

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
INDUCEMENT RESOLUTION**

**NIAGARA WIND POWER, LLC, AND/OR INDIVIDUAL(S) OR AFFILIATE(S),  
SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS  
BEHALF**

A regular meeting of the Erie County Industrial Development Agency was convened on Wednesday, November 20, 2019 at 12:00 p.m.

The following resolution was duly offered and seconded, to wit:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF NIAGARA WIND POWER, LLC AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, THE “COMPANY”) IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF A PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT; AND (iv) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, A FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

**WHEREAS**, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 293 of the Laws of 1970 of the State of New York, as amended (collectively, the “Act”), the ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the “Agency”) was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing, commercial and other facilities as authorized by the Act; and

**WHEREAS**, the Company has submitted an application to the Agency (the “Application”) requesting the Agency’s assistance with a certain project (the “Project”) consisting of: (i) the acquisition by the Agency of a leasehold interest in eight (8) parcels of real property at 2303 Hamburg Turnpike in the City of Lackawanna, Erie County, New York (the “Parcels”) together with eight (8) 2.5 megawatts (“MW”) wind turbines (the “Existing Improvements”), (ii) the replacement and upgrading of the Existing Improvements without changing the existing towers, foundations and electrical equipment (the “Improvements”), and (iii) the acquisition and installation by the Company of certain items of machinery, equipment and other tangible personal property necessary for the operation of the wind energy generation

facility (the “Equipment”, and collectively with the Parcels, the Existing Improvements and the Improvements, the “Facility”); and

**WHEREAS**, pursuant to General Municipal Law Section 859-a, on November 18, 2019, at 9:30 a.m., at the City of Lackawanna City Hall located at 714 Ridge Road (Council Chambers), Lackawanna, New York 14218, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance (as hereinafter defined) being contemplated by the Agency (the “Public Hearing”) whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

**WHEREAS**, it is contemplated that the Agency will (i) execute and deliver a financial assistance project agreement (the “Project Agreement”), (ii) negotiate and enter into a lease agreement (the “Lease Agreement”) and related leaseback agreement (the “Leaseback Agreement”) with the Company, pursuant to which the Agency will retain a leasehold interest in the Parcels and or the Existing Improvements, the Improvements, the Equipment and personal property constituting the Facility; and (iii) provide Financial Assistance to the Company in the form of a partial abatement from real property taxes benefit through a fifteen (15) year term PILOT Agreement for the benefit of each municipality and school district having taxing jurisdiction over the Project, (the “Financial Assistance”); and

**WHEREAS**, commensurate with the submission of the Application to the Agency, the Company has requested the Agency’s consideration of a deviation from the Agency’s Uniform Tax Exemption Policy (“UTEP”) to allow for a payment-in-lieu-of-tax agreement (“PILOT Agreement”) to utilize a per-MW payment structure providing for fifteen (15) years of real property tax abatement for the Facility consisting of a flat payment of \$10,000 per MW for the first ten years of the term of the PILOT Agreement, and then said initial payment amount to be increased 5% in year years eleven through fifteen of the remaining term of the PILOT Agreement (the “PILOT Deviation”); and

**WHEREAS**, Notice letters stating that there will be a deviation from the Agency’s UTEP and describing the PILOT Deviation were mailed or delivered to the chief executive officers of each Affected Tax Jurisdictions on November 7, 2019; and

**WHEREAS**, the Company’s PILOT Deviation request also details that the Company and the City of Lackawanna have also agreed to enter into a certain host community agreement whereby the Company will make payments to the City in the amount equal to \$1,000 per MW per each year during the term of the PILOT Agreement (the “Host Community Agreement”); and

**WHEREAS**, by resolution adopted November 20, 2019, the Agency adopted a negative declaration in compliance with the New York State Environmental Quality Review Act; and

**WHEREAS**, at this November 20, 2019, regular meeting of the Agency, the Agency allowed representatives of all Affected Tax Jurisdictions present at the meeting to address the Agency with respect to the deviation from the Agency’s UTEP; and

**WHEREAS**, pursuant to Article 18-A of the Act, the Agency desires to adopt a resolution describing the Project and the Financial Assistance that the Agency is contemplating with respect to the Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:**

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application and any other correspondence submitted by the Company to the Agency, public hearing comments, if any, and Agency board member review, discussion, and consideration of same, 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; and

(B) The Agency has the authority to take the actions contemplated herein under the Act; and

(C) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing and/or retaining employment opportunities in Erie County, New York and otherwise furthering the purposes of the Agency as set forth in the Act; and

(D) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries, and, to the extent occupants are relocating from one plant or facility to another in another area of the State, the Agency has complied with the Intermunicipal Movement procedures as required in the UTEP; and

(E) The Agency has assessed all material information included in connection with the Application necessary to afford a reasonable basis for the decision by the Agency to provide Financial Assistance for the Project as described herein; and

(F) The Agency has prepared a written cost-benefit analysis identifying the extent to which the Project will create or retain permanent, private sector jobs, the estimated value of any tax exemption to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the Project in a timely fashion, and the extent to which the Project will provide additional sources of revenue for municipalities and school districts, and any other public benefits that might occur as a result of the Project; and

(G) The Company has provided a written statement confirming that the Project as of the date of the Application is in substantial compliance with all provisions the Act; and

(H) The Project qualifies for Agency Financial Assistance as it meets the Agency's evaluative criteria for energy production projects, said criteria established by New York State and the Agency as required under General Municipal Law Section 859-a(5) as evidenced by the following:

(i) Wage Rate (above median wage for area): Erie County median worker income: \$33,350. The Company's estimated average salary of jobs to be retained is \$80,000.

(ii) In Region Purchases: The Company estimates that 67% of its total annual supplies, raw materials and vendor services will be purchased from firms in Erie County but notes that for the renovation related to replacing turbine components that parts must be provided by certain manufacturers located outside of the local labor area.

(iii) The Project meets and advances New York State Renewable Energy Production.

(I) The project is located in a highly distressed area as defined in the New York General Municipal Law.

Section 2. The proposed Financial Assistance to the Project deviates from the terms of the Agency's UTEP to the extent that the Company has requested a PILOT Agreement providing for a flat payment of \$10,000 per MW for the first ten years of the term of the PILOT Agreement, and then said initial payment amount to be increased 5% in year years eleven through fifteen of the remaining term of the PILOT Agreement. The Agency hereby approves of the deviation from its UTEP for this PILOT Deviation request and authorizes the provision of the Financial Assistance to the Company as described herein. In making this determination, the Agency has considered the following factors as required by the Act and its UTEP, no single one of which is determinative:

- The extent to which the Project will create or retain permanent, private sector jobs. The Company has represented that construction jobs will be created during the construction time period, and that the currently existing 3 full-time employee positions related to the operation of the Facility will be retained.
- The estimated value of tax exemptions to be provided. Given the uncertainty surrounding the affected taxing jurisdictions' future tax rates, along with the extent of any appreciation or depreciation in the value of the Facility, it is difficult to quantify the value of tax exemption to be provided pursuant to the PILOT Agreement.
- Whether affected taxing jurisdictions shall be reimbursed by the Project occupant if the Project does not fulfill the purposes for which an exemption was provided. The Company will be subject to potential Financial Assistance

recapture in the event it does not adhere to the Agency's standard material terms and conditions of receipt of financial assistance.

- The impact of the proposed project on existing and proposed businesses and economic development projects in the vicinity. The impact of the Project is a positive one on the community, as it will continue to promote job opportunities, general prosperity and economic welfare for the residents of Erie County and the City of Lackawanna and in addition, the Project will fulfill alternative, renewable, green energy needs of the State of New York.
- The amount of private sector investment generated or likely to be generated by the Project. The total private sector investment in the Project is expected to exceed approximately \$17,171,429.
- The demonstrated public support for a proposed Project. The affected taxing jurisdictions have all expressed support for the Project.
- The likelihood of accomplishing the proposed project in a timely fashion. It is anticipated that the Project will be completed in 2020.
- The Project will not result in any adverse environmental impact and the continued production of alternative, renewal, green energy is consistent with New York State and Erie County energy policies.
- The extent to which the Project will require the provision for additional services. This Project involves the rehabilitation of the already existing and operating wind turbine structure and facility such that no additional services will be required.
- The extent to which the Project will provide additional sources of revenue for municipalities and school districts. The benefit is a positive one economically, in that it is expected that the PILOT Agreement payments will be greater than what would be collected in the event the Project is not undertaken.

Section 3. The approval of the PILOT Deviation request and the execution and delivery of the PILOT Agreement is specifically conditioned upon the Company and the City of Lackawanna entering into the Host Community Agreement as described herein.

Section 4. Subject to the Company executing a Project Agreement and the delivery to the Agency of a binder, certificate or other evidence of insurance for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project.

Pursuant to the policies of the Agency, the Agency may recover or recapture from the Company partial abatements from real property taxes benefits taken by the Company if it is

determined that: (i) the Company has made a material false statement on its application for Financial Assistance; (ii) the partial abatement from real property taxes are taken in cases where the Company fails to comply with the Investment Commitment, the Employment Commitment, and/or the Local Labor Commitment, said commitments, as described below, being a material term or condition to use property or services in the manner approved by the Agency in connection with the Project; and/or (iii) the partial abatement from real property taxes benefits are taken in cases where the Company fails to comply with the Equal Pay Commitment and/or the Unpaid Real Property Tax Policy Commitment, as described below, being a material term or condition to use property or services in the manner approved by the Agency in connection with the Project.

As a condition precedent of receiving Financial Assistance, the Company must (i) cooperate with the Agency in its efforts to recover or recapture any Financial Assistance, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

As an additional condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Agency in connection with the Project, the Company covenants and agrees and understands that it must, subject to potential modification, termination, and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, submit, on an annual basis or as otherwise indicated below through the termination of the PILOT Agreement, a certification, as so required by the Agency, confirming:

- (i) Investment Commitment – the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$14,595,715 (which represents the product of 85% multiplied by \$17,171,429, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there are at least three (3) existing full time equivalent (“FTE”) employees located at, or to be located at, the Facility as stated in the Company’s application for Financial Assistance (the “Baseline FTE”); and that the Company has maintained the Baseline FTE as stated in the Company’s application for Financial Assistance. In an effort to confirm and verify the Company’s employment numbers, the Agency requires that, at a minimum, the Company provide employment data to the Agency on a quarterly basis, said information to be provided on the Agency’s “Quarterly Employment Survey” form to be made available to the Company by the Agency.
- (iii) Local Labor Commitment – that the Company adheres to and complies with the Agency’s Local Labor Workforce Certification Policy on a quarterly basis during the construction period.
- (iv) Equal Pay Commitment – that the Company adheres to and complies with the Agency’s Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency’s Unpaid Real Property Tax Policy.

Section 5. Subject to the terms of this Resolution, the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer, are hereby authorized, on behalf of the Agency, to negotiate, execute and deliver (A) the Project Agreement, (B) the Lease Agreement whereby the Company leases the Project to the Agency, (C) the related Leaseback Agreement whereby the Agency leases the Project back to the Company, and (D) the PILOT Agreement and (E) related documents; provided, however, that (i) the rental payments under the Leaseback Agreement to the Company include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's UTEP, or procedures for deviation have been complied with accordingly.

Section 6. 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 and to negotiate, execute and deliver all such 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 resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 7. The provision by the Agency of Financial Assistance with respect to the Project as described herein is subject to the execution and delivery of the Agency's Administrative Fee Agreement (the "Fee Agreement") and payment by the Company of an administrative fee calculated in accordance with the Fee Agreement, all within sixty (60) days of the date of this resolution. In the event the Agency has not received the executed Fee Agreement and the appropriate fee within such sixty (60) day period, this resolution shall become automatically null and void and of no further effect and the Agency shall have no liability to the Company hereunder or otherwise, unless extended in the discretion of the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer, or the Assistant Treasurer for good cause shown.

Section 8. This Resolution shall take effect immediately, and shall expire one (1) year from the date hereof unless extended for good cause by the Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer, or the Assistant Treasurer.

Dated: November 20, 2019

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

I, the undersigned Secretary of the Erie County Industrial Development Agency, DO  
HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the Erie County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on November 20, 2019, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of the Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with Article 7.

I FURTHER CERTIFY, that 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 modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 20<sup>th</sup> day of November, 2019.



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Karen M. Fiala  
Secretary

[SEAL]