

**RESOLUTION AUTHORIZING CERTAIN MODIFICATIONS
OYA INDEPENDENCE EAST LLC PROJECT**

A regular meeting of Allegany County Industrial Development Agency (the “Agency”) was convened in public session at the office of the Agency located at Crossroads Commerce & Conference Center located at 6087 State Route 19 North in the Town of Angelica, Allegany County, New York on November 10, 2022 at 10:00 o’clock a.m., local time.

The meeting was called to order by the (Vice) Chair of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

Richard Ewell	Chairman
Judy Hopkins	Vice Chairperson
Randy Shayler	Secretary
Douglas Frank	Treasurer
John Ricci	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Craig R. Clark, P.E., Ph.D.	Executive Director
Pam Common	Chief Finance Officer

The following resolution was offered by R. Ewell, seconded by J. Ricci, to wit:

Resolution No. 1122-01

**RESOLUTION AUTHORIZING THE EXECUTION BY ALLEGANY COUNTY
INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN MODIFICATIONS AND
AMENDMENTS TO THE BASIC DOCUMENTS IN CONNECTION WITH THE
OYA INDEPENDENCE EAST LLC PROJECT**

WHEREAS, Allegany County Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 99 of the 1973 Laws of New York, as amended, constituting Section 906-a of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, commercial and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct and install one or more “projects” (as defined in the Act), or to cause said projects to be acquired, constructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, pursuant to a closing on March 31, 2021 (the “Closing”) the Agency entered into a lease agreement dated as of March 1, 2021 (the “Lease Agreement”) with OYA Independence East LLC (the “Company”) in connection with a project (the “Project”) consisting of the following: (A) (1) the acquisition of an interest in two (2) parcels of land containing in the aggregate approximately 152 acres located at 1669 County Road 22 (tax map numbers 268.-1-15.21 and 268.-1-15.11) in the Town of Independence, Allegany County, New York (collectively, the “Land”), (2) the construction on the Land of a 5MWAC/7.5MWDC solar energy generating facility, including panels, racking, inverters, electrical cables, battery storage, access roads, site preparation, grid interconnection, and other required improvements (collectively, the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other personal property (the “Equipment”), all of the foregoing to constitute a solar energy generating facility to be owned and operated by the Company (the Land, Facility and the Equipment being collectively referred to as the “Project Facility”); (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease of the Project Facility to the Company pursuant to the Lease Agreement; and

WHEREAS, simultaneously with the Closing, (A) the Company executed and delivered to the Agency a certain lease to agency dated as of March 1, 2021 (the “Underlying Lease”) by and between the Company, as landlord and the Agency, as tenant pursuant to which the Company leased to the Agency the Land and all improvements now or hereafter located on the land (collectively, the “Leased Premises”); (B) the Company and the Agency executed and delivered (1) a certain payment in lieu of tax agreement dated as of March 1, 2021 (the “Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a certain recapture agreement (the “Section 875 GML Recapture Agreement”) by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (C) the Agency and the Company executed and delivered the uniform project benefits agreement dated as of March 1, 2021 (the “Uniform Agency Project Agreement”) by and between the Agency and the Company relating to the terms of the granting by the Agency of the Financial Assistance to the Company; the Agency filed with and/or mailed to the assessor and the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Project Facility; (D) the Agency executed and delivered to the Company a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance; and (E) the Agency filed with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”) (collectively, with the Lease Agreement, the “Basic Documents”); and

WHEREAS, the Basic Documents were modified pursuant to a modification agreement dated as of October 1, 2022 (the “Modification Agreement”) by and between the Agency and the Company; and

WHEREAS, the Company has requested, after discussions with the Agency and Agency counsel, that the Basic Documents be further modified as follows: (A) to provide that the job levels be reduced

from 1 full-time job to 0.25 full-time job, (B) that as the Project is near the construction phase, to decrease the acreage of Leased Premises from approximately 55 acres to 33.59 acres and (C) to extend the Completion Date (as defined in the Lease Agreement) (collectively, the "Second Modification"); and

WHEREAS, in connection with the Second Modification, the Company has requested that the Agency enter into a certain (A) amendment to Uniform Agency Project Agreement (the "First Amendment to Uniform Agency Project Agreement") by and between the Company and the Agency and (B) second modification agreement (the "Second Modification Agreement") by and between the Agency and the Company; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the "Regulations" and collectively with the SEQR Act, "SEQRA"), it appears that the Second Modification constitutes a Type II action under SEQRA;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF ALLEGANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Based upon an examination of the Second Modification, the Agency hereby makes the following determinations:

(A) The Amendment constitutes a "Type II action" pursuant to 6 NYCRR 617.5(c), (26) and (32), and therefore that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Second Modification.

(B) That since compliance by the Agency with the Second Modification will not result in the Agency providing more than \$100,000 of "financial assistance" (as such quoted term is defined in the Act) to the Company, Section 859-a of the Act does not require a public hearing to be held with respect to the Second Modification.

Section 2. Subject to (A) compliance with the terms and conditions in the Basic Documents, and (B) payment by the Company of all fees and expenses of the Agency in connection with the delivery of the First Amendment to Uniform Agency Project Agreement and the Second Modification Agreement (collectively, the "Modified Documents"), including the fees of Agency Counsel, the Agency hereby (a) consents to the Second Modification and (b) determines to enter into the Modified Documents.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chair (or Vice Chair) or Authorized Officer of the Agency is hereby authorized to execute and deliver the Modified Documents to the Company, and, where appropriate, the Secretary of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chair (or Vice Chair) or Authorized Officer shall approve, the execution thereof by the Chair (or Vice Chair) or Authorized Officer to constitute conclusive evidence of such approval.

Section 4. 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 or provided for by the provisions of the Modified Documents, and to execute and deliver all such additional 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 Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Modified Documents binding upon the Agency.

Section 5. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Richard Ewell	VOTING	AYE
Judy Hopkins	VOTING	AYE
Randy Shayler	VOTING	AYE
Douglas Frank	VOTING	AYE
John Ricci	VOTING	AYE

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF ALLEGANY)

I, the undersigned Secretary of Allegany County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on November 10, 2022 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) 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 rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 10th day of November, 2022.



Secretary

(SEAL)