

RESOLUTION OF THE WYOMING COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE CONSTRUCTION AND EQUIPPING OF A 20+/- MEGAWATT (MW) AC BATTERY ENERGY STORAGE FACILITY BY ORANGEVILLE ENERGY STORAGE LLC, TO BE LOCATED ON CENTERLINE ROAD IN THE TOWN OF ORANGEVILLE, NEW YORK, FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASEBACK TO ORANGEVILLE ENERGY STORAGE LLC, THE EXECUTION OF LEASE AGREEMENTS, A NON-STANDARD PILOT AGREEMENT, MORTGAGE AGREEMENT, AND THE TAKING OF OTHER ACTIONS.

WHEREAS, the Wyoming County Industrial Development Agency (the “Agency”) is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Section 901-b of the General Municipal Law, as amended (collectively, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, Orangeville Energy Storage LLC, for itself or for related individuals or entities (the “Company”), has submitted to the Agency an application and other material information in connection therewith (collectively, the “Application”) with respect to the construction and equipping by the Agency without the proceeds of a bond issue of a 20+/- megawatt (MW) AC battery energy storage facility comprised of multiple storage container buildings, commercial scale lithium-ion batteries, inverters, pad-mount transformers, electrical interconnection facilities and related improvements (the “Project”) and conveyance of the Project pursuant to a lease of the Project to the Company, such Project to be located on Centerline Road in the Town of Orangeville, New York (the “Premises”); and

WHEREAS, the Agency has reviewed and assessed the Application as necessary to afford a reasonable basis to decide whether to provide financial assistance for the Project; and

WHEREAS, the Agency has prepared a written cost-benefit analysis that identifies the extent to which the Project will create permanent, private-sector jobs, the estimated value of any tax exemptions to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the proposed Project in a timely fashion, the extent to which the proposed Project will provide additional sources of revenue for the municipalities and school district and any other public benefits that might occur as a result of the Project; and

WHEREAS, the Company has requested that the Agency consider entering into a non-standard agreement for payment in lieu of real estate taxes (“PILOT”) which will provide for payment by the Company of an annual PILOT equal to \$1,475.00 per megawatt (MW) AC installed capacity, subject to an annual increase equal to the greater of 2.5% or the Bureau of

Labor Statistics Consumer Price Index for the Northeast Region for the prior year, over a term of twenty (20) years, which agreement would deviate from the Agency's standard PILOT schedule set forth in the Agency's Uniform Tax Exemption Policy (the "UTEP"); and

WHEREAS, by letter dated September 25, 2019, the Planning Board of the Town of Orangeville (the "Planning Board") issued written notice to the Agency of its intent to act as lead agency under the State Environmental Quality Review Act (ECL Article 8 and its implementing regulations at 6 NYCRR Part 617) ("SEQRA") for the project. The Agency was specifically identified as an "involved agency," and a copy of the Company's completed Part 1 of the long-form Environmental Assessment Form ("EAF") was submitted to the Agency; and

WHEREAS, on December 11, 2019, the Planning Board issued a negative declaration under SEQRA with respect to the Project. A copy of the negative declaration is attached hereto as Exhibit A (the "Negative Declaration"); and

WHEREAS, the Company and the Town of Orangeville have entered into a certain host community agreement dated as of December 12, 2019, pursuant to which the Company will make payments to the Town in an amount equal to \$5,900 per MW AC installed capacity each year, subject to an annual increase equal to the greater of 2.5% or the Bureau of Labor Statistics Consumer Price Index for the Northeast Region for the prior year, for a term of twenty (20) years (the "Host Community Agreement"); and

WHEREAS, Section 5 of the UTEP provides that the Agency may deviate from its standard PILOT schedule if the Agency determines in accordance with the provisions of the UTEP that a project will have a significant impact in the locality where it is located; and

WHEREAS, pursuant to Section 874(4)(b) of the General Municipal Law and the UTEP, the Agency duly delivered a notice of deviation on February 12, 2020 to the chief executive officers of each of the affected taxing jurisdictions regarding the proposed non-standard PILOT agreement for the Project; and

WHEREAS, after the giving of all required notices (including published notice), the Agency held a public hearing on the Project on March 17, 2020, and has considered all oral and written presentations made at or in connection with said public hearing; and

WHEREAS, the Agency desires to encourage the Company with respect to the consummation of the Project, if by doing so it is able to induce the Company to proceed with the Project.

NOW, THEREFORE, THE WYOMING COUNTY INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. Based upon a review of the Company's Application, the EAF and the Negative Declaration issued by the Planning Board, the Agency hereby: (a) consents to and affirms the status of the Planning Board as lead agency within the meaning of, and for all purposes of complying with, SEQRA; (b) determines that the proceedings undertaken by the

Planning Board as lead agency under SEQRA with respect to the acquisition, construction and equipping of the Project satisfy the requirements of SEQRA, and ratifies and confirms such proceedings by the Planning Board as lead agency; (c) 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 (as defined herein) contemplated by the Agency with respect to the Project and the participation by the Agency in undertaking the Project have been satisfied.

Section 2. The Project is described in the recitals to this Resolution. The financial assistance to be provided by the Agency in connection with the Project includes: (i) an exemption from sales and use taxes on construction materials and non-production equipment purchased for incorporation in the Project or use at the Project location having a total cost not to exceed \$11,125,000.00; (ii) a mortgage recording tax exemption on one or more mortgages in the aggregate amount not to exceed \$10,512,000.00; and (iii) a twenty (20) year abatement from real property taxes in accordance with the non-standard payment in lieu of tax schedule set forth in **Exhibit B** attached hereto (the “Financial Assistance”). The payment in lieu of tax arrangement shall be set forth in a Payment in Lieu of Real Estate Taxes Agreement to be entered into between the Agency and the Company (the “PILOT Agreement”).

Section 3. The Agency hereby determines that the Project and the financing 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.

Section 4. The proposed Financial Assistance to the Project deviates from the terms of the Agency’s UTEP to the extent that the Company has requested a PILOT Agreement with a term of twenty (20) years that provides for a payment of \$1,475.00 per megawatt (MW) AC installed capacity, subject to an annual increase equal to the greater of 2.5% or the Bureau of Labor Statistics Consumer Price Index for the Northeast Region for the prior year. The Agency’s UTEP authorizes the Agency to deviate from the Agency’s standard PILOT schedule or to provide a project with enhanced benefits if the project is expected to have a significant impact in the locality where the project will be located. The Agency hereby determines that the Project will have a significant impact in the Town of Orangeville, New York, approves of the deviation from the Agency’s UTEP and authorizes the provision of the Financial Assistance to the Company as described herein. In making this determination, the Agency has considered the following factors in accordance with the Act and its UTEP, no single one of which is determinative:

1. The nature of the proposed project (e.g. manufacturing, commercial, etc.): The Project involves the acquisition of an interest in approximately 1 acre of real property located on Centerline Road in the Town of Orangeville, and the construction and equipping of a 20+/- megawatt (MW) AC battery energy storage facility comprised of multiple storage container buildings, commercial scale lithium-ion batteries, inverters, pad-mount transformers, electrical interconnection facilities and related improvements.
2. The nature of the property before the project begins (e.g. vacant land, vacant building, Brownfield site, etc.): The project site consists of a parcel of land that is vacant and is

currently zoned as a Low-Density District. A Special Use Permit was applied for by the Company and was approved by the Town Planning Board.

3. The economic condition of the area at the time of the application and the economic multiplying effect the project will have on the area: The Project will result in the construction of a new modern battery storage energy facility to be owned by the Company. The Company estimates six individuals will be working full-time construction jobs in connection with the acquisition, construction and installation of the Project Facility and one half of a fulltime equivalent (FTE) during operation. The FTE position will be filled by an individual local to the area. Additional benefits created by the Project will be felt by local businesses such as hotels, restaurants, gas stations, hardware stores and equipment rental companies.
4. The extent to which the project will create or retain permanent, private sector jobs, the number of jobs to be created/retained and/or the salary ranges of such jobs: The project is a battery storage facility. There will be one-half of a full time equivalent (FTE) permanent private sector job directly created or retained as a result of the Project. The salary range is projected to be \$60,000 annually.
5. The estimated value of tax exemptions to be provided: The value of the sales tax exemption for the Project is equal to approximately \$882,000. The value of mortgage recording tax exemption is \$131,400. A description of the value of the real property tax exemption is available upon request and described in the attached Exhibit B.
6. The economic impact of the project and the proposed tax exemptions on affected tax jurisdictions: The economic impact of the Project PILOT Agreement is positive as the Company will be paying PILOT payments relating to the Project facility in excess of the amounts currently being paid on the land, and at the expiration of the Proposed PILOT Agreement the Project facility will be subject to normal real property taxes.
7. The impact of the proposed project on existing and proposed businesses and economic development projects in the vicinity: The impact of the Project is a positive one for the community. Energy storage is a critical component of New York's transition to cleaner energy. The Project will assist the State of New York in meeting its goal of 70% clean energy by 2030.
8. The amount of private sector investment generated or likely to be generated by the proposed project: Investment by the Company will be approximately \$11,680,000. Every year the Company will contribute over \$100,000 to the communities of Wyoming County. These funds will be shared by the local fire department and emergency responders, schools, and agencies, contributing to and strengthening Wyoming County's economy.
9. The likelihood of accomplishing the proposed project in a timely fashion: The Project is expected to be completed in a timely manner.

10. The effect of the proposed project upon the environment and surrounding property: The Project will have a positive impact on the environment as described in number 7 above and in the Application.
11. The extent to which the proposed project will require the provision of additional services including, but not limited, educational, transportation, emergency medical or police and fire services: It is not anticipated that the Project will impose any significant additional burdens on municipal or educational services.
12. The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts in which the project is located: Sources of revenue to be generated by the Project include the tax revenues (both income and sales and use taxes) generated by construction workers, PILOT payments to be paid to the affected taxing jurisdictions during the term of the PILOT Agreement and the real property taxes generated when the Project facility is placed on the tax rolls at the expiration of the PILOT Agreement.
13. The extent to which the proposed project will provide a benefit (economic or otherwise) not otherwise available within the municipality in which the project is located: The benefit is a positive one economically as the Project would not occur without the entering into of the Proposed Pilot Agreement. The Project will deliver value locally and regionally, enabling renewable power generated in Wyoming County to be dispatchable and providing frequency regulation services that enhance the reliability and resiliency of the grid and increase the amount of clean energy being produced in New York State.

Section 5. The Agency hereby authorizes the Company, as agents for the Agency, to proceed with the Project as herein authorized. The Agency is hereby authorized to acquire an interest in the Project site and the buildings thereon, if any, and to make renovations or additions thereto. The Company is authorized to proceed with the acquisition and construction of the Project as set forth in any Project Assistance Agreement, the Mortgage Agreement, the Agency Lease Agreement or Installment Sale Contract (as hereinafter defined).

Section 6. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary of the Agency, and other appropriate officials of the Agency and its agents and employees, are hereby authorized and directed to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and to complete the Project in cooperation with the Company.

Section 7. The Company is authorized, as agents of the Agency, to initiate the construction of the Project, and the acquisition of machinery and equipment which will be a part thereof or will be used in connection therewith, and to advance such funds as may be necessary to accomplish such purposes. The designation of the Company as agent hereunder is limited to purchases of sales-taxable tangible personal property and services in connection with the Project which do not exceed a total cost of \$11,125,000.00 and shall not apply to any other purchase by the Company or any operating expenses of the Company. The Company shall report to the Agency, at

such times as the Agency shall require, or as may otherwise be prescribed by the Commissioner of the New York State Department of Taxation and Finance (the “Commissioner”), the value of all sales and use tax exemptions claimed by the Company or agents of the Company or any operators of the Project, including, but not limited to, consultants or subcontractors of such agents or Project operators under the authority granted pursuant to this Resolution. A failure to report may result in the revocation of the designation of the Company as agent and repayment of any sales and use tax exemptions claimed.

Section 8. The Agency is hereby authorized to enter into a project assistance agreement with respect to the provision of the Financial Assistance authorized herein (the “Project Assistance Agreement”), to acquire an interest in the Project site and construct a facility thereon, and execute and deliver a lease by the Company to the Agency (the “Company Lease”), an Agency Lease Agreement (the “Agency Lease Agreement”) or Installment Sale Contract (the “Installment Sale Contract”) between the Agency and the Company, the PILOT Agreement, and such other documents as may be necessary to fulfill the intent of the parties to the transaction (collectively, the “Project Documents”), in a form satisfactory to Agency counsel. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, or any Assistant Secretary are each authorized to execute such documents and to make or approve such amendments or modifications to the Project Assistance Agreement, Company Lease, the Agency Lease Agreement, Installment Sale Contract, the PILOT Agreement and such other documents executed and delivered in connection therewith as they deem necessary under the circumstances provided, however, that such modifications do not materially alter the risk to the Agency.

Section 9. In the event the Company obtains one or more conventional loans to finance the cost of the Project or which will otherwise be secured by a lien on the Project, the Agency is hereby authorized to execute and deliver to the lender(s) one or more collateral mortgages (“Mortgage Agreement”) on the Project given to secure such loans, and such other documents as may be necessary to fulfill the intent of the parties to the transaction in form satisfactory to Agency counsel, provided that the aggregate amount of such mortgages shall not exceed \$10,512,000.00. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary are each authorized to execute such collateral mortgages and to make or approve such amendment(s) or modifications to such collateral mortgages and other documents executed and delivered in connection therewith as they may deem necessary under the circumstances, provided, however, that such modifications do not materially alter the risk to the Agency.

Section 10. Any such action heretofore taken by the Company initiating the acquisition, installation and construction of the Project is hereby ratified, confirmed and approved.

Section 11. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Company. By acceptance hereof, the Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, 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 with respect to the Project and the financing thereof.

Section 12. In the event a lease is not executed between the Company and the Agency by

the expiration date of this Resolution (as such date may be extended as provided herein) or the termination of this Resolution, the Company shall then be required to pay all sales taxes which would have been levied in connection with the acquisition, construction and installation of all improvements to the real property and the machinery and equipment which constitute the Project, as if the Agency did not have an interest in the Project from the date the Company commenced its acquisition, construction and installation. In addition, in the event, because of the involvement of the Agency, the Company claims an exemption from state sales or use tax in connection with the Project, and such exemption is claimed with respect to property or services not authorized hereunder, or which exemption is in excess of the amounts authorized hereunder, or is otherwise not permitted under this Resolution, or if the Company shall fail to comply with a material term or condition regarding the use of property or services acquired by the Company as agent for the Agency as set forth in this Resolution or in any document authorized hereunder, then the Company shall each be required to remit to the Agency an amount equal to the amount of state sales and use taxes for which such exemption was improperly claimed. A failure to remit such amounts may result in an assessment against the Company by the Commissioner of state sales and use taxes, together with any relevant penalties and interest.

In addition to the foregoing, in the event the Agency determines that Company is in violation of a material term, or in the event that the Company closes the Project or relocates its operations to a location outside of the Town of Orangeville within the time period during which the Company is receiving Financial Assistance from the Agency or in the event the Agency determines, in its judgment, that the Company knowingly and intentionally submitted false or intentionally misleading information in its application to the Agency or in any report or certification submitted to the Agency for the purpose of obtaining or maintaining any Financial Assistance from the Agency (each referred to herein as a “Recapture Event”), the Agency may, in accordance with its policies and procedures then in effect, (i) revoke the designation of the Company and any agents of the Company (including, but not limited to, consultants, sub-contractors or equipment lessors of the Company) as agents for the Agency in connection with the Project and terminate the exemption from New York State and local sales and use taxes conferred with respect to the Project and/or (ii) require that the Company, commencing with the tax fiscal year next following such Recapture Event make payments in lieu of taxes on the Project with respect to all applicable taxing authorities in such amounts as would be payable as real estate taxes levied on the Project if the Agency did not have an interest in the Project or otherwise modify the amount or terms of any Financial Assistance being provided by the Agency in connection with the Project and/or (iii) require that the Company pay to the Agency an amount equal to all or a portion (as determined by the Agency in its discretion) of the total value of (x) all sales tax exemptions claimed by the Company and any agents of the Company, including, but not limited to, consultants, sub-contractors, or any equipment lessors of the Company under the authority granted under this Resolution and the Project Assistance Agreement, (y) any exemption from mortgage recording tax received by reason of the Agency’s involvement with the Project and/or (z) any exemption from real estate taxes received by reason of the Agency’s leasehold interest in the Project. If the Agency makes any of the foregoing determinations and requires a repayment of all or a portion of the Financial Assistance received by the Company, the Company shall (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall

then redistribute such amounts to the appropriate affected tax jurisdiction(s) unless otherwise agreed to by any affected tax jurisdiction.

Section 13. 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 Company's purposes or needs. The Company is satisfied that the Project is suitable and fit for its 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 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 Company hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 14. Should the appropriate officers of the Agency determine, in their absolute discretion, that there is reason to believe that the activities of any past or present owner or operator of the Premises have resulted in the generation of any "hazardous substance" (as the term has been defined from time to time in any applicable federal or state law, rule or regulation), or that any party has stored, disposed or released any such substance on the Premises or within a one (1) mile radius thereof, the Agency shall be under no obligation to enter into a lease as contemplated by this Resolution.

Section 15. No covenant, stipulation, obligation or agreement herein contained or contained in the Project Documents, or other documents, nor the breach thereof, shall constitute or give rise to or impose upon the Agency a pecuniary liability or a charge upon its general credit, nor shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity.

Section 16. Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect (except for the obligations in this Section 16), and the Agency shall have no liability to the Company hereunder or otherwise.

Section 17. This Resolution shall take effect immediately and shall continue in full force and effect for one (1) year from the date hereof and on or after such one (1) year anniversary, the Agency may, at its option (a) terminate the effectiveness of this Resolution (except with respect to the obligations of the Company pursuant to Sections 11, 12 and 16 of this Resolution which shall survive any expiration or termination) or (b) allow the Company additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions taken by the Company to complete such transactions.

ADOPTED: March 19, 2020

ACCEPTED AND AGREED TO: 10/28/2020, 2020

ORANGEVILLE ENERGY STORAGE LLC

DocuSigned by:

James Murphy

By: _____
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Name: James Murphy

Title: vice president



EXHIBIT A

**Town of Orangeville Planning Board
Negative Declaration**

See attached.

EXHIBIT B

PILOT Schedule

PILOT Payments shall be calculated as follows:

With respect to the assessed value of the land and any pre-Project improvements, payments by the Company shall be in an amount equal to the amount of taxes that would have been paid were there no exemption based on the Agency's leasehold interest in the Project.

With respect to the assessed value added by the Project, the PILOT Agreement between the Agency and the Company will provide for payments by the Company of \$1,475.00 per megawatt (MW) AC installed capacity, subject to an annual increase equal to the greater of 2.5% or the Bureau of Labor Statistics Consumer Price Index for the Northeast Region for the prior year. The PILOT Agreement will have a term of twenty (20) years.

In accordance with Section 858(15) of the General Municipal Law, PILOT payments shall be allocated among the affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the Project not been tax exempt due to the status of the agency involved in the project