

WORKSHOP MEETING  
TOWN BOARD TOWN OF MARLBOROUGH  
21 MILTON TURNPIKE, MILTON NY  
MARCH 27, 2023 7:00 PM  
MINUTES OF MEETING

Present: Supervisor Corcoran  
Councilman Zambito  
Councilwoman Sessa  
Councilman Cauchi

Colleen Corcoran, Town Clerk

Jen Flynn, Planning Board Secretary  
Cindy Lanzetta, Planning Board Member  
Joseph Lofaro, Planning Board Member  
Fred Callo, Planning Board Member  
Stephen Jennison, Planning Board Member  
James Garofalo, Planning Board Member

Gerald Coccozza, Chief of Police  
Brandee Nelson, Tighe & Bond

Absent: Councilman Molinelli

ITEM #1 Call to order - Pledge of Allegiance

ITEM #2 Moment of Silence

ITEM #3 Motion to approve agenda

***Councilman Cauchi made a motion to approve the agenda. Motion seconded by Councilwoman Sessa.***

***Yeas: 4                      Nays: 0                      Carried***

ITEM #4 Motion to approve minutes from the March 13, 2023 Town Board Meeting

***Councilman Cauchi made a motion to approve minutes from the March 13, 2023 Town Board Meeting. Motion seconded by Councilwoman Sessa.***

***Yeas: 4                      Nays: 0                      Carried***

Motion to approve minutes from the March 13, 2023 Public Hearing

***Councilwoman Sessa made a motion to approve minutes from the March 13, 2023 Public Hearing. Motion seconded by Councilman Cauchi.***

***Yeas: 4                      Nays: 0                      Carried***

ITEM #5 Authorize payments of bills

***Councilman Zambito made a motion to authorize payment of the abstract in the amount of \$178,398.68. Motion seconded by Councilman Cauchi.***

***Yeas: 4***

***Nays: 0***

***Carried***

ITEM #6 Supervisor Updates

*Supervisor Corcoran stated that the TOMVAC project is moving forward. However, the contractor, WND Construction, is having issues with the carpenter's union and will hopefully resolve them by the end of the week. Plumbing is complete and has passed inspection. Walls have been put up in the back room. The first estimate to install audio/visual systems in the building is around \$50,000.00. Estimates for cameras were in the range of \$20-\$25,000.00. The Highway Department is working on expanding the parking lot to square it off; they will also pour the pads for the generator and HVAC system. The goal is for the building to be open in July.*

ITEM #7 Presentations

*Brandee Nelson stated that after a lot of negotiating with the insurance company they estimated \$72,000.00 just to cover the damage at the north pier for the fire damage. In order to make it ADA compliant they estimated the cost to be \$164,218.00. The above water portion of the pier does not show significant section loss. Therefore, from what they see above water the pier can be restored as a fishing pier.*

*Ms. Nelson stated that there would be certain tasks included in the rebuild of the pier and explained each of the following.*

- Divers would assess the condition of the pier down to about 45 feet under the water with video; they check for section loss on the piles*
- Design of the new pier  
For fire damage and for ADA compliance*
- Preparation of the bid and specs which would be a prevailing wage job*
- Tighe & Bond will handle contracts and also be the construction administrator*

*There was a brief questioning and discussion about the divers, the condition of the pier, the purpose of the pier and construction of the pier.*

*Supervisor Corcoran asked for a motion to sign the proposal with Tighe & Bond for engineering services not exceeding \$75,000.00.*

***Councilman Zambito made a motion to allow the Supervisor to sign the proposal with Tighe & Bond for engineering services for the north pier at Milton Landing not to exceed \$75,000.00. Motion seconded by Councilman Cauchi.***

***Yeas: 4***

***Nays: 0***

***Carried***

ITEM #8 Comments on the agenda

*Mark Reynolds asked for a copy of Brandee Nelson's proposal.*

ITEM #9 New Business

*No new business.*

ITEM #10 Workshop topics

A). Planning Board /Town Board open discussion

*James Garofalo suggested putting an arial view photo of a project when there is a (Planning Board) public hearing to let the surrounding residents know if they have any interest in the project or even want to come to the public hearing.*

*There was a brief discussion about what is posted on the website and also what the certified letter process is; the Planning Board has been discussing how to make the process easier and less costly for the applicant.*

*Mr. Garofalo began a conversation about parking in the hamlets and parking for current and future projects.*

*Steve Jennison suggested that the Town Board find a way to get extra public parking in the hamlet. He suggested using the American Legion and the corner of White Street and Western Avenue.*

*Dave Zambito explained that there are currently three parking areas in the hamlet of Marlboro; Supply Captain, Marlboro Market and the Methodist Church. He gave his opinion that White Street would be dangerous and the American Legion may be ok. It is difficult; many businesses are sharing parking lots and spaces.*

*Supervisor Corcoran stated that Howard Baker had mentioned the Presbyterian Church in the past. The Supervisor also stated that Bob Pollock has helped the town with parking and has been asked for an additional lot.*

*There was a brief discussion about how the town is expanding and also about the Dockside (Leyton) condominium project may affect the overflow parking for the Falcon.*

*James Garofalo disclosed that he through his firm, worked on the original project in the early 2000's but is not working on the current one.*

*Cindy Lanzetta commended the Town Board for working with business owners to allow public use of their parking areas. She also suggested looking at residency requirements in the Short Term Rental (STR) law. Also, she suggested looking at minimum requirements with regard to affordable housing. A possible 10% for workforce housing for multifamily dwellings.*

*Supervisor Corcoran stated that he and Councilwoman Sessa met with Dennis Doyle. The Supervisor explained that he has two concerns. One is that if a developer has a choice to develop in one town or an adjacent town and one has the 10% rule and the other doesn't, they will likely choose the one that doesn't. Second, developers feel there should be a tax break.*

*Steve Jennison asked who was responsible for following up with the completion of a project beyond the Certificate of Occupancy (CO).*

*Supervisor Corcoran said no one and explained some options.*

*James Garofalo suggested that the applicant's professional should follow up as they are the ones signing off on the as built plans.*

*There was a brief discussion about how long to keep the escrow open.*

*Cindy Lanzetta suggested that a temporary CO could be issued. She stated that legal said the Zoning Officer could do it and recited Town Law regarding final inspections. James Garofalo added that the CO could be pulled if the applicant doesn't comply. Supervisor Corcoran stated that they will try to figure this out. Mr. Garofalo suggested another code change which is that the applicant is currently required to provide 12 copies of their application and supporting documents; the code states 7. There was a brief discussion about why there aren't that many STR applications.*

#### ITEM #11 Correspondence

*Supervisor Corcoran read the following correspondence:*

*A letter from Tom Schroeder, Commander, Marlborough American Legion Post 124 requesting use of the pavilion at no charge on September 24, 2023 to sponsor an appreciation day event for Marlborough Vietnam Veterans.*

***Councilman Zambito made a motion to allow the American Legion to sponsor an event for Marlborough Vietnam Veterans at no charge at the pavilion at Cluett Schantz Park on September 24, 2023. Motion seconded by Councilman Cauchi.***

***Yeas: 4                      Nays: 0                      Carried***

*A letter from Christina Jennerich, Director of the Marlboro Free Library requesting use of the pavilion at Cluett Schantz Park on August 1, 2023 for a family performance by Jester Jim.*

***Councilman Zambito made a motion to allow the Marlboro Free Library to use the pavilion at Cluett Schantz Park at no charge for the family performance by Jester Jim. Motion seconded by Councilwoman Sessa.***

***Yeas: 4                      Nays: 0                      Carried***

*A resignation letter from Police Officer Kevin Coronel, effective March 22, 2023.*

#### ITEM #12 Public Comment

*No public comment.*

#### ITEM #13 Resolutions

A). Resolution #46 To establish the amount of a maintenance bond and maintenance security

B). Resolution #47 To propose that the term of office, of the Town Supervisor is to be increased to four (4) years

C). Resolution #48 To authorize a payment in lieu of taxes agreement for solar energy systems between the Town of Marlborough, New York and Baileys Gap Solar, LLC

*Supervisor Corcoran explained that the town entered into agreement with Nexamp in 2020; this resolution is to execute a PILOT agreement with the Town. There are currently no taxes paid on*



*the property. Over 15 years, the town will receive \$26,398.49. He also explained the breakdown of credits in terms of percentages that the town will receive as well which will add up to approximately \$20,000.00 including the tax payment.*

*Councilwoman Sessa stated her opinion that the percentage was low then she learned that 80-120 residential customers would be eligible for a discounted rate.*

*There was a brief discussion about the rates.*

***Councilman Cauchi made a motion to amend a word in the last paragraph of the resolution as presented on the agenda from Marlborough (Central School District) to Highland (Central School District). Motion seconded by Councilwoman Sessa.***

***Yeas: 4***

***Nays: 0***

***Carried***

D). Resolution #49 To authorize a credit purchase and sale agreement between the Town of Marlborough, New York and Baileys Gap Solar, LLC

E). Resolution #50 To authorize the grant of easement to Central Hudson Gas & Electric Corporation to enable the construction and operation of a solar (pv) electric generation facility at 20 Baileys Gap Road in the Town of Marlborough

F). Resolution #51 To appoint a full-time police officer

G). Resolution #52 To appoint a full-time police officer

*Chief Cocozza explained that Frank Zebrowski and Ryan Greaven still need to be approved by civil service so their start dates are in April. They will both be full time. Since Sergeant Pascale retired from his position, the department needs a new Sergeant; Officer Masten is eligible to fill that position. The plan is to assign Ryan Greaven to Officer Masten's position as School Resource Officer after of training for patrol during the spring and summer months.*

#### **ITEM#14 ADJOURNMENT**

*Before adjourning, Councilwoman Sessa updated the Board about the Sloop Clearwater. At the last meeting, they wrote in asking to waive docking fees for educational programs. It was negotiated that the Board would waive the fee and the Town Recreation Program would get a complimentary slot for a children's program.*

***Councilwoman Sessa made a motion to adjourn the meeting at 8:46 p.m. Motion seconded by Councilman Cauchi.***

***Yeas: 4***

***Nays: 0***

***Carried***

*Respectfully submitted,  
Danielle Cherubini  
Deputy Town Clerk*

March 27, 2023

A). Resolution #46 To establish the amount of a maintenance bond and maintenance security

Supervisor Corcoran proposes the following:

WHEREAS, the Vita-Meadow View Estates Subdivision was approved by the Town of Marlborough Planning Board in November 2006; and

WHEREAS, as a condition of subdivision approval, the developer was required to provide a performance bond and security acceptable to the Town for the completion of subdivision improvements; and

WHEREAS, by a resolution dated May 11, 2020, the Town of Marlborough Town Board approved an amount of security fixed at \$161,000.00;

WHEREAS, the developer provided the required security by a letter of credit in the amount of \$161,000.00, which has since expired; and

WHEREAS, as a condition of subdivision approval, the developer was required to provide a maintenance bond and security acceptable to the Town for the maintenance of the subdivision roads; and

WHEREAS, the original bonding amount as determined by the Town Engineer was \$866,271.00; and

WHEREAS, the Town Engineer has determined that in accordance with § 130-5(B) of the Town Code, the amount of the maintenance bond and maintenance security is 10% of the original approved bonding amount which would equal \$86,627.00; it is hereby

RESOLVED, that the amount of the maintenance bond and maintenance security is hereby fixed at \$86,627.00 conditioned upon (a) the developer's establishment of an escrow fund with the Town to defray the Town's cost of engineering and attorneys' services in connection herewith and (b) the developer's execution and delivery of a maintenance bond and security in form and substance to the Town Supervisor and the attorney to the Town and in compliance with the Town Code of the Town of Marlborough.

The foregoing resolution was voted upon with all councilmen voting as follows:

Supervisor Corcoran	Yes
Councilman Cauchi	Yes
Councilman Molinelli	Absent
Councilman Zambito	Yes
Councilwoman Sessa	Yes

March 27, 2023

B). Resolution #47 To propose that the term of office of the Town Supervisor is to be increased to four (4) years

Councilwoman Sessa offered the following resolution, which was seconded by Councilman Zambito, who moved its adoption:

WHEREAS, the term of office of the Town Supervisor is currently two (2) year years; and

WHEREAS, the Town Board of the Town of Marlborough deems it to be in the best interests of the Town to increase the term of office of the Town Supervisor from two (2) to four (4) years; and

WHEREAS, pursuant to Town Law §24-a, the Town Board is authorized to increase the term of office of the Town Supervisor to four (4) years by adoption of a resolution subject to a mandatory referendum; and

WHEREAS, the adoption of this resolution is a Type II Action requiring no SEQRA review;

NOW, THEREFORE, BE IT RESOLVED, that the term of office of the Town Supervisor is hereby increased to four (4) years, commencing January 1, 2024, subject to mandatory referendum; and

BE IF FURTHER RESOLVED, that a proposition to increase the term of the office of the Town Supervisor shall be submitted to the electors of the Town of Marlborough at the biennial town election held on November 7, 2023, for the purpose of voting by ballot on the following proposition:

PROPOSITION

Shall the term of office of the Town Supervisor of the Town of Marlborough be increased from two years to four years commencing January 1, 2024?

; and

BE IT FURTHER RESOLVED, that the change in term of office shall take effect on January 1, 2024 if approved by the electors of the Town of Marlborough at the biennial election on November 7, 2023; and

BE IT FURTHER RESOLVED, that a certified copy of this resolution shall be promptly filed with the Ulster County Board of Elections.

The foregoing resolution was voted upon with all councilmen voting as follows:

Supervisor Corcoran	Yes
Councilman Cauchi	No
Councilman Molinelli	Absent
Councilwoman Sessa	Yes
Councilman Zambito	Yes

Dated: Milton, New York  
March 27, 2023

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COLLEEN CORCORAN, TOWN CLERK

March 27, 2023

C). Resolution #48 To authorize a payment in lieu of taxes agreement for solar energy systems between the Town of Marlborough, New York and Baileys Gap Solar, LLC

Supervisor Corcoran proposes the following:

WHEREAS, the Town of Marlborough (the “Town”) and Nexamp Solar, LLC (“Nexamp”) entered into that certain Lease Option Agreement dated August 20, 2020 (the “Lease Option Agreement”) pursuant to which the Town granted an option (the “Option”) to Nexamp to lease the portion of Town-owned real property located at 20 Baileys Gap Road, Marlborough, New York described in Exhibit A annexed to the Lease Option Agreement (the “Premises”); and

WHEREAS, on May 21, 2021, the Town Board granted conditional site plan approval and a special use permit to Nexamp, Inc., the parent company of Nexamp and Baileys Gap Solar, LLC, to permit the operation of a solar energy system on the Premises; and

WHEREAS, the terms of the Option were modified and the rights of Nexamp under the Option were assigned to Baileys Gap Solar, LLC (“Baileys Gap”); and

WHEREAS, Baileys Gap and the Town have manifested their intent to enter in an agreement for payments in lieu of taxes pursuant to Real Property Tax Law section 487(9)(a) (the “PILOT Agreement”); and

WHEREAS, the form of the proposed PILOT Agreement is attached hereto; and

WHEREAS, it is in the best interest of the Town to enter into the PILOT Agreement;

NOW, THEREFORE, IT IS HEREBY RESOLVED that terms of the PILOT Agreement are approved and the Supervisor is authorized to execute the PILOT Agreement in substantially the form attached hereto on behalf of the Town or a PILOT agreement entered into collectively Bailey’s Gap, the Town, the Highland Central School District and/or the County of Ulster, which agreement incorporates the terms of the PILOT Agreement hereby approved.

The foregoing resolution was duly put to a vote which resulted as follows:

Supervisor Corcoran	Yes
Councilman Molinelli	Absent
Councilman Cauchi	Yes
Councilwoman Sessa	Yes
Councilman Zambito	Yes

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PAYMENT IN LIEU OF TAXES AGREEMENT

FOR SOLAR ENERGY SYSTEMS

among

Town of Marlborough, New York

and

Baileys Gap Solar, LLC

Dated as of \_\_\_\_\_, 2023

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RELATING TO THE PREMISES LOCATED AT  
20 BAILEYS GAP ROAD, MARLBOROUGH, NY 12528 (NY TAX ID: 95.4-1-35)  
IN THE TOWN OF MARBOROUGH, COUNTY OF ULSTER, STATE OF NEW YORK

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PAYMENT IN LIEU OF TAXES AGREEMENT

FOR SOLAR ENERGY SYSTEM PURSUANT TO REAL PROPERTY TAX LAW § 487

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR REAL PROPERTY ("Agreement"), effective as of the date on the cover page, above, by and between, Baileys Gap Solar, LLC a Delaware Limited Liability Company, with a principal place of business located at 101 Summer Street, Floor 2, Boston, MA (the "Company") and the Town of Marlborough (the "Town"), a municipal corporation duly established with a principal place of business at 21 Milton Turnpike, PO Box 305, Milton, New York 12547.

The Town may at times hereinafter be referred to as the "Taxing Jurisdiction." The Company and Town are collectively referred to in this Agreement as the "Parties" and are individually referred to as a "Party."

RECITALS

WHEREAS, Company has submitted a Notice of Intent to the Town that it plans to build and operate a "Solar Energy System" as defined in New York Real Property Tax Law ("RPTL") Section 487(l)(b) with an expected nameplate capacity ("Capacity") of approximately 1.35 Megawatts AC, as measured at the inverter (herein the "Project") on a parcel of land located within the Town of Marlborough at 20 Bailey Gap Road, Marlborough, NY (NY Tax ID: 95.4-1-35) (herein the "Property"); and

WHEREAS, pursuant to RPTL 487(9)(a), the Town has indicated its intent to require a Payment in Lieu of Taxes ("PILOT") Agreement with the Company, under which the Company (or any successor owner of the Project) will be required to make annual payments to the Town for each year during the term of this Agreement; and

WHEREAS, upon completion of the project, the Company will submit to the Assessor for the Town of Marlborough, a RP-487 Application for Tax Exemption of Solar or Wind Energy Systems or Farm Waste Energy Systems with respect to the Project, demonstrating its eligibility for a real property tax exemption pursuant to RPTL Section 487; and

WHEREAS, the Parties intend that, during the term of this Agreement, the assessed value of the Property will remain on the taxable portion of the assessment roll with the value of the exemption with respect to the Project, computed pursuant to subdivision two of section 487 of the Real Property Tax Law and identified in a separate tax-exempt column of such tax rolls whereby the Company will be exempt from any statutory real property taxes for which it might otherwise be subjected under New York law with respect to the Project; and

WHEREAS, the Town will take reasonable action, as needed, to provide documentation and acknowledgment to the Town assessor that the Project is exempt from taxation under RPTL 487 as of the applicable tax status day.

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Representations of the Parties.

(a) The Company hereby represents, warrants, and covenants that, as of the date of this Agreement:

i. The Company is duly organized, and a validly existing limited liability company duly authorized to do business in the State of New York, has requisite authority to conduct its business as presently conducted or proposed to be conducted under this Agreement, and has full legal right, power, and authority to execute, deliver, and perform all applicable terms and provisions of this Agreement.

ii. All necessary action has been taken to authorize the Company's execution, delivery, and performance of this Agreement and this Agreement constitutes the Company's legal, valid, and binding obligation enforceable against it in accordance with its terms.

iii. None of the execution or delivery of this Agreement, the performance of the obligations in connection with the transactions contemplated hereby, or the fulfillment of the terms and conditions hereof will (i) conflict with or violate any provision of the Company's Certificate of Incorporation, Certificate of Formation, bylaws or other organizational documents or of any restriction or any agreement or instrument to which the Company is a party and by which it is bound; (ii) conflict with, violate, or result in a breach of any applicable law, rule, regulation, or order of any court or other taxing jurisdictions or authority of government or ordinance of the State or any political subdivision thereof; or (iii) conflict with, violate, or result in a breach of or constitute a default under or result in the imposition or creation of any mortgage, pledge, lien, security interest, or other encumbrance under this Agreement or under any term or condition of any mortgage, indenture, or any other agreement or instrument to which it is a party or by which it or any of the Company's properties or assets are bound.

iv. There is no action, suit, or proceeding, at law or in equity, or official investigation before or by any government authority pending or, to its knowledge, threatened against the Company, wherein an anticipated decision, ruling, or finding would result in a material adverse effect on the Company's ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.

(b) The Town hereby represents, warrants, and covenants that, as of the date of this Agreement:

- i. The Town is duly organized, validly existing, and in good standing under the laws of the State of New York and has full legal right, power, and authority to execute, deliver, and perform all applicable terms and provisions of this Agreement;
- ii. All necessary action has been taken to authorize the Town's execution, delivery, and performance of this Agreement, and this Agreement constitutes a legal, valid, and binding obligation enforceable against it in accordance with its terms; and
- iii. No governmental approval by or with any government authority is required for the valid execution, delivery, and performance under this Agreement by the Taxing Jurisdiction except such as has been duly or will be obtained or made.
- iv. There is no action, suit, or proceeding, at law or in equity, or official investigation before or by any government authority pending or, to its knowledge, threatened against the Town, wherein an anticipated decision, ruling, or finding would result in a material adverse effect on the Town's ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.



- v. As of the time of filing of Real Property Tax Exemption Form (RP 487) by the Company for the Project, the Town will have taken all action necessary to cause the RPTL Section 487 exemption to be available for the Project.
2. Tax Exemption; Payment in Lieu of Real Property Taxes.

(a) Tax-Exempt Status of the Project. It is the intent of the Parties that, pursuant to RPTL 487, the Project shall be identified as exempt upon the assessment rolls of the Town of Marlborough. A Real Property Tax Exemption Form (RP 487) has or will be filed by the Company with the Town Assessor. Upon acceptance by the Assessor, the Project shall be eligible for an exemption pursuant to RPTL Section 487, which shall render the Project exempt from real property taxes otherwise payable to the Town.

(b) Company agrees to make annual payments to the Town in lieu of real property taxes for the Project for a period of fifteen (15) consecutive fiscal tax years in the amounts and at the times set forth in Exhibit A to this Agreement ("Annual Payments"). Such Annual Payment will not exceed the amounts that would otherwise be payable but for the RPTL 487 exemption. Such 15-year period of Annual Payments shall begin with the first applicable tax year of the Taxing Jurisdiction following the taxable status date (March 1 of such year) for which a Real Property Tax Exemption Form (RP-487) was filed with the assessor (the "Commencement Date") and shall end with the fifteenth fiscal year following such fiscal year the exemption first became effective. Based on the Capacity of 1.35 Megawatts AC, Annual Payments to be made by the Company during the term of this Agreement are listed in Exhibit A; actual payments will be determined according to Section 3 of this Agreement.

(c) The Company agrees that the payments in lieu of taxes under this Agreement will not be reduced on account of a depreciation factor or reduction in the Town's tax rate, and the Town agrees that the payments in lieu of taxes will not be increased on account of an inflation factor or increase in the Town's tax rate, all of which factors have been considered in arriving at the payment amounts reflected in this Agreement.

3. Change in Capacity at Mechanical Completion: Adjustments to Payments. To the extent that the Capacity of the Project is more or less than the 1.35 Megawatts AC on the date when the Project is mechanically complete and Company has commenced production of electricity, the Annual Payments will be increased or decreased on a pro rata basis.

4. Change in Capacity After Mechanical Completion: Adjustments to Payments. If after the Completion Date, but during the Term of this Agreement, the Capacity is increased as a result of the replacement or upgrade of equipment or property or decreased as a result of the partial removal or retirement of existing Project equipment or property, which replacement property has lower capacity output capability, the Annual Payments shall be increased or decreased on a pro rata basis for the remaining years of the Agreement.

5. Payment Collection.

The Town will issue an annual bill to the Company at:

Baileys Gap Solar, LLC  
101 Summer Street, Floor 2  
Boston, MA 02110  
Attn: Dallas Manson

Each Annual Payment will be paid to the Town on or before February 1 of each year for the term of this Agreement in accordance with Exhibit A of this Agreement; and the payment amount and payment date will be noted on an annual bill issued by the Town to the Company, provided that any failure of the Town to issue such a bill shall not relieve Company of its obligation to make timely payments under this section.

Payments to the Town shall be made payable Town of Marlborough and mailed to:

Town of Marlborough  
21 Milton Turnpike  
PO Box 305  
Milton, New York 12547  
Attn: Supervisor Scott Corcoran

6. Late Payment. All PILOT Payments are due on or before the Annual Payment date set forth in Exhibit A. Annual Payments not made to the Town prior to or on the Payment Due Date shall be subject to the same interest and penalties as unpaid real property taxes.

7. Transfer or Assignment. This Agreement may not be assigned or transferred by Company without the prior written consent of the Town and such consent may not be unreasonably withheld, conditioned, or delayed. Company may, without the advance written consent of the Town, assign its obligations under this Agreement to (A) an affiliate of Company or (B) to an institutional lender providing financing to Company for the construction, operation and/or maintenance of the Project. If Company is permitted to otherwise assign this Agreement with the advance written consent of the Town, Company shall be released from all obligations under this Agreement upon assumption thereof by the assignee, provided that Company, as a condition of such assignment or transfer and to the reasonable satisfaction of the Town, cure any defaults and satisfy all liabilities arising under this Agreement prior to the date of such assignment or transfer, and the assignee agrees in writing to accept all obligations of the Company. Any assignment or transfer in violation of this Agreement shall be null and void.

8. Removal. The Company shall secure a bond sufficient with the municipality to cover the expense of the removal of the Project at the conclusion of the Project's operations.

9. Statement of Good Faith. The Parties agree that the payment obligations established by this Agreement have been negotiated in good faith in recognition of and with due consideration of the full and fair taxable value of the Project.

10. Additional Documentation and Actions. Subject to applicable laws and regulations, each Party will, from time-to-time hereafter, execute and deliver or cause to be executed and delivered, such reasonable additional instruments and documents as the other Party reasonably requests for the purpose of implementing or effectuating the provisions of this Agreement.

11. Notices. All notices under this Agreement shall be in writing and will be deemed delivered upon the next business day after being deposited with a nationally recognized overnight courier service, or the second business day after being deposited in the United States Mail, postage prepaid, certified mail, return receipt requested. Such notices shall be addressed or delivered to the Parties at their respective addresses shown below.

If to Company:

Baileys Gap Solar, LLC  
101 Summer Street, Floor 2  
Boston, MA 02110  
Attn: Dallas Manson

If to Town:

Town of Marlborough  
21 Milton Turnpike  
PO Box 305  
Milton, New York 12547  
Attn: Supervisor Scott Corcoran

Any such addresses for the giving of notices may be changed by either Party by giving written notice as provided above to the other Party. Notice given by counsel to a Party shall be effective as notice from such Party.

12. Termination Rights of the Company. Company may terminate this Agreement at any time by notice to the Town. Upon receipt of the notice of termination, the Project shall be identified as the taxable on the tax roll effective on the next taxable status date of the Town of Marlborough, provided such date is not less than one hundred and twenty (120) days prior to such taxable status date. The Company shall be liable for all PILOT payments due hereunder in the year of termination, except that if Company is required to pay any part-year real property taxes, the PILOT payment for that year shall be reduced pro rata so that the Company is not required to pay both PILOT payments and real property taxes for any period of time.

13. Termination Right of Town. Notwithstanding anything to the contrary in this Agreement, the Taxing Jurisdiction may terminate this Agreement on sixty (60) days written notice to Company if:

(a) Company fails to make timely payments required under this Agreement, unless such payment is received by the Taxing Jurisdiction within the 60-day notice period; or

(b) The Company has filed or has had filed against it, a petition in Bankruptcy, or is otherwise insolvent.

14. Maintenance and Repair. The Company shall maintain the Project and the Property in good repair and condition during the Term of this Agreement.

15. Miscellaneous.

(a) Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the Town, the Company and their respective successors and assigns.

(b) Applicable Law. This Agreement will be made and interpreted in accordance with the laws of the State of New York. Company and the Town each consent to the jurisdiction of the New York Courts, Ulster County. In the event of any litigation arising under or in connection with this Lease, proper venue shall be Ulster County, New York.

(c) Damage or Destruction. In the event that all or substantially all of the Project shall

be damaged or destroyed as of the taxable status date, then the PILOT Payments for such tax year shall not exceed such amount as would result from taxes levied on the Project (as damaged or destroyed).

- (d) No Waiver. The failure or delay of either Party to insist, in any one or more instances, upon the strict performance of any one or more of the obligations of this Agreement, or to exercise any election contained herein, shall not be construed as a waiver or relinquishment at the time for the future of the performance of such one or more obligations of this Agreement or of the right to exercise such election.
- (e) Entire Agreement. The Parties agree that this is the entire Agreement between them with respect to payments in lieu of taxes for the Project. This Agreement may not be amended or modified except in writing and executed by both Parties.
- (f) Severability. If any provision of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such provision so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.
- (g) Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- (h) Filing. The Company shall file copies of this Agreement within thirty (30) days after the execution hereof by the Parties with the New York State Office of Real Property Tax Services and the Assessor for the Town of Marlborough.
- (i) Recitals. The recitals set forth in the beginning of this Agreement are hereby incorporated by reference.

(Remainder of page intentionally left blank)

[Signature Page to Payment-in-Lieu-of-Taxes Agreement]

Executed by the undersigned as of the day and year first written above, each of whom represents that it is fully and duly authorized to act on behalf of and bind the parties hereto.

**BAILEYS GAP SOLAR, LLC**

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

Name:

Title:

**TOWN OF MARLBOROUGH**

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

Name: Scott Corcoran

Title: Supervisor

EXHIBIT A

Operating Year	Tax Year	Payment Amount
Year 1	2024-2025	\$1,526.51
Year 2	2025-2026	\$1,557.04
Year 3	2026-2027	\$1,588.18
Year 4	2027-2028	\$1,619.94
Year 5	2028-2029	\$1,652.34
Year 6	2029-2030	\$1,685.39
Year 7	2030-2031	\$1,719.09
Year 8	2031-2032	\$1,753.47
Year 9	2032-2033	\$1,788.54
Year 10	2033-2034	\$1,824.31
Year 11	2034-2035	\$1,860.80
Year 12	2035-2036	\$1,898.02
Year 13	2036-2037	\$1,935.98
Year 14	2037-2038	\$1,974.70
Year 15	2038-2039	\$2,014.19
Total		\$26,398.49

March 27, 2023

D). Resolution #49 To authorize a credit purchase and sale agreement between the Town of Marlborough, New York and Baileys Gap Solar, LLC

Supervisor Corcoran proposes the following:

WHEREAS, the Town of Marlborough (the “Town”) and Nexamp Solar, LLC (“Nexamp”) entered into that certain Lease Option Agreement dated August 20, 2020 (the “Lease Option Agreement”) pursuant to which the Town granted an option (the “Option”) to Nexamp to lease the portion of Town-owned real property located at 20 Baileys Gap Road, Marlborough, New York described in Exhibit A annexed to the Lease Option Agreement (the “Premises”); and

WHEREAS, on May 21, 2021, the Town Board granted conditional site plan approval and a special use permit to Nexamp, Inc., the parent company of Nexamp and Baileys Gap Solar, LLC, to permit the operation of a solar energy system on the Premises; and

WHEREAS, the terms of the Option were modified and the rights of Nexamp under the Option were assigned to Baileys Gap Solar, LLC (“Baileys Gap”); and

WHEREAS, Baileys Gap and the Town have manifested their intent to enter in Credit Purchase and Sale Agreement (the “Agreement”); and

WHEREAS, the form of the proposed Agreement is attached hereto; and

WHEREAS, it is in the best interest of the Town to enter into the Agreement;

NOW, THEREFORE, IT IS HEREBY RESOLVED that terms of the Agreement are approved and the Supervisor is authorized to execute the Agreement in substantially the form attached hereto.

The foregoing resolution was duly put to a vote which resulted as follows:

Supervisor Corcoran	Yes
Councilman Molinelli	Absent
Councilman Cauchi	Yes
Councilwoman Sessa	No
Councilman Zambito	Yes

DATED: Milton, New York  
March 27, 2023

## CREDIT PURCHASE AND SALE AGREEMENT

This Credit Purchase and Sale Agreement ("*Agreement*") is entered into as of \_\_\_\_\_, 2023 (the "*Effective Date*") by and between Baileys Gap Solar, LLC, a Delaware limited liability company ("*Seller*"), and Town of Marlborough, a municipality in the State of New York ("*Buyer*"). In this Agreement, Seller and Buyer are sometimes referred to individually as a "*Party*" and collectively as the "*Parties*."

### RECITALS

**WHEREAS**, Seller finances, develops, owns, operates and maintains solar (PV) electric generation facilities; and

**WHEREAS**, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Seller, the Credits associated with Energy generated by the Facility, but not the Environmental Attributes or Tax Attributes, during the Term, subject to the terms set forth in this Agreement.

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

### ARTICLE I DEFINITIONS

When used in this Agreement, capitalized terms shall have the meanings given in the Glossary of Terms, attached hereto and incorporated herein, unless a different meaning is expressed or clearly indicated by the context. Words defined in the Glossary of Terms which 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.

### ARTICLE II TERM

2.1 Term. The term of this Agreement (the "*Term*") shall begin on the Effective Date and shall end at the earlier of (i) 11:59 PM on the day preceding the twentieth (20<sup>th</sup>) anniversary of the Commercial Operations Date (the "*Termination Date*"), or (ii) such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof. The Parties, by mutual written agreement may exercise one (1) option to renew this Agreement, for an additional five (5) year term.

2.2 Early Termination. This Agreement may be terminated before the Termination Date (the "*Early Termination Date*"):

- (a) by Seller, subject to Section 5.4, upon thirty (30) days' notice to Buyer, if Seller, in its sole discretion, determines that (i) prior to the Construction Commencement Date, it should not construct the Facility or (ii) after the Construction Commencement Date



- it should abandon the Facility as a result of an event of Force Majeure;
- (b) by Seller, in accordance with section 4.1 (regarding conditions precedent);
- (c) by either Party, in accordance with Section 4.2 (regarding regulatory change); or
- (d) pursuant to Section 10.3 (regarding financing).

Upon early termination of this Agreement in accordance with this Section 2.2, each Party shall discharge by performance all obligations due to the other Party that arose before the Early Termination Date and the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement in accordance with the terms hereof.

### **ARTICLE III TITLE; COMMERCIAL OPERATION DATE**

#### **3.1 Title.**

- (a) Under no circumstances shall the Buyer have or retain title to the Facility, Energy, Environmental Attributes, Tax Attributes, generation capacity and ancillary services produced or associated with the Energy or the Facility. If Buyer is deemed to be the owner or provider of any of the above, Buyer shall assign them to Seller, and if Buyer receives any payments for them it shall promptly pay them to Seller. This Section 3.1(a) shall survive the termination of this Agreement.
- (b) As between Seller and Buyer, title to, and risk of loss of, the Credits will pass from Seller to Buyer upon allocation of the Credits to Buyer's Utility Account(s).

**3.2 Notice of Commercial Operations Date.** Seller shall promptly notify Buyer in writing of the Commercial Operations Date.

### **ARTICLE IV CONDITIONS PRECEDENT; REGULATORY CHANGE**

**4.1 Conditions Precedent.** Seller's obligations under this Agreement are subject to the Facility's connection to the Utility pursuant to any laws, regulations or tariffs qualifying the Facility to generate Credits. Buyer agrees that it will, in good faith, execute any reasonably requested documentation required by any Governmental Authority or the Utility. If the Facility does not so qualify to generate Credits then Seller may, but shall not be obligated to, terminate this Agreement by delivering notice to the Buyer. If this Agreement is terminated pursuant to this Section 4.1, the termination shall be effective as of the delivery of such notice without further liability of the Parties to each other, provided that the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice and Section 11.1 (Disputes) shall continue to apply notwithstanding such termination.

4.2 Obligation to Modify Agreement Pursuant to Actions by Governmental Authority. Upon a Governmental Authority order, decision, or regulation implementation, or upon the administration or interpretation thereof by the New York State Public Service Commission, the Utility, or any other Governmental Authority that (i) materially restricts Seller's ability to deliver Credits to Buyer or to fulfill its other obligations under this Agreement, (ii) materially restricts Buyer's ability to receive Credits, or (iii) disallows the Facility's qualification under laws, regulations or tariffs qualifying the Facility to generate Credits, as appropriate, the Parties shall negotiate in good faith to amend this Agreement to conform to such rule(s) and/or regulation(s) to the greatest extent possible, and shall use commercially reasonable efforts to conform such amendment to restore the economic benefit to each Party and to do so in a timely fashion. If the Parties, negotiating in good faith, cannot agree concerning conforming to such actions, then either Party may terminate this Agreement. Notwithstanding anything to the contrary in this Agreement, the imposition of any non-bypassable charge(s) and/or utility rate designed to recover additional costs due to Buyer's purchase or receipt of the Credits, shall not trigger the obligation to amend this Agreement under this Section 4.2.

## ARTICLE V PURCHASE AND SALE OF CREDITS; GOVERNMENTAL CHARGES

- 5.1 Sale and Purchase of Credits. Beginning on the Commercial Operations Date and continuing throughout the Term, Seller agrees to sell to Buyer, and Buyer agrees to accept from Seller and to pay the Price to Seller for the Quantity of Credits associated with the Energy, as determined by the Meter. The Price is stated on Exhibit A, attached hereto and incorporated herein.
- 5.2 Delivery; Indemnification. Seller shall, in its sole discretion, direct the Utility to deliver the Credits to Buyer under the Value of Distributed Energy Resources Program.
- (a) To deliver the Credits to Buyer, Seller shall direct the Utility to allocate the Credits purchased by Buyer under this Agreement to Buyer's Utility Account(s) (as determined by a process established by the Utility pursuant to the Tariff or other similar rules adopted by the Utility).
  - (b) Buyer understands that the Credits delivered to Buyer in any particular month will be reflected on Buyer's Utility Statement as a monetary credit amount and not as an electricity quantity; and that such credit will be reflected on the Utility Statement according to the Utility's billing cycle, which may be up to approximately two (2) months after the Facility generates the Energy associated with the Credits.
  - (c) Buyer acknowledges that Seller is relying on commitments made by Buyer under this Agreement for the Facility to receive and maintain qualification as a Community Distributed Generation Facility or a Remote Crediting Facility. Buyer agrees that it shall not take any action that would cause the Facility not to be qualified as a Community Distributed Generation Facility or a Remote Crediting Facility, and shall cooperate with Seller to assure the Facility's continued qualification.

- (d) Seller will attempt to correct any Utility allocation error and Buyer agrees to cooperate in a timely manner as needed.

#### 5.3 Governmental Charges.

- (a) Seller is responsible for any Governmental Charges attributable to the sale of Credits hereunder, whether imposed before, upon or after the allocation and delivery of Credits to Buyer.
- (b) The Parties shall use commercially reasonable efforts to administer this Agreement and implement its provisions to minimize Governmental Charges. If any Credits sales are exempted from or not subject to one or more Governmental Charges, the relevant Party shall, promptly upon the other Party's written request, provide the other Party with all necessary documentation to evidence the exemption or exclusion.

#### 5.4 Contract Adjustments.

- (a) If the Seller determines in its sole discretion that it's beneficial to submit a revised Exhibit A and B designating a new Facility, then Seller may submit a revised Exhibit A and B designating a new Facility and this Agreement shall be modified to account for the revisions, provided that the alternate Facility (i) is located within the same Utility service territory, (ii) has a Commercial Operations Date that is not substantially later than is anticipated for the original Facility (iii) satisfies the program qualification requirements, and (iv) does not materially change the estimated Quantity to be delivered to the Buyer.
- (b) Buyer may request in writing an update to the Utility Accounts, and upon consent by Seller (such consent not to be unreasonably withheld, conditioned or delayed), such updated Utility Accounts shall automatically become effective ninety (90) days after Seller's consent. Buyer represents that all Utility Accounts are for subsidiaries or Affiliates of Buyer for which Buyer is duly authorized to execute on behalf of. Notwithstanding the above, any requested amendments must be to Utility Accounts within the same utility area and the aggregate Purchase Percentage shall not be adjusted. Buyer further acknowledges that all invoices and payments for Credits with respect to allocations made to Utility accounts prior to the effective date of any updated Utility Account list shall not be affected by any such update or amendment.

### ARTICLE VI PAYMENT

#### 6.1 Payment.

- (a) Beginning with the first Billing Period that Seller delivers Energy to the Utility, Seller

shall provide an invoice to Buyer (the “**Invoice**”) for the amount due based on the Price multiplied by the Quantity.

- (b) Buyer shall remit payment of the full amount of each Invoice to Seller or its designee by electronic funds transfer (or other means agreeable to Seller) to the account designated by Seller within thirty (30) days following Buyer’s receipt of each Invoice. If Buyer does not pay an Invoice within thirty (30) days of receiving the Invoice, the amount due on the Invoice shall bear interest from the date on which the payment was due, through and including the date Seller receives the payment. The annual interest accrual rate is the Interest Rate.
- (c) Before the Commercial Operations Date, Buyer shall take all actions necessary to allow Seller to electronically access, for the Term, the Utility Statement(s) and account information solely for purposes of fulfilling Seller’s obligations under this Agreement.
- (d) The Parties shall resolve Invoice disputes according to Section 6.3 (Invoice Disputes).

#### 6.2 Records and Audits.

- (a) Seller shall maintain accurate operating records in order to properly administer this Agreement.
- (b) Each Party shall keep, for a period of not less than two (2) years after the expiration or termination of any transaction, records sufficient to permit the other Party to verify the accuracy of billing statements, invoices, charges, computations and payments for the transaction. During these periods each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party’s records regarding the transactions during the other Party’s normal business hours.

#### 6.3 Invoice Disputes; Invoice Discrepancies.

- (a) If a Party, in good faith, disputes an Invoice, including disputes under Section 6.3(b), the disputing Party shall promptly notify the other Party of the basis for the dispute and Buyer shall pay the undisputed portion of the Invoice no later than the due date. Any required payment shall be made within seven (7) Business Days of resolving the dispute. Any overpayments shall be returned by the receiving Party promptly following the request or, deducted from subsequent payments with interest accrued at the Interest Rate, at the option of the overpaying Party. The Parties may only dispute amounts owed or paid within twelve (12) calendar months from the Invoice date. If the Parties are unable to resolve an Invoice dispute under this Section, the Parties shall follow the procedure set forth in Article 11 (regarding dispute resolution).
- (b) If the Parties determines that the value of Credits reflected on an Invoice is different than the value of Credits allocated to Buyer’s Utility Account(s), and that the discrepancy is due to an issue related to the Meter, Seller shall use commercially reasonable efforts to resolve the issue with the Utility. If the discrepancy is due to an

accounting or administrative error by the Utility, Buyer, as the Utility Account holder, and with Seller's cooperation, shall resolve the discrepancy with the Utility.

## **ARTICLE VII REPRESENTATIONS, WARRANTIES, COVENANTS**

7.1 Each Party represents and warrants to the other Party as follows.

- (a) The Party is duly organized, validly existing, and in good standing under the laws of the state in which the Party is organized and is authorized to conduct business in the State of New York.
- (b) The Party has full legal capacity to enter into and perform this Agreement.
- (c) 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 to fully bind the Party.
- (d) It shall perform its obligations under this Agreement in material compliance with Applicable Law.

7.2 The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are a "forward contract" within the meaning of the United States Bankruptcy Code, and that Seller is a "forward merchant" within the meaning of the United States Bankruptcy Code. The Parties further acknowledge and agree that, for purposes of this Agreement, Seller is not a "utility" as such term is used in Section 366 of the United States Bankruptcy Code, and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor.

7.3 To the extent the financial statements are not publicly available, or if Buyer's credit rating is withdrawn or greater than two years old, Buyer shall provide to Seller, on or prior to the Effective Date and annually thereafter, a copy of the most recent year's financial statements for Buyer.

## **Article VIII TERMINATION; DEFAULT**

8.1 Events of Default. The following shall each constitute an Event of Default by a Party.

- (a) The Party fails to make any material payment due under this Agreement within thirty (30) days after such payment is due unless the specific amount of the payment not made is being disputed.
- (b) 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 from the other Party; provided, however, if the defaulting Party proceeds with due diligence during such thirty (30) day period to

cure such breach and is unable by reason of the nature of the work involved using commercially reasonable efforts to cure the same within the said thirty (30) days, the defaulting Party's time to do so shall be extended by the time reasonably necessary to cure the same.

(c) Fraud or intentional misrepresentation by the Party with respect to any of the covenants or agreements of this Agreement.

(d) The Party:

- i. is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- ii. makes a general assignment, arrangement or composition with or for the benefit of its creditors; or
- iii. (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) commences a voluntary case under any bankruptcy law; (D) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (E) acquiesces in, or fails to contest in a timely manner, any petition filed against it in an involuntary case under bankruptcy law or seeking to dissolve it under other applicable law; or (F) takes any action authorizing its dissolution.

8.2 Force Majeure. Except as specifically provided herein, if by reason of *Force Majeure*, either Party is unable to carry out, either in whole or in part, any of its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within a reasonable time after the occurrence of the *Force Majeure* event, gives the other Party hereto written notice describing the particulars of the occurrence 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* event; (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.

### 8.3 Termination for Default.

- (a) Upon the occurrence of an Event of Default, the non-defaulting Party at any time thereafter may give written notice to the defaulting Party specifying such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, subject to the rights to cure of Section 8.1 and Section 10.2(a)(iii)(A), and upon any termination date specified in such notice, this Agreement shall terminate as though such date were the date originally set forth herein for the termination hereof.

- (b) If this Agreement is terminated due to an Event of Default, Seller shall have no further obligation to deliver, and Buyer shall have no further obligation to purchase, Credits generated after that termination date.

**ARTICLE IX  
REMEDIES; LIMITATION OF LIABILITY; WAIVER**

9.1 Remedies. Subject to the limitations set forth in this Agreement, upon an Event of Default by Buyer, Seller may sell Credits produced by the Facility to persons other than Buyer, and recover from Buyer any loss in revenues including as a result from such sales; and/or pursue other remedies available at law or in equity. 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 shall take commercially reasonable actions available to it to mitigate damages it may incur as a result of the other Party's non-performance under this Agreement.

9.2 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE (EXCEPT GROSS NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.

9.3 Waivers.

(a) No Implied Waivers – Remedies Cumulative. No covenant or agreement under this Agreement shall be deemed to have been waived by Seller or Buyer unless the waiver is in writing and signed by the Party against whom it is to be enforced or such Party's agent. A Party's consent or approval 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. A Party's failure 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 Party's right or remedy specified herein or any other right or remedy a Party 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.

(b) 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 covenants or agreements of this Agreement, or of any right or defense that Seller or Buyer may be entitled to exercise hereunder.

## ARTICLE X ASSIGNMENT

10.1 Prior Written Consent. Neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that without consent of Buyer, Seller (i) may assign its rights and obligations hereunder to an Affiliate of Seller and (ii) may sell or collaterally assign this Agreement in accordance with Section 10.2. For purposes of this Section 10.1, transfer does not include any sale of all or substantially all of the assets of Seller or Buyer or any merger of Seller or Buyer with another person, whether or not Seller or Buyer is the surviving entity from such merger, or any other change in control of Seller or Buyer, provided any such surviving entity assumes all obligations of Seller or Buyer, as appropriate, under this Agreement; provided however, with respect to Buyer, such surviving entity is acceptable to Lender in its sole discretion.

### 10.2 Collateral Assignment; Financing Provisions:

(a) Financing Arrangements. Seller may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to a Lender. Buyer acknowledges that in connection with such transactions Seller may secure Seller's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Facility. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any Lender, Buyer agrees as follows:

(i) Consent to Collateral Assignment. Buyer hereby consents to both of the sale of the Facility to a Lender and the collateral assignment of the Seller's right, title and interest in and to this Agreement as security for financing associated with the Facility.

(ii) Rights of Lender. Notwithstanding any contrary term of this Agreement:

(A) Step-In Rights. The Lender, as owner of the Facility, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement. The Lender shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Facility;

(B) Opportunity to Cure Default. The Lender shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Seller thereunder or cause to be cured any default of Seller thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Lender to cure any default of Seller



under this Agreement or (unless the Lender has succeeded to Seller's interests under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives it the option to do so;

(C) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Facility by the Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Lender (or any assignee of the Lender as defined below) in lieu thereof, the Lender shall give notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement;

(D) Cure of Bankruptcy Rejection. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of Lender made within ninety (90) days of such termination or rejection, Buyer shall enter into a new agreement with Lender or its assignee having substantially the same terms and conditions as this Agreement.

(iii) Right to Cure.

(A) Cure Period. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given the Lender prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Seller default reasonably cannot be cured by the Lender within such period and the Lender commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional ninety (90) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(B) Continuation of Agreement. If the Lender or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control of Seller's assets and shall, within the time periods described in Section 10.2(a)(iii)(A), cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

(b) Lender a Third-Party Beneficiary. Buyer agrees and acknowledges that Lender is a third-party beneficiary of the provisions of this Section 10.2.

(c) Entry to Consent to Assignment. Buyer agrees to (i) execute any consents to

assignment or acknowledgements and (ii) provide such opinions of counsel as may be reasonably requested by Seller and/or Lender in connection with such financing or sale of the Facility.

- 10.3 Obligation to Modify Agreement. If a Lender or the Seller requires this Agreement to be modified to finance, develop or operate the Facility, and the modification does not (i) materially restrict Seller's ability to deliver Credits to Buyer, (ii) materially restrict Buyer's ability to receive Credits, (iii) materially diminish the Credit value to Buyer, or (iv) disallow the Facility's (x) qualification under the Value of Distributed Energy Resources Program or (y) eligibility as a Community Distributed Generation Facility or a Remote Crediting Facility, the Parties shall negotiate in good faith to amend this Agreement in a timely fashion. If the Parties, negotiating in good faith, cannot agree on the amendments, Seller may terminate this Agreement, or, if Seller determines in good faith that the Agreement cannot be amended to allow the Facility to be financed, developed or operated in a commercially reasonable manner, then Seller may terminate the Agreement. The terminating Party shall give the other Party thirty (30) days prior written notice and this Agreement shall terminate without further liability of the Parties to each other, provided that the Parties shall not be released from any obligation arising under this Agreement prior to such termination.

## ARTICLE XI DISPUTE RESOLUTION

- 11.1 Dispute Resolution. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement.
- (a) Negotiation. Any dispute that arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between a senior executive of Seller, and a senior executive of Buyer, who shall use their respective best efforts to resolve such dispute. The dispute shall be considered to have arisen when one Party sends the other a notice that identifies with particularity the nature, and the acts(s) or omission(s) forming the basis of, the dispute. The period for informal negotiations shall not exceed fourteen (14) calendar days from the time the dispute arises, unless it is modified by written agreement of the Parties.
- (b) Mediation. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties involved in the dispute agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties involved in the dispute shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator either Party may request the American Arbitration Association (the "AAA") to appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties involved in the dispute. The decision to continue mediation shall be in the sole discretion of each Party

involved in the dispute. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by all Parties involved in the dispute.

(c) Arbitration.

(i) Rules of Arbitration. Any Dispute that is not settled to the mutual satisfaction of the Parties pursuant to Sections 11.1(a) and (b) shall (except as provided in Section 11.2(d)) be settled by binding arbitration between the Parties conducted in Boston, Massachusetts, or such other location mutually agreeable to the Parties, and in accordance with the Commercial Arbitration Rules of the AAA in effect on the date that a Party gives notice of its demand for arbitration.

(ii) Dispute Submission. The Party initiating the Arbitration (the "Submitting Party") shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party (the "Responding Party"), which demand must include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief, accompanied by all relevant documents supporting the Demand.

(iii) Arbitrator Selection. The arbitrator(s) selected shall have contract resolution experience and experience in the electric power business and shall not have any current or past substantial business or financial relationships with the Parties or their Affiliates. Arbitrators must agree to be bound by the confidentiality provisions of this Agreement. If the amount in controversy is less than \$250,000, the Dispute will be determined by a single neutral arbitrator, who will be chosen by the Parties within forty-five (45) days of submission of the demand on the Responding Party. If the Parties cannot agree on a single neutral arbitrator within such period, the arbitrator shall be chosen by the AAA. If the amount in controversy is \$250,000 or greater, the Dispute will be determined by a Panel of three (3) arbitrators. Each Party shall select one arbitrator, but if a Party fails to select an arbitrator within forty-five (45) days of the submission of the demand on the Responding Party, the arbitrator will be chosen by the AAA. The two arbitrators so selected will select the third arbitrator, who shall act as the chairman of the panel. If the two arbitrators cannot select the third arbitrator within thirty (30) days (or such additional time as the Parties may agree) of the selection of both of the first two arbitrators, the third arbitrator shall be chosen by the AAA. As used herein, "Panel" means either a single arbitrator or a group of three arbitrators selected as provided herein.

(iv) Discovery. Within fifteen days (15) of the selection of the third arbitrator, the Parties shall submit statements to the Panel summarizing the issues in the case and including recommendations for discovery. Within twenty (20) days of receipt of the statements from the Parties, the Panel will meet with the Parties and issue orders on the scheduling of the case and any discovery to be permitted.

(v) Decision. Upon ten (10) days of completion of the hearing conducted by the Panel, each Party shall submit to the Panel its proposal for resolution of the dispute. The Panel in its award shall be limited to selecting only one of the two proposals submitted by the Parties. The award shall be in writing (stating the amount and reasons therefore) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy between the Parties regarding any claims and counterclaims presented to the Panel. The Panel shall be permitted, in its discretion, to add pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction.

(vi) Expenses. Unless otherwise ordered by the Panel, each Party shall bear its own expenses and one-half of the cost of the Panel. Payments of the Panel's costs shall be made on a monthly basis prior to the Award.

(d) Exceptions to Arbitration. The obligation to arbitrate shall not be binding upon any Party with respect to (i) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute; (ii) actions to enforce an award of a Panel or otherwise to collect payments not subject to bona fide dispute; or (iii) claims involving third parties who have not agreed to participate in the arbitration of the Dispute.

(e) Survival of Dispute Resolution Provisions. The provisions of this Section 11.1 shall survive any termination of this Agreement and shall apply (except as provided herein) to any disputes arising out of this Agreement.

## ARTICLE XII 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 deemed delivered upon receipt (except that notice provided by email shall be deemed delivered upon confirmation of receipt, of which auto-reply is insufficient), and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or email transmission. The communications shall be sent to the following addresses:

If to Seller:	Baileys Gap Solar, LLC
	ATTN: Asset Management
	101 Summer Street, 2 <sup>nd</sup> Floor
	Boston, MA 02110

Email: [AM@nexamp.com](mailto:AM@nexamp.com)

With a copy to: Nexamp, Inc.  
ATTN: General Counsel  
101 Summer Street  
Boston, MA 02110  
Email: [legal@nexamp.com](mailto:legal@nexamp.com)

If to Buyer: Town of Marlborough  
ATTN: Supervisor  
21 Milton Turnpike #200  
Milton, NY 12547  
Email:

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 Confidentiality. Except as provided in this Section 12.2, and to the extent allowed by law, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent; provided that Seller may disclose the existence of this Agreement with Buyer to lenders and potential financing parties.

- (a) Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates, attorneys, accountants, lenders and financing parties, representatives, agents and employees who have a need to know related to this Agreement.
- (b) If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, governmental agency or authority having jurisdiction over a Party, that Party may release Confidential Information, or a portion thereof, to the court, governmental agency or authority, as required by applicable law, statute, ordinance, decision, order or regulation, and a Party may disclose Confidential Information to accountants in connection with audits, provided however, to the extent permitted by law, such disclosing Party shall promptly notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses) to cause that court, governmental agency, authority or accountant to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

12.3 Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision

the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Parties benefits, the matter shall be resolved under Section 11 (regarding dispute resolution) and an arbitrator may reform the Agreement as the arbitrator deems just and equitable to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

- 12.4 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.
- 12.5 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 Press Releases. The Parties shall cooperate with each other when making public announcements of any kind or in any form related to the execution and existence of this Agreement, or the sale or purchase of Credits and no Party shall issue any public announcement or statement with respect to the foregoing without the prior written consent of the other, which shall not be unreasonably withheld, conditioned, or delayed.
- 12.7 No Joint Venture. 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.
- 12.8 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 Parties 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.
- 12.9 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.
- 12.10 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 and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Agreement that may be reasonably requested by the other to effect or confirm transactions contemplated by this Agreement. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 12.10.
- 12.11 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a reasonable manner.
- 12.12 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties. Except as expressly set forth in this Agreement, nothing in this Agreement shall

be construed to create any duty to or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement. This Section 12.12 shall not limit the right of a Lender pursuant to Section 10.2.

IN WITNESS WHEREOF, the Parties executed this Credit Purchase and Sale Agreement under seal as of the Effective Date.

**BUYER**

**Town of Marlborough, LLC  
on behalf of itself and all  
Utility Account holders**

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

Name: Scott Corcoran

Title: Supervisor

**SELLER**

**Baileys Gap Solar, LLC**

By: Chris Clark \_\_\_\_\_

Name: \_\_\_\_\_

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

## Glossary of Terms

***“Affiliate”*** means, as to any person or entity, any other person or entity which, directly or indirectly, is in control of, is controlled by, or is under common control with, such person or entity. For purposes of this definition, “control” of a person or entity means the power, directly or indirectly, to direct or cause the direction of the management and policies of such person or entity whether by contract or otherwise.

***“Applicable Law”*** means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, constructing, operating, and owning the Facility, and selling and purchasing Credits.

***“Billing Period”*** shall mean as defined in the applicable Tariff pursuant to which the Facility becomes qualified to receive Credits.

***“Business Day”*** means a day on which Federal Reserve member banks in Boston, MA 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.

***“Commercial Operations”*** shall occur for the Facility when (i) Seller has obtained all necessary licenses, permits and approvals under Applicable Law to install and operate the Facility, (ii) the Facility is able to generate and supply electricity to the Utility’s electricity distribution system, (iii) Seller has completed or obtained all Facility-related equipment and rights, if any, to allow regular Facility operation, and (iv) if applicable and to the extent required, the Utility has approved the Facility’s interconnection with the electricity distribution system to allow regular Facility operation.

***“Commercial Operations Date”*** means the date on which the Facility achieves Commercial Operations and has obtained the final statement of qualification from the New York Public Service Commission (or equivalent).

***“Community Distributed Generation Facility”*** means an electric generation facility that satisfies all applicable requirements established by the New York State Public Service Commission in its July 17, 2015 Order Establishing a Community Distributed Generation Program and Making Other Findings issued in Docket No. 15-E-0082, together with any and all supplemental or subsequent Orders issued by the New York State Public Service Commission in Docket Nos. 15-E-0082 and 15-E-0751 regarding such facilities and together with any and all Tariffs applicable to such generation facilities.

***“Confidential Information”*** means all oral and written information exchanged between the Parties which contains proprietary business or confidential information of a Party. The Parties agree that the provisions and specifics (but not the existence) of this Agreement constitute Confidential Information. The following exceptions, however, do not constitute Confidential



Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by the receiving Party on a non-confidential basis prior to this Agreement; (c) information that becomes available to receiving Party on a non-confidential basis from a source other than the disclosing Party if such source was not subject to any prohibition against disclosing the information to such Party; (d) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of its business or in accordance with any statute or regulations; (e) is disclosed by the disclosing Party to a third party without a duty of confidentiality; and (f) is disclosed by the receiving Party with the written permission of the disclosing Party's prior written approval.

**"Construction Commencement Date"** means the date of commencement of site preparation or construction activities on the property upon which the Facility is located.

**"Credits"**, means the monetary value of the excess Energy generated by the Facility, which value is calculated as of the Effective Date by the Utility according to its Tariff and applied by the Utility as a bill credit to Buyer's Utility accounts; and excluding, for the avoidance of doubt, any Tax Attributes or Environmental Attributes; provided, however that Seller shall be entitled in its sole discretion to transfer the Environmental Attributes from the Facility to the Utility in accordance with the Value of Distributed Energy Resources Program rules, in order to have the Credits include the value associated with said Environmental Attributes.

**"Credit Value"** shall be calculated by Seller in its sole discretion and shall be determined by reference to the relevant Value of Distributed Energy Resources Program rules and the applicable Tariff, for the relevant Billing Period.

**"Energy"** means the amount of electricity the Facility generates over a period of time, expressed in terms of kilowatt hour ("kWh") or megawatt hour ("MWh").

**"Environmental Attribute"** means GIS Certificates, Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, benefits, certificates, products, or valuations attributed to the Facility and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes and the Credits.

**"Facility"** means the solar (PV) power electrical generation facility or facilities identified on Exhibit B, attached hereto and incorporated herein, together with all appurtenant equipment required to interconnect the Facility to the Utility's electric distribution system.

**"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; fires;

epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lockouts or other industrial disturbances; 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 permitting delays); acts or failures to act of the Utility, including disconnections of the Facility from the Utility system or delays in interconnection; 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 governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

**"Governmental Authority"** means any national, state or local government, or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity.

**"Governmental Charges"** means all applicable federal, state and local taxes (other than taxes based on income or net worth, but including, without limitation, 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), imposed or authorized by a Governmental Authority, Utility, or other similar entity, on or with respect to the Credits, but does not include any non-bypassable charge(s) designed to recover additional costs due to Buyer's purchase or receipt of the Credits, and/or any similar utility rate or any charge imposed in its place, regardless of how named or characterized (such as a "monthly minimum reliability contribution" or "MMRC").

**"Interest Rate"** means a fluctuating interest rate per annum equal to the sum of (i) the Prime Rate as stated in the "Bonds, Rates & Yields" section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus (ii) two percentage points. (In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate mutually acceptable to both the Seller and Buyer.) 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 the entity or person(s) (or any affiliate of any thereof) from time to time providing any debt or equity financing or refinancing to the Seller or any affiliate thereof or otherwise for the construction of, expansion of, and/or operation and maintenance of, the Facility, and any successors, assigns, agents, or trustees thereof, including any lessor.

**"Losses"** means any and all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, interest, fines, fees, penalties, costs, and expenses (including all reasonable attorney's fees and other costs and expenses incurred in defending any such claims or matters or in asserting or enforcing any indemnity obligation).

**"Meter"** means the meter furnished and installed by the Utility to measure the electricity delivered by the Utility to the Facility and delivered by the Facility to the Utility.

*“Price”* is defined on Exhibit A.

*“Purchase Percentage”* is defined on Exhibit A.

*“Quantity”* means quantity of Credits purchased by Buyer, and equals the total Credits associated with the Energy generated by the Facility during the relevant Term or Billing Period (as determined pursuant to applicable law, regulation and Tariff), multiplied by the Purchase Percentage.

*“Remote Crediting Facility”* means an electric generation facility that satisfies all applicable requirements established by the New York State Public Service Commission in its May 14, 2020 Order Extending and Expanding Distributed Solar Incentives issued in Docket No. 19-E-0735 and later clarified in its September 17, 2020 Order Clarifying Remote Crediting Program, together with any and all supplemental or subsequent Orders issued by the New York State Public Service Commission in Docket No. 19-E-0735 regarding such facilities and together with any and all Tariffs applicable to such generation facilities.

*“Renewable Energy Certificate”* or *“REC”* means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy project, and excluding, for the avoidance of doubt, the Tax Attributes and the Credits.

*“Tariff”* means the Utility tariff for interconnection for distributed generation and compensation under the Value of Distributed Energy Resources Program, and as approved by the New York State Public Service Commission, together with any subsequent amendments and approvals thereto.

*“Tax Attributes”* means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Facility or the output generated by the Facility (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation), and excluding, for the avoidance of doubt, any Environmental Attributes and Credits.

*“Utility”* means the electric distribution company providing service to the Facility.

*“Utility Account(s)”* means the Utility accounts designated by Buyer and identified to the Utility by the Seller pursuant to applicable regulation under the Value of Distributed Energy Resources Program. “Utility Accounts” may include but not be limited to “Satellite Accounts,” as that term is utilized within the Value of Distributed Energy Resources Program.

*“Utility Statement(s)”* means the statements from the Utility, which accompanies the Buyer’s Utility Account(s).

*“Value of Distributed Energy Resources Program”* means the program that provides for the creation and allocation of monetary Utility bill credits pursuant to the crediting methodology known as the “Value Stack,” established by the New York State Public Service Commission (and implemented by the Tariff) pursuant to the March 9, 2017 Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters, together with any and all supplemental Orders issued by the New York State Public Service Commission in Docket Nos. 15-E-0751 and 15-E-0082 and together with any Tariffs following therefrom.

## EXHIBIT A

### PRICE; and PURCHASE PERCENTAGE

*“Price”* equals eighty two percent (82%) of the Credit Value for that Billing Period.

Buyer acknowledges that the Credit Value is variable and may increase or decrease from Billing Period to Billing Period in accordance with the rules of the Value of Distributed Energy Resources Program.

*“Purchase Percentage”* equals twenty eight percent (28%) of the Energy generated during the relevant Billing Period.

## **EXHIBIT B**

### **FACILITY**

**The Facility** is the approximately 1.35 MW (AC) solar (PV) power electrical generation facility located at 20 Bailey Gap Road, Highland NY also described, as of the date hereof, in ISA# CH-14328.

March 27, 2023

E). Resolution #50 To authorize the grant of easement to Central Hudson Gas & Electric Corporation to enable the construction and operation of a solar (pv) electric generation facility at 20 Baileys Gap Road in the Town of Marlborough

Supervisor Corcoran proposes the following:

WHEREAS, the Town of Marlborough (the “Town”) and Nexamp Solar, LLC (“Nexamp”) entered into that certain Lease Option Agreement dated August 20, 2020 (the “Lease Option Agreement”) pursuant to which the Town granted an option (the “Option”) to Nexamp to lease the portion of Town-owned real property located at 20 Baileys Gap Road, Marlborough, New York described in Exhibit A annexed to the Lease Option Agreement (the “Premises”); and

WHEREAS, on May 21, 2021, the Town Board granted conditional site plan approval and a special use permit to Nexamp, Inc., the parent company of Nexamp and Baileys Gap Solar, LLC, to permit the operation of a solar energy system on the Premises (the “System”); and

WHEREAS, the terms of the Option were modified and the rights of Nexamp under the Option were assigned to Baileys Gap Solar, LLC (“Baileys Gap”); and

WHEREAS, to enable the development and operation of the System, Baileys Gap requires electric service to be provided by Central Hudson Gas & Electric Corporation (“Central Hudson”); and

WHEREAS, to provide the required electric service, Central Hudson requires an easement over a portion of the Premises (the “Utility Easement”); and

WHEREAS, a map showing the proposed location of the Utility Easement and the form of Utility Agreement are attached hereto; and

WHEREAS, it is in the interests of the Town to grant the Utility Easement and thereby facilitate the construction and operation of the System:

NOW, THEREFORE, IT IS HEREBY RESOLVED that terms and location of the Utility Easement are approved and the Supervisor is authorized to execute the Utility Easement in substantially the form attached hereto.

The foregoing resolution was duly put to a vote which resulted as follows:

Supervisor Corcoran	Yes
Councilman Molinelli	Absent
Councilman Cauchi	Yes
Councilwoman Sessa	Yes
Councilman Zambito	Yes

In consideration of the sum of \$1.00 and other valuable considerations, the receipt whereof from Central Hudson Gas & Electric Corporation, a domestic corporation having its principal office (residence) at 284 South Avenue, Poughkeepsie, New York is hereby acknowledged, the undersigned hereby grant(s) and convey(s) unto said corporation(s), and each of them, their respective successors, assigns and lessees (hereinafter collectively referred to as the "Corporations"), an easement for any use relating to the electric, gas, or communication industry, including, but not limited to, the installation, operation and maintenance of overhead and/or underground electric, gas or communication facilities which easement shall be 30 feet in width throughout its extent, in, upon, under, over and across the lands of the undersigned, including roads and highways thereon and adjacent thereto, situated in the Town of Marlborough, County of Ulster, State of New York.

Said easement shall extend from approximately 635' Northwest of the Northeast property corner on Baileys Gap Road and in a Southwesterly direction for approximately 35' with overhead utilities. See Exhibit A

Together with the rights for guying facilities and service extensions to be located outside of the stated easement width.

Together with the permanent right at all times to have access thereto within the easement and across the remaining premise(s) of the undersigned, and to enter thereon, and to construct, excavate, place, relocate, extend, operate, maintain and to protect, repair, replace and remove, in, over and under the property covered by said easement, such facilities, including, but not limited to, lines or poles, cables, crossarms, wires, guys, braces, underground conduits, pipes, mains and ducts, and all other appurtenances and fixtures adaptable to the present and future needs, uses and purposes of said corporations, their respective successors, assigns and lessees, and provided that physical damage to the property owned by the undersigned caused solely by said corporations, their respective successors, assigns or lessees, shall be adjusted at the expense of the person or entity so causing such damage.

Together with the permanent right to also trim, cut, clear cut to ground level and at the election of either Corporation remove at any time such brush, trees and other objects, thereon or on adjacent property of the undersigned, including trees, brush and other objects located outside the easement, as in the sole judgment of either Corporation may fall upon or come in contact with the facilities or may interfere with, obstruct or endanger the construction, operation or maintenance of said rights, facilities and other appurtenances and fixtures or any thereof, which may hereafter be constructed in, over, or across said easement. Said right shall include the right to use chemical means of brush and vegetation control within the limits of the easement and rights of way where applicable. Any chemical use shall be in accordance with all Federal and State regulations pertaining to utility right-of-way maintenance.

The exact location of said easement and lines is to be as determined by said corporations having regard to the origin, general direction and destination of said facilities and the requirements of said corporations.

Reserving unto the undersigned the right to only plant and cultivate lawn grass and low growing ornamental shrubs within said easement, and the right to cross and recross said easement, provided that any such cultivation and/or use of said easement shall not in the sole judgment of said Corporations interfere with, obstruct or endanger any of the rights granted as aforesaid and provided that no house, shed, garage, outbuilding, pool, road, driveway or other structures or above or in ground improvements shall be erected, constructed placed, installed, or located and no excavating, mining or blasting shall be undertaken or performed within the limits of said easement without the prior written consent of said Corporations.

This easement and the provisions hereof shall be binding upon and inure to the benefit of the heirs, legal representatives, successors, assigns and lessees of the undersigned and said Corporations, respectively.

Signed, sealed and delivered, on \_\_\_\_\_, 2023

(Business Name)

In the presence of: *Subscribing Witness Only*

\_\_\_\_\_, (L-S)  
(Sign Name)

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_, (L-S)  
(Sign Name)

\_\_\_\_\_  
(Sign & Print Name)

\_\_\_\_\_  
(Print Name and Title)

Residing at: \_\_\_\_\_  
Number Street

\_\_\_\_\_  
Town, City or Village State

\_\_\_\_\_  
County



## ACKNOWLEDGEMENT OF CONVEYANCE

State of New York )  
 County of \_\_\_\_\_ ) ss.:

On the ..... day of ..... in the year ..... before me, the undersigned, a Notary Public in and for said State, personally appeared ..... personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

.....  
 Notary Public

## NEW YORK ALL-PURPOSE ACKNOWLEDGMENT

State of New York )  
 County of \_\_\_\_\_ ) ss.:

On the ..... day of ..... in the year ..... before me, the undersigned, a Notary Public in and for said state, personally appeared ..... personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

.....  
 Notary Public

## CERTIFICATE OF SUBSCRIBING WITNESS

State of New York )  
 County of \_\_\_\_\_ ) ss.:

On the ..... day of ..... in the year ..... before me, the undersigned, a Notary Public in and for said State, personally appeared ..... the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they resides in ..... that he/she/they know(s) ..... to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said ..... execute the same, and that said witness at the same time subscribed his/her/their name(s) as a witness thereto.

.....  
 Notary Public

## RIGHT OF WAY

ROW No. .... Town, Marlborough

PD # 34 Village

City

Granted by

... Town of Marlborough

to

Central Hudson Gas & Electric Corporation

Date:

Map: D01H10 Line: 5081

Pole No: 203218

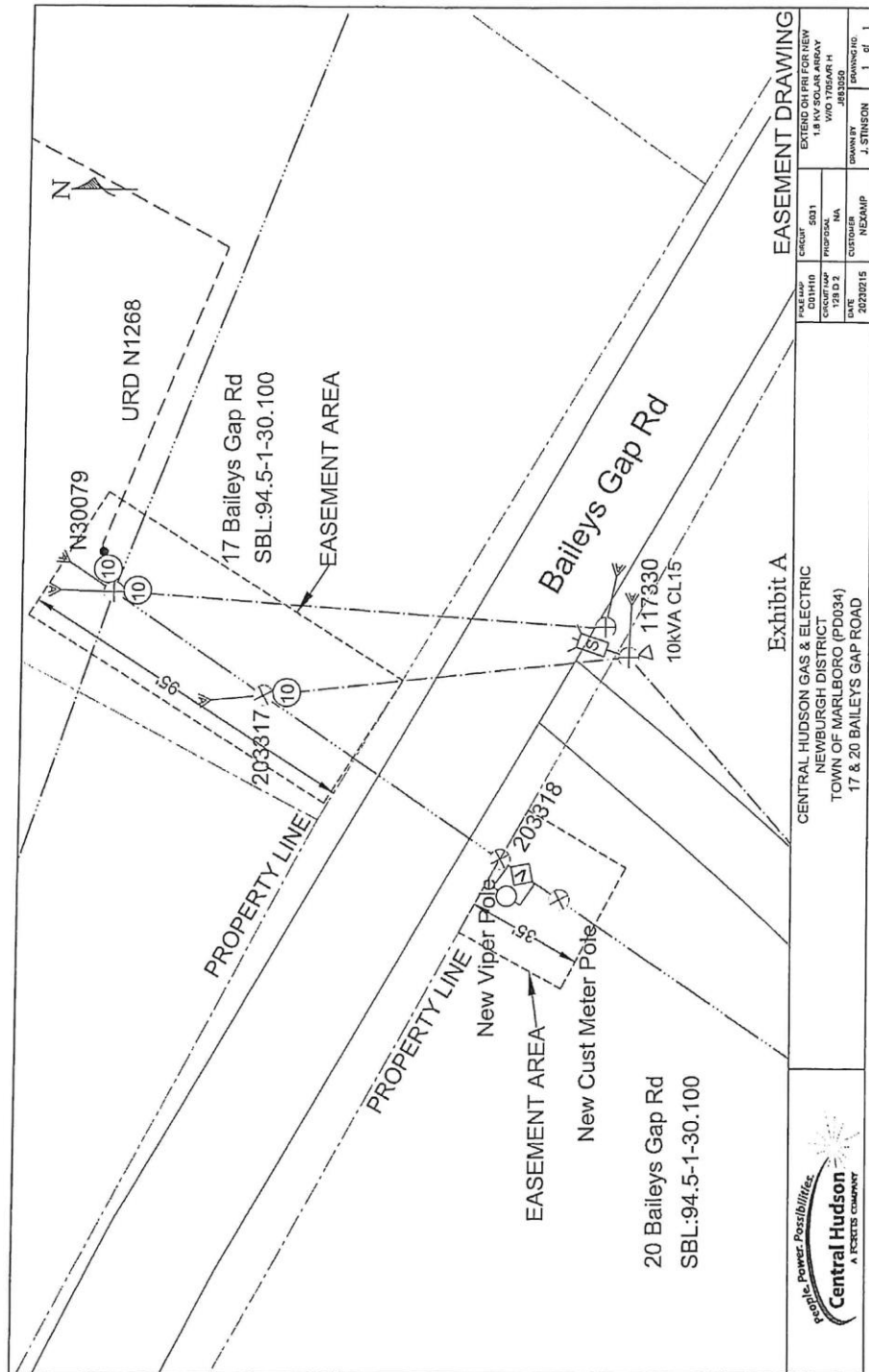
Work Order # 1705A/R.H. # 883050

SBL: 95-4-1-35

Address of ROW: 20 Bailey Gap Road,  
 Marlborough, N.Y.

## RECORD AND RETURN TO:

Central Hudson Gas & Electric Corporation  
 284 South Avenue  
 Poughkeepsie, NY 12601  
 Attn: Real Property Services



March 27, 2023

F). Resolution #51 To appoint a full-time police officer

Supervisor Corcoran proposes the following:

Whereas, the Town of Marlborough Police Department has an open full time police officer position due to the recent retirement of Sergeant Pascale, and

Whereas, it is the recommendation of the Chief of Police to appoint part time police officer Frank Zebrowski.

Be it resolved, that Frank Zebrowski be appointed as full-time police officer effective April 1, 2023 contingent upon pending civil service medical approval

And moves for its adoption:

Councilman Molinelli	Absent
Councilwoman Sessa	Yes
Councilman Cauchi	Yes
Councilman Zambito	Yes
Supervisor Corcoran	Yes

March 27, 2023

G). Resolution #52 To appoint a full-time police officer

Supervisor Corcoran proposes the following:

Whereas, the Town of Marlborough will have an open position for full time police officer due to the pending medical retirement of Detective Geremino, and

Whereas, it is the recommendation of the Chief of Police to appoint Ryan Greaven.

Be it resolved, that Ryan Greaven be appointed as full time police officer contingent upon a background check and civil service approval.

And moves for its adoption:

Councilman Molinelli	Absent
Councilwoman Sessa	Yes
Councilman Cauchi	Yes
Councilman Zambito	Yes
Supervisor Corcoran	Yes