.

County Consideration: If a project is located on county-owned land, New York County Law § 215 may limit the term of the land lease to five (5) years. As part of this Toolkit, there is a model law that can allow for Counties to lease land longer than 5 years for specific projects. The model law cites the appropriate laws to extend the land lease and includes fields for jurisdictions to fill in. Jurisdictions should work closely with their local legal counsel to determine local land lease requirements.

Establish Project Goals

The advisory committee, once assembled, should consider the goals and the desired outcomes of a solar project, and develop a preliminary list of project goals and key outcomes, which could include:

- Providing **revenue to the town by leasing public land, such as landfills or brownfields**, to a private developer to construct a community solar project, which the town may or may not participate in, but will provide greater access to clean power to community members.¹
- Providing a **positive use of a capped landfill, brownfield, or other sites** where environmental or other attributes make alternate land uses difficult.
- Providing **greater access to solar power** for residents, businesses, institutions, and organizations through a community solar project.

Step 2. Site Identification & Considerations

For many municipalities, closed landfills or brownfields are attractive areas to site solar projects because of the limited number of alternative uses for these sites. Developing solar on these sites requires special consideration.

Considerations for solar on landfills

- Under 6 N.Y.C.R.R. Part 360, landfill owners must submit landfill closure plans and adhere to a Post-Closure Monitoring and Maintenance Operations Manual when ceasing landfill operations.
- To develop solar on a landfill, a contractor must submit a modification to the post-closure plan to the New York State Department of Environmental Conservation (NYSDEC). These plans will have to take into consideration existing infrastructure, such as gas collection systems and leachate control systems.
- NYSDEC's regional offices offer pre-application consultations to municipalities, who are encouraged to contact NYSDEC early in the project planning process to understand the special requirements of developing solar on landfill sites.

¹ If a solar project is being considered for county owned land, County Law § 215 may limit the term of county-owned land leases to five years. If municipalities are considering county land, they should contact their legal counsel and County government.

Considerations for solar on brownfields

- For a proposed brownfield solar site with an Institutional Control (IC) on the property, the Developer will be required to notify the NYSDEC's Division of Environmental Remediation of the site's change of use and to submit details to assess whether the remedy will remain effective or what new Engineering Control and Institutional Control (EC/IC), monitoring activities, and periodic reviews may be necessary. A site-specific inquiry needs to be undertaken in this regard, and the DEC regional office should be engaged early on to discuss next steps.
- Any submissions relative to new and/or revised EC/ICs will likely require modification of the Site Management Plan (SMP) that directs the process for certain site activities and may require additional work to be undertaken pursuant to DEC approval, depending on the scope of proposed site activities.
- SMPs are filed against the deed of the brownfield property via an Environmental Easement, and a copy of the SMP would either be accessible via the DEC or by retrieving the copy included in the County real property records. Of note, the DEC utilizes a form SMP as the starting point for plan development, which is revised based on site-specific information. A copy of the form is available on DEC's website.
- Note that brownfield sites without existing IC equipment should notify the change of use but may not have to submit any additional plan documentation.

Step 3. RFP Process & Contractual Documents

Competitive processes create a fair and open procedure under which solar developers can offer their services. They also ensure that local governments receive the best available pricing, thereby maximizing financial benefits to the municipality. The Toolkit provides a template Request for Proposals (RFP) for municipalities to utilize. The template provides suggested language that can be adjusted to reflect the goals and context of a municipality's procurement. Example evaluation criteria are provided in the template RFP. Municipalities may use these evaluation criteria as a guide but are encouraged to tailor their evaluation processes to meet their own needs and goals. To facilitate comparison of proposals, it is recommended that municipalities ask all respondents to provide price proposals in the same format (the attached sample RFP includes such a request).

One step that municipalities can take to protect their interests is to use a model lease agreement, as provided in the Toolkit. By using a document that the municipality is comfortable with, the municipality may ensure that all its contractual "must haves" are brought up early in the contract negotiations and included in the final contract. It contains many of the terms and conditions that typically arise during contract negotiation. It is the responsibility of the contracting jurisdiction to negotiate its own final contract and local governments should hire legal counsel with solar lease negotiation experience to protect their interests in contract negotiations.

NY-Sun, a dynamic public-private partnership, will drive growth in the solar industry and make solar technology more affordable for all New Yorkers. NY-Sun brings together and expands existing programs administered by the New York State Energy Research and Development Authority (NYSERDA), Long Island Power Authority (LIPA), PSEG Long Island, and the New York Power Authority (NYPA), to ensure a coordinated, well-supported solar energy expansion plan and a transition to a sustainable, self-sufficient solar industry.

