

UTILITY CREDIT PURCHASE AGREEMENT

This Utility Credit Purchase Agreement (“Agreement”) is entered into as of _____, (“Effective Date”) between ELP Greenport Solar LLC as seller (“Seller”), and the City of Hudson, a municipal corporation, as buyer (“Buyer”). In this Agreement, Seller and Buyer are sometimes referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Seller is in the business of financing, developing, owning, operating and maintaining solar (PV) electric generation facilities;

WHEREAS, Seller proposes to finance, install, own, operate and maintain the Solar Energy Facility (as defined below) to be located on a site located in Hudson, New York;

WHEREAS, Seller desires to sell and deliver to Buyer, and Buyer, in accordance with the Resolution approved by the Common Council of the Buyer on [DATE], desires to purchase and receive from Seller, all or a portion of the Utility Credits generated by the Solar Energy Facility during the Term, subject to the terms and conditions, and at the prices, set forth in this Agreement; and

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises, representations, warranties, covenants, conditions herein contained, and the Exhibits attached hereto, Seller and Buyer agree as follows.

1. DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given below. Words defined in this Article 1 that are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

“Accounts” means the Buyer’s accounts with the LEDC identified in Exhibit A of this Agreement.

“Actual Facility Output” has the meaning set forth in Section 9.4.

“Applicable Legal Requirements” means any law, act, rule, regulation, requirement, standard, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, including without limitation the VDER Program Orders, Sections 66-j and 66-l of the New York State Public Service Law, Article 9 of the New York State Energy Law, the Town of Greenport zoning ordinance and related planning board rules and regulations and the New York State Environmental Quality Review Act (“SEQRA”) and all licenses, permits, and other governmental consents, which are applicable to a Party’s rights and obligations hereunder, including, without limitation, the construction, operation, maintenance

and ownership of the Solar Energy Facility, as well as the selling and purchasing of Utility Credits therefrom.

“Average Actual Facility Output” has the meaning set forth in Section 9.4.

“Average Minimum Output” has the meaning set forth in Section 9.4.

“Billing Cycle” has the meaning set forth in Section 5.1.

“Business Day” means a day on which Federal Reserve member banks in New York City are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

“Buyer’s Percentage” has the meaning set forth in Section 4.1.

“Commercial Operations” means that (i) the Solar Energy Facility has been constructed and installed to Seller’s satisfaction in accordance with Applicable Legal Requirements, is ready and able to produce and deliver Energy at full or substantially full capacity, and the interconnection of the Solar Energy Facility to the LEDC distribution has been completed and fully tested, (ii) if required under the Schedule, the LEDC has otherwise authorized and approved the interconnection of the Solar Energy Facility to the LEDC distribution system, and (iii) the Solar Energy Facility is eligible to receive Utility Credits pursuant to the Schedule.

“Contract Year” means each 365-day period commencing on the Credit Start Date and each anniversary thereof.

“Credit Start Date” means the first date on which the Solar Energy Facility achieves Commercial Operations and generates Utility Credits, and such credits have begun to be allocated and credited to Buyer by the LEDC and are being reflected in invoices received by Buyer from the LEDC.

“Effective Date” has the meaning set forth in the preamble of this Agreement (above).

“Electricity” means the verifiable amount of electricity generated by the Solar Energy Facility which is not used by the Solar Energy Facility, as metered in whole kilowatt hours.

“Energy” means the amount of electricity either used or generated over a period of time, expressed in terms of a kilowatt hour (“kWh”) or a megawatt hour (“MWh”).

“Force Majeure” means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, acts of God; high winds, hurricanes or tornados (but not the lack of sunlight); fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity, including NYSEERDA or NYISO, provided any such act, failure to act, or order is not due, in whole or in part, to some fault of the party claiming Force Majeure; insurrections; military action; war, whether or not it is

declared; sabotage; riots; civil disturbances or explosions. A Party may not assert an event of *Force Majeure* to excuse it from performing due to any act, failure to act, or order of a Governmental Authority, where it was reasonably within such Party's power to prevent such act, failure to act, or order of a Governmental Authority; provided, however, that the lawful acts, orders, rulings, decisions, etc. of a committee, board, official, commission or other governmental unit of the Buyer-municipality made in the good faith exercise of legislative, regulatory or judicial functions, shall not be deemed an "act, failure to act or order" with the Buyer's "power to prevent" for the purpose of Force Majeure. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

"Governmental Authority" means (i) any national, state or local government, or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, including without limitation the State of New York Public Service Commission, NYSEDA, and NYISO, and (ii) any transmission or distribution entity providing distribution or transmission services to the Solar Energy Facility, including the LEDC.

"Governmental Charges" means all applicable federal, state and local taxes (other than taxes based on income or net worth, but including, without limitation, real property, personal property, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges).

"Interconnection Agreement" means the interconnection service agreement(s) between Seller and National Grid required for interconnection of the Solar Energy Facility.

"Interest Rate" means a rate per annum equal to the lesser of (a) the "prime rate" (as reported in The Wall Street Journal) plus one (1%) and (b) the maximum rate allowed by Applicable Legal Requirements. The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of three hundred sixty five (365) days and the actual number of days for which such interest is due.

"Lender" means any individual or entity (a) providing direct or indirect senior or subordinated construction, interim or long-term debt or equity financing or refinancing to Seller (or to any permitted assignee of all or any portion of this Agreement, or to any affiliates of Seller) for or in connection with the development, construction, purchase, installation or operation of the Solar Energy Facility, whether that financing or refinancing takes the form of private debt, public debt or any other form (including debt financing or refinancing), including any equity and tax investor directly or indirectly providing financing or refinancing for the Solar Energy Facility or purchasing equity ownership interests of Seller (or of any permitted assignee of all or any portion of this Agreement, or to any affiliates of Seller), or (b) participating directly or indirectly in a lease financing, including any sale leaseback or leveraged leasing structure, with respect to the Solar Energy Facility. The Seller shall designate a single Designated Representative for purposes of default notices pursuant Section 11.2.2.1. The Buyer shall be notified of the Designated Representative. Seller shall notify Buyer in writing of the name, address, and telephone number of the Designated Representative.

“**LEDC**” means National Grid, or whatever other local electric distribution company that will be responsible for allocating Utility Credits generated by the Solar Energy Facility.

“**NYISO**” means The New York Independent System Operator, Inc., which administrates the wholesale power markets in New York.

“**NYSERDA**” means the New York State Energy Research and Development Authority.

“**Utility Credits**” means the monetary value measured in dollars of the Energy output (in kWh) of the Solar Facility in a Billing Cycle, determined in accordance with the VDER Program Orders (including all applicable components of the Value Stack (as defined in the VDER Program Orders)) and all other Applicable Legal Requirements, and set forth on an invoice received from the LEDC for the applicable Billing Cycle, which invoice shall be conclusive evidence of the Utility Credits absent manifest error or change in Applicable Legal Requirements.

“**Person**” means an individual, general or limited partnership, corporation, Municipal Corporation, business trust, Joint Stock Company, trust, unincorporated association, joint venture, Governmental Authority, Limited Liability Company, or any other entity of whatever nature.

“**PSC**” means the State of New York Public Service Commission.

“**Renewable Energy Incentives**” shall mean: (a) federal, state, or local tax credits or other tax benefits (such as accelerated depreciation) associated with the construction, ownership, or production of electricity from a Solar Energy Facility or any governmental payments made in lieu of such tax benefit, (b) any federal, state or local grants, rebates, subsidized financing or any other subsidy relating to the renewable energy property of a Solar Energy Facility or the output thereof, and (c) any other form of incentive that is not a Reserved Environmental Attribute that is available with respect to a Solar Energy Facility. Renewable Energy Incentives shall not include the Utility Credits allocated to Buyer under this Agreement.

“**Reserved Environmental Attributes**” shall mean any and all attributes of the Solar Energy Facility that are not otherwise included in (or deemed by any Governmental Authority to be included in) or part of the Utility Credits, including any financial rebates, carbon credits attributes associated with or with respect to fuel, emissions, air quality or other environmental benefits resulting from the use of solar generation or the avoidance of use or omission of any other fuel, and other equivalent incentives created under state, local or federal law and in effect from time to time.

“**Schedule**” means the National Grid Schedule for Electric Service, PSC No. 15, effective as of February 1, 2000, as it may be amended from time to time.

“**Solar Energy Facility**” means the solar (PV) power electrical generation facility, and the parcel of real estate on which it shall be located, planned to be constructed, owned, operated and maintained by Seller, with specifications for an estimated aggregate nameplate capacity of approximately 7,000 kW (AC), together with all appurtenant facilities required to interconnect the Solar Energy Facility to the grid, all to be located in Greenport, New York.

“VDER Program Cancellation” means any passage, enactment, modification, revision, repeal, addendum, interpretation or other change in any Applicable Legal Requirement that (a) prevents the Solar Energy Facility to generate Utility Credits that can be allocated to Buyer, or (b) results in the ineligibility of Buyer to receive Utility Credits.

“VDER Program Orders” means, collectively, that certain Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters, Case 15-E-0751 and Case 15-E-0082, issued by the PSC on March 9, 2017, and all subsequent orders issued by the PSC from time to time in connection therewith, including for the avoidance of doubt that certain Order on Phase One Value of Distributed Energy Resources Implementation Proposals, Cost Mitigation Issues, and Related Matters, issued by the PSC on September 14, 2017.

2. TERM; EARLY TERMINATION

2.1. Term. The term of this Agreement (the **“Term”**) shall commence on the Effective Date, and shall end at 11:59 PM on the day preceding the twenty-fifth (25th) anniversary of the date on which Commercial Operations is achieved or such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof.

2.2 Early Termination. Notwithstanding any provision contained herein to the contrary, and without limiting any other right or remedy available at law, in equity or otherwise, this Agreement may be terminated prior to the expiration of the Term (the “Early Termination Date”):

- (a) by either Party in accordance with Section (12.12);
- (b) by either Party in the event the Credit Start Date is not on or before December 31, 2020; or
- (c) as otherwise permitted by this Agreement or Applicable Legal Requirements.

3. SOLAR ENERGY FACILITY OWNERSHIP AND OPERATION

3.1. Title. As between Buyer and Seller, Seller shall have sole title to the Solar Energy Facility and the Energy generated by the Solar Energy Facility, along with any Reserved Environmental Attributes and Renewable Energy Incentives generated or associated with the Solar Energy Facility, or the Energy generated by the Solar Energy Facility, and not included in or made part of the Utility Credits.

3.2. Notice of Commercial Operations Date. Subject to the provisions of this Agreement, Seller shall notify Buyer in writing in accordance with Section 12.1

within ten (10) Business Days after the Solar Energy Facility has achieved Commercial Operations.

3.3

4. PROCUREMENT AND ALLOCATION OF UTILITY CREDITS

- 4.1. Utility Credits. Seller shall arrange for the submission of an application to the LEDC for the Solar Energy Facility consistent with the identification of accounts as set forth on Exhibit A (the “Utility Credit Application”). The Utility Credit Application will allocate Utility Credits as follows: (a) first, to one or more Persons (other than Buyer) as Seller may determine in its sole discretion and in accordance with Applicable Legal Requirements (the “**CS Buyers**”), up to sixty-five percent (65%) of the Utility Credits generated by the Solar Energy Facility on a billing-cycle basis (the actual percentage of Utility Credits allocated to the CS Buyers on a Billing Cycle basis, the “**CS Percentage**”), (b) then, to the Buyer, the balance (but not more than 40%) of the Utility Credits generated by the Solar Energy Facility on a billing-cycle basis (the actual percentage of Utility Credits allocated to Buyer on a Billing Cycle basis, the “**Buyer Percentage**”). Notwithstanding anything to the contrary in this Agreement, Buyer shall (a) have no obligation hereunder to purchase any Utility Credits in excess of the Buyer Percentage, (b) have no liability to Seller or any other Person for any failure by Seller to sell, transfer or allocate the CS Percentage to the CS Buyers, or (c) for any default of any nature by any CS Buyers. In the event that Buyer is credited by the LEDC with Utility Credits in excess of the Buyer Percentage, Buyer shall take whatever reasonable steps are requested by Seller to ensure that such excess Utility Credits are properly reallocated, reccredited or otherwise accounted for.
- 4.2. Indemnification of Buyer. Seller shall indemnify Buyer from any and all costs and expenses incurred by Buyer, or imposed upon Buyer by the LEDC, arising out of the activities undertaken by Seller in connection with this Agreement or the Solar Energy Facility, including without limitation any demand charges or other charges, any charges and costs for any electricity (including Energy) used by the Solar Energy Facility, and any liability arising in relation to the CS Percentage.

5. PURCHASE AND SALE OF UTILITY CREDITS

- 5.1. Sale and Purchase of Utility Credits. Commencing on the Credit Start Date continuing until the last day of the Term, Buyer agrees to purchase, receive, accept and pay Seller for the Buyer Percentage of the Utility Credits generated by the Solar Energy Facility, as measured on a billing cycle basis (as such billing cycle is established by the LEDC) (the “**Billing Cycle**”).

- 5.2. Price. For each Billing Cycle, Buyer shall pay Seller the Buyer Percentage of the Utility Credits generated by the Solar Energy Facility for such Billing Cycle, multiplied by ninety percent (90%).
- 5.3. Title and Risk of Loss of Utility Credits. As between Seller and Buyer, title to and risk of loss of the Utility Credits will pass from Seller to Buyer upon allocation of the Utility Credits to Buyer's Account(s) by the LEDC, as reflected on the applicable invoice received by Buyer from the LEDC.
- 5.4. Governmental Charges. Seller is responsible for any and all Governmental Charges attributable to the Solar Energy Facility, and is responsible for any and all Governmental Charges attributable to the allocation and sale of Utility Credits to Buyer.

6. PAYMENT

- 6.1. Payment. Subject to Applicable Legal Requirements, Buyer shall provide Seller access to Buyer's Accounts solely for purposes of verifying the Utility Credits that are allocated to Buyer's Account. Buyer shall also provide Seller, upon request therefor, with any other information reasonably necessary to permit Seller to verify the Utility Credits allocated to the Buyer's Accounts. Seller shall use all information to which it is provided access under this Section solely for the purposes of carrying out its rights and obligations pursuant to this Agreement. Seller shall invoice Buyer on a monthly basis for the total Price due and payable to Seller during the Billing Cycle for the Utility Credits allocated and credited to Buyer's Accounts for the immediately preceding month, and Buyer shall make payment within thirty (30) days of its receipt of such invoice from Seller. Buyer shall make its payment by check or wire transfer (or other mutually agreeable method) in immediately available funds to the account designated by Seller on Exhibit B attached hereto, which may be updated by Seller by written notice to Buyer from time to time. All undisputed amounts outstanding shall accrue interest at the Interest Rate commencing on the thirty-first (31st) day following the date of the applicable invoice.
- 6.2. Accounts Management. Buyer shall provide Seller with at least forty-five (45) days prior notice of Buyer's intention to close any of the Accounts to which Utility Credits are being allocated, and concurrently with such notice Buyer shall designate one or more replacement accounts to which such Utility Credits should be allocated on a going forward basis, and each such replacement account shall thereafter be an "Account" hereunder.
- 6.3. Records and Audits. Each Party shall keep, for a period of not less than three (3) years after the expiration or termination of this Agreement, records created or received relating to this Agreement sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments, and Energy produced by the Solar Energy Facility under this Agreement. During such period

each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine/audit the other Party's records pertaining to such transactions during the other Party's normal business hours; provided, however, that Seller may require Buyer to examine or audit, and not copy, proprietary business information at the premises of Seller in New York, and if no such premises exist in New York, at a location within fifty (50) miles of Buyer's principal offices to be mutually agreed upon by the Parties. If Seller has reason to dispute the Utility Credits Buyer received from the LEDC, Buyer shall provide reasonable assistance to Seller in support of such dispute. At least ninety (90) days before either Party intends to discard records at the end of the aforesaid three-year period, it shall notify the other Party in writing of its intent so that such Party may, in its discretion, take possession of any or all such records.

6.4. Disputes with the LEDC and Between the Parties.

- 6.4.1. To the extent that Seller disputes that the Utility Credits allocated by the LEDC to Buyer's Accounts in a Billing Cycle does not equal the amount of Utility Credits that Seller reasonably believes should have been allocated by the LEDC to Buyer's Accounts during such Billing Cycle, Seller may dispute such allocation with the LEDC (with Buyer's reasonable cooperation and at Seller's sole cost and expense), and upon resolution of such dispute, Buyer agrees to pay to Seller the Price for all Utility Credits allocated to Buyer's Accounts in resolution of such dispute. Notwithstanding anything to the contrary herein, under no circumstances will Buyer be required to pay Seller for Utility Credits that have not been allocated and credited to Buyer's Accounts by the LEDC.
- 6.4.2. If a Party, in good faith, disputes an amount owed or paid as provided in this Agreement, the disputing Party shall promptly notify the other Party in writing of the basis for the dispute and timely pay all undisputed amounts. The Parties shall resolve all disputes in accordance with the provisions of Section 12.4. Upon resolution of the dispute, any required payment (including any interest thereon at the Interest Rate) shall be made within thirty (30) days of such resolution. In the event of any overpayment, the overpayment amount (plus all interest thereon accrued at the Interest Rate) shall be returned by the receiving Party upon request by the other Party, or may otherwise be set off against subsequent payments. A Party shall be entitled to initiate a dispute with respect to any payment amount for twelve (12) months following its receipt of the first invoice for such amount, and thereafter all claims with respect thereto shall be waived by the disputing Party except in the case of fraud or willful misconduct by the other Party.

7. OBLIGATIONS OF THE PARTIES

7.1. Utility Credit Eligibility and Approvals.

- 7.1.1. Subject to the provisions of this Agreement, Seller shall use commercially reasonable efforts to apply for and obtain all approvals necessary for the Solar

Energy Facility to receive Utility Credits as a Community Distributed Generation Project (as defined by the VDER Program Orders), provided that Buyer shall reasonably cooperate with Seller (at Seller's cost and expense) in connection therewith.

7.2. Seller's Obligations.

7.2.1. Seller shall maintain accurate operating, maintenance and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required of Seller (and in the form required) by any Governmental Authority, and all records necessary to allow Buyer to verify the Energy produced by the Solar Energy Facility, the Utility Credits allocated to Buyer under this Agreement, and any and all amounts paid, or requested by Seller to be paid, by Buyer to Seller under this Agreement, subject to the right of Seller in Section 6.3 to request Buyer to review proprietary information at Seller's premises in New York.

7.2.2. Subject to Section 7.1, Seller shall be solely responsible for obtaining and maintaining all permits and approvals required for the Solar Energy Facility under Applicable Legal Requirements, including without limitation, to the extent applicable, local zoning by-laws and the New York State Environmental Quality Review Act.

7.2.3. Seller shall operate and maintain the Solar Energy Facility in accordance with Applicable Legal Requirements and prudent industry practices applicable to distributed solar photovoltaic generating facilities in the State of New York, and shall use commercially reasonable efforts to operate the Solar Energy Facility in a manner such it will maintain Commercial Operations continuously throughout the term of this Agreement, subject to Force Majeure, outages required for planned and unplanned maintenance, and any act or omission by a Government Authority or the LEDC.

7.3. **Buyer's Obligations.** Buyer shall perform its obligations under this Agreement in strict compliance with this Agreement and all Applicable Legal Requirements. Among other things, Buyer shall not, and shall not cause or permit any other Person to, modify, cancel or impair the Utility Credit Application and the allocation of Utility Credits to Buyer's Accounts without the prior written approval of Seller. Buyer acknowledges and agrees that its obligation to perform under this Agreement is not conditioned upon the financial solvency of the LEDC, nor shall the financial condition of the LEDC be a basis for Buyer to terminate this Agreement.

8. REPRESENTATIONS AND WARRANTIES

8.1. **Representations and Warranties.** As of the Effective Date and the Credit Start Date, each Party represents and warrants to the other Party as follows:

- 8.1.1. The Party is duly organized, validly existing, and in good standing under the laws of the state of its formation.
- 8.1.2. The Party has the right and authority under its governing documents to execute, deliver and perform this Agreement.
- 8.1.3. The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of the Party has full authority to do so, and this Agreement is a binding obligation of and is an enforceable obligation of such Party.
- 8.1.4. Neither the execution and delivery of this Agreement by the Party, nor the performance of such Party's obligations hereunder, conflicts with or will result in a breach or default under the Party's organizational documents or any agreement or obligation to which the Party is a party.
- 8.2. Buyer Representations and Warranties. As of the date of Commercial Operation and the Credit Start Date, Buyer further represents and warrants that it is the customer of record for and has all necessary rights to the Accounts set forth on Exhibit A hereto. The Buyer represents and warrants that all information provided by the Buyer regarding its Account history and usage is accurate in all material respects.

9. TERMINATION/DEFAULT/REMEDIES

- 9.1. Events of Default. The following shall each constitute an Event of Default by a Party.
- 9.1.1. The Party fails to pay any amount (other than amounts disputed in good faith in accordance with this Agreement) as and when due under this Agreement, and such failure is not cured in full within five (5) Business Days following written notice thereof.
- 9.1.2. The Party fails to perform or comply with any material covenant or agreement set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof; provided, however, if the nature of the default is not susceptible to cure within such thirty (30) day period and the defaulting Party commences and works diligently and with commercially reasonable efforts to cure such breach during such thirty (30) day period, the defaulting Party's time to cure such default shall be extended by the time reasonably necessary to cure the same; provided further, that if such breach is not cured within ninety (90) days following the first notice of default, then the non-defaulting Party may terminate this Agreement.
- 9.1.3. The Party: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a

general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within forty-five (45) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

9.1.4. The Party assigns this Agreement in whole or in part in violation of Section 11.

9.1.5. A representation or warranty made by either Party in Section 8 is discovered to have been materially false or misleading when made, and such breach has an actual material adverse impact on the Solar Energy Facility or the non-breaching Party.

9.2. Force Majeure. If by reason of Force Majeure either Party is unable to carry out, either in whole or in part, any of its obligations contained herein, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party promptly gives the other Party hereto written notice describing the particulars of the Force Majeure and the anticipated period of delay; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. Notwithstanding anything to the contrary in this Agreement, if a Force Majeure event continues for a period of 180 consecutive days or more, either Party may terminate this Agreement by written notice to the other Party, such termination effective upon delivery of such notice to the other Party. Upon termination of this Agreement by either Party pursuant to this Section 9.2, (i) neither Party shall have any obligation or financial liability to the other Party as a result of such termination, and (ii) Seller shall be permitted to sell, transfer, assign or allocate the Buyer Percentage to any Person, free and clear of any claim by Buyer.

9.3. Termination for Default.

- 9.3.1. Upon the occurrence of an Event of Default, the non-defaulting Party may terminate this Agreement by providing written notice to the defaulting Party. Such termination shall be effective as of the date of delivery of such notice to the defaulting Party.
- 9.3.2. If this Agreement is terminated pursuant to Section 9.3.1, Seller shall have no further obligation to deliver, and Buyer shall have no further obligation to purchase, any Utility Credits from Seller, and Seller shall be permitted to sell, transfer, assign or allocate the Buyer Percentage to any Person, free and clear of any claim by Buyer; provided, however, that Buyer shall continue to pay Seller for any Utility Credits that have or may continue to be allocated to Buyer by the LEDC until the LEDC revises the allocation designation Seller shall make the proper notification to the LEDC promptly (but in no event more than fourteen (14) days following termination) to cease the allocation of Utility Credits to Buyer, including the filing of a Utility Credit Application with the LEDC within such fourteen (14) day period.
- 9.4. Reservation of Rights. Subject to the limitations set forth in this Agreement, upon an Event of Default, Buyer and Seller each reserve and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement. Each Party agrees that it has a duty to mitigate damages that it may incur as a result of the other Party's non-performance under this Agreement.

10. LIMITATION OF LIABILITY

- 10.1. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM A BREACH OF THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.
- 10.2. No Implied Waivers – Remedies Cumulative. No covenant or agreement under this Agreement shall be deemed to have been waived by Seller or Buyer, unless such waiver shall be in writing and signed by the Party against whom it is to be enforced. Consent or approval of Seller or Buyer to any act or matter must be in writing, shall apply only with respect to the particular act or matter in which such consent or approval is given, and shall not relieve the other Party from the obligation wherever required under this Agreement to obtain consent or approval for any other act or matter. The failure of Seller or Buyer to insist upon the strict performance of any one of the covenants or agreements of this Agreement or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy or election, but the same shall continue and

remain in full force and effect. Any right or remedy of Seller or Buyer herein specified or any other right or remedy that Seller or Buyer may have at law, in equity or otherwise upon breach of any covenant or agreement herein contained shall be a distinct, separate and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other.

- 10.3. Acceptance of Payment. Neither receipt nor acceptance by Seller or Buyer of any payment due herein, nor payment of same by Buyer or Seller, shall be deemed to be a waiver of any default under the provisions of this Agreement, or of any right or defense that Seller or Buyer may be entitled to exercise hereunder.

11. ASSIGNMENT

11.1. Prior Written Consent

- 11.1.1. Except as set forth in Section 11.2, neither Party shall assign this Agreement, or any part thereof, to any Person without the prior written consent of the other Party, which consent may not be unreasonably conditioned, withheld or delayed. Any assignee pursuant to this Section 11.1.1 shall confirm in writing to the non-assigning Party that such assignee is bound by this Agreement and is subject to all of the obligations required of the assigning Party.

- 11.1.2. Notwithstanding Section 11.1.1, the Seller may assign and collaterally assign this agreement without the consent of Buyer (i) to any affiliate of Seller, (ii) any successor of Seller or an affiliate thereof, whether by acquisition, merger, novation or otherwise, (iii) any Person that acquires (directly or indirectly) all or substantially all of the assets of Seller, or (iv) as provided in Section 11.2 below.

- 11.2. Assignment and Collateral Assignment to Lender. Seller, without the approval of Buyer, may assign, collaterally assign and/or grant an interest in this Agreement or any or all of its rights and obligations hereunder to any Lender. Promptly after granting such interest, Seller shall notify Buyer in writing of the name, address, and telephone number of each and every Lender to which Seller's interest under this Agreement has been assigned.

- 11.3. Lender Accomodations. If Seller assigns, collaterally assigns and/or grants an interest in or to this Agreement as permitted by Section 11.2, then:

- 11.3.1. Buyer shall simultaneously provide Lender with copies of all default notices issued to Seller pursuant to this Agreement, and any Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by Seller in accordance with Article X, and Buyer shall accept a cure performed by any Lender provided the same is performed in accordance with the terms of this Agreement and such additional cure period as the Lender may reasonably request.

11.3.2. Buyer agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or shall have any obligation or liability to Buyer with respect to this Agreement except to the extent such liabilities arise after this Agreement has been assigned to the Lender, or any Lender has otherwise assumed obligations of Seller hereunder; provided that Buyer shall nevertheless be entitled to exercise all of its rights hereunder if Seller or Lender fails to perform Seller's obligations under this Agreement.

11.3.3. Upon the receipt of a written request from Seller, Buyer shall execute or arrange for the delivery of such documents as may be reasonably requested by Seller to consummate any financing or refinancing, and which may provide that Buyer and Seller recognize the right of such Lender to assume the rights and obligations of Seller under this Agreement upon foreclosure of Lender's security interest; provided, however, that this provision shall not require Buyer to execute any documents or instruments which are contrary to Applicable Legal Requirements or which may increase Buyer's risk under the Agreement.

11.4. Any assignment or transfer not expressly permitted herein or without advance written consent will be null and void ab initio.

12. MISCELLANEOUS

12.1. Notices. All notices and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing (except where expressly provided for otherwise), shall be effective upon delivery, and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or by any other commercially acceptable methods agreed to in writing, in advance, by the Parties.

The communications shall be sent to the following addresses:

If to Seller: ELP Greenport Solar LLC
Suite 201
552 Massachusetts Avenue
Cambridge, MA 02139
Attn: Manager

If to Buyer: City of Hudson
[]
[]
[]

Any Party may change its address and contact person for the purposes of this Section by giving notice thereof in the manner required herein.

12.2. Severability. If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired. The Parties understand and agree that it is an essential purpose of this Agreement that Seller be eligible to allocate Utility Credits to Buyer's Accounts, and that Buyer be eligible to receive, use and compensate Seller for such allocated Utility Credits, all as set forth herein.

12.3. Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of New York without regard to principles of conflicts of law.

12.4. Dispute Resolution. The Parties shall use reasonable efforts to resolve any dispute(s) that may arise regarding this Agreement.

12.4.1. Any dispute that arises under or with respect to this Agreement that cannot be resolved informally shall in the first instance be the subject of formal negotiations between respective executive officers, or his/her designee, of each Party. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for formal negotiations shall be thirty (30) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties.

12.4.2. If that the Parties cannot timely resolve a dispute by pursuant to Section 12.4.1, either Party may bring a suit seeking authorized relief in any federal or state court in New York.

12.4.3. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to the dispute resolution process set forth in this Section to prevent irreparable harm that would be caused by a breach of this Agreement.

12.5. Entire Agreement. This Agreement, together with its exhibits, contains the entire agreement between Seller and Buyer with respect to the subject matter hereof, and supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.

12.6. No Joint Venture. Each Party will perform all obligations under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to

create a joint venture, partnership, agency or any relationship between the Parties. The obligations of Seller and Buyer hereunder are individual and neither collective nor joint in nature.

- 12.7. Amendments; Binding Effect. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Agreement or their successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.
- 12.8. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.
- 12.9. Further Assurances. From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents, reasonably requested by the other and consistent with the terms of the Agreement for the purpose of effecting or confirming any of the transactions contemplated by this Agreement. The Party making a request under this Section shall pay all reasonable costs and expenses incurred by the other Party in complying with any such request. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section. If this Agreement is terminated for any reason, Buyer agrees to execute whatever documents may be required by the LEDC to cease its receipt of Utility Credits from Seller. No Party shall be required to execute, acknowledge and deliver any document that such Party reasonably believes is contrary to Applicable Legal Requirements.
- 12.10. Survival. The provisions of Sections 3.1 (Title), 5.5 (Energy and Environmental Attributes), 6.3 (Records and Audits), 6.4 (Dispute), 7.2 (Seller's Obligations), 7.3 (Buyer's Obligations), 8 (Warranty Survival), 9 (Termination), 10 (Limitation of Liability), and Section 12 (Miscellaneous), shall survive the expiration or earlier termination of this Agreement.
- 12.11. No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto. Notwithstanding anything to the contrary in this Agreement, there are no third party beneficiaries to this Agreement.
- 12.12. Notice of Regulatory Change; Good Faith Negotiations. In the event of a VDER Program Cancellation, then, upon a Party's receipt of notice of same from the other Party (the "**Notice of Regulatory Change**"), the Parties shall promptly and in good faith negotiate such amendments to or restatements of this Agreement as may be necessary to achieve the allocation of economic benefits and risks originally intended by the Parties. Without limiting the foregoing, such amendments may include an amendment and restatement of this Agreement in the form of a power purchase agreement. In the event that such negotiations do not result in an executed

amendment or restatement within sixty (60) days following the date of the Notice of Regulatory Change, either Party may terminate this Agreement without penalty. In the event of termination under this section Buyer's obligation shall be limited to payment for Utility Credits credited to Buyer's Accounts prior to the termination date.

[Signatures Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

City of Hudson, New York

ELP Greenport Solar LLC

By: _____
Name:
Title:

By: East Light Partners PBC, its Manager
By: _____
Name:
Title:

List of Exhibits to Agreement

Exhibit A –Designation of Buyer Accounts

Exhibit B – Seller’s Wire Transfer Account Information

Exhibit C—Buyer’s Projected Annual Utility Credits

EXHIBIT A

DESIGNATION OF BUYER ACCOUNTS

Electric Accounts	Lighting Accounts
11875-14102	689154005
02048-62108	1473156009
00730-88007	1571000006
02036-56115	1669099004
02236-56102	2551160002
03039-00012	2621065005
12075-14100	3951076004
12675-14108	4049044004
14580-99003	4575090107
17424-29108	4959116006
17624-29104	5913878104
17824-29100	6613880109
18675-14100	6799950115
26712-92105	7084862105
35999-50118	
42824-29103	
4703972001	
63248-62102	
65550-89100	
66199-50119	
70448-62103	
71648-62101	
83750-89104	
85350-88109	
94663-05107	
12475-14102	
20901-04100	
26512-92145	
29912-92134	
29399-50108	
39999-50107	
45231-25013	
47670-07003	
59524-89114	
65263-05104	
78624-28123	
79350-88106	
88750-89113	

EXHIBIT B

SELLER'S PAYMENT ACCOUNT INFORMATION

[To be provided by Seller prior to the date of Commercial Operation]

EXHIBIT C

BUYER'S PROJECTED ANNUAL UTILITY CREDITS

Year	Utility Credits (\$)
1	\$348,000.00
2	\$348,000.00
3	\$348,000.00
4	\$348,000.00
5	\$348,000.00
6	\$348,000.00
7	\$348,000.00
8	\$348,000.00
9	\$348,000.00
10	\$348,000.00
11	\$348,000.00
12	\$348,000.00
13	\$348,000.00
14	\$348,000.00
15	\$348,000.00
16	\$348,000.00
17	\$348,000.00
18	\$348,000.00
19	\$348,000.00
20	\$348,000.00
21	\$348,000.00
22	\$348,000.00
23	\$348,000.00
24	\$348,000.00
25	\$348,000.00