

FINAL AUTHORIZING RESOLUTION

(Cricket Valley Energy Center, LLC 2017 Facility)

At a special meeting of the Dutchess County Industrial Development Agency (the “Agency”), held at 9:00 a.m. at 3 Neptune Road, Poughkeepsie, New York on the 9th day of January, 2017, the following members of the Agency were:

Present: Timothy Dean, Vice Chairman
Angela E. Flesland, Assistant Secretary
Mark Doyle
Alfred D. Torreggiani

Absent: Charles Daniels III, Chairman
Edward Summers

Also Present: Sarah Lee, Executive Director
Donald Cappillino, IDA counsel
Robert E. De Meyere, Company

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of title to, or a leasehold interest in, a certain industrial development facility (Cricket Valley Energy Center, LLC 2017 Facility) and the leasing of the facility to Cricket Valley Energy Center, LLC (the “Company”) as more particularly described below:

RESOLUTION OF THE DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, DEMOLITION, CONSTRUCTION, REMEDIATION, RENOVATION, INSTALLATION, FURNISHING AND EQUIPPING OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY FOR CRICKET VALLEY ENERGY CENTER, LLC AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF 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 335 of the Laws of 1977 of the State of New York (collectively, the “Act”), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, the Company has requested the Agency’s assistance with a facility (the “Facility”) consisting of:

- (a) demolition of all existing structures currently existing on 193.5 acres of land located at 2241 Route 22, Dover Plains, Town of Dover, Dutchess County, New York (the “Premises”);

- (b) construction of (i) a new approximately 200,000 square foot structure on the Premises to be utilized for a nominal 1,177 megawatt (“MW”), combined-cycle (“CCGT”) electric generating facility, including all necessary equipment and associated gas and electric interconnection facilities (the “**Generating Facility**”), (ii) an electric substation on the Premises (the “**Substation**”), (iii) a new approximately 14.5 mile 345kV transmission line with the installation of certain equipment and improvements from the Substation to the Consolidated Edison Pleasant Valley Substation (the “**Transmission Line**”), and (iv) the re-conductoring (with the installation of certain equipment and improvements) of an existing 3.5-mile 345 kV transmission line from the Substation to the New York/Connecticut border (the “**Reconductoring**” and collectively with the Premises, Generating Facility, Substation and Transmission Line, the “**Project**”); and
- (c) remediation of the Premises to address existing New York State Department of Environmental Conservation (“NYS DEC”) violations as set forth in the October 30, 2015 Remediation/Closure Plan prepared by Tetra Tech and attached to the April 1, 2016 Application for Financial Assistance submitted to the Agency by the Company, as updated by the September 6, 2016 Remediation/Closure Plan prepared by Tetra Tech and as may be updated from time with the approval of the NYS DEC; and

WHEREAS, the Agency requires, as a condition to its issuance of Financial Assistance, that the Company lease the Facility to the Agency pursuant to the terms of a Company Lease Agreement, dated as of January 1, 2017 or such other date as the Executive Director of the Agency and Agency Counsel shall agree (the “**Company Lease**”), by and between the Company and the Agency; and

WHEREAS, the Company has agreed to transfer title to the Equipment to the Agency pursuant to a Bill of Sale, dated the Closing Date (the “**Bill of Sale**”); and

WHEREAS, the Agency has agreed to sublease and lease the Facility to the Company pursuant to a certain Lease Agreement, dated as of January 1, 2017 or such other date as the Executive Director of the Agency and Agency Counsel shall agree (the “**Lease Agreement**”), by and between the Agency and the Company; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency’s agent, to acquire, demolish, construct, remediate, renovate, install, furnish and equip the Facility substantially in accordance with the Plans and Specifications; and

WHEREAS, the Company will enter into a Recapture Agreement, dated as of January 1, 2017 or such other date as the Executive Director of the Agency and Agency Counsel shall agree (the “**Recapture Agreement**”), from the Company to the Agency in order to reflect the repayment of certain obligations of the Company upon the occurrence of a Recapture Event (as defined therein); and

WHEREAS, the Company will enter into a Project Agreement, dated as of January 1, 2017 or such other date as the Executive Director of the Agency and Agency Counsel shall agree (the “**Project Agreement**”), between the Company and the Agency setting forth certain other terms of the Financial Assistance being provided; and

WHEREAS, as an inducement for the Agency to enter into and perform the transactions contemplated by the Lease Agreement, the Agency will require the Company to enter into an Environmental Compliance and Indemnification Agreement, dated as of January 1, 2017 or such other date as the Executive Director of the Agency and Agency Counsel shall agree (the “**Environmental Compliance and Indemnification Agreement**”), by and between the Company and the Agency; and

WHEREAS, the Agency by resolution duly adopted on April 19, 2016 (the “**Preliminary Resolution**”), decided to proceed under the provisions of the Act to acquire and lease the Facility and enter into the Lease Agreement; and

WHEREAS, the Agency had previously adopted a Final Authorizing Resolution approved on December 1, 2016;

WHEREAS, subsequent to the Agency’s adoption of the Final Authorizing Resolution on December 1, 2016, the Company disclosed to the Agency an exchange of land pursuant to a lot line adjustment arrangement as depicted in the Subdivision Plat prepared by Zarecki & Associates, LLC dated November 4, 2016, attached hereto as Exhibit A and incorporated by reference herein (the “**Lot Line Realignment**”); and

WHEREAS, the Lot Line Realignment provides for the conveyance of 26.357 acres of the Premises by the Company to World Olivet Assembly, Inc., owner of an adjacent parcel and the conveyance of 3.017 acres of adjacent land by World Olivet Assembly, Inc. to the Company, resulting in a net reduction of Premises by 23.34 acres; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted by the Department of Environmental Conservation of the State of New York (the laws and regulations hereinafter collectively referred to as “**SEQRA**”), the Facility constitutes an “**Action**” as that term is defined under SEQRA; and

WHEREAS, the Agency is an “**Involved Agency**” as that term is defined under SEQRA; and

WHEREAS, on November 19, 2009, the Town of Dover Town Board (the “**Town Board**”), as an Involved Agency under SEQRA, declared its intent to act as Lead Agency for purposes of review of the Action under SEQRA, and coordinated review with Involved and Interested Agencies; and

WHEREAS, the New York State Department of Environmental Conservation (the “**DEC**”) submitted a letter dated December 16, 2009 to the Town Board declaring its intent to act as Lead Agency; and

WHEREAS, the DEC Commissioner designated DEC as Lead Agency for SEQRA review of the Action by decision dated April 12, 2010; and

WHEREAS, on May 10, 2010, the DEC determined that a Draft Environmental Impact Statement (“**DEIS**”) should be prepared to assess the potential impacts of the Action and to assess alternatives and mitigation measures; and

WHEREAS, on May 18, 2011, following public scoping, the DEC accepted the DEIS for the Facility as complete for purposes of public review; and

WHEREAS, the DEC held a public hearing on June 28, 2011, and accepted comments on the DEIS through August 5, 2011, including comments submitted at a public hearing sponsored by the Town of Dover on July 9, 2011; and

WHEREAS, on July 25, 2012, the DEC accepted a Final Environmental Impact Statement (“**FEIS**”) for the Action; and

WHEREAS, on September 26, 2012, the DEC issued a Certification of Findings to Approve/Fund/Undertake the Facility (the “**DEC Findings Statement**”) with the reasons for its determination stated therein; and

WHEREAS, on January 30, 2013, the Town of Dover issued a Certification of Findings to Approve/Fund/Undertake the Facility (the “**Town of Dover Findings Statement**”) with the reasons for its determinations stated therein; and

WHEREAS, the DEC Findings Statement and the Town of Dover Findings Statement are attached hereto as Exhibits B and C, respectively, hereinafter collectively referred to as the “**Findings Statements**”; and

WHEREAS, in compliance with §859-a of the Act the Agency on October 11, 2016 held a public hearing on the grant of financial assistance as set forth herein following publication in the *Poughkeepsie Journal* on September 27, 2016 of a notice of the public hearing; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the transfer of leasehold title to the Facility to the Agency and the Agency’s sublease of the Facility to the Company.

NOW, THEREFORE, BE IT RESOLVED, by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

(a) The Action is a Type 1 Action pursuant to SEQRA.

(b) The Agency’s jurisdiction over the Facility is the provision of financial and other assistance as authorized under Article 18-A of the General Municipal Law of

the State of New York and Chapter 1030 of the Laws of 1969 of the State of New York; together with Chapter 788 of the Laws of 1976 of the State of New York for certain components of the Action.

(c) Based upon an independent review by the Agency of the DEIS, FEIS, and the Findings Statements, the Agency hereby concurs in the Lead Agency's findings and decisions contained in the Findings Statement and hereby adopts the Findings Statements attached hereto as Exhibits B and C as its own Findings Statement under SEQRA.

(d) Having considered the DEIS, FEIS, the Findings Statements, and such other documents as may be necessary or appropriate, the Agency certifies that:

(i) The requirements of 6 NYCRR Part 617 have been met;

(ii) Consistent with the social, economic and other essential considerations, from among the reasonable alternatives thereto, the Action is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including effects disclosed in the DEIS, FEIS, and the Findings Statements; and

(iii) Consistent with social, economic, and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the DEIS, FEIS, and the Findings Statements will be minimized or avoided by incorporating as conditions those mitigative measures which were identified as practicable.

(e) The basis for this decision is set forth in the Findings Statements attached as Exhibits B and C hereto and incorporated by reference herein, and thus all of the provisions of SEQRA have been complied with.

Section 2. The Agency further hereby finds and determines:

(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 Facility constitutes a "project", as such term is defined in the Act; and

(c) The public hearing held by the Agency on October 11, 2016, concerning the grant of Financial Assistance as set forth herein and the nature and location of the Facility was duly held in accordance with the laws of the State of New York, including but not limited to the giving of public notice of the meeting a reasonable time before the meeting and affording a reasonable opportunity for persons with differing views to be heard about the Agency's providing of the financial assistance contemplated herein and the location and nature of the Facility; and

(d) The acquisition, demolition, construction, remediation, renovation, installation, furnishing and equipping of the Facility and the leasing of the Facility to the Company will promote and maintain the job opportunities, health, general prosperity and economic welfare

of the citizens of Dutchess County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(e) The acquisition, demolition, construction, remediation, renovation, installation, furnishing and equipping of the Facility is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York and to discourage the Company from removing its existing facilities to a location outside the state and to preserve the competitive position of the Company in its industry; and

(f) Based upon representations of the Company, the Facility conforms with the local zoning laws and planning regulations of Dutchess County and all regional and local land use plans for the area in which the Facility is located; and

(g) It is desirable and in the public interest for the Agency to lease the Facility; and

(h) The Lot Line Realignment does not substantially affect the size, nature or scope of the Project and, in fact, reduces the total size of the Premises while retaining the amount of the PILOT Payments as more particularly described in the PILOT Agreement as later defined herein; and

(i) The Company Lease is an effective instrument whereby the Company leases the Facility to the Agency; and

(j) The Lease Agreement is an effective instrument whereby the Agency leases and subleases the Facility to the Company and further provides for the Agency to become a mortgagor on a mortgage given by the Company provided there shall be no recourse against the Agency except against the Facility; and

(k) The Payment-in-Lieu-of-Tax Agreement (the “**PILOT Agreement**”), dated as of January 1, 2017 or such other date as the Executive Director of the Agency and Agency Counsel shall agree, by and between the Company and the Agency, in form satisfactory to the Executive Director and Agency Counsel, will be an effective instrument whereby the Agency and the Company set forth the terms and conditions of their agreement regarding the Company’s payments in lieu of real property taxes; and

(l) The Recapture Agreement is an effective instrument whereby the Company agrees to the recapture of benefits granted to the Company in the event any enumerated recapture events occur; and

(m) The Project Agreement is an effective instrument setting forth certain terms and conditions of the Agency’s Financial Assistance to the Company; and

(n) The Environmental Compliance and Indemnification Agreement whereby the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws.

Section 3. Subject to (i) the Company executing the Company Lease, the Lease Agreement, the Recapture Agreement, the Project Agreement, the Recapture Agreement, and the Environmental Compliance and Indemnification Agreement and a Bill of Sale, dated a date to be determined, and (ii) the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Facility satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, demolition, construction, remediation, renovation, installation, furnishing and equipping of the Facility and hereby appoints the Company as the true and lawful agent of the Agency.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (i) sublease the Facility to the Company pursuant to the Lease Agreement, (ii) execute, deliver and perform the Lease Agreement, (iii) execute and deliver the Company Lease, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement, the Recapture Agreement, and the Project Agreement.

Section 5. The Agency is hereby authorized to acquire a leasehold interest in the real property and personal property described in Exhibit A and Exhibit B, respectively, to 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 are hereby approved, ratified and confirmed.

Section 6. The form and substance of the Company Lease, the Lease Agreement, the PILOT Agreement, the Recapture Agreement, the Project Agreement and the Environmental Compliance and Indemnification Agreement (each in substantially the forms presented to the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 7. The Facility is being financed by the Company and in connection therewith, the lenders will require that the Agency execute and deliver various loan agreements, mortgages, assignments, consents, financing statements and other related documentation. Subject to the reasonable approval of the form of such documents as determined by the Executive Director of the Agency and Agency Counsel, provided that, collectively, the financing documents indicate that there shall be no recourse against the Agency on the indebtedness created by the financing documents and limit any liability of the Agency to the value of the Facility, the Agency hereby authorizes the execution and delivery of such requested financing documentation in form and substance as so approved by the Executive Director of the Agency and Agency Counsel. It is expressly authorized that with regard to such financing, the Company shall benefit from the mortgage recording tax exemption, to the extent allowed by law, for the recording of any such mortgage. In addition, the Executive Director of the Agency and Agency Counsel are authorized to make any changes to the Company Lease, the Lease Agreement, the Recapture Agreement, the Project Agreement, the Recapture Agreement, the Environmental Compliance and Indemnification Agreement, the Bill of Sale and any other documents required to be executed and delivered by the Agency with respect to the benefits conferred to the Company and the Facility, as the Executive Director of the Agency and Agency Counsel in their reasonable discretion deem necessary and appropriate.

Section 8. Recapture Provisions. The Agency shall enjoy certain recapture rights under the terms and conditions of the Recapture Agreement, attached hereto and made a part hereof as Exhibit D, upon the occurrence of a Recapture Event as defined therein.

Section 9. 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 Facility and that would otherwise be subject to New York State and local sales tax in an amount up to approximately \$344,615,385, which result in New York State and local sales and use tax exemption benefits (“**sales and use tax exemption benefits**”) not to exceed \$28,000,000. The Agency agrees to consider any requests by the Company for an 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 10.

(a) The Chairman, Vice Chairman, any member of the Agency or the Executive Director are hereby authorized, on behalf of the Agency, to execute and deliver the Company Lease, the Lease Agreement (including any Mortgage and accompanying Assignment of Leases and Rents and Consents to Assignment and any other financing documents reasonably approved as to form and substance by the Executive Director and counsel to the Agency), the Recapture Agreement, the Project Agreement, the PILOT Agreement, and the Environmental Compliance and Indemnification Agreement, all in substantially the forms thereof presented to this meeting or otherwise hereby authorized with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, any member of the Agency or the Executive Director shall approve, and such other related documents as may be, in the judgment of the Executive Director and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the “**Agency Documents**”). The execution thereof by the Chairman, Vice Chairman, any member of the Agency or the Executive Director of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, any member of the Agency and the Executive Director of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement). The Agency hereby appoints each Member of the Agency and Counsel to serve as an Assistant Secretary of the Agency for purposes of this transaction.

Section 11. 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, 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 12. The Final Authorizing Resolution in this matter approved by the Agency on December 1, 2016 is hereby rescinded and replaced by this resolution which shall take effect immediately.

The following resolution was duly moved by Angela E. Flesland, seconded by Alfred D. Torreggiani, discussed and adopted with the following members voting:

Charles Daniels III, Chairman	Being	ABSENT
Timothy Dean, Vice Chairman	VOTING	"Aye"
Angela E. Flesland, Assistant Secretary	VOTING	"Aye"
Edward Summers	Being	ABSENT
Mark Doyle	VOTING	"Aye"
Alfred D. Torreggiani	VOTING	"Aye"

Adopted: January 9, 2017

STATE OF NEW YORK)

) ss.:

COUNTY OF DUTCHESS)

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

That I have compared the annexed extract of the minutes of the meeting of the Dutchess County Industrial Development Agency (the "Agency"), including the resolutions contained therein, held on the 9th day of January, 2017, 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 resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Company Lease, Lease Agreement, the PILOT Agreement, the Project Agreement, the Environmental Compliance and Indemnification Agreement and the Recapture Agreement contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, that all members of said Agency had due notice of said meeting and that the meeting was all respects duly held.

IN WITNESS WHEREOF, I have hereunto set my hand as of the 9th day of January, 2017.



Angela E. Flesland, Assistant Secretary

(SEAL)