

RESOLUTION

A regular meeting of the County of Sullivan Industrial Development Agency (“Agency”) was convened on July 10, 2023 at 11:00 a.m. local time at the Sullivan County Government Center, 100 North Street, Monticello, New York 12701.

The meeting was called to order by Chairperson Suzanne Loughlin, and, upon the roll being called, the following members of the Agency were:

	<u>PRESENT</u>	<u>ABSENT</u>
Suzanne Loughlin	[√]	[]
Edward T. Sykes	[√]	[]
Carol Roig	[√]	[]
Howard Siegel	[]	[√]
Scott Smith	[]	[√]
Paul Guenther	[√]	[]
Sean Brooks	[]	[√]
Philip Vallone	[√]	[]
Kathleen Lara	[√]	[]

The following persons were also present:

Jennifer M. Flad, Executive Director
John W. Kiefer, Chief Executive Officer
Julio Garaicoechea, Project Manager
Bethanii Padu, Economic Development Coordinator
Walter F. Garigliano, Agency General Counsel
William A. Frank, Special Transaction Counsel

The following resolution was duly offered by Carol Roig, and seconded by Kathleen Lara, to wit:

Resolution No. 25 - 23

RESOLUTION OF THE AGENCY AMENDING THE PAYMENT IN LIEU OF TAX AGREEMENT (“PILOT AGREEMENT”) BETWEEN THE AGENCY AND NY LIBERTY II, LLC (“COMPANY”) FOR THE PROJECT (HEREINAFTER DEFINED)

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York (“State”), as amended, and Chapter 560 of the Laws of 1970 of the State, as amended and codified as Section 960 of the General Municipal Law (collectively, the “Act”), the Agency was created with the authority and power to own, lease and sell property as authorized by the Act; and

WHEREAS, in 2014 Governor Andrew M. Cuomo launched Reforming the Energy Vision (“REV”), New York State’s energy policy and plan, which is intended to encourage renewable energy development that will spur economic growth and develop new clean energy business models; and

WHEREAS, the New York Community Distributed Generation (CDG) program was approved and enacted by the Public Service Commission in 2015, as part of and in support of the REV initiative; and

WHEREAS, a CDG facility is a commercial scale electricity generator to which residential and business customers can subscribe to receive credits from the electricity generated at the facility without the need to install or maintain equipment at the business or residential location; and

WHEREAS, Section 487 of the New York State Real Property Tax Law (“NYS RPTL”) provides a fifteen-year exemption on real property taxes for all CDG systems in the State, unless the local taxing jurisdiction opts out; and

WHEREAS, Section 487 allows participating jurisdictions to negotiate Payments in Lieu of Tax Agreements (PILOTs), the purpose of which is to reduce the tax burden and tax rate uncertainty for developers while preserving some of the foregone revenue that would have been paid in real property taxes to the taxing jurisdictions; and

WHEREAS, at the request of the County of Sullivan and various municipalities, in 2016 the Agency adopted its Community Distributed Generation Uniform Tax Exemption Policy (CDG UTEP), to provide a uniform system for assessing and collecting PILOTs from CDG projects throughout the County; and

WHEREAS, on or about April 4, 2022, the Company presented an application to the Agency (“Application”), a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project consisting of the construction of an approximately 2MWac solar photovoltaic electricity generating facility that will be interconnected to the NYSEG electrical grid (“Project”). The Project is new construction and will be comprised of (a) racking to mount the solar modules (such racking generally to be pile driven into the ground); (b) solar modules; (c) inverters and transformers to sit on a concrete inverter pad and (d) assorted electrical components and wiring. The solar array will be constructed on one (1) parcel of real estate consisting of approximately 20± acres on Harris Road, Town of Liberty (“Town”), County of Sullivan (“County”), State and a portion of Town tax map Section 36, Block 1, Lot 121.3 (“Land”); and

WHEREAS, on or about July 11, 2022, by duly adopted Resolution No. 29-22 (“Resolution”), the Agency authorized the Company to act as its agent for the purposes of constructing the Project and conferred on the Company certain financial assistance consisting of: (a) an exemption from all State and local sales and use tax for the purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Project or used in the construction of the Project, (b) an exemption from mortgage recording tax, and (c) a partial abatement from real property taxes for a period of five (5) years following the

statutory exemption from real property taxes under Real Property Tax Law Section 487, which exemption shall be conferred through a certain payment in lieu of tax agreement requiring the Company to make payments in lieu of taxes (“PILOT”) for the benefit of each municipality and school district having taxing jurisdiction over the Project, (collectively, the sales and use tax exemption, the mortgage recording tax exemption, and the partial abatement from real property taxes, are hereinafter collectively referred to as the “Financial Assistance”); and

WHEREAS, as relevant here, on or about October 1, 2022, the Agency and the Company entered into an Agent and Project Agreement, Lease to Agency, Leaseback to Company, and Payment in Lieu of Taxation Agreement (the “PILOT Agreement” and collectively with the Agent and Project Agreement, Lease to Agency, and Leaseback to Company, the “Transaction Documents”); and

WHEREAS, the Project is under construction and is expected to be placed in service on or before March 1, 2024, and

WHEREAS, in accordance with the PILOT Agreement the first PILOT payment will be due February 1, 2025; and

WHEREAS, across New York State, the assessed values of CDG systems have varied widely, resulting in uneven tax burdens on CDG developers and uneven revenues for taxing jurisdictions; and

WHEREAS, in response to the variations in assessments to CDG systems, in 2021 the New York State Legislature adopted Section 575-b of the NYS RPTL, which sets forth a method for determining the assessed value of solar or wind systems, including CDG systems, and requires all assessors to use a discounted cash flow appraisal model (the “Model”) published by the New York State Department of Taxation and Finance (“NYDTF”) for assessing such systems; and

WHEREAS, the Model was challenged because NYSDTF did not put the Model through the State Administrative Procedure Act (“SAPA”) process, resulting in a delay in implementation of the Model; and

WHEREAS, on May 1, 2023, local assessors across New York State filed their tentative 2023 assessment rolls, using various methodologies to calculate the assessed values of CDG systems; and

WHEREAS, Part N of the 2024 New York State budget legislation, signed by Governor Kathy Hochul on May 3, 2023, amends Section 575-b of the NYS RPTL so the Model is not subject to SAPA, and amends SAPA to exempt the Model and other appraisal models and discount rates from the requirements of SAPA; and

WHEREAS, under the Model, which now governs, the assessed values of some CDG systems are much lower than the assessed values calculated by local assessors and recorded on the tentative 2023 assessment rolls; and

WHEREAS, in these instances, the theoretical taxes paid by CDG systems would be far lower than the PILOT payments to be made in accordance with Agency agreements; and

WHEREAS, the Company and the Agency recognize that the PILOT Agreement as currently constructed places a financial burden on the Company that would not exist if the Agency and the Company terminated the PILOT Agreement, but also recognize that the PILOT Agreement provides stability and predictability for the Company and the taxing jurisdictions; and

WHEREAS, on or about May 30, 2023, the Company requested an amendment to the PILOT Agreement to reduce each annual PILOT payment by fifty (50%) of the difference between the PILOT payment set forth in the PILOT Agreement and the theoretical taxes as calculated using the Model; and

WHEREAS, the Agency is willing to amend the PILOT Agreement as requested by the Company as set forth below.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. That Section 2 of the PILOT Agreement is hereby deleted in its entirety and replaced as follows:

2. Agreement to Make Payments in Lieu of Taxes.

(a) RPTL §487 Exemption Period. During the period the Solar Array is exempt from general ad valorem real property taxes under RPTL §487 (years 1 to 15), the Company agrees to pay to the Agency at 548 Broadway, Monticello, New York 12701, or at such other address as shall be designated from time to time by the Agency (the "Agency's Offices"), payments in lieu of tax (each a "PILOT Payment") in the amount of Four Thousand Two and 00/100 (\$4,002.00) Dollars per name plate MW AC, which for this 2MW AC name plate Project is Eight Thousand Four 00/100 (\$8,004.00) Dollars;

For only the fifteen (15) year period during which time the Project is owned by the Company or an Affiliate of the Company and is exempt from general ad valorem real property taxes under Real Property Tax Law §487, the Company shall not and shall cause any of its Affiliates (as such term is defined below) not to enter into any agreement to make payments in lieu of tax, or agree to be subject to general ad valorem real property taxes payments, in each case in amounts greater than the PILOT Payments provided for herein for any other solar photovoltaic electricity generating facility located in Sullivan County, compensated for the energy generated by the Public Service Commission's base Value of Distributed Energy Resource method, and interconnected to the NYSEG electrical grid. For the purposes of this Section 2(a), the term "Affiliate" shall mean any entity which, directly or indirectly, is in control of, is controlled by, or is under common control with, the Company.

(b) RPTL §412-a Exemption Period. During any period the Land and Solar Array are exempt from taxation under §412-a of the RPTL and §874 of the Act, the Company agrees to pay the Agency at the Agency’s Offices a PILOT payment equal to what the real estate taxes on the unimproved Land (without giving effect to any increase to the assessed value associated with the Project) would have been if the Agency was not involved with the Project PLUS Eight Thousand Four 00/100 (\$8,004.00) Dollars.

(c) The chart which follows sets forth the anticipated years of the overall twenty (20) year period for PILOT Payments under the Agency’s Community Distributed Generation Tax Abatement Policy; the date that a PILOT Payment is due; and the appropriate tax periods to which the PILOT Payment applies. These periods are based on the expectation that the Solar Array will be placed in service after March 1, 2023 and before March 1, 2024. The “Years” set forth in the first column of the chart shall be adjusted so Year 1 is the February 1st of the year following the next March 1st after the date the Solar Array is placed in service.

Year	PILOT Payment Due Date	School Fiscal Year Beginning	County and Town
1	February 1, 2025	July 1, 2024	January 1, 2025
2	February 1, 2026	July 1, 2025	January 1, 2026
3	February 1, 2027	July 1, 2026	January 1, 2027
4	February 1, 2028	July 1, 2027	January 1, 2028
5	February 1, 2029	July 1, 2028	January 1, 2029
6	February 1, 2030	July 1, 2029	January 1, 2030
7	February 1, 2031	July 1, 2030	January 1, 2031
8	February 1, 2032	July 1, 2031	January 1, 2032
9	February 1, 2033	July 1, 2032	January 1, 2033
10	February 1, 2034	July 1, 2033	January 1, 2034
11	February 1, 2035	July 1, 2034	January 1, 2035
12	February 1, 2036	July 1, 2035	January 1, 2036
13	February 1, 2037	July 1, 2036	January 1, 2037
14	February 1, 2038	July 1, 2037	January 1, 2038
15	February 1, 2039	July 1, 2038	January 1, 2039
16	February 1, 2040	July 1, 2039	January 1, 2040
17	February 1, 2041	July 1, 2040	January 1, 2041

18	February 1, 2042	July 1, 2041	January 1, 2042
19	February 1, 2043	July 1, 2042	January 1, 2043
20	February 1, 2044	July 1, 2043	January 1, 2044

Section 2. The Chairperson or Executive Director of the Agency, each acting individually, is hereby authorized, on behalf of the Agency, to execute and deliver an Amendment to the PILOT Agreement in the form presented at this meeting with such changes, variations, omissions and insertions to the PILOT Agreement and as may be necessary, any of the Transaction Documents, as the Chairperson or Executive Director of the Agency shall approve in consultation with Counsel to the Agency, the execution thereof by the Chairperson or Executive Director of the Agency to constitute conclusive evidence of such approval.

Section 3. The officers, employees and agents of the Agency are hereby authorized and directed in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay, and or collect from the Company, 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 this resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 4. It is hereby found and determined that all formal actions of the Agency concerning and relating to the adoption of this resolution were adopted in an open meeting of the Agency; and that all deliberations of the Agency and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements.

Section 5. The Executive Director or Counsel to the Agency is hereby authorized and directed (i) to distribute copies of this resolution to the Company; and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 6. These Resolutions shall take effect immediately.

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

Suzanne Loughlin	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Edward T. Sykes	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Carol Roig	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Howard Siegel	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Scott Smith	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Paul Guenther	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Sean Brooks	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Philip Vallone	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Kathleen Lara	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain

The resolutions were thereupon duly adopted.

STATE OF NEW YORK :
:SS
COUNTY OF SULLIVAN :

I, the undersigned Secretary of the Agency DO HEREBY CERTIFY THAT:

1. I have compared the foregoing copy of a resolution of the County of Sullivan Industrial Development Agency (“Agency”) with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of such resolution and of the proceedings of the Agency in connection with such matter.
2. Such resolution was passed at a meeting of the Agency duly convened in public session on July 10, 2023 at 11:00 a.m. at the Sullivan County Government Center, 100 North Street, Village of Monticello, Sullivan County, New York, at which the following members were present:

	<u>PRESENT</u>	<u>ABSENT</u>
Suzanne Loughlin	[<input checked="" type="checkbox"/>]	[]
Edward T. Sykes	[<input checked="" type="checkbox"/>]	[]
Carol Roig	[<input checked="" type="checkbox"/>]	[]
Howard Siegel	[]	[<input checked="" type="checkbox"/>]
Scott Smith	[]	[<input checked="" type="checkbox"/>]
Paul Guenther	[<input checked="" type="checkbox"/>]	[]
Sean Brooks	[]	[<input checked="" type="checkbox"/>]
Philip Vallone	[<input checked="" type="checkbox"/>]	[]
Kathleen Lara	[<input checked="" type="checkbox"/>]	[]


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

Suzanne Loughlin	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Edward T. Sykes	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Carol Roig	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Howard Siegel	[] Yes	[] No	[<input checked="" type="checkbox"/>] Absent	[] Abstain
Scott Smith	[] Yes	[] No	[<input checked="" type="checkbox"/>] Absent	[] Abstain
Paul Guenther	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Sean Brooks	[] Yes	[] No	[<input checked="" type="checkbox"/>] Absent	[] Abstain
Philip Vallone	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Kathleen Lara	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain

and therefore, the resolution was declared duly adopted.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103(a) and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections 103(a) and 104, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the 10th day of July, 2023.



Carol Roig, Secretary