

DECOMMISSIONING AGREEMENT

This **DECOMMISSIONING AGREEMENT** (this “Agreement”), dated as of July _____ 2020 (the “Effective Date”), is made by and among the **Town of Duanesburg**, a municipal corporation duly established in Schenectady County with a principal place of business located at 5853 Western Turnpike, Duanesburg, NY 12056 (referred to as the “Town”), **Oak Hill Solar 1 LLC**, a limited liability company formed under the laws of the State of New York with principal offices at 1550 Wewatta Street, 4th Floor, Denver, CO 80202 (referred to as the “Operator”) and Richard Murray, an individual (referred to as the “Landowner”). The Town, the Operator and the Landowner may each be referred to herein as a “Party” and collectively, as the “Parties”.

WHEREAS, Operator intends to permit, construct, operate and maintain a solar energy facility with battery storage with an estimated size of five (5) megawatts of alternating-current (AC) nameplate capacity that will generate electric power (the “Project”), as shown on the Site Plans entitled “Proposed Site Plan for Oak Hill 1 and 2”, prepared by Environmental Design Partnership, LLP., last revised September 5, 2019 (hereinafter, the “Site Plans”), copies of which are attached as **Schedule A**, on real property owned by the Landowner and leased to the Operator, and more particularly identified hereto in **Schedule B**, and commonly known as **13590 Duanesburg Road Delanson, NY (Tax Map 74.00-2-5)** in the Town of Duanesburg, Schenectady County, New York (“the Properties”); and

WHEREAS, on September 5, 2019, based on the Operator’s application, and after duly noticed public hearing(s), the Town, by its Planning Board, granted conditional special use and site plan approval (hereinafter “Approval Resolution”) for the Project¹, on condition that, among other things, the applicant submit a final decommissioning plan and decommissioning security and that the applicant provided the Town with access to funds for the Decommissioning (as defined below) of the Project; and

WHEREAS, a copy of said Approval Resolution is attached hereto as **Schedule C**; and

WHEREAS, the Town has enacted Local Law 1-2016, which provides that Decommissioning must occur pursuant to a decommissioning plan, among other requirements (the “Local Law”); and

WHEREAS, the Parties now desire to enter into this Agreement to set forth the “Decommissioning Plan” for the Oak Hill 1 Solar Project, attached hereto as **Schedule D**, as required by the Local Law and the Town Planning Board and to agree upon terms and conditions of the financial surety provided to the Town for the purpose of Decommissioning the Project;

¹ The Oak Hill Solar 1 Project was also approved at this meeting.

NOW, THEREFORE, in consideration of the promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Prior to the issuance of a building permit for the Project (the "Start Date"), the Operator shall post a letter of credit or bond, in form and substance reasonably satisfactory to the Town or deposit cash in escrow with the Town (the "Security") in the amount of \$211,381 for the benefit of the Town. In the event Operator elects to deposit cash in escrow with the Town as the Security, the Parties shall execute the Decommissioning Escrow Agreement attached hereto as Schedule E. The parties agree that the Security shall be used solely to pay for any Decommissioning costs of the Project. At least 60 days prior to the end of each successive five (5) -year period after the execution of this Agreement, the Operator shall provide the Town with an updated decommissioning plan setting forth an updated estimate for the Decommissioning of the Project, which updated estimate shall be subject to review and approval by the Town, which approval shall not unreasonably be withheld, conditioned or delayed. Within 30 days after the Town's approval of the updated estimate, the Security shall be changed to reflect the updated estimate approved by the Town for such Decommissioning of the Project. Any such updated and approved decommissioning plan shall be deemed the "Decommissioning Plan" hereunder. For avoidance of doubt, the updated estimate will use the estimated decommissioning cost as a template in the updated decommissioning plan. Operator shall have no further payment obligations in connection with Decommissioning during the operation of the Project provided that Operator complies with posting the Security in accordance with this Agreement. Nonetheless, in the event the actual Decommissioning costs incurred by the Town exceed the amount covered by the Security, Operator or its successor in title to the Project shall be responsible for reimbursing the Town for any and all such excess costs, provided that the Town delivers to the Operator a reasonable written record of such costs.

2. "Decommissioning" as used in this Agreement shall mean the removal of all collectors, mounts and/or associated equipment and facilities that were installed in connection with the Project and the reasonable restoration of the Properties to either of the following, at the Operator's option ("Decommissioning"): (i) the condition the Properties was in prior to the development, construction and operation of the Project, including restoration, regrading, and reseeding, or (ii) the condition designed by a subsequent Operator or developer as agreed upon with the Town. Costs of Decommissioning under this Agreement include labor, professional services and any other costs reasonably associated with such Decommissioning.

3. Each of the circumstances described in clauses (a) and (b) below shall be a "Triggering Event" for purposes hereof:

- (a) construction of the Project is not completed within eighteen (18) months of receiving a building permit, other than as a result of Force Majeure (defined below), or
- (b) the Project, after commencing commercial operation, "ceases to be operational" (as defined below) for more than twelve (12) consecutive months.

In the event the Operator fails to initiate Decommissioning of the Project within ninety (90) days of a Triggering Event (the "Decomm Deadline"), or Operator fails to provide a reasonable explanation for the delay in the construction or cessation of operation of the Project by the Decomm Deadline, then, the Town may issue a notice to Operator (the "Town Decommissioning Notice") and Operator shall have thirty (30) days to respond to the Town Decommissioning Notice with a reasonable explanation for the delay in the construction or the cessation of operation of the Project. In the event that (A) the Operator does not respond to the Town Decommissioning Notice in accordance with the forgoing sentence, or (B) Decommissioning is not completed, within six (6) months after a Triggering Event, then the Town shall have the right, but not the obligation, to commence Decommissioning of the Project through use of the Security.

For purposes of this Agreement, "Force Majeure" means any circumstance not within the reasonable control of the Party affected, but only if and to the extent that: (i) such event is not due to the affected Party's negligence or willful misconduct; (ii) such event is not the result of any failure of the affected Party to perform any of its obligations hereunder; and (iii) the affected Party has given the other Party prompt notice describing such event. Subject to the foregoing conditions, Force Majeure Events include, without limitation: acts of God; war; acts of the public enemy; terrorism; riot; civil commotion; sabotage; fire; floods; landslide; volcanic eruption; epidemics; global pandemics; quarantine restrictions; embargos; and governmental authority decreed official state of emergency.

For the purposes of this Agreement, "ceases to be operational" shall mean no generation of electricity, other than due to Force Majeure, repairs, upgrades, permitting matters, casualty, or other issue regarding the Project that Operator is in good faith attempting to remedy

4. The parties hereto acknowledge that the Decommissioning is intended to occur outside the winter months. Upon removal of the infrastructure and disposal of the components of the Project from the Properties, and restoration of the Properties to its pre-project state, or to the condition designed by a subsequent Operator or developer as agreed upon with the Town. Upon completion of Decommissioning, the Operator shall have no further obligation to the Town provided that the costs of the Decommissioning has been paid for in full by the Security or otherwise by or on behalf of the Operator.

5. In the event that the Town elects to complete Decommissioning under Section 3, Operator (or its successors or assigns) agrees to give the Town the right of reasonable access to the Properties to Decommission the Project. In the event the leases between Landowner and Operator are terminated or Landowner otherwise has control over the Properties at the time of the Decommissioning, Landowner (or its successors or assigns) agrees to give the Town the right of reasonable access to the Properties in order to perform Decommissioning in accordance with this Agreement.

6. This Agreement may not be amended or modified except by written instrument signed and delivered by the Parties. This Agreement is binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. In accordance with the provisions of section 109 of the New York General Municipal Law, Operator is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of any right, title or interest in this Agreement, or its power to execute this Agreement, to any other person or

corporation without the previous consent in writing of the Town, which consent shall not be unreasonably withheld, conditioned or delayed.

7. Operator, or the operations and maintenance provider of the Operator, shall provide the Town with proof that it either carries sufficient workers' compensation insurance coverage for any employees in New York involved in the Decommissioning as required under applicable law or that it is exempt from such requirement.

8. The Parties agree to execute and deliver any additional documents or take any further action as reasonably requested by another Party to effectuate the purpose of this Agreement.

9. The Parties agree that this Agreement shall be construed and enforced in accordance with and governed by the laws of New York, without regard to its conflict of laws principles. The Parties hereby consent to exclusive venue and jurisdiction in the state and federal courts located in the State of New York. **EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH REGARD TO ANY DISPUTE RELATED HERETO.** If one or more of the provisions hereof are deemed by a court of competent jurisdiction to be unenforceable, in whole or in part, the scope of such provisions shall be reduced to the extent necessary to make them enforceable or, if such reduction is not possible for any reason, such provisions shall be severed from this Agreement entirely, without effect upon the balance hereof.

10. This Agreement may be executed through separate signature pages or in any number of counterparts, and each of such counterparts shall, for all purposes, constitute one agreement binding on all Parties.

11. Any and all notices required to be sent by a Party to another Party hereunder shall be addressed as follows by certified mail or mail courier service:

To the Town:

Town of Duaneburg
Attn: Supervisor
5853 Western Turnpike
Duaneburg, NY 12056

With a copy to:

Whiteman Osterman & Hanna LLP
Attn: Teresa Bakner, Esq.
One Commerce Plaza
Albany, New York 12260

To Operator:

Oak Hill Solar 1 LLC
c/o **AMP Solar Development Inc.**

1550 Wewatta St., 4th Floor
Denver, CO 80202

With an electronic copy to:

jdonald@amp.energy

To Landowner:

Richard Murray 1206 Oak Hill Rd.
Esperance, NY 12066

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement as of the date first written above.

TOWN:

Town of Duanesburg

By: _____

Name: Roger Tidball

Title: Town Supervisor

OPERATOR:

Oak Hill Solar 1 LLC

By: AMP Solar Development Inc.

Its: Manager

By: _____

Name: David Rogers

Title: President

LANDOWNER:

By: _____

Name:

Title: