



**Electrical Power Exchange Agreement**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, by and between the City of Elberton (hereafter “the City”) and (Applicant Name) \_\_\_\_\_ (hereafter “Customer”) for the Customer Electric Service Location at the following address: \_\_\_\_\_.

WITNESSETH:

WHEREAS, Customer owns the above noted property, and owns/leases or permits to operate an associated system on such property that has the capability of generating electricity of the quality and type that can be provided to the City; and

WHEREAS, the City is a municipal utility duly established with authority to serve electrical needs to this property; and

WHEREAS, Customer desires to sell to the City excess electrical energy that may at any given time could exceed the electrical energy consumed on the Customer’s property; and

WHEREAS, the City desires to purchase such excess electrical energy.

NOW, therefore, in consideration of the terms, conditions, covenants, agreements and obligations herein stated, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed by and between the parties hereto as follows:

1. OBLIGATIONS OF THE CITY

At the Customer’s expense, the City will install single directional metering or bi-directional metering depending on the Customer’s method of installation. All installed related costs for metering and associated equipment will be paid by the Customer at the time service is initiated under this Agreement.

Bi-directional metering is defined as measuring the amount of electricity supplied by the City and the amount fed back to the City by the Customer’s distributed generation facility during the billing period using the same meter. Bi-directional metering shall be used where distributed generation facilities are connected to the City on the Customer’s side of the Customer’s meter.

Single directional metering shall be defined as measuring electricity produced or consumed during the billing period, in accordance with normal metering

practices. Single directional metering shall be used where distributed generation facilities are connected to the City's distribution system on the City's side of the Customer's meter.

#### Bi-directional metering

1. When billing period kWh's supplied by the City exceeds kWh's generated by the Customer's distributed generation, the electricity shall be billed by the City in accordance with the applicable tariff(s).
2. When billing period kWh's generated by the Customer's distributed generation system exceeds kWh's supplied by the City, the Customer shall be billed for appropriate Customer charges for that billing period, and **credited** for any excess kWh's generated during the billing period in accordance with the City approved Distributed Generation - Renewable Energy Tariff.

#### Single directional metering

1. When billing period kWh's are generated by the Customer's distributed generation facility, the Customer shall be compensated for these kWh's based on avoided energy costs as determined by the City. The City will only compensate the Customer for avoided energy kWh's as determined by metered energy delivered to the City's distribution system.
2. The billing period Customer's net bill will be calculated using the City calculation for avoided energy compensation (as described above) credited to the Customer, netted against the billing period charges for the Customer's regular service (according to the applicable tariff) based on actual metered energy.

The City will only be required to purchase energy from eligible distributed generation facilities on a first-come, first-served basis until the cumulative generating capacity of all renewable energy sources from all Customer's equals 0.2% of the City's annual peak demand in the previous year. Additional energy may be purchased by the City at a cost agreed to by it and the Customer.

In the event the Customer develops a credit balance during a billing period, the credit balance will be carried forward in accordance with the procedures outlined in the City's Distributed Generation - Renewable Energy Tariff.

The City reserves the right to separate Customer's equipment from the City's lines and facilities if, in the exclusive opinion of the City engineering staff, continued parallel operation is unsafe or may cause damage to persons or property. Upon such separation, the City shall promptly notify Customer so that any unsafe condition can be corrected.

## 2. OBLIGATIONS OF CUSTOMER

Customer agrees and warrants:

- a) That it has full power and authority to execute and deliver this Agreement and all documents contemplated hereunder, and to assure full performance and compliance.
- b) That the Customer will pay for the electrical power exchanged as provided by this Agreement according to the applicable City tariffs.
- c) That the Customer shall supply the City with appropriate electrical interconnection plans, which must be designed to protect the safety of the City and the general public, and which must be pre-approved by the City. Included in these plans must be the requirement that the Customer-owned interconnection equipment must disconnect from the City's electrical system upon the absence of City utility power. Customer must complete the City "Application for Interconnection of Distributed Generation Facility" and the City "Interconnection Agreement".
- d) That the Customer agrees to provide the City access to the metering equipment, and agrees to cooperate with the City for any special, temporary metering intended to monitor energy flows.
- e) That the Customer agrees to allow the City to use data gathered from this installation for public use, such as newsletter articles, presentation, or other similar uses. Customer's name will be protected if requested in writing by Customer, for such use.
- f) That the Customer agrees to pay for any incremental City metering or electrical distribution system costs necessitated by this Agreement.
- g) That the Customer will provide, install, own/lease and maintain such power exchange and interconnection equipment that provides for the safe interconnection to the City's system.
- h) That the Customer's installed distributed generation and interconnection equipment will operate safely at the time of installation and throughout the term of the Agreement.
- i) That the Customer will notify the City of any changes to the Customer's system (size change, generation change, or change in interconnection equipment). Technical information on any changes in Customer's equipment must be provided to the City and pre-approval received from the City prior to Customer connection and operation of such equipment.
- j) That the Customer shall comply at all times with applicable law, including without limitation, City's service rules, regulations, terms, policies and procedures, as amended from time to time, which are incorporated herein by this reference,

## 3. TERM

This Agreement shall continue for a period of one (1) year, effective the date of first operation of the power exchange system, but no later than three months after the City has installed the proper electric metering. This Agreement shall automatically renew for additional one year periods following the expiration date if neither party gives the other notice of termination at least ninety (90) days in advance of the expiration date of the original term or any one year extension thereof.

#### 4. COMPENSATION AND BILLING

Customer and the City agree to pay for the electrical power exchanged per the applicable rates and schedules as approved the City of \_\_\_\_\_.

#### 5. LEGAL STATUS

It is understood and agreed that no agency, employment, joint venture or partnership is created hereby between the parties hereto; that the City is not an affiliate of the Customer; and that neither party, nor its agents or employees, shall be deemed to be agent of the other, nor shall either party have the right, power or authority to act for the other party in any manner to create obligations or debts which would be binding upon the other party.

#### 6. RIGHT TO TERMINATE

- a) Prior to the end of the term of this Agreement, as set forth in Section 3 hereof, including any extensions or renewals, this Agreement shall be terminated as follows:
  - i. In the event Customer fails to comply with any material provision of this Agreement ("Default") which Default shall not have been cured within thirty (30) business days after written notice.
  - ii. This Agreement shall terminate if the City is denied the right to serve the Property by a court, by a public body or by a state agency or if the City determines that it is legally impermissible for it to serve the Property.
  - iii. At the City's option in the event of any conveyance of the property by Customer.
- b) If this Agreement is terminated for any reason, the City shall have the right, but not the obligation, to disconnect or remove any city equipment within a reasonable period of time following termination.
- c) The City reserves the right to inspect and test the Customer's equipment and system operation at any time before activation or during the term of this Agreement to ensure proper operation and compliance with safety requirements. This Agreement may be terminated by the City if in the exclusive opinion of the City engineering staff the system is unsafe or otherwise not operating in compliance with this Agreement and any technical requirements contained herein.

#### 7. LIABILITY AND INDEMNIFICATION

- a) Customer hereby agrees to indemnify the City against, and to hold the City harmless of and from any and all liability, claims, loss, damage and expense, including, without limitation, reasonable attorney fees and costs which the City may suffer or incur, by reason of any breach of any warranty or representation made by Customer, or by reason of any action or proceeding asserted or instituted, arising from such breach, or asserted by any tenant or third party claiming rights under this Agreement or otherwise related to this Agreement.
- b) Customer and its successors shall hold the City harmless from any damages caused by Customer, its agents, its residents or occupants, unless such

damages shall result from the City's gross negligent installation or maintenance of any or all of the City's electrical system.

- c) Nothing in this Agreement shall be construed as a waiver by the City of any rights, immunities, privileges, monetary limitations to judgments, and defenses available to the City under law.

## 8. SUCCESSORS

This Agreement, shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors, heirs and assigns.

## 9. NOTICES AND PAYMENTS

Any and all payments, notices or other communications provided for herein shall be delivered at the addresses as first set forth above or any other address which may be specified in writing by the parties hereto. All notices required to be given hereunder shall be given in writing, sent by certified mail, return receipt requested, and shall be deemed effective five (5) days after such mailing.

## 10. GOVERNING LAW

This Agreement shall be construed in accordance with and governed by the laws of the State of Georgia and the exclusive venue for all actions arising out of this Agreement (including any action for declaratory relief) shall be in Elbert County, Georgia.

## 11. ENTIRE AGREEMENT

This Agreement constitutes the entire understanding between the parties and contains all the covenants made between the parties with respect to the subject matter hereof. This Agreement supersedes any and all other agreements between the parties, either oral or in writing, with respect to the subject matter hereof.

## 12. AMENDMENTS

This Agreement may be amended, changed or modified only by written amendment executed by the parties hereto. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the party charged.

## 13. CUSTOMER'S REMEDIES

The exclusive and sole remedy of the Customer shall be receipt of payment for the value of electricity generated by Customer and provided to the City.

## 14. LIMITED LIABILITY

Neither party to this Agreement shall be liable for the other's lost profits or special, incidental, or consequential damages, whether in an action in contract or tort, even if the party has been advised by the other party of the possibility of such damages.

15. FORCE MAJEURE

Neither party will be deemed to be in breach of this Agreement if it is unable to perform its obligations hereunder as a result of the occurrence of a failure of equipment or facilities, an event of "force majeure," or other causes beyond such party's reasonable ability to control.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year set forth below.

City of Elberton d/b/a  
Elberton Utilities:

Customer:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Customer Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_

Date: \_\_\_\_\_