

TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY  
**BOARD OF DIRECTORS**

Meeting Minutes July 14<sup>th</sup>, 2022

**1.0 Roll Call**

**Present** – Chairman Todd Fragale, Vice Chairman Eric Connor, Secretary Jeanine Chatt, Board Member Daniel Antkowiak and Darlene DiCarlo.

Legal Counsel – Dan Seaman and Administrative Director – Thomas Sy.

Guests – Brian Madigan, Renewable Properties and Kevin Zanner, Hurwitz and Fine.

**Excused** –Treasurer Robert Runk, Board Member Harry Anderson

**CALL TO ORDER:**

The regular July Board meeting was called to order at 7:59 am by Chairman Todd Fragale.

**2.0 SECRETARY’S REPORT:**

On a motion by Mr. Anderson, seconded by Mr. Antkowiak, the minutes of the June 8<sup>th</sup> Board Meeting were approved. Vote 5-yes, 0-no, unanimous.

**3.0 TREASURER’S REPORT:**

Mr. Sy reviewed for the Board the June 30<sup>th</sup> financial statements due to Treasurer Runk’s absence. His review covered the Income Statement, Statement of Cash Transactions, and Balance Sheet. On the Income Statement, Mr. Sy noted the interest earned and receipt of the farm land rental fee and key expense categories that totaled \$13,361.36 for the month and that the surplus year-to-date is \$47,220.47. As concerns the Statement of Cash Transaction, Mr. Sy noted the transfer of \$103,850.00 from checking to savings and presented a detailed review of the previous month’s disbursements. Concerning the Balance Sheet, Mr. Sy highlighted the checking and savings account balances, an accounts payable of \$8093.50 consisting of quarterly payments to the IDA Counsel and the CFO and a fund balance of 1,460,598.35. On a motion by Mrs. DiCarlo, seconded by Mr. Antkowiak, the report was approved as presented. Vote 5-yes, 0-no, unanimous.

Mr. Sy reviewed the monthly bills for July 2022 that totaled \$13,087.45. It was noted that quarterly payments to Counsel and the CFO are included and that North Shore fees were for the website hosting change and domain registration. On a motion by Mr. Connor, seconded by Mrs. DiCarlo, the Board of Directors approved payment of the bills.

**4.0 ADMINISTRATIVE DIRECTOR’S REPORT:**

Mr. Sy reviewed highlights of his submitted report for the month of June and early July.

Mr. Sy announced he visited with Greg Molisani of Teamasys who purchased the former BCKH Building in the IDA Park. Mr. Molisani plans renovations prior to relocating his operations.

Mr. Sy noted that progress on Bison Bags expansion has picked up and he referenced photos he shared with the Board earlier via email.

Mr. Sy also announced that he is filing 2 grants for the Town in conjunction with Wendel for an Engineering Planning grant and a Culvert Mapping project via the CFA.

Mr. Sy announced Buffalo Transformer Services, currently located in the City of Lockport at Merritt Machinery, has been selected to participate in the INVEST B/N Economic Gardening program. Mr. Sy encouraged Chad Curtis of Buffalo Transformer to apply and he appears actively engaged in the project.

Mr. Sy reported that at the recent Niagara County Economic Development Alliance meeting that there was a presentation by National Grid on Electric Vehicles (EV's). Mr. Sy was surprised the dollars received by National Grid and NYSEG and the # of charging stations they are planning.

Mr. Fragale noted that the IDA was still in need of a Cost Benefit Analysis tool due to the cessation of our former tool Inform Analytics. Mr. Sy noted that he had evaluated new alternatives and strongly favored the tool offered by the MRB Group. Counsel had expressed some concerns with the agreement but the MRB group were unwilling to modify the agreement. Mr. Sy had recently noted the Niagara County IDA was using the MRB Tool and reached out to their director to learn their counsel did not have concerns with the agreement. Mr. Seaman noted that if there are business reasons to move forward with the MRB Tool then Mr. Sy should do so. Mr. Sy committed to recontact the MRB group.

Lastly, Mr. Sy pointed out the article on the FAST program and the 2021 Report on IDAs by the State Comptroller that were in the Board packets.

## 5.0 ATTORNEY'S REPORT:

Full Inducement Resolution attached to these minutes.

Mr. Seaman noted that an inducement resolution on the Renewable Properties Solar PILOT had been distributed via email and was included in the Board Packet. Mr. Seaman reviewed the highlights of the resolution and in particular noted the requirement for the Town Board to successfully reach agreement on a Host Community Agreement. After brief discussion a motion was made by Mr. Connor to adopt the inducement resolution with Renewable Properties, seconded by Mr. Antkowiak.

Roll Call Vote:

Mr. Antkowiak   X    
Mrs. DiCarlo   X    
Mr. Connor   X    
Mrs. Chatt   X    
Mr. Fragale   X  

Vote 5-yes, 0-no, unanimous.

Mr. Seaman noted that Up North Hosting was in the process of changing ownership via a sale to Ostendo Technologies. A motion was made by Mrs. DiCarlo to approve the execution of a certificate and consent to the transfer of the Lease Back agreement. Motion seconded by Mr. Connor.

Vote 5-yes, 0-no, unanimous

Mr. Seaman noted that Hashem Enterprises/Niagara Frontier Distribution was in the process of a refinancing. As Lease owner under the existing PILOT it is necessary for the IDA to consent to this transaction. A motion was made by Mr. Connor and seconded by Mr. Antkowiak to approve the refinancing.

Vote 5-yes, 0-no, unanimous

**6.0 OLD BUSINESS:**

No report.

**7.0 EXECUTIVE SESSION:**

**8.0 NEW BUSINESS:**

No report.

**9.0 NEXT MEETING:**

The next meeting of the IDA Board will be on August 11<sup>th</sup> at 8am. Board members should alert Mr. Sy if they are unable to attend.

**10.0 ADJOURNMENT:**

On a motion by Mrs. DiCarlo, seconded by Mr. Connor, the Board voted to adjourn at 8:20 am. Vote 5-yes, 0-no, unanimous.

Respectfully submitted,

Jeanine Chatt  
Board Secretary

RESOLUTION OF THE TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY (THE AGENCY) AUTHORIZING RPNY SOLAR 3, LLC ("RPNY" OR THE "LESSEE") FOR THE ACQUISITION OF A LEASE OF APPROXIMATELY 46 ACRES +/- OF PROPERTY LOCATED AT 7068 SLAYTON SETTLEMENT ROAD, LOCKPORT, NEW YORK, TO BE USED FOR A SOLAR ENERGY SYSTEM AT SAID ADDRESS AND TO ACQUIRE AND INSTALL MACHINERY AND EQUIPMENT REQUIRED IN CONNECTION WITH THE SAME, AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE TO THE AGENCY, A LEASEBACK AGREEMENT, AND OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH.

**WHEREAS**, RPNY SOLAR 3, LLC (the Lessee) has entered into negotiations with the Town of Lockport Industrial Development Agency (the Agency) for assistance for (A) the acquisition of a lease of certain property located at 7068 Slayton Settlement Road, Town of Lockport, New York 14094 (the "Land"); (B) the construction on the Land of an approximately 46 acre solar electric generating photovoltaic facility of an approximately 7 megawatt solar project (the "Improvements"); (C) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the "Equipment" and, together with the Land and the Improvements, the "Project"); (D) the negotiation and execution of a lease agreement with the Agency and leaseback agreement to the Company pursuant to a project/leaseback agreement; and (E) a partial abatement from Real Property taxes through a Payment-In-Lieu-Of-Tax ("PILOT") Agreement, in addition to mortgage tax abatement and sales tax abatement, if applicable; and

**WHEREAS**, the Lessee has submitted an Application for Financial Assistance and other materials and information to the Agency (collectively hereinafter the "Application for Incentives") to initiate the accomplishment of the above; and

**WHEREAS**, the Application for Financial Assistance sets forth certain information with respect to the Lessee, including the following: the Lessee desires Agency assistance to lease the land and purchase equipment and machinery for a solar farm in accordance with the New York State General Municipal Law Article 18-a. Industrial Development (NY GEN MUN §852-888); that but for the availability of financing and/or other assistance, the Lessee would not locate the Project within the Town of Lockport, there will be no substantial adverse disruption of existing employment at facilities of a similar nature in the Town of Lockport, and the Project will provide substantial capital investment; if Agency financing or other assistance is disapproved, the Lessee would likely not proceed with the Project; and that, therefore, Agency financing or other

assistance is necessary to encourage the Lessee to proceed with the Project in the Town of Lockport; and

**WHEREAS**, the Agency has held a Public Hearing on the Project pursuant to Section 859-A of the General Municipal Law; and

**WHEREAS**, the Agency determines it is in the best interest of the Town of Lockport to encourage the Lessee with respect to the acquisition of the Project, if by so doing it is able to induce the Lessee, to proceed with the Project in the Town of Lockport; and

**WHEREAS**, the Agency has determined that the Project be limited to the parcel located at 7068 Slayton Settlement Road, Town of Lockport, New York 14094 (Tax Map No. 96.00-1-11); and

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:**

Section 1. The Agency hereby determines that the acquisition and installation of the Project and the financing or other assistance thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency further hereby determines, on the basis of the Application for Incentives and supplemental information furnished by the Lessee, that a deviation from the Agency's Uniform Tax Exemption Policy and Guidelines ("UTEF") is appropriate based on the following factors which may be considered by the Agency in making a determination to deviate from the UTEF guidelines pursuant to the Agency's UTEF, Section VII,: (a) The nature of the proposed project (a solar electric generating photovoltaic facility) is consistent with New York State General Municipal Law § 852 which states in relevant part, "It is hereby declared to be the policy of this state to ...promote the development of renewable energy projects to support the state's renewable energy goals . . ."; (b)the amount of private sector investment generated or likely to be generated by the proposed project is estimated at 14.7M; (c)the project is likely to be accomplished in a timely fashion; (d)the effect of the proposed project upon the environment and surrounding property is not significant based on a previous determination by the Town of Lockport Planning Board, through the State Environmental Quality Review process, that the project will result in no significant environmental impacts and was therefore issued a Negative Declaration under SEQRA; (e)that the extent to which the proposed project will require the provision of additional municipal services, including, but not limited to,

educational, transportation, emergency medical or police and fire services is minimal as the project is designed to function largely independently beyond the initial construction phase; (f) that the extent to which the proposed project will provide additional sources of revenue for municipalities and school districts in which the project is located is substantial, compared to the current land use, due to the expected approximate yearly increase of tax revenues (approximately \$17,500 per year through the PILOT when developed compared with approximately \$3,000 per year as undeveloped) in addition to the anticipated Host Community Agreement payments paid directly to the Town of Lockport upon which the inducements anticipated by this resolution are contingent upon. In addition, the Agency has considered the following factors in reaching this determination: (g) that the project will create or retain a limited number of permanent, private sector jobs, if any; (h) the estimated amount of tax exemptions to be provided as outlined in the Lessee's Application for Financial Assistance; (i) that reimbursements for affected tax jurisdictions may be sought if the Lessee does not fulfill the purposes for which an exemption was provided; (j) that the impact of the project on existing and proposed businesses and economic development projects in the vicinity is minimal; (k) the approximate amount of private sector investment generated by the project estimated at 14.7M; (l) that there is mixed demonstrated public support for the proposed project; and (m) the extent to which the project will utilize, to the fullest extent practicable and economically feasible, resource conservation, energy efficiency, green technologies, and alternative and renewable energy measures is substantial due to the project being one designed to generate green energy through solar technology.

Section 2. The Agency hereby authorizes the Lessee to proceed with the Project as herein authorized at a cost not to exceed \$16,000,000.00, which Project will be financed with mortgage financing, and with a Lease Agreement between the Agency and the Lessee each in substantially the same form approved by the Agency for prior transactions or in form approved by the Chairman, Treasurer, Administrative Director, Secretary, Assistant Secretary, and any member or officer of the Agency, who are hereby authorized to execute, acknowledge and deliver each such Instrument and the Chairman, Treasurer, Administrative Director, Secretary and any member or officer of the Agency are hereby authorized to affix the seal of the Agency on each such instrument, as applicable, and attest the same, or in the alternative through a lease transaction. All other provisions of the Resolution relating to the Lease Agreement, shall apply to such Instruments.

All covenants, stipulations, obligations and agreements of the Agency contained in this resolution and the Lease Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution, and the Lease Agreement, as the case maybe, shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenants, stipulation, obligation or agreement herein contained or contained in any mortgage financing, any UCC-1 Financing Statements and the Lease Agreement or any other agreement or instrument executed and delivered by the Agency in furtherance of this resolution shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agency or employee of the Agency in his individual capacity and neither the members of the Agency or any officer executing the mortgage financing, the UCC-1 Financing Statements and the Lease Agreement shall be liable personally thereon or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

The Chairman, Treasurer, Administrative Director, Secretary, Assistant Secretary, and any member or officer of the Agency are hereby designated the authorized representatives of the Agency and each of them is hereby authorized to execute and deliver any and all agreements, papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the execution and delivery of any mortgage financing, any UCC-1 Financing Statements and the Lease Agreement.

Section 3. The provisions of Section 875 of the General Municipal Law which became effective on March 28, 2013 shall apply to this Project. In the event it is determined that an agent, project operator or other person or entity obtained state sales and use exemptions benefits for which they were not entitled or which were in excess of the amount authorized or which are for property or services not authorized or taken in

cases where such Lessee, its agents, project operators or other person or entity failed to comply with a material term or condition to use property or services in the manner required by Agreements entered into between the Agency and the applicant with respect to the Project, the agent, project operator or other person or entity shall comply with all the provisions of Section 875 and pay back to the Agency the amount of the state sales and use tax exemptions benefits that they obtained but were not entitled to.

Section 4. The Agency will undertake, as soon as it is furnished with sufficient information to use its best efforts to proceed, subject to agreement among the Agency, the Lessor and Lessee and as to terms in all agreements to be entered in to with respect to the Project, undertake as soon as particular terms and conditions of a Lease Agreement(s) are determined to enter into necessary transactions.

Section 5. The Chairman, Administrative Director, Treasurer, Secretary or Assistant Secretary, of the Agency and other appropriate officials or Board Members of the Agency and its agents and employees are hereby authorized to take whatever steps may be necessary to cooperate with the Lessee to assist in the completion of the Project.

Section 6. The Lessee is authorized to acquire, by lease, the premises, and to utilize said premises for a solar facility and related activities, and install machinery and equipment required in connection therewith; and to advance such funds as may be necessary to accomplish such purposes. The Agency is hereby authorized to enter into such agreements with the Lessee as the Chairman, or Administrative Director or other officer of the agency may deem necessary in order to accomplish the above.

Section 7. The Lessee is authorized 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 estimated amount up to \$225,000.00, which may result in a New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$18,000.00. The Agency may not consider any requests by the Lessee for increases in the amount of sales and use tax benefits authorized by the Agency, absent amendment of the resolution.

Section 8. Any such action heretofore taken by the Lessee in acquisition of the Project is hereby ratified, confirmed and approved except that the Agency is not taking any position on the Lessee's lease with the Landowner.



Section 9. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Lessee, whether or not the transaction is consummated. By acceptance hereof, the Lessee agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof.

Section 10. This resolution is subject to Agency approval of payment in lieu of taxes agreement for municipal services, as well as a Host Community Agreement with the Town of Lockport. Should the Lessee or any of its subtenants vacate the premises prior to the expiration of the arrangement for payment in lieu of taxes, the Lessee shall use its best efforts to obtain new subtenants, so that no application will be necessary for reduction in assessed value, it being the intent of the Agency that payments in lieu of taxes will be maintained at the level called for at all times while it holds a lease to the Project. The PILOT shall be for a period of 25 years with payments in lieu of taxes at a rate of \$2,500.00 per megawatt of project design with an escalation rate of 2% per year over the 25-year term. The lease and project documents shall be binding on the Lessee, its successors, heirs and distributes and all documents shall so reflect, with provision that the Agency may enforce them by action for specific performance.

Section 11. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 8 hereof) unless prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution or (b) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 12. This resolution is also subject to (a) the acquisition of space suitable for the purpose authorized herein (b) approval by the Agency of any Sublease, merger, or acquisition, including any information that the Agency deems necessary to verify compliance with the New York State Industrial Development Agency Act and (c) provision in any Sublease for use of the Project only for those purposes specified above or otherwise permitted by the New York State Industrial Development Agency Act and approved by the Agency.

Section 13. The execution and delivery of a Lease or a Lease and Leaseback between the Agency and the Lessee, being substantially in the form approved by the Agency or in form approved by the Chairman, Administrative Director or any member of the Board of Directors or the Agency attorney is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 14. The Agency hereby determines, based upon information furnished to the Agency by the Lessee and such other information as the Agency has deemed necessary to make this determination, that the Project does not require the preparation of additional environmental impact statement under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation law, as the contemplated actions have been determined to not have a significant effect on the environment.

Section 15. The mortgage financing to be issued, if any, shall not be exempt from Federal Income Taxation. Therefore, this resolution is not subject to compliance with the provisions of Section 103 of the Internal Revenue Code of 1954 as amended (the "Code") or to an appropriate allocation under the State law pursuant to the Deficit Reduction Act of 1984.

Section 16. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Lessee's purposes or needs or the extent to which proceeds derived from the mortgage will be sufficient to pay the cost of the acquisition, renovation and installation of the Project. The Lessee is satisfied that the Project is suitable and fit for Lessee's purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project, Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any

interruption of service or loss of use thereof or for any loss of business howsoever caused and the Lessee hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 17. This resolution is subject to compliance with all local building and zoning requirements.

Section 18. This resolution is subject to New York State Law regarding prevailing wages.

Section 19. This resolution shall take effect immediately.

Adopted June 14, 2022