

**FINAL RESOLUTION**  
*(Excelsior Energy Center, LLC Project)*

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, June 3, 2021.

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

Resolution No. 06/2021 - 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 19, 2021, WITH RESPECT TO THE EXCELSIOR ENERGY CENTER, LLC (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, (B) A PARTIAL REAL PROPERTY TAX ABATEMENT STRUCTURED THROUGH A TAX AGREEMENT AND (C) A MORTGAGE RECORDING TAX EXEMPTION AS AUTHORIZED BY THE LAWS OF THE STATE OF NEW YORK; AND (v) AUTHORIZING THE NEGOTIATION, 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 (the "State"), 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, **EXCELSIOR ENERGY CENTER, LLC**, for itself or on behalf of an entity formed or to be formed by it or on its behalf (the "Company") has 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 fee title to or a leasehold interest in certain parcels of real property located in the Town of Byron, Genesee County, New York (the "Land", being more particularly described as a portion of certain tax parcels more fully identified on Schedule 1 attached hereto,

as may be subdivided and/or modified from time to time); (ii) the planning, design, construction and operation of a 280MWac PV solar electrical generation system and a 20MWac/4-hour duration energy storage system, including panel foundations, inverters, transformers, interconnect wiring, utility connections, sitework, landscaping, fencing, security and related improvements (collectively, the "Improvements"); (iii) the acquisition of and installation in and around the Land and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the "Equipment" and, collectively with, the Land 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 a project agreement (the "Project 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 and equipping of the Project, (b) a partial real property tax abatement structured through the Tax Agreement and (c) a mortgage recording tax exemption as authorized by the laws of the State of New York (collectively, the "Financial Assistance"); and

WHEREAS, on March 25, 2021, 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 Monday, April 19, 2021, at 3:00 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 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, no Financial Assistance shall be conferred upon the Company by the Agency until the time at which the Company provides the Agency with written documentation evidencing the Company's compliance with Article 10 of the New York State Public Service Law.

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 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

Section 2. The Public Hearing held by the Agency on April 19, 2021, 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. Contingent upon the Company providing the Agency with written documentation evidencing the Company's compliance with Article 10 of the New York State Public Service Law, 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, (b) a partial real property tax abatement structured through the Tax Agreement and (c) a mortgage recording tax exemption as authorized by the laws of the State of New York.

Section 4. 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 State and local sales and use tax in an amount up to \$203,300,637 @ 4%/\$39,453,268 @ 8% which

result in State and local sales and use tax exemption benefits ("Sales and Use Tax Exemption Benefits") not to exceed **\$11,288,287**. 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 5. 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 6. 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 **December 31, 2023** (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 7. The President/CEO, Chair, Vice Chair and/or Senior Vice President of Operations of the Agency are hereby authorized, on behalf of the Agency, to negotiate and enter into (A) the Project 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*,

however, (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 8. The President/CEO, Chair, Vice Chair and/or Senior Vice President of Operations of the Agency are hereby authorized, on behalf of the Agency, to execute, deliver and record any mortgage, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any lender identified by the Company (the "Lender") (collectively, the "Mortgage") up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or refinance the Facility or equipment and other personal property and related transactional costs (hereinafter, with the Project Agreement, Lease Agreement, Leaseback Agreement, Tax Agreement and the Mortgage, collectively called the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the President/CEO, Chair, Vice Chair and/or Senior Vice President of Operations of the Agency shall approve, the execution thereof by the President/CEO, Chair, Vice Chair and/or Senior Vice President of Operations of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency's interest in the Project.

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>
Peter Zeliff	[ X ]	[ ]	[ ]	[ ]
Matthew Gray	[ X ]	[ ]	[ ]	[ ]
Paul Battaglia	[ X ]	[ ]	[ ]	[ ]
Craig Yunker	[ ]	[ ]	[ ]	[ X ]
Todd Bender	[ X ]	[ ]	[ ]	[ ]
Amy Vanderhoof	[ ]	[ ]	[ X ]	[ ]
Marianne Clattenburg	[ X ]	[ ]	[ ]	[ ]

The Resolutions were thereupon duly adopted.

**SECRETARY'S CERTIFICATION**  
*(Excelsior Energy Center, LLC 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:

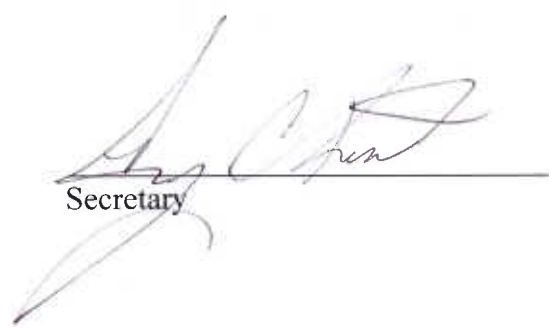
That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on June 3, 2021, with the original thereof on file in the offices of 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 3<sup>rd</sup> day of June, 2021.

  
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Secretary

## Schedule 1

- 4.-1-11.1
  - Tower Hill Road
  - Legacy Lands LLC
  - Town of Byron
- 4.-1-27.11
  - Route 262
  - Legacy Lands
  - Town of Byron
- 6.-1-6
  - Route 262
  - Brooke-Lea LLC
  - Town of Byron
- 6.-1-5.1
  - Route 262
  - Call Lands
  - Town of Byron
- 6.-1-43.1
  - Byron Road
  - Lea-View Farms Inc.
  - Town of Byron
- 6.-1-42.1
  - Byron Road
  - Brooke-Lea LLC
  - Town of Byron
- 6.-1-42.2
  - Byron Road
  - Call Lands
  - Town of Byron
- 6.-1-37.1
  - Bank Street Road
  - Call Lands
  - Town of Byron
- 6.-1-15.2
  - Cockram Road
  - Lea-View Farms Inc.
  - Town of Byron
- 6.-1-44
  - Cockram Road
  - Richard G. Colby
  - Town of Byron
- 6.-1-14
  - Byron Road
  - Lea-View Farms Inc.
  - Town of Byron

- 6.-1-13.12
  - Caswell Road
  - Lea-View Farms Inc.
  - Town of Byron
- 6.-1-13.111
  - 7022 Caswell Road
  - Lea-View Farms Inc.
  - Town of Byron
- 6.-1-52
  - Byron Road
  - Legacy Lands LLC
  - Town of Byron
- 6.-1-16.111
  - Caswell Road
  - Brooke-Lea LLC
  - Town of Byron
- 6.-1-19.213
  - 7271 Byron Road
  - L-Brooke Farms LLC
  - Town of Byron
- 6.-1-25.1
  - Cockram Road
  - Richard G. Colby
  - Town of Byron
- 6.-1-33.111
  - Cockram Road
  - Call Lands
  - Town of Byron
- 6.-1-28.111
  - Cockram Road
  - Richard G. Colby
  - Town of Byron
- 6.-1-26.2
  - Bank Street Road
  - John F. Starowitz
  - Town of Byron
- 6.-1-26.1
  - Bank Street Road
  - John F. Starowitz
  - Town of Byron
- 8.-1-1.2
  - Bank Street Road
  - Leo D. Starowitz Jr.
  - Town of Byron



- 6.-1-22
  - Byron Road
  - Legacy Lands LLC
  - Town of Byron
- 8.-1-2.2
  - Byron Road
  - Lea-View Farms Inc.
  - Town of Byron
- 8.-1-29
  - Walkers Corners Road
  - Star Growers Land LLC
  - Town of Byron
- 8.-1-28
  - Walkers Corners Road
  - Star Growers Land LLC
  - Town of Byron
- 8.-1-26.1
  - Walkers Corners Road
  - John F. Starowitz & Andrew M. Starowitz
  - Town of Byron
- 8.-1-3
  - Byron Road
  - Legacy Lands LLC
  - Town of Byron
- 8.-1-4
  - Byron Road
  - Lea-View Farms Inc.
  - Town of Byron
- 8.-1-5
  - Byron Road
  - L-Brooke Farms LLC
  - Town of Byron
- 8.-1-38.1
  - Walkers Corners Road
  - Lea-View Farms Inc.
  - Town of Byron
- 8.-1-19.12
  - Walkers Corners Road
  - Lea-View Farms Inc.
  - Town of Byron
- 8.-1-17.12
  - Walkers Corners Road
  - Brooke-Lea LLC
  - Town of Byron

- 8.-1-10.2
  - Caswell Road
  - Brooke-Lea LLC
  - Town of Byron
- 7.-1-73.1
  - Caswell Road
  - Legacy Lands LLC
  - Town of Byron
- 9.-1-2.2
  - Caswell Road
  - Legacy Lands LLC
  - Town of Byron
- 5.-2-58.11
  - Route 262
  - Charles D. Sackett
  - Town of Byron
- 5.-2-54.1
  - Route 262
  - Charles D. Sackett
  - Town of Byron
- 7.-1-46.111
  - Route 237
  - Legacy Lands LLC
  - Town of Byron
- 7.-1-47.11
  - 6548 Route 262
  - John L. Sackett Jr. & Charles D. Sackett
  - Town of Byron
- 7.-1-103.1
  - 6902 Ivison Road
  - CY Properties LLC
  - Town of Byron
- 7.-1-65.12
  - Route 237
  - Legacy Lands LLC
  - Town of Byron
- 7.-1-66.1
  - Route 237
  - Legacy Lands LLC
  - Town of Byron
- 7.-1-60.113
  - Gillett Road
  - CY Properties LLC
  - Town of Byron
- 7.-1-111
  - Ivison Road

- CY Properties LLC
  - Town of Byron
- 6.-1-37.2
  - 6999 Bank Street Road
  - Call Lands Partnership
  - Town of Byron

**Exhibit A**

Notice Letter, Notice of Public Hearing,  
of Publication of *The Batavia Daily News* and Minutes of Public Hearing

[Attached Hereto]