

**APPROVING RESOLUTION
ALBANY PORT DISTRICT COMMISSION PROJECT**

A regular meeting of Town of Bethlehem Industrial Development Agency (the “Agency”) was convened in public session at the offices of the Agency located at the Town of Bethlehem Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York on March 25, 2022, at 8:00 o’clock, a.m., local time.

The meeting was called to order by the Chair and, upon roll being called, the following members of the Agency were:

PRESENT:

Victoria Storrs	Chair
Tim Maniccia	Secretary
Richard Kotlow	Treasurer
David Kidera	Member
Chris Bub	Member

ABSENT:

Jared Finke	Member
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AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Catherine Hedgeman, Esq.	Executive Director, Assistant Secretary and Agency Counsel
Allen F. Maikels	Treasurer, Chief Financial Officer and Contracting Officer
Robin Nagengast	Assistant Executive Director
Robert Leslie	Director, Department of Economic Development & Planning

The following resolution was offered by David Kidera, seconded by Richard Kotlow, to wit:

Resolution No. 0322-____

RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION WITH A LEASE/LEASEBACK TRANSACTION FOR A PROJECT FOR ALBANY PORT DISTRICT COMMISSION (THE “APDC”).

WHEREAS, Town of Bethlehem Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 582 of the 1973 Laws of New York, as amended, constituting Section 909-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of commercial, manufacturing and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, in September, 2021, the Albany Port District Commission, a New York State public benefit corporation (the “APDC”), submitted an application (the “Application”) to the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the APDC, said Project consisting of the following: (A) (1) the acquisition of an interest in two (2) parcels of land containing in the aggregate approximately 81 acres located on Port Road South (tax map number 98.01-2-1) and East of River Road (NYS Rt. 144) south of Normans Kill and north of PSEG property (tax map number 98.00-2-10.23) in the Town of Bethlehem, Albany County, New York (collectively, the “Land”), (2) the construction on the Land of four (4) buildings containing in the aggregate approximately 560,000 square feet of space, a bridge, related parking and various infrastructure improvements (collectively, the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the “Equipment”) (the Land, the Facility, and the Equipment being collectively hereinafter referred to as the “Project Facility”), all of the foregoing to constitute an industrial/manufacturing facility to be owned by the APDC and operated by a joint venture third party operator as a wind tower manufacturing and shipping facility and any other directly and indirectly related activities; (B) the granting of certain potential “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes (the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the APDC or such other person as may be designated by the APDC and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on September 24, 2021 (the “Public Hearing Resolution”), the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on September 30, 2021 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be posted on September 28, 2021 at the Town Hall Auditorium located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York, (C) caused notice of the Public Hearing to be published on October 1, 2021 in the Albany Times Union, a newspaper of general circulation available to the residents of Town of Bethlehem, New York, (D) conducted the Public Hearing on October 13, 2021 at 4:30 p.m., local time at the Town Hall Auditorium located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York 12054, and (E) prepared a report of the Public Hearing (the “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on December 17, 2021 (the “Preliminary Term Sheet Resolution”), the Agency approved an IDA Term Sheet (the “IDA Term Sheet”) outlining the Financial Assistance the Agency would provide, which assistance was contingent upon (A) the completion of the SEQRA (as hereinafter defined) review by the Town of Bethlehem Planning Board (the “Planning Board”), (B) the preparation, review and finalization of the documents providing for an IDA straight lease transaction (the “APDC Documents”) outlined below, such documents to be subject to review and approval by the Agency Counsel, and (C) adoption by the Agency of an “approving resolution” which approves the APDC Documents; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), (A) the Executive Director of the Agency has reported to the members of the Agency, as follows: (1) that all state and local governmental agencies identified as “involved agencies” with respect to the Project have agreed that the Town of Bethlehem Planning Board should act as the “lead agency” (the “Lead Agency”) pursuant to SEQRA with respect to the Project; (2) the Lead Agency on May 5, 2020, accepted a final generic environmental impact statement (the “FGEIS”) prepared with respect to the Project, which analyzed and evaluated potential environmental impacts equally with social and economic factors associated with the conceptual development of the Project; (3) on June 2, 2020, the Lead Agency adopted the FGEIS Findings Statement, which established thresholds pursuant to SEQRA to be followed during the design, construction and operations phase of a future specific Project; (4) a supplemental draft environmental impact statement (the “SDEIS”) was submitted to the Lead Agency on November 16, 2021; (5) the Lead Agency accepted the supplemental final environmental impact statement (the “SFEIS”) on March 1, 2022; (6) the staff of the Agency received a copy of the FGEIS, the SDEIS and the SFEIS; (7) the staff of the Agency reviewed the FGEIS, the SDEIS and the SFEIS; (8) the staff of the Agency also received a copy of a Planning Board’s Findings Statement relative to the FGEIS, the SDEIS and the SFEIS (the “Findings Statement”), which Findings Statement was adopted by the Lead Agency on March 15, 2022; and (9) the staff of the Agency reviewed the Findings Statement and (B) by resolution adopted by the members of the Agency on March 25, 2022 (the “SEQR Resolution”), the members of the Agency (1) concurred in the determination by the Town of Bethlehem Planning Board should act as the “lead agency” pursuant to SEQRA with respect to the Project; (2) adopted the Findings Statement as the Agency’s written findings statement relative to the Project, as required by Section 617.11(c) of the Regulations and (3) determined to proceed with the Project; and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the APDC that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the APDC to undertake the Project in the Town of Bethlehem, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

WHEREAS, the Agency desires to encourage the APDC to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of the Town of Bethlehem, New York by undertaking the Project in the Town of Bethlehem, New York; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the “Agency Documents”): (A) a certain lease to agency (the “Lease to Agency” or the “Underlying Lease”) by and between the APDC, as landlord, and the Agency, as tenant, pursuant to which the APDC will lease to the Agency the Land and all improvements now or hereafter located on said portion of the Land (collectively, the “Leased Premises”); (B) a certain license agreement (the “License to Agency” or the “License Agreement”) by and between the APDC, as licensor, and the Agency, as licensee, pursuant to which the APDC will grant to the Agency (1) a license to enter upon the Land (the “Licensed Premises”) for the purpose of undertaking and completing the Project and (2) in the event of an occurrence of an Event of Default by the APDC, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement (as hereinafter defined); (C) a lease agreement (and a memorandum thereof) (the “Lease Agreement”) by and between the Agency and the APDC, pursuant to which, among other things, the APDC agrees to undertake the Project as agent of the Agency and the APDC further agrees to lease the Project Facility from the Agency and, as rental

thereunder, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (D) a uniform agency project agreement (the "Uniform Agency Project Agreement") by and between the Agency and the APDC regarding the granting of the financial assistance and the potential recapture of such assistance; (E) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the APDC and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (F) a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance; (G) a New York State Department of Taxation and Finance form entitled "IDA Appointment of Project Operator or Agency for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report") and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the "Additional Thirty-Day Project Report"); and (H) various certificates relating to the Project (the "Closing Documents");

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. All action taken by the Executive Director of the Agency, Agency Counsel and Agency Special Counsel with respect to the Public Hearing with respect to the Project is hereby ratified and confirmed.

Section 2. The law firm of Whiteman Osterman & Hanna LLP is hereby appointed Special Counsel to the Agency with respect to all matters in connection with the Project. Special Counsel for the Agency is hereby authorized, at the expense of the APDC, to work with the APDC, counsel to the APDC, counsel to the Agency and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution. Special Counsel has prepared and submitted an initial draft of the Agency Documents to staff of the Agency.

Section 3. The Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act;

(B) The Project constitutes a "project," as such term is defined in the Act;

(C) The Project site is located entirely within the boundaries of the Town of Bethlehem, New York;

(D) It is estimated at the present time that the costs of the planning, development, acquisition, construction and installation of the Project Facility (collectively, the "Project Costs") will be approximately \$235,213,646;

(E) The completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York;

(F) The Project Facility does not constitute a project where facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit

such facilities constitute more than one-third of the total cost of the Project, and accordingly the Project is not prohibited by the provisions of Section 862(2)(a) of the Act;

(G) The Project should receive financial assistance in the form of an exemption from sales tax based on the following factors contained in Section 1703 of the Agency's Uniform Tax Exemption Policy ("UTEP"):

- (1) the nature of the Project Facility is industrial/manufacturing (Factor #1);
- (2) the nature of the real property before the Project is undertaken is vacant land (Factor #2);
- (3) the general economic condition of the area where the Project Facility will be located is generally under-developed (Factor #3);
- (4) the Project will create a significant number of permanent private sector jobs (Factor #4);
- (5) the estimated value the tax exemptions (i.e., exemption from sales tax) to be provided is approximately \$853,000 (Factor #5);
- (6) the impact of the Project on affected tax jurisdictions is beneficial as the Project will stimulate development and growth in the Capital District (Factor #6);
- (7) the impact of the Project will be beneficial to existing and proposed businesses (the Project reflects a significant NYS initiative of stimulating and assisting renewable energy projects in NYS in general and the Capital District in particular) (Factor #7);
- (8) the amount of private sector investment is approximately \$235,213,646 (Factor #8);
- (9) it is likely that the Project Facility will be completed on time (Factor #9);
- (10) the Town Planning Board has been the lead agency with respect to the Project and has issued a EIS and a Findings Statement with respect to the Project (Factor #10);
- (11) due to the increased development relating to the Project, it is expected that the Project will provide additional sources of revenue to the municipalities and school district in which the Project Facility is located (Factor #11);
- (12) it is expected that the undertaking of the Project will provide economic benefits not otherwise available in the Town of Bethlehem (Factor #12);
- (13) the affected tax jurisdictions will be reimbursed if the Project is not completed (i.e., the Agency will enter into a Uniform Agency Project Agreement providing for claw-backs (see Exhibit A attached)) (Factor #13);
- (14) at the public hearing held by the Agency with respect to the Project, all persons who spoke supported the Project (Factor #14);

(15) it is expected that the Project Facility will have a minimal impact on the need for additional services and such issues were (Factor #15);

(16) the Financial Assistance and the involvement of the Agency are significant components in the ability of the APDC to undertake and complete the Project (Factor #16), and

(17) the Project is designed to provide for renewable energy facilities, and will utilize, to the fullest extent practicable and feasible, resource conservation, energy efficiency, green technologies, and alternative and renewable energy measures (Factor #17).

(H) The provisions regarding potential claw-backs of the Financial Assistance are described in Exhibit A attached to this Resolution;

(I) The granting of the Financial Assistance by the Agency with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of the Town of Bethlehem, Albany County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;

(J) The Agency has reviewed the Public Hearing Report and has fully considered all comments contained therein; and

(K) It is desirable and in the public interest for the Agency to enter into the Agency Documents.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (A) accept the License Agreement; (B) lease the Project Facility to the APDC pursuant to the Lease Agreement; (C) acquire, construct and install the Project Facility, or cause the Project Facility to be acquired, installed and constructed; (D) enter into the Uniform Agency Project Agreement; (E) enter into the Section 875 GML Recapture Agreement; and (F) grant the Financial Assistance with respect to the Project.

Section 5. The Agency is hereby authorized (A) to acquire a license in the Licensed Premises pursuant to the License Agreement, (B) to acquire a leasehold interest in the Leased Premises pursuant to the Underlying Lease, (C) to acquire title to the Equipment pursuant to a bill of sale (the "Bill of Sale to Agency") from the APDC to the Agency, and (D) to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisitions are hereby approved, ratified and confirmed.

Section 6. The Agency is hereby authorized to acquire, construct and install the Project Facility as described in the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and installation are hereby ratified, confirmed and approved.

Section 7. The Chair of the Agency, with the assistance of Agency Counsel and/or Special Counsel, is authorized to negotiate and approve the form and substance of the Agency Documents.

Section 8. The Agency has been informed that Hodgson Russ LLP is acting as counsel to the APDC with respect to the Project. As described in Section 2 above, the Agency has retained Whiteman Osterman & Hanna LLP to act as Agency Special Counsel with respect to the Project. The Agency hereby

waives any potential conflict resulting from Hodgson Russ LLP acting as counsel to the APDC with respect to the Project, and on any other related or unrelated matters, and authorizes the Chief Executive Officer and/or the Chair to execute any document or documents evidencing such waiver.

Section 9. (A) The Chair of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in the forms thereof as the Chair shall approve, the execution thereof by the Chair to constitute conclusive evidence of such approval.

(B) The Chair of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 10. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 11. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Victoria Storrs	VOTING	YES
Tim Maniccia	VOTING	YES
Richard Kotlow	VOTING	YES
David Kidera	VOTING	YES
Jared Finke	VOTING	ABSENT
Chris Bub	VOTING	YES

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF ALBANY)

I, the undersigned Secretary of Town of Bethlehem Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on March 25, 2022 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

25th IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this day of March, 2022.


Secretary

(SEAL)

EXHIBIT A

DESCRIPTION OF THE RECAPTURE EVENTS

In connection with the Project and the granting of the Financial Assistance, the Agency and the Project Beneficiary agree that the following shall constitute recapture events with respect to the Project and the granting of the Financial Assistance:

- (1) failure to complete the acquisition, construction and installation of the Project Facility by the Completion Date;
- (2) liquidation of substantially all of the APDC's operating assets and/or cessation of substantially all of the APDC's operations;
- (3) relocation of all or substantially all of the APDC's operations at the Project Facility to another site, or the sale, lease or other disposition of all or substantially all of the Project Facility;
- (4) failure by the APDC to comply in all material respects with the annual reporting requirements or to provide the Agency with requested information;
- (5) sublease of all or part of the Project Facility in violation of the Basic Documents;
- (6) a change in the use of the Project Facility, other than as an industrial/manufacturing facility to be owned by the APDC and operated by a joint venture third party operator as a wind tower manufacturing and shipping facility and any other directly and indirectly related activities and other directly and indirectly related uses; or
- (7) failure by the APDC to make an actual investment in the Project by the Project's Completion Date equal to or exceeding 80% of the Total Project Costs as set forth in the APDC's application for Financial Assistance.