



**COIDA Board Meeting Agenda**  
Wednesday December 27, 2023 10:00 AM  
Updated 12/26/23

- **Call COIDA Board meeting to order-Chair**
- **Roll Call** – Calling of Board members, announcement as to whether a quorum is present
- **Approval of Previous Board Meeting Minutes**
  - *None*
- **Financial –**
  - *None*
- **Report of Committees/Departments/Sites**
  - *None*
- **Executive Session – If Required – Motion (Including invitees)**
  - *Action on any matters from executive session – Motion*
- **Unfinished Business**
  -
- **New Business**
  - *Consider resolution authorizing the execution and delivery of a mortgage, an assignment of leases and rents and other documents in connection with WNY Energy, LLC project – Motion*
  - *Consider agreement with Orleans County - Motion*
- **Adjournment**

**RESOLUTION OF THE COUNTY OF ORLEANS INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE EXECUTION AND DELIVERY OF A MORTGAGE, AN ASSIGNMENT OF LEASES AND RENTS AND OTHER DOCUMENTS IN CONNECTION WITH THE WESTERN NEW YORK ENERGY, LLC PROJECT.**

**WHEREAS**, the County of Orleans 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 Chapter 918 of the 1971 Laws of New York, 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**, to accomplish the purposes of the Act, Western New York Energy, LLC (the "Company") was authorized to proceed with the construction and equipping by the Agency without the proceeds of a bond issue of an 6,050+/- square foot expansion of the Company's existing ethanol manufacturing facility and the purchase and installation of equipment and improvements (the "Project"), such Project to be located at 4141 Bates Road in the Town of Shelby, New York (the "Premises"); and

**WHEREAS**, to facilitate the Project, the Agency acquired a leasehold interest in the Premises from the Company pursuant to a Company Lease dated as of January 1, 2021, a memorandum of which was recorded in the Office of the Orleans County Clerk on May 19, 2021 in Book/Liber 865 at page 1187, and the Agency leased the Premises back to the Company pursuant to an Agency Lease Agreement dated as January 1, 2021, a memorandum of which was recorded in the Office of the Orleans County Clerk on May 19, 2021 in Book/Liber 865 at page 1174; and

**WHEREAS**, the Company has requested that the Agency enter into a mortgage agreement and Assignment of Leases and Rents with Farm Credit, ACA (the "Lender") encumbering the Premises (the "Mortgage"), for the sole purpose of subjecting the Agency's interest in the Premises to the lien of the Mortgage and not for the purpose of providing any exemption from mortgage recording tax or other financial assistance.

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

1. The execution and delivery by the Agency of the Mortgage, the Assignment of Leases and Rents and such other documents as may be reasonably necessary to effectuate the transaction contemplated therein, each in the form presented to and approved by the CEO/CFO of the Agency and Agency counsel, are hereby authorized. No exemption from mortgage recording tax shall be conferred as a result of the Agency executing the Mortgage.

2. The Chairman, Treasurer, Secretary, Assistant Secretary and the CEO/CFO of the Agency are each individually authorized to execute and deliver the Mortgage, the Assignment of Leases and Rents and such other documents and instruments as may be reasonably necessary to effectuate the transaction contemplated therein, and each is further authorized to take such other actions as may be necessary to effectuate the transactions contemplated by this resolution.

3. This resolution shall take effect immediately.

The above resolution was moved for adoption by \_\_\_\_\_  
and seconded by \_\_\_\_\_.

ROLL CALL VOTE:

	<u>Yes</u>		<u>No</u>		<u>Absent</u>		<u>Abstain</u>	
Carol D'Agostino	[	]	[	]	[	]	[	]
Merle Draper	[	]	[	]	[	]	[	]
John Fitzak	[	]	[	]	[	]	[	]
Jeffrey Martin	[	]	[	]	[	]	[	]
John Misiti	[	]	[	]	[	]	[	]
Craig Tuohey	[	]	[	]	[	]	[	]
Ed Urbanik	[	]	[	]	[	]	[	]

ADOPTED: December 27, 2023

**COUNTY OF ORLEANS INDUSTRIAL DEVELOPMENT AGENCY  
AGREEMENT WITH ORLEANS COUNTY  
2024**

THIS AGREEMENT made effective January 1, 2024, by and between the County of Orleans, a municipal corporation organized and existing under and by virtue of the laws of the State of New York and having its principal office at the Legislature Building, Albion, New York, hereinafter called the "County", and the County of Orleans Industrial Development Agency, organized pursuant to Section 892-g of the General Municipal law, with its principal office located at 121 North Main Street, Albion, New York, hereinafter called "Agency".

WITNESSETH:

WHEREAS, it is in the best interest of the County that the many advantages of Orleans County be publicized to those who may be interested in establishing, maintaining or expanding business and industry in the County of Orleans, in order to create new jobs and keep a healthy economy; and

WHEREAS, equally as important is the ability to retain within the county the jobs already located here; and

WHEREAS, among the most important tasks facing New York State are the need to increase jobs and encourage higher levels of private capital investment in business and industry thereby improving the general prosperity and economic welfare of the people of New York State and its constituent municipalities; and

WHEREAS, the County recognizes that the Agency is an community-wide organization with the expertise and capacity to so improve the general prosperity and economic welfare to the people of the County; and

WHEREAS, the purpose of this Agreement is to carry out in a legal and proper manner the provisions of Section 852 of the General Municipal Law of the State of New York, which section does authorize the County to appropriate funds for the purpose of encouraging industrial development within the County; and

WHEREAS, New York State Public Officers Law Section 18 states that a county legislative body may provide for the defense and indemnification of the officers and employees of a public entity and additional indemnification of said Agency may be contracted in return for services; and

NOW THEREFORE, in consideration of the agreements and promises herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:

## SERVICES

1. The parties understand that the Agency shall hire and employ a professional staff, which shall maintain a continuing program of identifying, locating and contacting industrial prospects who may be interested in establishing or expanding manufacturing or industrial facilities with the County of Orleans. The Agency shall have the right to discharge such staff without the approval of the Legislature. Such staff shall be entitled to participate in all County/State employee benefit programs including but not limited to retirement, compensation, medical insurance, dental insurance and Cafeteria Program.

2. The Agency shall, through its professional staff, conduct an ongoing local economic retention and development program. As part of this program, the agency shall maintain close and frequent contact and communication with local firms. In connection, therewith the Agency agrees that it shall maintain up-to-date factual data on all aspects of the County of Orleans for use in promoting the advantages of the County to such prospects.

3. The Agency shall assist prospective employers in packaging financial assistance from available public and private sources as appropriate for the construction of new or expanded facilities, which shall result in additional employment for residents of Orleans County.

## ACCOUNTABILITY

1. The Agency shall keep the County informed, subject to the restraints of law, of its operations through the Orleans County Legislature's representative members of the Agency, by means of joint meetings, which either party might request, and through the submission of its Annual Report. Each public entity shall respect the confidentiality of the others executive sessions and the information disclosed therein.

2. The Agency agrees to establish appropriate accounting and record keeping procedures that comply with generally accepted principles and with appropriate law and regulations in reporting and withholding Federal and New York State Taxes and Social Security contributions and transmitting to the proper authorities.

## ADMINISTRATION

1. The Agency understands that its professional staff will cooperate with the Director of Planning and Development in all circumstances that relate to the Planning Department area of influence

2. The parties specifically acknowledge that this Agreement pertains solely to the professional services of the Agency and that any other Agreements between the parties shall be

governed exclusively by the terms and conditions of said Agreements and that additional unrestricted gifts on account of specific projects undertaken by the Agency are permitted by law.

3. The Agency shall comply with all applicable federal, state and local laws, rules and regulations including, but not limited to, those prohibiting discrimination based on race, religion, color, national origin, disability, marital status or status as a disabled veteran.

### FINANCES

1. The Agency agrees to report all State and Federal Withholding as well as New York State Retirement contributions in such manner and method as the parties may agree.

### INDEMNIFICATION

1. The County shall defend, hold harmless and indemnify the Agency and its members, officers and employees (“claimant”) for and against all costs, fees, damages, fines and penalties incurred or imposed by virtue of the performance by the Agency of the terms and conditions of this Agreement in any court, administrative, or other proceeding.

2. The duty to defend, indemnify and hold harmless provided by this Agreement shall be conditioned upon; (i) delivery by the “claimant” to the chief legal officer of the county or to its chief administrative officer of a written request to provide for his defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten days after he is served with such document, and (ii) the full cooperation of the “claimant” in the defense of such action or proceeding and in defense of any action or proceeding against the public entity based upon the same act or omission, and in the prosecution of any appeal.

3. It is not the intention of this Agreement to in any way impair, limit, modify or restrict any immunity to liability available to the Agency or any legislator, board member or employee of the Agency or County.

4. This Agreement shall not in any way affect the obligation of any “claimant” to give proper notice to the Agency and the County under the provisions of Section 50-e of the New York State General Municipal Law, or any other applicable provision regarding notice and compromise and settlement. The provisions of said Section 50-e and the procedures therein are incorporated by reference herein to the extent not inconsistent herewith.

### TERM OF AGREEMENT

1. This Agreement shall be for a term from the date hereof until December 31, 2024. The Agency agrees to submit its proposed budget for the ensuing budget year to the County no later than September 15th of the preceding year. The County agrees to examine such budgetary requests as a part of its budgetary process in adopting the Annual Budget of the County of

Orleans. Either party upon ninety (90) days prior written notice to the other party may terminate this contract at any time.

NO POWER TO BIND

1. The County, the Agency, and their respective employees are not and shall not be considered as joint ventures, employees, partners or agents of each other and neither shall have the power to bind and obligate the other except as set forth in this Agreement.

TERM OF PAYMENT

1. Orleans County will pay COIDA during their 2024 Agreement the amount of \$200,000 payable in quarterly payments of \$50,000.

IN WITNESS WHEREOF, the undersigned have set their hands and seals this day of \_\_\_\_\_, 20\_\_.

ORLEANS COUNTY LEGISLATURE

\_\_\_\_\_  
By:  
Title:

COUNTY OF ORLEANS INDUSTRIAL  
DEVELOPMENT AGENCY

\_\_\_\_\_  
By: Michael Dobell  
Title CEO

ACKNOWLEDGMENT OF SIGNATORY (IES)  
STATE OF NEW YORK)

) ss  
COUNTY OF ORLEANS)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_ to me known or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies); and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature of Notary Public

Orleans County Legislature  
Office or Capacity of signatory (ies)  
Notary Stamp:

ACKNOWLEDGMENT OF SIGNATORY (IES)  
STATE OF NEW YORK)

) ss  
COUNTY OF ORLEANS)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said state, personally appeared \_\_\_\_\_ to me known or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies); and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature of Notary Public

County of Orleans Industrial Development Agency  
Office or Capacity of signatory (ies)  
Notary Stamp: