

TOWN OF RIPLEY

AND

CONNECTGEN CHAUTAUQUA COUNTY LLC

HOST COMMUNITY AGREEMENT  
FOR THE  
SOUTH RIPLEY SOLAR PROJECT

EFFECTIVE AS OF DECEMBER 30, 2021

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## HOST COMMUNITY AGREEMENT

This **HOST COMMUNITY AGREEMENT**, effective as of December 30, 2021 (the “Agreement”), by and between the **TOWN OF RIPLEY**, a municipal corporation existing under the laws of the State of New York (the “Town”), and **CONNECTGEN CHAUTAUQUA COUNTY LLC**, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York (the “Company”, and together with the Town, the “Parties”),

**WHEREAS**, on August 10, 2021, the Company submitted an application (the “94-c Application”) to the New York State Office of Renewable Energy Siting (“ORES”) pursuant to Section 94-c of the New York Executive Law and its implementing regulations (the “Section 94-c Process”) to obtain a permit (a “94-c Permit”) to construct a solar-powered electric generating facility (the “Project”) on land located in the Town of Ripley, Chautauqua County (the “Land”), including a buried and overhead collection line system to carry electricity to the point of interconnection, a collection substation, a feeder line to carry electricity to the point of interconnection, an interconnection substation facility, operations and maintenance structures, and a system of gravel access roads, security fencing and gates, parking, landscaping and related improvements to the Land (collectively, the “Improvements”), and certain equipment, including photovoltaic panels (“Panels”) producing direct current (“DC”) electricity with a planned total rated alternating current (“AC”) output capacity of up to 270 megawatts (“MWac”) to be mounted on fixed-tilt panel racks (“Panel Racks”), inverters to convert DC electricity to AC electricity, battery storage and related facilities, and furniture, fixtures, machinery and equipment (collectively, the “Equipment”, and together with the Land and the Improvements, the “Project Facility”); and

**WHEREAS**, the Section 94-c Process examines potential environmental and other impacts from the Project and ORES may impose conditions for the avoidance, minimization and/or mitigation of potential impacts; and

**WHEREAS**, the Company, as a new member of the local business community, wishes to demonstrate good citizenship by making a commitment to assist the community in improving and maintaining the physical, natural, business and social environment benefiting all members of the community, by making benefit payments to the Town (“Host Community Benefit Payments” and each a “Host Community Benefit Payment”), subject to the conditions set forth herein, and in consideration for (1) the Town’s agreement not to oppose the issuance of an ORES Permit to the Company, and (2) the Town’s agreement to consult with the Company in good faith on a timely basis concerning any matters that may reasonably adversely affect the health and safety of the Town’s residents concerning the 94-c Application or other Project-related applications for permits or approvals before seeking intervention by any governmental body; and

**WHEREAS**, the Town is willing to accept such Host Community Benefit Payments subject to the terms of this Agreement; and

**WHEREAS**, the Parties believe that their mutual interests will be served by the execution of this Agreement which specifies their respective rights, interests, and obligations relative to the construction, operation, and decommissioning of the Project Facility; and

**NOW, THEREFORE**, in consideration of the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.1**      Definitions.

For all purposes of this Agreement, defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified herein except as otherwise expressly provided for herein or as the context hereof otherwise requires.

**Section 1.2**      Interpretation.

In this Agreement, unless the context otherwise requires:

a.      The terms “hereby,” “hereof,” “herein,” “hereunder,” and any similar terms as used in this Agreement refer to this Agreement, the term “heretofore” shall mean before, and the term “hereafter” shall mean after the date this Agreement is effective;

b.      Words of masculine gender shall mean and include correlative words of feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa; and

c.      Any certificates, letters, or opinions required to be given pursuant to this Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law, or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Agreement.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES**

**Section 2.1**      Town Representations and Warranties.

The Town hereby represents and warrants that, as of the date of this Agreement:

a.      it is a validly existing political subdivision of the State of New York (“*State*”);

b. it has the power and authority to execute, deliver, and carry out all applicable terms and provisions of this Agreement;

c. all necessary action has been taken to authorize its execution, delivery, and performance of this Agreement, and this Agreement constitutes its legal, valid, and binding obligation enforceable against it in accordance with its terms (a copy of the Town's resolution approving this Agreement and authorizing its execution is attached hereto as Exhibit A);

d. its signatory hereto is duly authorized and empowered to execute and enter into this Agreement;

e. none of the execution or delivery of this Agreement, the performance of the obligations in connection with the transaction contemplated hereby, or the fulfillment of the terms and conditions hereof will conflict with or violate any provision of its organizational documents or policies or will conflict with, violate, or result in a breach of any applicable law; and

f. 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 it, wherein an anticipated decision, ruling, or finding would result in a material adverse effect on its ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.

## Section 2.2 Company Representations and Warranties.

The Company hereby represents and warrants that, as of the date of this Agreement:

a. it is duly organized, validly existing, and in good standing under the laws of the state in which it is formed as set forth in the first paragraph of this Agreement, is duly authorized to transact business in the State of New York, and has requisite authority to own its property and assets and conduct its business as presently conducted or proposed to be conducted under this Agreement;

b. it has the power and authority to execute, deliver, and carry out all applicable terms and provisions of this Agreement;

c. all necessary action has been taken to authorize its execution, delivery, and performance of this Agreement, and this Agreement constitutes its legal, valid, and binding obligation enforceable against it in accordance with its terms;

d. no governmental approval by or with any government authority is required for the valid execution, delivery, and performance under this Agreement by the Company, except such as are required for the construction, operation and maintenance of the Project Facility, which are being diligently pursued by the Company;

e. none of the execution or delivery of this Agreement, the performance of the obligations in connection with the transaction contemplated hereby, or the fulfillment of the terms and conditions hereof will (i) conflict with or violate any provision of its certificate of formation or operating agreement; (ii) conflict with, violate, or result in a breach of any applicable law; 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 its properties or assets are bound;

f. 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 it, wherein an anticipated decision, ruling, or finding would result in a material adverse effect on its ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement; and

g. the conduct of its business is in compliance with all applicable governmental approvals with which a failure to comply, in any case or in the aggregate, would result in a material adverse effect on its ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.

## **ARTICLE III**

### **TERM**

Section 3.1 Effective Date.

This Agreement will become effective (the “*Effective Date*”) as of the date first written above.

Section 3.2 Term.

The term of this Agreement shall commence on the Effective Date and expire upon the earlier to occur of: (a) payment by the Company of the thirtieth (30<sup>th</sup>) annual Host Community Benefit Payment under this Agreement, (b) completion of Decommissioning (as defined below) of the entire Project Facility, or (c) the occurrence of one or more of the events set forth in Section 8.1 hereof (the “*Term*”).

## **ARTICLE IV**

### **HOST COMMUNITY BENEFIT PAYMENTS**

Section 4.1 Host Community Benefit Payments.

The Company shall make annual Host Community Benefit Payments to the Town as follows:

a. Host Community Benefit Payment Amount. The Company shall annually make Host Community Benefit Payments in the amount of \$1,750 per MWac of installed solar nameplate rated AC capacity of the Project Facility (“*Installed Capacity*”) during the Term, as such amount may be adjusted from time to time pursuant to this Article. The initial Installed Capacity is anticipated to be up to 270 MWac. The Company shall certify to the Town the Installed Capacity

at least forty-five (45) days prior to the date the initial Host Community Benefit Payment is due pursuant to the provisions of this Agreement. Thereafter, the Company shall certify to the Town any change in the Installed Capacity within forty-five (45) days of any such change. A form of such certification is attached hereto as Exhibit B. The amount of all Host Community Benefit Payments following provision of any such certification shall be prorated, as of the date set forth in such certification, based upon the Installed Capacity reflected in such certification compared to the Installed Capacity prior to the date set forth in such certification.

b. Escalation. Host Community Benefit Payments shall be increased during the Term by two percent (2.0%) over the previous year, commencing with payment year 2 and continuing until and including payment year 11. Thereafter, the Host Community Benefit Payments shall not escalate, but the Minimum Revenue Amount (as defined below) shall escalate in accordance with Section 4.7 of this Agreement.

#### Section 4.2 Due Date of Host Community Benefit Payments.

The first Host Community Benefit Payment shall be due on or before January 31 of the year following the first taxable status date occurring after the commercial operation date of the Project Facility (the “Commercial Operation Date”), which is the date on which the Project Facility as a whole first commences generating or transmitting electricity for sale, excluding electricity generated or transmitted during the period of on-site test operations and commissioning of the Project Facility. Subsequent Host Community Benefit Payments shall be due on or before January 31 of each year thereafter during the Term. For purposes of this Agreement, the Commercial Operation Date is deemed to be the commercial operation date indicated in the Company’s notice to the New York Independent System Operator (“NYISO”) for the Project Facility. Within thirty (30) days after its notice to the NYISO, the Company shall provide notice to the Town of the Commercial Operation Date. Due to energy market conditions, among other reasons, the Company is not able to make any representations regarding when the Project Facility will be constructed and therefore when Host Community Benefit Payments would commence. The Company shall not be obligated to make Host Community Benefit Payments during construction of the Project Facility.

#### Section 4.3 Payee.

Host Community Benefit Payments shall be paid directly to the Town and sent to the attention of the Town Supervisor unless the Company is notified in writing to direct payment in another manner.

#### Section 4.4 Late Payment.

Any Host Community Benefit Payment not received as of the date due shall be deemed late without any requirement of notice from the Town. Late fees shall be assessed at a rate of one percent (1%) for each month or a portion of a month that the original amount outstanding remains due, until the Host Community Benefit Payment is received .

#### Section 4.5        Support for IDA Assistance.

The Company has applied to the Chautauqua County Industrial Development Agency (the “IDA”) for financial assistance including real property tax, sales and use tax, and mortgage recording tax exemptions (“Financial Assistance”) for the Project. The Town agrees to not directly or indirectly oppose the Company’s application for Financial Assistance and its entry into a payment in-lieu of tax (“PILOT”) agreement with the IDA (the “PILOT Agreement”) that calls for annual PILOT payments in an amount no greater than \$2,750 per MWac of Installed Capacity (increased by 2% annually).

#### Section 4.6        Additional Payments in Relation to Total Amount of Special District Taxes.

The Parties acknowledge that the Project Facility would not be exempt from special *ad valorem* taxes (“Special District Taxes”) pursuant to the Real Property Tax Law Section 412-a exemption underlying the PILOT Agreement. The Parties further acknowledge that it is difficult to determine the value of the Project Facility for Special District Tax purposes. The Parties anticipate that the total annual Special District Taxes owed for the Project Facility will be approximately \$700 per MWac of Installed Capacity (escalated by 2.0% annually), which shall be the targeted total Special District Taxes for a given payment year (the “Special District Tax Target”). However, if the total amount of Special District Taxes owed for the Project Facility is less than the Special District Tax Target for a payment year, the Company shall pay an additional amount to the Town (an “Additional Payment”) equal to the amount by which the Special District Tax Target exceeds such Special District Taxes for such payment year. Additional Payments, if any, shall be due when Host Community Benefit Payments are due. Similarly, in the event the total amount of Special District Taxes owed for the Project Facility is greater than the Special District Tax Target for a payment year, the Company shall receive a credit against the total Host Community Benefit Payment owed by the Company for such payment year in an amount equal to the amount by which such Special District Taxes exceed the Special District Tax Target for such payment year.

#### Section 4.7        Minimum Revenue Amount and Supplemental Payments.

Notwithstanding anything herein to the contrary, the sum of the Host Community Benefit Payment, the Town’s share of the PILOT Payment, the Special District Taxes, and any Additional Payment for each payment year (such sum, the “Total Revenue Amount”) shall be at least \$1,000,000 in payment years 1 through 11 and at least \$1,000,000 escalated by three percent (3%) annually beginning in payment years 12, through year 30 (the “Minimum Revenue Amount”). This provision assumes that the Town’s percentage share of annual PILOT payments under the PILOT Agreement will be fixed throughout the term of the PILOT Agreement at the Town’s percentage share of the combined tax rate of all affected tax jurisdictions (as such term is defined in Section 854(16) of the New York General Municipal Law) either at the time of execution and delivery by the Company of the PILOT Agreement or for the assessment year immediately preceding the year in which construction of the Project Facility commences. In the event the Total Revenue Amount for a payment year is less than the Minimum Revenue Amount, the Company shall pay a supplemental amount to the Town (a “Supplemental Payment”) equal to the Minimum Revenue Amount minus the Total Revenue Amount. Supplemental Payments, if any, shall be due when

Host Community Benefit Payments are due. The following table sets forth the Minimum Revenue Amount for each payment year during the Term.

Payment Year	Percent Increase in Minimum Revenue Amount	Minimum Revenue Amount
1	0%	\$ 1,000,000
2	0%	\$ 1,000,000
3	0%	\$ 1,000,000
4	0%	\$ 1,000,000
5	0%	\$ 1,000,000
6	0%	\$ 1,000,000
7	0%	\$ 1,000,000
8	0%	\$ 1,000,000
9	0%	\$ 1,000,000
10	0%	\$ 1,000,000
11	0%	\$ 1,000,000
12	3%	\$ 1,030,000
13	3%	\$ 1,060,900
14	3%	\$ 1,092,727
15	3%	\$ 1,125,509
16	3%	\$ 1,159,274
17	3%	\$ 1,194,052
18	3%	\$ 1,229,874
19	3%	\$ 1,266,770
20	3%	\$ 1,304,773
21	3%	\$ 1,343,916
22	3%	\$ 1,384,234
23	3%	\$ 1,425,761
24	3%	\$ 1,468,534
25	3%	\$ 1,512,590
26	3%	\$ 1,557,967
27	3%	\$ 1,604,706
28	3%	\$ 1,652,848
29	3%	\$ 1,702,433
30	3%	\$ 1,753,506
	Total	\$36,870,374

In the event the Installed Capacity of the project is increased and exceeds 270 MWac, the Minimum Revenue Amount beginning in the year that Installed Capacity exceeds 270 MWac shall be increased by a total of \$4,500.00 per megawatt of Installed Capacity in excess of 270 MWac.

#### Section 4.8        Unused Local Agency Account Funds.

The Company is required to provide funding for local agencies to participate in the review of the Project pursuant to Section 94-c Process (“Local Agency Account Funds”), with the amount of such funds to be determined by ORES and placed in an escrow account during the pendency of the Section 94-c Process. In the event the Town does not use the portion of the Local Agency

Account Funds allocated for its use by ORES, the Company shall pay the Town the amount of any such unused portion of the Local Agency Account Funds upon reimbursement of such amount from or at the direction of ORES.

**Section 4.9            Reimbursement for Professional Services not reimbursable with Local Agency Account Funds.**

The Company shall reimburse the Town for any reasonable and necessary attorney or expert consultant costs or fees related to the Town's participation in the Section 94-c Process that are not reimbursable by Local Agency Account Funds (collectively, "Town Expenses"); provided, however, that the Company's obligation to reimburse the Town for Town Expenses shall be limited to \$50,000, in the aggregate. In the event Town Expenses are anticipated to exceed such limit, the Town may seek an increase in such limit by providing the Company with a written cost estimate for same in advance which details the scope of services to be performed. Any increase to the foregoing limit on Town Expenses shall require written consent of both Parties, which will not be unreasonably withheld. The Company shall have the right to review, and upon request the Town shall provide, copies of invoices for Town Expenses for which the Town seeks reimbursement. Notwithstanding anything herein to the contrary, the Company shall have no obligation to reimburse the Town for Town Expenses incurred in connection with any action, suit, or proceeding in which the Town takes a position adverse to the Company or the Project.

## **ARTICLE V**

### **MUNICIPAL FRANCHISE IN TOWN ROWS; CURB CUTS**

**Section 5.1            Municipal Franchise in Town ROWs; Curb Cuts.**

It is anticipated that certain elements of the Project Facility, such as power collection and transmission lines, will need to be located above, below or within Town roads or rights-of-way ("Town ROWs") and that access roads constructed in connection with the Project will intersect Town ROWs. The Town agrees to grant all necessary municipal franchises necessary to construct, install, locate and operate Project Facility elements above, below or within Town ROWs and all road permits and curb cuts for access roads as may be required for the Project, pursuant to a separate Road Use Agreement (the "RUA"), under terms and conditions acceptable to both the Town and the Company which will be negotiated in good faith and using commercially reasonable, ordinary, and customary provisions relating to road permit, curb cut, and road use matters, shall include commercially reasonable financial terms as to Company obligations, and shall require the Company to use an independent engineer to engage in pre-construction and post-construction testing to evaluate whether the Project Facility construction caused any damage (ordinary wear and tear excepted) to Town road(s).

## **ARTICLE VI**

### **INDEPENDENT ENGINEER; SCOPE OF REVIEW; PROMPT REVIEW AND APPROVALS**

**Section 6.1            Engagement of Independent Engineer.**

The Town will engage the services of a qualified independent engineer or engineering firm (the “*Independent Engineer*”) to assist the Town code enforcement officer and any representative of such officer (collectively, the “*Town CEO*”) with reviewing building plans for and the construction of Reviewed Improvements (as defined below). The Town shall select the Independent Engineer within thirty (30) days of the Town’s receipt of written notice from the Company of the anticipated commencement of construction of the Project Facility. Such selected firm must be a qualified independent engineering firm with solar-powered electric generating facility experience and may only charge fees and expenses that are ordinary and customary for similar services performed in the geographic area of the Project. The Town shall provide advance written notice to the Company of the selected firm. The Company shall have five (5) days after its receipt of such notice to advise the Town in writing of any objection to the engagement of such firm to serve as the Independent Engineer. If the Company raises an objection, the Town and the Company agree to meet within five (5) business days of the Town’s receipt of the Company’s notice to discuss the Company’s concerns with the selected firm and potential substitute firms.

## Section 6.2 Reimbursement of Independent Engineer Fees.

a. Reimbursement of Independent Engineer Fees. The Company shall reimburse the Town for all reasonable and necessary costs, fees and expenses paid to the Independent Engineer (the “*Independent Engineer Fees*”) incurred in connection with the Independent Engineer’s performance of the Scope of Services (as defined below). The Company’s obligation to reimburse the Town for Independent Engineer Fees shall be limited to \$50,000, in the aggregate. In the event Independent Engineer Fees are anticipated to exceed such limit, the Town may seek an increase in such limit by providing the Company with a written cost estimate for same in advance which details the scope of services to be performed. Any increase to the foregoing limit on Independent Engineer Fees shall require written consent of both Parties, which will not be unreasonably withheld. The Company shall have the right to review, and upon request the Town shall provide, copies of invoices for the Independent Engineer Fees for which the Town seeks reimbursement.

b. Invoices. The Town shall submit to the Company an invoice for Independent Engineer Fees on a monthly basis. The Company shall pay the undisputed amount of all invoices for Independent Engineer Fees within forty-five (45) days of receipt.

c. Disputes. In the event the Company disputes or objects to any item set forth in an invoice, the Company shall identify the disputed item and the basis for the dispute, in writing, within thirty (30) days of the receipt of such invoice. The Company and the Town agree to communicate expeditiously with each other and act commercially reasonably to resolve any such billing dispute as promptly as possible.

## Section 6.3 Scope of Review.

a. Town Scope of Review. The Town agrees that the scope of its review is limited to compliance with the New York State Uniform Fire Prevention and Building Code and the Energy Conservation Code of New York State (together, the “*Applicable Codes*”) for construction of the following elements of the Project Facility (each a “*Reviewed Improvement*”): (a) Panel Rack foundations, if any, (b) inverters and transformers, (c) operations and maintenance or storage structures, (d) substations, (e) access roads, (f) fencing and landscaping, and (g) battery energy

storage facilities. The Town agrees that in the event the Applicable Codes are inconsistent or in conflict with any substantive provisions of the Town's local zoning, electrical, plumbing, and building codes, the Applicable Codes supersede the Town's codes. The Town further agrees that the scope of its review of the Project Facility is limited to the foregoing expressly delineated items and does not extend to any elements not expressly set forth herein, including without limitation the installation or assembly of Panels and power collection components of the Project Facility.

b. Independent Engineer Scope of Review. The Independent Engineer shall be responsible for: (a) reviewing any portion(s) of the Company's building plans for the Reviewed Improvements that are required to be reviewed by the Town, (b) recommending approval of building plans for the Reviewed Improvements, (c) assisting the Town CEO with inspecting the construction work for compliance with Applicable Codes, and (d) certifying such compliance which shall be evidenced by issuance by the Town, or by the Independent Engineer on its behalf, of Certificates of Compliance (as defined below) and/or Temporary Certificates of Compliance (as defined below) (collectively, the "Scope of Services").

#### Section 6.4        Town Responsibility for Review; Prompt Review of Building Plans.

The Town, through the Town CEO, shall be responsible for reviewing the construction of Reviewed Improvements. The Town CEO shall review the Company's building plans for the Reviewed Improvements and either approve or disapprove (with detailed justification) within ten (10) business days of the Company's submission of same. A failure to provide such a response (with any required justification) within that period shall be deemed to constitute an approval of the submitted plans.

#### Section 6.5        Duties and Notice; Reports.

a. Duties and Notice. The Town shall ensure that the Independent Engineer performs the Town's duties pursuant to this Article, and any written notice given to the Independent Engineer in relation to this Article shall be deemed duly received by the Town for the purposes of this Agreement.

b. Reports. The Town shall ensure that the Independent Engineer provides copies of his or her reports to the Company at the same time such reports are provided to the Town or any of its representatives. The Town shall ensure that the Independent Engineer provides its reports promptly and in all cases within such time periods as is required to support the Company's construction schedule.

c. Emergency Notifications. In the event of an emergency which requires the Company to notify the New York State Department of Public Service, the New York State Department of Environmental Conservation, the New York State Department of Health, or any federal, county or local emergency service or agency, the Company will immediately thereafter notify the Independent Engineer of the circumstances and events requiring the initial reporting to the previously-referenced entities. All written reports and documents regarding such notifications will be made available to the Independent Engineer, along with any responses or further written directions received from the entities to which the Company initially reported.

## Section 6.6 Completion Notice and Evaluation Period.

When the Company has completed installation of a Reviewed Improvement, it shall certify to the Town, or the Independent Engineer on its behalf, by submission of a completion notice (the “Completion Notice”) that it has done so and request that a Certificate of Compliance (as defined below) be issued. The Town, or the Independent Engineer on its behalf, will by the end of the tenth (10th) business day following receipt of a Completion Notice (the “Evaluation Period”) issue either a Certificate of Compliance (as defined below) or a Temporary Certificate of Compliance (as defined below) as outlined in Section 6.7 and Section 6.8 hereof. If the Town, or the Independent Engineer on its behalf, does not issue a Certificate of Compliance (as defined below) or a Temporary Certificate of Compliance (as defined below) for any Reviewed Improvement for which a Completion Notice was provided to it, the Independent Engineer shall deliver to the Company a written list of all alleged deficiencies for any such improvement (“Deficiency Notice”) by the expiration of the Evaluation Period. If the Company agrees with the Deficiency Notice (in part or in whole), it shall address the identified deficiencies it agrees with and deliver a new Completion Notice to the Independent Engineer. To the extent of any Company disagreement with respect to items covered by a Deficiency Notice, the procedures of Section 6.9 shall apply.

## Section 6.7 Certificate of Compliance.

In the event the Independent Engineer finds that a Reviewed Improvement has been constructed in accordance with Applicable Codes, the Town, or the Independent Engineer on its behalf, will issue to the Company a certificate of compliance confirming that the Reviewed Improvement has been constructed in accordance with Applicable Codes (a “Certificate of Compliance”). For purposes of this Agreement, a Certificate of Compliance shall be deemed to be a certificate of occupancy or similar approval issued by the Town.

## Section 6.8 Temporary Certificate of Compliance.

a. If during the Evaluation Period the Independent Engineer determines that a Reviewed Improvement was constructed in accordance with Applicable Codes except for certain outstanding conditions such as landscaping, restoration, or other items that cannot be completed due to weather or similar reasons, the Town, or the Independent Engineer on its behalf, will issue to the Company a temporary certificate of compliance confirming that such Reviewed Improvement has been constructed in accordance with Applicable Codes (a “Temporary Certificate of Compliance”). A Temporary Certificate of Compliance may be issued by the Town for a six-month period and renewed by the board of the Town (“Town Board”) for up to six months at a time, as long as efforts are being made to satisfy all conditions.

b. When the Company has satisfied all outstanding conditions in accordance with Applicable Codes relative to Reviewed Improvement for which the Town, or the Independent Engineer on its behalf, has issued a Temporary Certificate of Compliance, the Company shall submit a Completion Notice to the Town. In the event the Town finds that the Company has satisfied such conditions, the Town, or the Independent Engineer on its behalf, will issue to the Company, within ten (10) business days of its receipt of the Completion Notice, a Certificate of Compliance confirming that such Reviewed Improvement has been constructed in accordance with Applicable Codes.

Section 6.9        Disputes Regarding Certificates of Compliance and Review of Building Plans for Reviewed Improvements.

a.     If the Company and the Independent Engineer do not agree that either a Certificate of Compliance or Temporary Certificate of Compliance should be issued for a Reviewed Improvement, at the Company's election, the Company and the Town, in consultation with the Independent Engineer, shall engage a third-party independent engineer with solar project experience ("Third-Party Engineer") to review the Company's Completion Notice and inspect the Reviewed Improvement in question. The cost of the Third-Party Engineer shall be borne equally by the Company and the Town. The Third-Party Engineer shall have five (5) business days to complete its analysis. If the Third-Party Engineer is satisfied with the completeness of the Reviewed Improvement, the Town, or the Independent Engineer on its behalf, shall immediately issue a Certificate of Compliance. If the Third-Party Engineer is not satisfied with the completeness of the installation, the Town, or the Independent Engineer on its behalf, shall either issue a Temporary Certificate of Compliance, or the Company shall cure the indicated deficiencies as required by the Third-Party Engineer as quickly as reasonably practicable.

b.     Any denial or approval with conditions of building plans, a Certificate of Compliance, or a Temporary Certificate of Compliance, shall be in writing and shall be issued prior to expiration of the Evaluation Period. The Company shall have the right to cure the indicated deficiency, and upon effecting such cure must submit a Completion Notice to the Independent Engineer pursuant to Section 6.6, following which a new Evaluation Period will begin. Notwithstanding any remedy otherwise available, the Town and the Company agree that the denial or approval with conditions of building plans, a Certificate of Compliance, or a Temporary Certificate of Compliance may be appealed to the Town Board. If such an appeal is made to the Town Board, the Town Board shall issue a final determination of the appeal within thirty (30) days from the application of appeal, and if the Town Board upholds the denial or approval with conditions the Company finds unacceptable, the Company may seek judicial review pursuant to Section 12.2 hereof to review such denial or conditioned approval.

Section 6.10       Limitation of Section.

a.     Nothing in this Agreement shall be read as making the Independent Engineer the engineer for the Company or the engineer of record for the Project, nor in any way limit the Company's obligation under New York law to use a licensed engineer where required.

b.     The Independent Engineer is retained to act on behalf of the Town pursuant to separate agreement with the Town and does not have any obligation to or fiduciary or employment relationship with the Company.

## **ARTICLE VII**

### **DECOMMISSIONING**

#### **Section 7.1      Decommissioning and Panel Retirement.**

The Parties acknowledge that the Company shall be obligated to decommission and remove the entire Project Facility at the end of its useful life or upon permanent cessation of its operation in conformity with Applicable Codes, the Decommissioning and Site Restoration Plan (as defined below), and the 94-c Permit (“*Decommissioning*”). The Parties further acknowledge that one or more Panels may, from time to time, need to be retired and removed prior to the end of the useful life of the Project Facility (“*Panel Retirement*”). The Company shall have no obligation to replace retired Panels. Except as provided in the Decommissioning and Site Restoration Plan (as defined below), the manner and timing of Decommissioning and Panel Retirement shall be at the Company’s sole discretion, but such discretion shall not be exercised in a manner inconsistent with the 94-c Permit, or any applicable provisions of the Town’s law incorporated by the 94-c Permit.

#### **Section 7.2      Standard of Decommissioning.**

Decommissioning shall also involve site restoration activities. The standards of Decommissioning, including site restoration, shall be as required by the 94-c Permit and set forth in a written plan (the “*Decommissioning and Site Restoration Plan*”). The Company shall provide the Town a copy of the Decommissioning and Site Restoration Plan upon completion of the 94-c Process. The Company’s responsibility for site restoration in the context of Decommissioning shall not extend beyond the requirements of the Decommissioning and Site Restoration Plan. Decommissioning shall be deemed complete when all requirements of the Decommissioning and Site Restoration Plan have been satisfied.

#### **Section 7.3      Failure to Perform Decommissioning; Town’s Right to Perform Decommissioning Activities.**

In the event the Company fails to perform necessary Decommissioning activities as set forth in the Decommissioning and Site Restoration Plan, the Town shall have the right to perform such Decommissioning activities in accordance with the terms of the Decommissioning and Site Restoration Plan. If the Town elects to perform such Decommissioning activities, the Company hereby acknowledges and agrees that it will use its commercially reasonable efforts to ensure the Town has the necessary access rights to carry out such Decommissioning activities, including facilitating the Town’s use of the Company’s easements and access rights to carry out any such Decommissioning activities; *provided, however,* that the Town’s rights as granted herein shall be concurrent with and derived from the Company’s rights set forth in, and shall be subject to the terms of, the agreements originally granting the Company such easement or access rights. The Company, to the extent permitted, will take commercially reasonable efforts not to allow its access rights or easements to any portion of the Project Facility to expire or be terminated until Decommissioning has been completed.

Section 7.4        Expense of Decommissioning.

In the event the Town carries out Decommissioning activities as set forth in Section 7.3 hereof, the Company shall indemnify the Town for expenses reasonably incurred by the Town in connection with performing Decommissioning activities, net of any salvage value obtained by the Town for decommissioned components of the Project Facility.

Section 7.5        Decommissioning Security.

a.     Establishment of Decommissioning Security. The Decommissioning and Site Restoration Plan will require the Company to provide the Town financial security for Decommissioning (“*Decommissioning Security*”). The Decommissioning and Site Restoration Plan will include the amount of such Decommissioning Security, a form of Decommissioning Security, the date by which the Decommissioning Security must be put in place, and requirements for potential adjustment thereof during the Term. The amount of such Decommissioning Security shall be calculated without regard to the salvage value of Project Facility components and shall remain fixed during the Term, except as provided herein. The amount of the Decommissioning Security shall be initially calculated as part of the Section 94-c Process and shall be recalculated by a third-party independent engineer with solar project experience, selected by the Company with the consent of the Town, which consent shall not be unreasonably withheld, at the Company’s expense, every five (5) years during the Term, with the first recalculation occurring on or before the fifth anniversary of the Commercial Operation Date. The Decommissioning Security shall be in the form of: 1) a Company cash deposit governed by an escrow agreement, 2) a surety bond, 3) a guaranty from an entity of reasonable and appropriate creditworthiness, or 4) a standby letter of credit, with the type of security at the Company’s election and with the form of the instrument on reasonable and customary terms subject to the approval of the Town, which shall not be unreasonably withheld, conditioned, or delayed. The Company acknowledges the Town has the right to seek a specific form of Decommissioning Security in the ORES proceeding on the Application of ConnectGen Chautauqua County LLC for a 94-c Permit for the South Ripley Solar Project, Matter Number 21-00750, subject to ORES approval.

b.     Use of Decommissioning Security. In the event the Company fails to perform Decommissioning activities required by the Decommissioning and Site Restoration Plan (“*Decommissioning Default*”), the Town shall provide written notice to the Company of such Decommissioning Default and the Town’s intent to call on the Decommissioning Security for the purpose of carrying out and completing Decommissioning. The Company shall have the right to cure any claimed Decommissioning Default; provided, however, that the Company may only exercise its right to cure if it provides the Town a written schedule for the completion of Decommissioning activities required by the Decommissioning and Site Restoration Plan (“*Decommissioning Schedule*”). If the Company fails to provide such Decommissioning Schedule and commence curative Decommissioning activities within thirty (30) days after the Company’s receipt of notice from the Town of a claimed Decommissioning Default, the Town shall have immediate access to the Decommissioning Security solely for the purpose of and only to the extent necessary for completing Decommissioning.

c.     Expiration. The Company shall maintain the Decommissioning Security throughout the Term and until Decommissioning is completed in accordance with the

Decommissioning and Site Restoration Plan. The Company's Decommissioning obligations, as set forth in the Decommissioning and Site Restoration Plan, shall survive the termination of this Agreement but shall expire once all Company obligations under the Decommissioning and Site Restoration Plan have been met.

d. Bankruptcy and Decommissioning Security. The Decommissioning Security established by this Agreement shall not be subject to disclaimer or rejection in a bankruptcy proceeding.

## **ARTICLE VIII**

### **TERMINATION**

Section 8.1        Termination.

The Company may terminate this Agreement at any time during the Term if (i) the IDA and the Company do not enter into an initial PILOT Agreement with respect to the Project Facility, (ii) ORES does not issue a final and non-appealable 94-c Permit for the Project, or (iii) the Company discontinues development of the Project.

## **ARTICLE IX**

### **DEFAULT AND REMEDIES**

Section 9.1        Notice of Default.

In any case where any Party is claimed to have defaulted under this Agreement (“*Default*”), any non-defaulting Party negatively impacted by the claimed Default shall provide written notice to the defaulting Party within ten (10) business days of such Default (“*Notice of Default*”). Each monetary Notice of Default shall state the amounts, to the extent known, of any payments that are then claimed to be in Default.

Section 9.2        Company Right to Cure.

For any claimed monetary Default, the Company shall have the right to cure any such Default and must cure such Default within thirty (30) business days of its receipt of a Notice of Default. For any claimed non-monetary Default, the Company shall have the right to cure any such Default and must cure such Default within ninety (90) days of its receipt of a Notice of Default, unless such Default is not capable of cure within ninety (90) days, in which event the Company may request an extension of the cure period, which extension shall be granted by the Town so long as the Company has commenced a cure and proceeded diligently to effect such cure. The Town may extend the time to cure in its discretion.

Section 9.3        Town Right to Cure.

The Town shall have the right to cure any Default by it and must cure all such Defaults within thirty (30) days of its receipt of the notice unless such Default is not capable of cure within thirty (30) days, in which event the Company shall give the Town an additional sixty (60) days to cure provided the Town has commenced a cure and proceeded diligently to effect such cure. If the Town fails to cure such Default within the time allowed, the Company's payment obligations under this Agreement shall be suspended until such Default is cured; *provided, however,* that the Company shall deposit such suspended Host Community Benefit Payment amount with an escrow agent mutually selected by the Parties, with such amounts to be released from such escrow once the Default is cured.

Section 9.4 Successor, Lender, and Investor Right to Cure.

Prior to the exercise of any remedy by the Town hereunder following a Default, the Company, any Successor (as defined below), any Lender (as defined below), and any person or entity providing tax equity financing for the Project Facility (an "*Investor*") shall have an absolute right to cure such Default during the time period allowed for curing same. Notwithstanding the foregoing, if the Company at any time during the Term, prior to the occurrence of a Default, provides a written request to the Town that notices hereunder be provided to a Successor, Lender or Investor, the Town shall provide notices of Default to such Successors, Lenders, and Investors, and each such Successor, Lender or Investor shall be afforded an additional thirty (30) days (beyond the time period allowed for the Company to cure) within which to cure a Default on behalf of the Company.

Section 9.5 Exercise of Remedies.

Upon the occurrence of an uncured Default as specified under this Agreement, the affected non-Defaulting Party may, at its sole discretion, elect to seek: (a) specific performance by the Defaulting Party of any obligation the Defaulting Party has failed to discharge, or (b) payment by the Defaulting Party of any amounts for which Default is claimed. Remedies under this Agreement may only be pursued by Parties having provided a Notice of Default and any such remedy shall only apply to the Party providing such Notice of Default. This Agreement shall continue and remain in full force and effect as to all Parties not involved in the claimed Default.

Section 9.6 No Acceleration.

Upon the occurrence and during the continuation of a Default hereunder, the Town shall not have the right to accelerate future Host Community Benefit Payments not yet due and payable as of the date of such exercise of remedies.

Section 9.7 Estoppel Certificates.

The Town, within five (5) business days after a request in writing by the Company, shall furnish a written statement, duly acknowledged, that this Agreement is in full force and effect and that there are no Defaults hereunder by the Company, or if there are any Defaults, such statement shall specify the Defaults the Town claims to exist.

## **ARTICLE X**

### **ASSIGNMENT AND CHANGE IN CONTROL**

#### Section 10.1 Assignment.

The Company may, without the consent of the Town: (a) assign this Agreement in connection with any sale or transfer of the Project Facility, so long as any required PSC approval is received for such sale or transfer, to any (i) purchaser of, or successor in and to, the Project Facility (a “Purchaser”), or (ii) affiliate or subsidiary of the Company that is controlled by, controlling or under common control with the Company (an “Affiliate”, and together with a Purchaser, a “Successor”), provided such Successor assumes and agrees to be bound by this Agreement by executing and submitting to the Town a notice of assignment and assumption of this Agreement, a form of which is attached hereto as Exhibit C, and provides to the Town replacement Decommissioning Security in accordance with this Agreement if the Decommissioning Security is not maintained, and (b) pledge, encumber, hypothecate, mortgage, grant a security interest in and collaterally assign this Agreement to any person or entity providing financing for the Project Facility (a “Lender”), including a collateral agent acting on behalf of such Lender, as security for the repayment of any indebtedness and/or the performance of any obligation whether or not such obligation is related to any indebtedness (a “Lender Lien”). A Lender shall have the absolute right to: (a) assign its Lender Lien; (b) take possession of and operate the Project Facility or any portion thereof in accordance with this Agreement and perform any obligations to be performed by Company or a Successor hereunder; or (c) exercise any rights of Company hereunder. The Town shall cooperate with the Company and any Successor or Lender from time to time, including, without limitation, by entering into a consent and assignment or other agreements with any such Successor or Lender and the Company in connection with any collateral assignment on such terms as may be customary under the circumstances and shall reasonably be required by such Successor or Lender. In the event this Agreement is assigned to a Successor or Lender, the Company shall have no further obligations hereunder, except for any obligations outstanding on the date of the transfer.

#### Section 10.2 Change in Control.

Nothing herein shall limit in any way the right of the direct or indirect owners of the Company to sell or otherwise transfer (including by merger or consolidation with any other entity) all or a portion of their ownership interests in the Company without the consent of the Town.

## **ARTICLE XI**

### **NOTICES**

#### Section 11.1 Notices.

All notices, demands, requests, consents, or other communications provided for or permitted to be given pursuant to this Agreement shall be in writing and shall be mailed (and a

copy, which shall not serve as formal notice, emailed), or delivered to the Parties at the respective address set forth below:

a. Notices to the Town:

Town of Ripley  
Ripley Town Hall  
14 North State Street, PO Box 3  
Ripley, New York 14775  
Attn: Supervisor  
Email: [ripleyts@fairpoint.net](mailto:ripleyts@fairpoint.net)  
[ripleytc@fairpoint.net](mailto:ripleytc@fairpoint.net)

With a copy to:  
Wisniewski Law PLLC  
66 East Main Street  
Webster, New York 14580  
Attn: Benjamin E. Wisniewski, Esq.  
Email: [bew@bewlawfirm.com](mailto:bew@bewlawfirm.com)

b. Notices to the Company:

ConnectGen Chautauqua County LLC  
c/o ConnectGen LLC  
1001 McKinney Street, Suite 700  
Houston, Texas 77002  
Attn: General Counsel  
Email: [contractadmin@connectgenllc.com](mailto:contractadmin@connectgenllc.com)

With a copy to:  
Swartz Moses PLLC  
1583 East Genesee Street  
Skaneateles, New York 13152  
Attn: Peter H. Swartz  
Matthew S. Moses  
Email: [phs@swartzmoses.com](mailto:phs@swartzmoses.com)  
[msm@swartzmoses.com](mailto:msm@swartzmoses.com)

All such notices, demands, requests, consents, or other communications shall be deemed to have been duly given when personally delivered or, in the case of a mailed notice, upon receipt, in each case addressed as aforesaid. Each of the Parties may from time to time change its address or mode of communication for notices by providing notice of such change to the other Parties given in accordance with this Section.

## **ARTICLE XII**

### **MISCELLANEOUS**

#### **Section 12.1      No Waiver.**

The failure of any Party to insist on the strict performance of any term or provision hereof will not be deemed a waiver of the right to insist on strict performance of any other term or provision, nor will it be deemed a waiver of any subsequent Default. Unless specifically stated, the selection of any specific remedy hereunder shall not be deemed an election of remedies limiting any Party's right to seek any other remedy otherwise allowed by this Agreement.

#### **Section 12.2      Applicable Law and Venue; Disputes.**

This Agreement will be governed by the laws of the State of New York. Venue for any dispute arising under this Agreement shall be in the New York State Supreme Court for Chautauqua County or the Federal District Court in and for the Western District of New York.

#### **Section 12.3      No Recourse; Special Obligation.**

All obligations of the Parties contained in this Agreement shall be deemed to be the corporate obligations of the respective Parties and not obligations of any member, officer, director, official, agent, servant, employee, or affiliate of the Parties. No recourse upon any obligation contained in this Agreement, or otherwise based on or in respect of this Agreement, shall be had against any past, present, or future member, officer, director, official, agent, servant, employee, or affiliate of the Parties.

#### **Section 12.4      Entire Agreement.**

Unless supplemented or otherwise amended in writing by the Town and the Company in accordance with the laws of the State, this Agreement constitutes the Parties' entire agreement with respect to the subject set forth herein, and no other agreements, written or unwritten, express or implied, will be deemed effective.

#### **Section 12.5      Amendment.**

No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in a writing that specifically references this Agreement and that is duly executed by the Parties.

#### **Section 12.6      Severability.**

If any clause, provision, section or article of this Agreement, or a portion thereof, is held invalid, inoperative or unenforceable by any court or regulatory authority of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by applicable law. Notwithstanding the foregoing, if any clause, provision, section or article of this Agreement, or a portion thereof, is held invalid,

inoperative, or unenforceable by any court or regulatory authority of competent jurisdiction, the Parties shall use commercially reasonable efforts to:

a. Promptly meet and negotiate a substitute for such clause, provision, section, or article, which will to the greatest extent legally permissible, effect the original intent of the Parties therein.

b. Negotiate such changes in, substitutions for, or additions to the remaining provisions of this Agreement as may be necessary to effect the original intent of the Parties in the clause, provision, section, or article declared invalid.

**Section 12.7 Binding Effect.**

This Agreement shall inure to the benefit of and shall be binding upon each of the Parties and, as permitted by this Agreement, their respective successors and permitted assigns.

**Section 12.8 Headings.**

The headings of sections and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement or to affect the construction hereof.

**Section 12.9 Counterparts.**

This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

**Section 12.10 Further Assurances.**

From time to time and at any time after the effective date of this Agreement, each of the Parties, at its own expense, shall execute, acknowledge and deliver any further instruments, documents or other assurances reasonably requested by any other Party, and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by another Party to evidence or carry out the intent of or to implement this Agreement.

**Section 12.11 Use of Host Community Benefit Payments; Public Purposes.**

Host Community Benefit Payments made by the Company to the Town hereunder may be used by the Town for any lawful public purpose, which purposes shall be determined in the sole and absolute discretion of the Town.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date and year above written.

**Town of Ripley**

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

Name:

Title:

**ConnectGen Chautauqua County LLC**

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

Name:

Title:

## **List of Exhibits**

- |           |   |
|-----------|---|
| Exhibit A | Town Approving Resolution   |
| Exhibit B | Form of Installed Capacity Certification                                |
| Exhibit C | Form of Notice of Assignment and Assumption of Host Community Agreement |

**Exhibit A**

**Town Approving Resolution**

## **Exhibit B**

### **Form of Installed Capacity Certification**

[Date]

Town of Ripley  
Ripley Town Hall  
14 North State Street, PO Box 3  
Ripley, New York 14775  
Attn: Supervisor

Re: South Ripley Solar Project – Installed Capacity Certification.

ConnectGen Chautauqua County LLC hereby certifies that as of the date above, the South Ripley solar-powered electric generating facility (the “Project”) has an installed nameplate electric generating capability (“Installed Capacity”), measured in megawatts alternating current (“MWac”), being the total installed capacity in the Tax Jurisdiction groups as follows:

Tax Jurisdiction Group	Installed Capacity (MWac)
Town of Ripley/Sherman CSD/Chautauqua County	[     ]
Town of Ripley/Ripley CSD/Chautauqua County	[     ]
Combined	[     ]

ConnectGen Chautauqua County LLC

By: \_\_\_\_\_  
Name:  
Title:

## **Exhibit C**

### **Form Notice of Assignment and Assumption of Host Community Agreement**

#### **NOTICE OF ASSIGNMENT**

Town of Ripley  
Ripley Town Hall  
14 North State Street, PO Box 3  
Ripley, New York 14775  
Attn: Supervisor

Re: South Ripley Solar Project – Assignment and Assumption of Host Community Agreement.

[\_\_\_\_], a limited liability company duly organized and existing under the laws of the State of [\_\_\_\_], and having an office at [\_\_\_\_], hereby provides notice to the Town of Ripley that as of [\_\_\_\_] it purchased or otherwise acquired all or substantially all of the assets of ConnectGen Chautauqua County LLC [\_\_\_\_] and hereby assumes all obligations under the Host Community Agreement by and between ConnectGen Chautauqua County LLC and the Town of Ripley dated as of [\_\_\_\_], and agrees to be bound by its provisions and waives all claims regarding its validity.

[\_\_\_\_], a [\_\_\_\_] limited liability company  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_