

RESOLUTION OF THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY (THE “AGENCY”) AUTHORIZING KEY CAPTURE ENERGY, LLC (THE “LESSEE”) TO CONSTRUCT AND INSTALL A 20 MW UTILITY SERVICING BATTERY ENERGY STORAGE FACILITY FOR WHOLESALE ELECTRIC MARKETS AT 2026 ELECTRIC AVENUE IN THE VILLAGE OF BLASDELL, AS AGENT FOR THE AGENCY FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASEBACK TO THE LESSEE AND TO TAKE OTHER ACTION.

WHEREAS, KEY CAPTURE ENERGY, LLC (the "Lessee") has entered into negotiations with the officials of the Town of Hamburg Industrial Development Agency (the "Agency") with respect to the construction and installation of a 20 MW utility servicing battery energy storage facility for wholesale electric markets at 2026 Electric Avenue in the Village of Blasdell for lease to the Agency and subsequent Leaseback to the Lessee (the "Project"); and

WHEREAS, the assistance contemplated by the Agency will include mortgage tax abatement, sales tax exemption on any materials and/or equipment purchased for incorporation into Project and real property tax abatement in accordance with existing Agency Uniform Tax Exemption Policy and Guidelines; and

WHEREAS, the Lessee 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 Agency has, after giving all required notices, held a public hearing on the Project pursuant to Section 859-A of the General Municipal Law; 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, the Project is in furtherance of the State of New York's energy goals including the Reforming the Energy Vision Policy and the New York State Energy Storage Roadmap; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: that the Lessee desires Agency assistance in regard to the construction and installation of a 20 MW utility servicing battery energy storage facility for wholesale electric markets at 2026 Electric Avenue in the Village of Blasdell for the continued growth of the Lessee, the Lessee needs an additional facility which is necessary to support the growth and the expansion of its operations; if the assistance is granted, **the Lessee anticipates hiring another .5 FT employees at the Project location** in the Village of Blasdell within two years following the completion of the Project; that the Project will result in substantial capital investment; that there will be no adverse disruption of existing employment at facilities of a similar nature in the Town of Hamburg; if Agency assistance is disapproved, the Lessee would have to scale back the Project negatively impacting future growth in New York; and that,

therefore, Agency assistance is necessary to encourage the Lessee to proceed with the Project in the Village of Blasdell; and

WHEREAS, the Agency desires to further encourage the Lessee with respect to the Project, if by so doing it is able to induce the Lessee to proceed with the Project in the Village of Blasdell.

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

Section 1. The Agency hereby determines that the acquisition, construction, equipping 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 Lessee, 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; (b) that Agency financing and/or other assistance is reasonably necessary to promote economic development and to induce the Lessee to proceed with the Project; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area; (d) the Project will allow the Lessee to expand its business in the Town of Hamburg; (e) the Project will create additional employment and provide substantial capital investment; The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that; (f) 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 into a lease with mortgage or lease only transaction and (g) the Project is an integral part of the Lessee's plan to proceed with the Project in the Village of Blasdell.

Section 2. 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 Lessee to assist in the acquisition, construction and equipping of the Project.

Section 3. The Lessee is authorized to initiate the construction and installation of a utility servicing battery energy storage facility for wholesale electric markets at 2026 Electric Avenue in the Village of Blasdell, by the Lessee, as Agent for the Agency, for lease to the Agency and subsequent Leaseback to the Lessee, and to proceed with the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith at a total Project Cost not to exceed **\$19,613,354.00**, subject to the obtaining of all required approvals from the Village of Blasdell and other involved governmental agencies, and to advance such funds as may be necessary to accomplish such purposes.

Section 4. The Agency is hereby authorized to enter into such agreements with the Lessee, as the Chairman, Vice Chairman, Executive Director or other officer may deem necessary in order to accomplish the above.

Section 5. 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 amount up to **\$18,323,354.00** 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 **\$1,603,293.00**. The Agency may consider any requests by the Lessee for increases in the amount of sales and use tax benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services necessary for the completion of the Project.

Section 6. Any such action heretofore taken by the Lessee 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 and the financing thereof shall be paid by the Lessee. 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 8. The Agency hereby authorizes and approves real property tax abatement benefits structured through a **twenty year payment in lieu of taxes agreement** (“PILOT Agreement”) estimated to provide **\$180,723.00 in real property tax abatement benefits**, and resulting in estimated total payments in lieu of taxes of **\$440,380.08** over the term of the PILOT Agreement.

Section 9. The Agency hereby authorizes and approves that the value of the mortgage to be placed upon the facility shall not exceed **\$13,618,012.00** and that the mortgage tax exemption benefit shall not exceed **\$102,126.00**.

Section 10. The execution and delivery of a Project and Agent Agreement, Closing Agreement, Lease to Agency, and Leaseback Agreement between the Agency and the Lessee, 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 execution and delivery of a mortgage from the Agency and the Lessee to a lender selected by the Lessee and approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary in an amount not to exceed **\$13,618,012.00** and other ancillary documents, if required, which mortgage and ancillary documents shall be 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 12. 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. 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 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 13. The provisions of Section 875 of the General Municipal Law 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 14. Should the Agency's participation in this Project be challenged by any party, in the courts or otherwise, the Lessee 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 Lessee hereunder or otherwise.

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

Section 16. The Agency hereby determines, based upon information furnished to the Agency by the Applicant and such other information as the Agency has deemed necessary to make this determination, that the Project does not require the preparation of an environmental impact statement under the State Environmental Quality Review Act, being Article 8 of the New

Section 16. The Agency hereby determines, based upon information furnished to the Agency by the Applicant and such other information as the Agency has deemed necessary to make this determination, that the Project does not require the preparation of an environmental impact statement under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation law ("SEQR"), as the contemplated actions are Type II actions that have been determined by SEQR not to have a significant adverse effect on the environment.

Section 17. The provisions of the Town of Hamburg Industrial Development Agency Policy for Recapture and/or Termination or Modification of Financial Assistance and Local Labor Policy shall be applicable to this Project.


Section 18. 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 Lessee pursuant to Sections 12, 13, 14 and 17 of this Resolution which shall survive any expiration or termination) or (b) allow the Lessee additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions taken by the Lessee to complete such transactions. Upon any allowance of additional time to close, the Agency may charge the Lessee an extension fee in accordance with the Agency's fee schedule.

ADOPTED: September 10, 2021

ACCEPTED:

KEY CAPTURE ENERGY, LLC
as Lessee

By



Daniel Fitzgerald
Member