

**Wells Enterprises, Inc. (2023 Substation PILOT Amendment) -
Authorizing Resolution**

A regular meeting of the County of Chautauqua Industrial Development Agency (the “Agency”) was convened in public session on December 19, 2023, at 10:00 A.M., local time, at the offices of the Agency located at 201 West 3rd Street, Jamestown, County of Chautauqua, New York (the “IDA Office”).

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

PRESENT:

Gary Henry	Chairperson
Bradley Walters	Vice Chairperson
Sagan Sheffield-Smith	Treasurer
Dan Heitzenrater	Secretary
Steven Thorpe	Member
Kevin Muldowney	Member
Daniel DeMarte	Member
Amy Harding	Member

NOT PRESENT:

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Mark Geise	Administrative Director/CEO
Richard E. Dixon	Chief Financial Officer
Milan K. Tyler, Esq.	Counsel
Greg Peterson	Counsel
Lisa Cole	Counsel
Bob Murray	Harris Beach
Kristine Morabito	IDA Staff
Rosie Strandburg	IDA Staff
Carol Rasmussen	IDA Staff
Kayla Strandburg	IDA Staff
Jeanette Lo Bello	IDA Staff
Jason Sample	IDA Staff
James Feldman	County Executive Staff
Dick Kennedy	Wells Enterprises Inc.
Brad Galles	Wells Enterprises Inc.
Chris Schastok	CBRE
Vince DeJoy	City of Dunkirk

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Kate Wdowiasz
Greg Bacon
Jonathan Epstein

City of Dunkirk
Jamestown Post Journal
Buffalo News

The attached resolution no. 12-19-23-04 was offered by Brad Walters, seconded by
Kevin Muldowney:

Resolution No. 12-19-23-04

RESOLUTION TAKING OFFICIAL ACTION TOWARD AND APPROVING THE
STRAIGHT LEASE DOCUMENTS FOR A CERTAIN PROJECT FOR
WELLS ENTERPRISES, INC. AND/OR ITS AFFILIATES

WHEREAS, the County of Chautauqua Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the Laws of 1969 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 71 of the 1972 Laws of New York, as amended, constituting Section 895-h 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 industrial, manufacturing, warehousing, commercial, research and recreation 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, reconstruct and install one or more “projects” (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, WELLS ENTERPRISES, INC., a corporation duly organized and existing under the laws of the State of Iowa and qualified to do business in the State of New York as a foreign corporation (including an entity to be formed for the purposes described herein, collectively, the “Applicant”), previously presented an application for financial assistance (the “Original Application”) to the Agency, which Original Application requested that the Agency consider undertaking a project (the “Original Project”) consisting of, *inter alia*, the following: (A)(1) the acquisition of an interest in an approximately 2.9 acre parcel of land located at 115 West Doughty Street Extension, City of Dunkirk, County of Chautauqua, New York (the “Land”), (2) the construction and installation of a power substation and related improvements on the Land (collectively, the “Improvements” and together with the Land, the “Facility”), and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the “Equipment”) necessary for the completion thereof (collectively, the “Project Facility”), all of the foregoing for use by the Applicant and/or its affiliates as an electrical substation facility; (C) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes (collectively, the “Original Financial Assistance”); and (D) the lease

(with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity(ies) as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on September 24, 2019 (the “Authorizing Resolution”), the Agency determined to proceed with the Original Project, to grant the Original Financial Assistance and to enter into the “straight lease transaction” (as such quoted term is defined in the Act) contemplated by the Lease Agreement (as hereinafter defined) and the other Transaction Documents (as defined in the Lease Agreement); and

WHEREAS, the Agency leased the Facility from the Applicant pursuant to the terms and conditions set forth in that certain Company Lease Agreement dated as of March 1, 2021 (the “Company Lease”) between the Applicant, as lessor, and the Agency, as lessee; and

WHEREAS, the Agency subleased the Facility to the Applicant, all pursuant to the terms and conditions set forth in that certain Agency Lease Agreement (Uniform Project Agreement) dated as of March 1, 2021 (the “Lease Agreement”) between the Agency and the Applicant and in the other Transaction Documents (as defined in the Lease Agreement); and

WHEREAS, pursuant to a certain Payment in Lieu of Taxes Agreement dated as of March 1, 2021 (the “PILOT Agreement”) between the Applicant and the Agency, the Applicant agreed to make certain payments in lieu of real property taxes with respect to the Facility; and

WHEREAS, pursuant to an application for financial assistance submitted to the Agency by the Applicant on or about August 18, 2023 (the “Application”), the Applicant has requested that the Agency consider undertaking a new project with respect to the Project Facility (collectively, the “Project”), consisting of the following: (A) the extension of the term of the Agency’s interest in the Facility; and (B) the granting of certain additional “financial assistance” (within the meaning of Section 854(14) of the Act) in the form of an amended exemption from real property taxes (collectively, the “Additional Financial Assistance”); and

WHEREAS, in accordance with Section 859-a of the Act, any approval of the Project is contingent upon, inter alia, a determination by the members of the Agency to proceed with the Project following a determination by the Agency that (A) the public hearing and notice requirements and other procedural requirements contained in the Act relating to the Project have been satisfied; and (B) the undertaking of the Project by the Agency and the granting of the Additional Financial Assistance are and will be in compliance with all other applicable requirements of the Act, SEQRA (as hereinafter defined), and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Project and/or the Project Facility (collectively, the “Applicable Laws”); and

WHEREAS, the Administrative Director/CEO of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) to hear all persons interested in the Project and the Additional Financial Assistance contemplated by the

Agency with respect to the Project, to be mailed on December 7, 2023 to the chief executive officer of the County of Chautauqua (the “County”) and of each other affected tax jurisdiction within which the Project Facility is or is to be located, and posted a copy of the Application on the Agency’s website; (B) caused notice of the Public Hearing to be published on December 8, 2023 in [*The Observer*], a newspaper of general circulation available to residents of the County; (C) caused the Public Hearing to be conducted on December 18, 2023, at 10:00 a.m., local time, at Fredonia Technology Incubator, Large Conference Room - 1st floor, 214 Central Avenue, City of Dunkirk, County of Chautauqua, New York; (D) caused the Public Hearing to be streamed on the Agency’s website in real-time and a recording of the Public Hearing to be posted on the Agency’s website, all in accordance with Section 857 of the Act, as amended; and (E) caused a written report of the Public Hearing to be prepared which fairly summarizes the views presented at the Public Hearing and collected written comments from the public (collectively, the “Report”) and distributed the Report to the members of the Agency; 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 (the “Regulations” and collectively with the SEQR Act, "SEQRA"), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to undertake the Project; and

WHEREAS, the appropriate personnel of the Agency reviewed the environmental assessment form and other materials submitted by the Applicant and made any necessary comments to the members of the Agency, the Agency conducted a coordinated review pursuant to SEQRA, and by resolution of the members of the Agency adopted on December 19, 2023, the Agency determined that (A) the Project is a Type I Action pursuant to SEQRA, and (B) the Project would have no significant adverse environmental impacts and issued a negative declaration in accordance with SEQRA; and

WHEREAS, in accordance with Section 874(4) of the Act, (A) the Administrative Director/CEO of the Agency caused a letter dated December 7, 2023 (the “Pilot Deviation Notice Letter”) to be mailed to the chief executive officer of each affected tax jurisdiction and such other persons as are required by applicable law, informing said individuals that the Agency would, at its meeting on December 19, 2023 (the “IDA Meeting”), consider a proposed deviation from the Agency’s Uniform Tax Exemption Policy and Guidelines (the “Tax Exemption Policy”) with respect to an amendment to the PILOT Agreement to be entered into by the Agency with respect to the Project Facility (the “PILOT Amendment”); and (B) the members of the Agency conducted the IDA Meeting on the date hereof and reviewed any comments and correspondence received with respect to the proposed deviation from the Tax Exemption Policy and approved the proposed deviation from the Tax Exemption Policy; and

WHEREAS, the Agency now desires to make its determination to proceed with the Project and to grant the Additional Financial Assistance, subject to the terms hereof; and

WHEREAS, the Applicant and/or one (1) or more of its affiliates will (A) execute and deliver a certain Amendment to Company Lease Agreement (the “Company Lease Amendment”), pursuant to which the Applicant and/or such affiliate(s) will, *inter alia*, extend the term of the Company Lease; (B) execute and deliver a certain Amendment to Agency Lease Agreement (Uniform Project Agreement) (the “Lease Amendment”), pursuant to which the Agency will extend the term of the Lease Agreement; (C) execute and deliver a certain Amendment to Payment in Lieu of Taxes Agreement (the “PILOT Amendment”), pursuant to which the Agency would grant an additional exemption from real property taxes with respect to the Project Facility; and (D) execute and deliver certain other certificates, documents, instruments and agreements related to the Project (together with the Company Lease Amendment, the Lease Amendment and the PILOT Amendment, collectively, the “Transaction Documents”);

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

Section 1. In accordance with Section 859-a of the Act, the Agency has prepared a written cost-benefit analysis with respect to the Project and the granting of the Additional Financial Assistance (the “Analysis”). The Agency has reviewed the Application, the Report and the Analysis, and, based upon the representations made by the Applicant to the Agency and information obtained by the Agency, the Agency has reviewed and assessed all material information necessary to afford a reasonable basis for the Agency to make a determination to approve the Additional Financial Assistance. In addition, the Agency hereby makes the following findings and determinations with respect to the Project:

(a) based on the continued use of the Project Facility as set forth in the Application, the economic effects of the Project on the area in which it is situated, and the employment reasonably expected to be created and/or maintained by the Project, and an analysis of how the Project contributes to the realization of the public purposes of promoting employment opportunities in the County and the prevention of economic deterioration in the County, the Project continues to constitute a commercial facility with a significant impact on the area in which it is situated, and will advance the Agency’s purposes by promoting employment opportunities and preventing economic deterioration in the County. Therefore, the Project constitutes a “project” within the meaning of the Act;

(b) the granting by the Agency of the Additional Financial Assistance with respect to the Project will be an inducement to the Applicant to undertake the Project in the County;

(c) there is a likelihood that the Project would not be undertaken but for the granting of the Additional Financial Assistance by the Agency to the Applicant;

(d) the completion of the Project, the sublease of the Project Facility by the Agency to the Applicant and the operation thereof by the Applicant will not result in the removal of a facility or plant of the Applicant or any other occupant or user of the Project Facility from one area of the State of New York (the "State") to another area of the State or in the abandonment of one or more plants or facilities of the Applicant or any other occupant or user located within the State (but outside of the County). Therefore, the provisions of subdivision (1) of Section 862 of the Act are not and will not be violated as a result of the granting of the Additional Financial Assistance by the Agency to the Applicant;

(e) the Project will serve the public purposes of the Act by preserving permanent, private sector jobs, and increasing the overall number of permanent, private sector jobs in the State;

(f) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State, nor shall any funds of the Agency be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media;

(g) the Project Facility does not and will not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project. For purposes of this finding, retail sales shall mean: (i) sales by a registered vendor under Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section 1101 of the New York Tax Law; or (ii) sales of a service to such customers;

(h) the granting of the Additional Financial Assistance by the Agency with respect to the Project will encourage and assist the Applicant in undertaking the Project in the County, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the County and the State and improve their standard of living, and thereby serve the public purposes of the Act; and

(i) the Project will not result in the removal or abandonment of a plant or facility of the Applicant or any other occupant or user of the Project Facility, currently located within the County.

Section 2. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Administrative Director/CEO, the Chief Financial Officer and the staff of the Agency with respect to the Application, the Analysis and the Public Hearing, including, without limitation, (a) those actions required to ensure full compliance with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Project, and (b) the appointment of the law firm of Phillips Lytle LLP as Counsel to the Agency with respect to all matters in connection with the Project.

Section 3. The Agency hereby determines that the Agency has fully complied with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Project.

Section 4. Having considered fully all comments received at or in connection with the Public Hearing and the IDA Meeting, including correspondence received subsequent to the Public Hearing, the Agency hereby further determines to proceed with the Project and the granting of the Additional Financial Assistance, subject to the terms hereof. The Agency hereby approves the granting of an amended exemption from real property taxes having an estimated value of \$450,897.

Section 5. The Agency recognizes that due to the complexities of the proposed transaction it may become necessary that certain of the terms approved hereby may require modifications from time to time which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman, Vice Chairman, Administrative Director/CEO and Chief Financial Officer of the Agency, acting individually or jointly, to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution, but may include adjustments to the Additional Financial Assistance granted hereunder. The approval of such modifications shall be evidenced by the certificate of determination of an Agency officer or the execution and delivery by some or all such Agency officers of relevant documents containing such modified terms.

Section 6. The Agency is hereby authorized to (a) execute and deliver the Company Lease Amendment, the Lease Amendment, the PILOT Amendment and the other Transaction Documents, (b) grant the Additional Financial Assistance, and (c) do all things necessary, convenient or appropriate for the accomplishment thereof. All acts heretofore taken by the Agency with respect to the foregoing are hereby approved, ratified and confirmed.

Section 7. The form and substance of the Transaction Documents, in the forms presented to the members of the Agency, together with such changes as the Chairman, Vice Chairman, Administrative Director/CEO or Chief Financial Officer may hereafter deem necessary or appropriate, are hereby approved. The Chairman, Vice Chairman, Administrative Director/CEO and Chief Financial Officer are hereby authorized, on behalf of the Agency, acting together or individually, to execute and deliver the Transaction Documents to which the Agency

is a party and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same. The execution and delivery of each such agreement, approval and consent by such person(s) shall be conclusive evidence of such approval.

Section 8. The Chairman, Vice Chairman, Administrative Director/CEO and Chief Financial Officer of the Agency are hereby further authorized, on behalf of the Agency, acting together or individually, to designate any additional Authorized Representatives (as defined in the Lease Agreement) of the Agency.

Section 9. The officers, employees and agents of the Agency are hereby authorized and directed, acting individually or jointly, 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 Transaction Documents, to execute and deliver all such additional certificates, instruments, agreements 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, convenient or appropriate to effect the purposes of this Resolution and to cause compliance with all of the terms, covenants and provisions of the Transaction Documents to which the Agency is a party or which are binding on the Agency.

Section 10. The Chairman, the Vice Chairman, the Administrative Director/CEO and the Chief Financial Officer of the Agency are hereby authorized and directed to distribute copies of this Resolution to the Applicant and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 11. 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:

Gary Henry	AYE
Bradley Walters	AYE
Sagan Sheffield-Smith	AYE
Dan Heitzenrater	AYE
Steven Thorpe	AYE
Kevin Muldowney	AYE
Daniel DeMarte	AYE
Amy Harding	AYE

The foregoing resolution was thereupon declared duly adopted.

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

WE, the undersigned officers of the County of Chautauqua Industrial Development Agency (the “Agency”), DO HEREBY CERTIFY that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on December 19, 2023 with the original thereof on file in our offices, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

WE 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 at both locations at which members of the Agency were present, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; (D) there was a quorum of the members of the Agency present throughout said meeting; and (E) the meeting was recorded and the recording has been or will be posted on the public website of the Agency pursuant to the Open Meetings Law.

WE 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, we have hereunto set our hand this 19th day of December, 2023.



[Assistant] Secretary



[Vice] Chairperson