

FINAL RESOLUTION
(Xylem Dewatering Solutions, Inc. Project)

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, May 3, 2018 at 4:00 p.m.

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

Resolution No. 05/2018 - 01

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (THE "AGENCY") (i) ACKNOWLEDGING THE PUBLIC HEARING HELD BY THE AGENCY ON APRIL 17, 2018, WITH RESPECT TO THE XYLEM DEWATERING SOLUTIONS, INC. (THE "COMPANY") PROJECT (THE "PROJECT"); (ii) MAKING A DETERMINATION WITH RESPECT TO THE PROJECT PURSUANT TO SEQRA (AS DEFINED BELOW); (iii) APPOINTING THE COMPANY AS AGENT OF THE AGENCY; (iv) AUTHORIZING 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, RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT AND (B) A REAL PROPERTY TAX ABATEMENT STRUCTURED THROUGH A TAX AGREEMENT; AND (v) AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF AN AGENT, FINANCIAL ASSISTANCE AND 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 565 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER** (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, **XYLEM DEWATERING SOLUTIONS, INC.**, for itself or on behalf of an entity formed or to be formed on its behalf (the "Company"), previously submitted an application (the "Application") to the Agency, a copy of which is on file with the Agency, requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (i) the acquisition by the Agency of a leasehold or other interest in certain property located at 8039 Oak Orchard Road, Town of Batavia, Genesee County, New York (being more particularly identified as tax map identification number 4.-1-26.2) (the "Land") and the existing improvements thereon, consisting principally of an existing approximately 18,282 square-foot commercial distribution warehouse and a lean-to (the "Existing Improvements"), (ii) the construction of a pole barn and paint booth,

the enclosure of the existing lean-to, the undertaking of site improvements, including but not limited to, increasing electrical and gas service and tying into the existing sewer system, and the reconstruction, renovation and remodeling of the interior of the Existing Improvements (specifically the restrooms and breakrooms) in order to accommodate the integration of additional employees (the "Improvements"), and (iii) the acquisition and installation by the Company in and around the Improvements and the Existing Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, pursuant to Article 18-A of the Act the Agency desires to adopt a resolution approving the Project and the Financial Assistance (as defined below) that the Agency is contemplating with respect to the Project; and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as agent of the Agency for the purpose of undertaking the Project pursuant to an agent, financial assistance and project agreement (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement"), a leaseback agreement (the "Leaseback Agreement"), a tax agreement (the "Tax Agreement") and related documents with the Company, (iii) take or retain title to or a leasehold interest in the Land, Improvements, Equipment and personal property constituting the Project (once the Lease Agreement, the Leaseback Agreement and the Tax Agreement have been negotiated), and (iv) 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, reconstruction, renovation and equipping of the Project; (b) a partial real property tax abatement structured through the Tax Agreement; and

WHEREAS, on March 29, 2018, the Agency adopted a resolution (the "Initial Resolution") accepting the Application and directing that a public hearing be held; and

WHEREAS, pursuant to Section 859-a of the Act, on Tuesday, April 17, 2018, at 4:00 p.m., local time, at Batavia Town Hall, Conference Room, 3833 W. Main Street Road, Batavia, New York, 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 Notice of Public Hearing published in *The Batavia Daily News*, the affidavit of publication of such newspaper, and Minutes of the Public Hearing are attached hereto as Exhibit A; and

WHEREAS, 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"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project; and

WHEREAS, the Town of Batavia Planning Board (the "Planning Board"), acting as "lead agency" (as such term is defined under SEQRA), undertook an "uncoordinated review" (as such term is defined under SEQRA) of the Project, determined that the Project was an "Unlisted Action" (as such term is defined under SEQRA) and on April 17, 2018 issued a "negative declaration" (as such term is defined under SEQRA) with respect to the Project (the "Negative Declaration"); and

WHEREAS, the Agent Agreement, the Lease Agreement, the Leaseback Agreement, the Tax Agreement and related documents have been negotiated and are presented to this meeting for approval and execution.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER 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 Application, 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) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, constructing and equipping the Project; and

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

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

(E) The Project will not result in the removal of a facility or 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 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

(F) The Project involves an Unlisted Action; the review is uncoordinated. The Planning Board, acting as lead agency, issued the Negative Declaration. The Agency, acting as an "involved agency" (as such term is defined under SEQRA), having undertaken a thorough and comprehensive review of the materials presented by the Company, including but not limited to, the Application and related documents delivered by the Company to the Agency, the Short Environmental Assessment Form and the Planning Board's Negative Declaration, as well as other representations made by the Company to the Agency in connection with the Project, hereby determines that the Project does not pose a potential significant adverse impact on the environment and thus adopts the Planning Board's Negative Declaration. The Agency further determines that

all of the provisions of SEQRA that are required to be complied with as a condition precedent to the approval of the Financial Assistance contemplated by the Agency with respect to the Project have been satisfied. A copy of the Short Environmental Assessment Form and Negative Declaration are attached hereto as **Exhibit B**.

Section 2. The Public Hearing held by the Agency on April 17, 2018, 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 being 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 3. The Company currently employs four (4) individuals to conduct its sales operations at an office facility, which it leases from Gallina Development Corporation, at 600 Mile Crossing Boulevard, Town of Gates, Monroe County, New York (the "Current Facility"). The Company has informed the Agency that upon completion of the Project, it will integrate its sales operations at the Current Facility into the Facility by relocating four (4) employees to the Facility. Upon completion of the Project, the Company intends to sublease the Current Facility. Pursuant to General Municipal Law ("GML") Section 859-a(5)(d), the Agency has provided written notice to the Monroe County Executive and the Town of Gates Supervisor, as the chief executive officers of the municipalities from which the Current Facility hereinafter described will be abandoned or removed. A copy of such written notice provided to the Monroe County Executive and Town of Gates Supervisor is attached hereto as **Exhibit C**.

Section 4. The Agency is hereby authorized to provide to the Company the Financial Assistance in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction, reconstruction, renovation and equipping of the Project, and (b) a partial real property tax abatement structured through the Tax Agreement.

Section 5. Based upon representations 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 **\$587,136**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$46,971**. 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.

Section 6. 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; or (iv) 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. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, shall (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 7. Subject to the Company executing the Agent 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 Agent Agreement shall expire on **April 30, 2019** (*unless extended for good cause by the President/CEO of the Agency*) if the Lease Agreement, the Leaseback Agreement and the Tax Agreement contemplated have not been executed and delivered

Section 8. The Chairman, Vice Chairman, President/CEO and/or the Senior Vice President of Operations of the Agency are hereby authorized, on behalf of the Agency, to negotiate and enter into (A) the Agent Agreement, (B) the Lease Agreement, pursuant to which the Company leases the Project to the Agency, (C) the related Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company, and (D) the Tax Agreement; *provided, that*, (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 9. 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 10. These Resolutions shall take effect immediately upon adoption.

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>
Paul Battaglia	[X]	[]	[]	[]
Peter Zelifff	[X]	[]	[]	[]
John L. Rizzo	[X]	[]	[]	[]
Craig Yunker	[X]	[]	[]	[]
Matthew Gray	[X]	[]	[]	[]
Todd Bender	[X]	[]	[]	[]
Andrew Young	[]	[]	[X]	[]

The Resolutions were thereupon duly adopted.

SECRETARY'S CERTIFICATION
(Xylem Dewatering Solutions, Inc. Project)

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

I, the undersigned Secretary of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center, DO HEREBY CERTIFY:

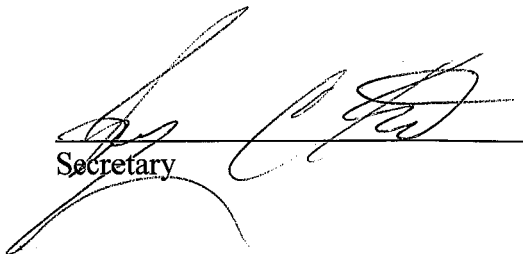
That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on May 3, 2018, with the original thereof on file in my office, and 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 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 3rd day of May, 2018.



Secretary