

FINAL RESOLUTION

(Canandaigua Power Partners II, LLC Project – Dutch Hill)

A regular meeting of the Steuben County Industrial Development Agency was convened on Thursday, October 24, 2019.

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

Resolution No. 10/2019 - 52

RESOLUTION OF THE STEUBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) ACKNOWLEDGING THE PUBLIC HEARING HELD WITH RESPECT TO THE CANANDAIGUA POWER PARTNERS II, LLC PROJECT (AS MORE FULLY DESCRIBED BELOW) ON OCTOBER 23, 2019; (ii) APPOINTING CANANDAIGUA POWER PARTNERS II, LLC AS AGENT OF THE AGENCY TO UNDERTAKE THE PROJECT; AND (iii) AUTHORIZING THE EXECUTION AND DELIVERY OF A PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, TAX AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 178 of the Laws of 1972 of the State of New York, as amended (hereinafter collectively called the "Act"), the **STEUBEN 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 industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, by resolutions adopted by the Agency on August 23, 2007 and January 24, 2008 (collectively, the "Original Resolution"), the Agency authorized the execution and delivery of certain documents in connection with a certain project (the "Original Project") undertaken by **CANANDAIGUA POWER PARTNERS II, LLC** (the "Company"), as agent of the Agency, consisting of: (i) the acquisition by the Agency of fee title to or a leasehold interest in various parcels of land consisting of approximately 2,560 acres of leased land located off of Shults Hill Road, Fleishman Road, Davis Hollow Road, Dutch Hill Road, Drum Road, Atlanta Back Road, Jeh Road, State Route 371 and Edmond Road, all within the Town of Cohocton, Steuben County, New York, as more fully described on Schedule 1 attached hereto (collectively, the "Land"), (ii) the construction and equipping on the Land of a wind energy generation facility consisting of approximately fifteen (15) wind turbines with the capacity to produce, in the aggregate, 37.5 megawatts of power, based on the manufactured design specifications of each wind turbine (a "nameplate capacity"), together with related substations, overhead and underground cabling and roadways for the production of wind-generated electricity (the "Original Improvements"), (iii) the acquisition of and installation in and around the Original Improvements of certain additional items of equipment and personal property necessary for the operation and maintenance of the wind energy generation facility (the

"Original Equipment"; and, collectively with the Land and the Original Improvements, the "Original Facility"); and

WHEREAS, the Company submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project"), consisting of: (i) the retention by the Agency of its interest in the Land, (ii) the replacement of the Original Improvements to extend the useful life of the Original Facility (the "2019 Improvements"), and (iii) the acquisition and installation by the Company in and around the Original Improvements of certain items of equipment and other tangible personal property to undertake the Project (the "2019 Equipment"; and, collectively with the Land and the 2019 Improvements, the "Facility"); and

WHEREAS, by resolution adopted by the Agency on September 26, 2019 (the "Inducement Resolution"), the Agency accepted the Application as submitted by the Company and, among other things, (i) described the Financial Assistance (as defined in the Inducement Resolution) being contemplated by the Agency, (ii) authorized the Agency to hold a public hearing, and (iii) made a determination pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"); and

WHEREAS, pursuant to General Municipal Law Section 859-a, on Wednesday, October 23, 2019, at Town Court Facility, 19 W. Main Street, Atlanta, New York 14808, at 4:00 p.m., local time, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance 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. A copy of the minutes of the Public Hearing along with the notice of the Public Hearing published and forwarded to the affected taxing jurisdictions at least ten (10) days prior to said Public Hearing are attached hereto as Exhibit A; and

WHEREAS, the Agency desires to adopt a resolution (i) acknowledging that the Public Hearing was held in compliance with the Act, (ii) appointing the Company as agent of the Agency to undertake the Project, and (iii) authorizing the execution and delivery by the Agency of the Project Agreement, the Lease Agreement, the Leaseback Agreement, the Tax Agreement and related documents (as each is defined in the Inducement Resolution); and

WHEREAS, the Project Agreement, the Lease Agreement, the Leaseback Agreement, the Tax Agreement and related documents are being negotiated and will be presented for execution and delivery subject to approval of this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE STEUBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Public Hearing held by the Agency on Wednesday, October 23, 2019, at Town Court Facility, 19 W. Main Street, Atlanta, New York 14808, at 4:00 p.m., local time, concerning the Project and the Financial Assistance was duly held in accordance with the Act,

including, but not limited to, the giving of at least ten (10) days published notice of the Public Hearing (such notice also provided to the chief executive officer of each affected tax jurisdiction), affording interested parties a reasonable opportunity, both orally and in writing, to present their views with respect to the Project.

Section 2. The Agency is hereby authorized to provide Financial Assistance to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project and (b) a partial real property tax abatement structured through the Tax Agreement.

Section 3. Based upon the representation and warranties made by the Company in the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax in an amount up to approximately \$[~~600,000~~], which result in New York State and local sales and use tax exemption benefits ("Sales and Use Tax Exemption Benefits") not to exceed \$[48,000]. The Agency agrees to consider any requests by the Company for increase to the amount of Sales and Use Tax Exemption Benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services, and, to the extent required, the Agency authorizes and conducts any supplemental public hearing(s).

Section 4. Pursuant to Section 875(3) of the Act, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any Sales and Use Tax Exemption Benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the Sales and Use Tax Exemption Benefits; (ii) the Sales and Use Tax Exemption Benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the Sales and Use Tax Exemption Benefits are for property or services not authorized by the Agency as part of the Project; (iv) the Company has made a material false statement on its application for financial assistance; (v) the Sales and Use Tax Exemption Benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project; and/or (vi) the Company obtains mortgage recording tax benefits and/or real property tax abatements and fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project (collectively, items (i) through (vi) are hereby defined as a "Recapture Event").

As a condition precedent of receiving Sales and Use Tax Exemption Benefits and real property tax abatement benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover

or recapture any Sales and Use Tax Exemption Benefits, mortgage recording tax benefits and/or real property tax abatements abatement benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

Section 5. Subject to the Company executing the Project Agreement and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, reconstruct, renovate and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however*, the Project Agreement shall expire on **September 30, 2020** (*unless extended for good cause by the Executive Director of the Agency*) if the Lease Agreement, the Leaseback Agreement and the Tax Agreement contemplated have not been executed and delivered

Section 6. The Chairman, Vice Chairman and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (A) the Lease Agreement, pursuant to which the Company leases the Project to the Agency, (B) the related Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company, and (C) the Tax Agreement (the terms of which shall provide a full exemption from ad valorem taxation with respect to the Facility; *provided, however*, the Company must satisfy certain conditions for such exemption as set forth in the Tax Agreement); provided (i) the rental payments under the Leaseback Agreement 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 Tax Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 7. 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 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 8. These Resolutions 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:

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Michael Nisbet	[✓]	[]	[]	[]
Joseph Hauryski	[✓]	[]	[]	[]
Anthony Russo	[✓]	[]	[]	[]
Mark Alger	[✓]	[]	[]	[]
Christine Sharkey	[✓]	[]	[]	[]
Michael Doyle	[✓]	[]	[]	[]
Dean Strobel	[✓]	[]	[]	[]

The Resolutions were thereupon duly adopted.

SECRETARY'S CERTIFICATION

(Canandaigua Power Partners II, LLC Project – Dutch Hill)

STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

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

That I have compared the annexed extract of minutes of the meeting of the Steuben
County Industrial Development Agency (the "Agency"), including the resolution contained
therein, held on October 24, 2019, with the original thereof on file in the office of the Agency,
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 related to the
subject matters therein referred to.

I FURTHER CERTIFY, that all members of said 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 such 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 said
Agency this 24 day of October, 2019.


Secretary



Schedule 1

Land

[See Attached]

Exhibit A

Public Hearing Notice Documents

[See Attached]