

RESOLUTION OF THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY (THE “AGENCY”) AUTHORIZING ERIE WIND LLC (THE “COMPANY”) TO PROCEED WITH THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF A PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH A FIFTEEN YEAR PILOT AGREEMENT AND THE DELIVERY OF A LEASE TO AGENCY AND A LEASEBACK AGREEMENT TRANSACTION WITH THE COMPANY.

Whereas, Erie Wind, LLC (the “Company”) has entered into negotiations with the officials of the Town of Hamburg Industrial Development Agency (the "Agency") with respect to the request for assistance in connection with leasing of the two partial parcels totaling approximately 7.47 acres of land and improvements located at 0 Lake Shore Road, in the Town of Hamburg, for the replacement and upgrade of the existing 4 (four) wind turbines with new equipment at a cost of \$8,600,000.00, due to persistent maintenance issues with the existing turbines which are no longer being manufactured, in connection therewith by the Company, as Agent for the Agency, all for a wind energy generation facility for lease to the Agency (the “Project”); and

WHEREAS, the Company has submitted an Eligibility Questionnaire and other materials and information to the Agency (collectively hereinafter the "Eligibility Questionnaire") to initiate the accomplishment of the above; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Company, including the following: that the Company desires Agency financial assistance to construct the Project within the Town of Hamburg; that the Project will allow the Company to continue its operations in New York State; that but for the availability of financing and/or other assistance by the Agency, it would be difficult for the Company to proceed with the Project, that there will be no adverse disruption of existing employment at facilities of a similar nature within the Town of Hamburg, the Project will maintain existing employment and provide a substantial capital investment; if Agency financing or other assistance is disapproved, the Company would likely not proceed with the Project; and that, therefore, Agency financing or other assistance is necessary to encourage the Company to proceed with the Project in the Town of Hamburg; and

WHEREAS, letters stating that there will be a deviation from the Agency’s UTEP and describing the PILOT Deviation were mailed or delivered to each affected Tax Jurisdictions; and

WHEREAS, a public hearing on the Project has been held as required pursuant to Section 859-A of the General Municipal Law; and

WHEREAS, the Agency desires to further encourage the Company with respect to the acquisition and construction of the Project, if by so doing it is able to induce the Company to proceed with the Project in the Town of Hamburg; and

NOW, THEREFORE, THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition, construction 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 Eligibility Questionnaire and supplemental information furnished by the Company, as follows: (a) it would not have financed or otherwise assisted the Project except to induce the location of the Project in the area to be served by the Project as there is a demonstrable need for the Project and the services it offers; (b) but for the availability of Agency financing or other assistance for the Project in such area, the Project would not be economically feasible; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area. The Agency further determines, on the basis of the Company's and the Company's Eligibility Questionnaire that; the Project as represented is reasonably necessary to provide the purposes of the Act, subject to verification and confirmation of such representations prior to the Agency entering into a lease only transaction; and the Project is an integral part of the Company's plans to proceed with the Project in the Town of Hamburg.

Section 2. The Agency hereby authorizes the Company to proceed with the Project as herein authorized, which Project will be a lease leaseback with partial abatement from Real Property Tax Benefits through a Fifteen (15) year PILOT Agreement with the Company.

Section 3. The Agency will undertake to enter into a lease leaseback transaction with the Company.

Section 4. The Chairman, Vice Chairman, Executive Director, Secretary and Assistant Secretary of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Company to assist in the acquisition and construction of the Project.

Section 5. The Company is authorized to initiate the replacement and renovation of the four (4) wind turbines located at 0 Lakeshore Road, in the Town of Hamburg and is authorized to initiate the acquisition and installation of 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 Company as the Chairman, Vice Chairman, Executive Director, Assistant Secretary or other authorized officer may deem necessary in order to accomplish the above.

Section 6. Any such action heretofore taken by the Company in initiating the acquisition and construction of the Project is hereby ratified, confirmed and approved.

Section 7. Any expenses incurred by the Agency with respect to the Project shall be paid by the Company. By acceptance hereof, the Company agrees to pay such expenses with respect to their portion of the Project 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 their portion of the Project and the financing thereof.

Section 8. This resolution is subject to Agency approval of an arrangement for some payment in lieu of taxes for municipal services should the Company vacate the premises prior to the expiration of the arrangement for payment in lieu of taxes. It being the intent of the Agency that payments in lieu of taxes will be maintained at the level called for by its standard policy at all times while it holds title to the Project.

Section 9. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon, if execution of the anticipated lease and leaseback agreements and the ancillary documents has not occurred, this resolution shall cease to be effective (except with respect to matters contained in Section 7 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 Agency shall adopt a resolution authorizing the issuance of the Agency's bonds or notes to finance the costs of the Project as herein authorized or enters into a lease only transaction or (c) the Company shall continue to take affirmative steps to secure financing for the Project.

Section 10. The execution and delivery of a lease to agency and a lease agreement between the Agency and the Company, each being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary 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 11. 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 12. The Agency hereby determines, based upon information furnished to the Agency that the Erie County Industrial Development Agency (the "ECIDA") confirms that it functioned as "Lead Agency" with respect to the coordinated review of this Project pursuant to SEQRA and such other information as the Agency has deemed necessary to make this determination, that the ECIDA determined that there were no significant adverse environmental impacts associated with the Project and this Agency incorporates and adopts the findings of the ECIDA and as such the contemplated actions will not have a significant effect on the environment and no further action is required by the Agency.

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 or the extent to which proceeds derived from the sale of the bonds will be sufficient to pay the cost of the acquisition, construction, renovation and installation of the Project. The Company is satisfied that the Project is suitable and fit for Company'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 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 Agency's participation in this 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 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, and the Agency shall have no liability to the Company hereunder or otherwise.

Section 15. This resolution is subject to compliance with all local building and zoning requirements.

Section 16. This resolution shall take effect immediately.

ADOPTED: December 17, 2019

ACCEPTED:

ERIE WIND, LLC
By: Huron Holdings, LLC

By: _____
(name)
(title)