

PRELIMINARY RESOLUTION
(Cricket Valley Energy Center, LLC 2016 Project)

A Regular meeting of the Dutchess County Industrial Development Agency was convened in public session on April 19, 2016 at 8:00 a.m., local time, at the office of the Dutchess County Industrial Development Agency, Three Neptune Road, Poughkeepsie, New York.

The meeting was called to order by the Chairman, with the following members being:

PRESENT: Charles Daniels III, Chairman
Timothy Dean, Vice Chairman
Phyllis DiStasi Keenan, Secretary/Treasurer
Angela E. Flesland
Edward Summers
Mark Doyle
Alfred D. Torreggiani

ABSENT:

ALSO PRESENT: Donald Cappillino, Counsel
Sarah Lee, Executive Director

On motion duly made by _____ and seconded by _____, the following resolution (the “**Resolution**”) was placed before the members of the Dutchess County Industrial Development Agency:

Resolution (i) Taking official action toward the issuance of financial assistance to Cricket Valley Energy Center, LLC (Cricket Valley Energy Center, LLC 2016 Project) in the form of potential exemption from sales and use taxes, real estate transfer taxes and mortgage recording taxes and exemption from real estate property taxes; and (ii) appointing Cricket Valley Energy Center, LLC as agent of the Agency for the purpose of the acquisition, demolition, construction, remediation, renovation, installation, furnishing and equipping of facilities to be the subject of the financial assistance; and (iii) authorizing the execution and delivery of an agreement by and between the Agency and Cricket Valley Energy Center, LLC with respect to such financial assistance.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York as amended and Chapter 335 of the Laws of 1977 of the State of New York (collectively the “**Act**”), the Dutchess County Industrial Development Agency (the “**Agency**”) was created with the authority and power to provide financial assistance for the purpose of, among other things, acquiring, renovating and equipping certain facilities as authorized by the Act; and

WHEREAS, Cricket Valley Energy Center, LLC, a New York limited liability company with offices at 31 Milk Street, Suite 1001, Boston, Massachusetts 02109 and a mailing address of P.O. Box 407, Dover Plains, New York 12522 (the “**Company**”), has applied to the

Agency for Financial Assistance (as hereinafter defined) to finance the acquisition, demolition, construction, remediation, renovation, installation, furnishing and equipping of a certain facility (the “**Facility**”) consisting of the following:

- (a) demolition of the existing approximately 200,000 square foot structure currently existing on 54.6 acres of land located at 2241 Route 22, Dover Plains, Town of Dover, Dutchess County, New York, bearing Tax Map Grid No. 132600-7061-00-580190-0000 (the “**Premises**”);
- (b) construction of a new approximately 200,000 square foot structure at the Premises to be utilized for a nominal 1,000 megawatt (“**MW**”), combined-cycle (“**CCGT**”) electric generating facility at the Premises (the “**Generating Facility**”) and a 14-mile 345 kV transmission line with the re-conductoring of an existing 345 kV transmission line from CVEC to the Long Mountain Substation in Connecticut (the “**Transmission Line**” and collectively with the Generating Facility, the “**Project**”). ; and
- (c) remediation of existing New York State Department of Environmental Conservation violations at the Premises as set forth in the October 30, 2015 Remediation/Closure Plan prepared by Tetra Tech and attached to the April 1, 2016 Application for Financial Assistance submitted by the Company.

The total cost of the Facility is currently estimated to be approximately \$1,500,000,000.

WHEREAS, the Facility includes the following, as they relate to the demolition, construction, remediation, renovation, erection and completion of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with demolition, construction erection and completion of the Facility; and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with construction and erection of the Facility and installation of the equipment; and

WHEREAS, the Agency has given due consideration to the application submitted by the Company, in which it is represented by the Company that the financial assistance (as defined herein) for the Facility will not result in the abandonment of a facility of the Company located elsewhere in the State of New York; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted by the Department of Environmental Conservation of the State of New York (the laws and regulations hereinafter collectively referred to as “**SEQRA**”), the Agency is required to determine whether the financial assistance (as defined herein) for the Facility may have a significant effect on the environment and therefore require the preparation of an Environmental Impact Statement; and

WHEREAS, a Final Environmental Impact Statement was completed and filed in July, 2012 and the New York State Department of Environmental Conservation issued a Findings Statement on September 26, 2012 pursuant to SEQRA (FEIS has been completed – information to be inserted here); and

WHEREAS, the proposed financial assistance to be granted by the Agency to the Company consists of the exemption from sales and use taxes, real estate transfer taxes and mortgage recording taxes and exemption from real estate property taxes (the “**Financial Assistance**”) which deviate from the Agency’s Uniform Tax Exemption Policy (the “**Policy**”); and

WHEREAS, the Agency has not yet held hearings pursuant to §859-a of Article 18-A of the General Municipal Law of the State of New York; and

WHEREAS, although the resolution authorizing the Financial Assistance has not yet been presented for approval by the Agency, a Preliminary Agreement relative to the proposed Financial Assistance has been presented for approval by the Agency.

NOW, THEREFORE, BE IT RESOLVED by the Dutchess County Industrial Development Agency, as follows:

1. Based upon the representations made by the Company to the Agency, the Agency hereby finds and determines that:

- (a) The Facility constitutes a “project” within the meaning of the Act;
- (b) The Financial Assistance for the Facility will not result in the abandonment of a facility of the Company;
- (c) The Financial Assistance for the Facility deviates from the Dutchess County Uniform Tax Exemption Policy of the Agency;
- (d) The Financial Assistance will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of Dutchess County, New York, and improve their standard of living, and thereby serve the public purposes of the Act; and
- (e) It is desirable and in the public interest for the Agency to assist the Company by granting the Financial Assistance.

2. Subject to the conditions set forth in ¶3 of this Resolution, the Agency will:

- (a) acquire the Facility; and
- (b) sublease the Facility to the Company pursuant to agreements by and between the Agency and the Company.

3. The provision of Financial Assistance herein, as contemplated by ¶2 of this Resolution, shall be subject to:

- (a) the execution and delivery by the Company of the Preliminary Agreement attached hereto as Exhibit “A” setting forth certain conditions for the provision of the Financial Assistance;
- (b) the agreement between the Agency and the Company on a mutually acceptable “Payment in Lieu of Tax Agreement” (the “**PILOT Agreement**”);
- (c) the Agency’s determination that there is satisfactory support from the Town of Dover and the Dover Union Free School District for the Project; and
- (d) the Agency’s determination that there is satisfactory for the security for the Company’s performance and payment under the terms of the PILOT Agreement.

4. The form and substance of a proposed Preliminary Agreement (in substantially the form presented to this meeting) by and between the Agency and the Company setting forth the undertakings of the Agency and the Company with respect to the provision of Financial Assistance is hereby approved. The Executive Director of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Preliminary Agreement and the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency hereto and to attest to this meeting, with such changes in terms and conditions as the Executive Director shall constitute conclusive evidence of such approval.

5. Provided the public hearing has been held pursuant to §859-a of Article 18-A of the General Municipal Law of the State of New York and no objection has been received by the Agency pursuant thereto, the Company is hereby appointed the true and lawful agent of the Agency (i) to acquire the Facility; and (ii) to make, execute, acknowledge, and deliver any contracts, orders, receipts, writings, and instructions, as the designated agent for the Agency, and in general to do all things which may be requisite or proper for the acquisition, demolition, construction, remediation, renovation, installation, furnishing and equipping of the Facility.

6. Pursuant to Section 875(3) of the Act and under the Agency policy concerning Maintaining Performance Based Incentives (the “MPBI”), the Agency may recover, recapture or receive from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by

the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; and/or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project in the manner approved by the Agency in connection with the Project (collectively, items (i) through (iv) hereby defined as a “**Recapture Event**”). The MPBI Policy also provides for the return of other Incentives as set forth therein.

7. Counsel to the Agency is hereby authorized to work with counsel to the Company and others to prepare for submission to the Agency, all documents necessary to effect the authorization and provision of Financial Assistance. The Company shall be responsible for the fees of Agency and Agency’s Counsel Transaction Counsel in relation to this Project and the provision of Financial Assistance.

8. The Agency hereby authorizes the Chairman of the Agency, prior to the granting of any Financial Assistance with respect to the Facility, after consultation with counsel to the Agency, (i) to establish the time, date and place for a public hearing of the Agency to hear all person interested in the Facility and the proposed Financial Assistance being contemplated by the Agency with respect to the Facility, said public hearing to be held in the Town of Dover, Dutchess County, New York; (ii) to cause notice of such public hearing to be given to the public by publishing a notice in accordance with the applicable provisions of the N.Y. General Municipal Law, as well as, at the same time, provide notice of the hearing to the chief executive officer of each affected tax jurisdiction; (iii) to conduct such public hearing or cause such hearing to be conducted by his designee; and (iv) to cause a stenographic transcript of said public hearing to be promptly prepared and cause copies of said report to be made available to the member of the Agency.

9. The Executive Director of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution. The Agency hereby appoints each Member of the Agency and the Agency Counsel to serve as an Assistant Secretary of the Agency for purposes of this project.

10. This Resolution shall take effect immediately.

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

Charles Daniels, III, Chairman	VOTING
Timothy Dean, Vice Chairman	VOTING
Phyllis DiStasi Keenan, Secretary/Treasurer	VOTING

Angela E. Flesland	VOTING
Edward Summers	VOTING
Mark Doyle	VOTING
Alfred D. Torreggiani	VOTING

The Resolution was thereupon declared duly adopted.

Adopted: April 19, 2016

PRELIMINARY AGREEMENT
(Cricket Valley Energy Center, LLC 2016 Project)

THIS PRELIMINARY AGREEMENT (the “Preliminary Agreement”), made as of April 19, 2016 between the **DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation, organized and existing under the General Municipal Law of the State of New York, having offices at Three Neptune Road, Poughkeepsie, New York 12601 (the “**Agency**”), and **CRICKET VALLEY ENERGY CENTER, LLC**, a New York limited liability company with offices at 31 Milk Street, Suite 1001, Boston, Massachusetts 02109 and a mailing address of P.O. Box 407, Dover Plains, New York 12522 (the “**Company**”).

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York as amended and Chapter 335 of the Laws of 1977 of the State of New York (collectively the “**Act**”), the Agency was created with the authority and power to provide financial assistance for the purpose of, among other things, acquiring, renovating and equipping certain facilities as authorized by the Act; and

WHEREAS, the Company has applied to the Agency for financial assistance (the “**Financial Assistance**”) to finance the acquisition, demolition, construction, remediation, renovation, installation, furnishing and equipping of a certain facility (the “**Facility**”) consisting of the following:

- (e) demolition of the existing approximately 200,000 square foot structure currently existing on 54.6 acres of land located at 2241 Route 22, Dover Plains, Town of Dover, Dutchess County, New York, bearing Tax Map Grid No. 132600-7061-00-580190-0000 (the “**Premises**”);
- (f) construction of a new approximately 200,000 square foot structure at the Premises to be utilized for a nominal 1,000 megawatt (“**MW**”), combined-cycle (“**CCGT**”) electric generating facility at the Premises (the “**Generating Facility**”) and a 14-mile 345 kV transmission line with the re-conductoring of an existing 345 kV transmission line from CVEC to the Long Mountain Substation in Connecticut (the “**Transmission Line**” and collectively with the Generating Facility, the “**Project**”). ; and
- (g) remediation of existing New York State Department of Environmental Conservation violations at the Premises as set forth in the October 30, 2015 Remediation/Closure Plan prepared by Tetra Tech and attached to the April 1, 2016 Application for Financial Assistance submitted by the Company.

The total cost of the Facility is currently estimated to be approximately \$1,500,000,000; and

WHEREAS, the Facility includes the following, as they relate to the demolition, construction, remediation, renovation, erection and completion of such Facility, whether or not

any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the demolition, construction, remediation, renovation, erection and completion of the Facility; and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the demolition, construction, remediation, renovation, erection and completion of the Facility and installation of the equipment for the Facility; and

WHEREAS, the Agency has determined that the financing of the Facility will promote and further the purposes of the Act; and

WHEREAS, on April 19, 2016, the Agency adopted a Preliminary Resolution (the “**Preliminary Resolution**”) authorizing the Facility and the execution of this Preliminary Agreement; and

WHEREAS, in the Preliminary Resolution the Agency appointed the Company its agents for the purposes of financing the Facility and doing all things requisite and proper for completing the Facility.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Agency and the Company agree as follows:

1. Undertakings of the Agency. Based upon the statements, representations, and undertakings of the Company and subject to the conditions set forth herein and in the Preliminary Resolution, the Agency agrees as follows:

(a) The Agency shall adopt, or cause to be adopted, such proceedings and authorize the execution of such documents as may be necessary or advisable for: (i) the acquisition, demolition, construction, remediation, renovation, installation, furnishing and equipping of the Facility and the financing of such costs; and (ii) the subleasing of the Facility to the Company and leasing the Equipment to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

(b) The Agency shall enter into an agreement to sublease the Facility to the Company (the “**Lease Agreement**”). The Lease Agreement shall contain all provisions required by law and such other provisions as shall be mutually acceptable to the Agency and the Company. The Lease Agreement shall contain all provisions required by law and such other provisions as shall be mutually acceptable to the Agency and the Company.

(c) The Agency shall appoint and does hereby appoint the Company the true and lawful agents of the Agency: (i) to acquire the Facility; and (ii) to make, execute, acknowledge, and deliver any contracts, orders, receipts, writings, and instructions, as the stated agent for the Agency, and in general, to do all things which may be requisite or proper for the acquisition, demolition, construction, remediation, renovation, installation, furnishing and equipping of the Facility.

(d) The Agency shall take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

2. Representations of the Company. The Company hereby represents to the Agency that:

(a) The Facility is located in the Dutchess County, New York;

(b) The proposed financing of the Facility will contribute to increased employment opportunities in Dutchess County, New York;

(c) The Company intends that the Facility will comply with all applicable federal, state, and local laws, ordinance, rules, and regulations and the Company shall have obtained all necessary approvals and permits required thereunder.

3. Undertakings of the Company. Based upon the statements, representations, and undertakings of the Agency and subject to the conditions set forth herein and in the Preliminary Resolution, the Company agrees as follows:

(a) The Company shall use all reasonable efforts necessary or desirable to enter into a contract or contracts for the acquisition of the Facility and on the terms and conditions set forth in the Lease Agreement, transfer to the Agency, or cause to be transferred to the Agency, title to or a leasehold interest in, the Facility. The Company shall use all reasonable efforts necessary or desirable to enter into a contract or contracts for the acquisition of the equipment in connection with the demolition, construction, remediation, renovation, installation, furnishing and equipping of the Facility.

(b) (i) The Company shall defend and indemnify the Agency and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on: (1) labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition of the Facility (including any expense incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of the Company acting as agents for the Agency pursuant to this Preliminary Agreement or otherwise; or (2) any untrue statement or alleged untrue statement of a material fact necessary in order to make the statements herein, in the light of the circumstances under which they were made, not misleading.

(ii) The Company shall not permit to stand, and shall at its own expense take all steps reasonably necessary to remove, any mechanic's or other liens against the Facility for labor for the acquisition, demolition, construction, remediation, renovation, installation, furnishing and equipping of the Facility.

(iii) The Company shall indemnify and hold the Agency harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing, except that the Company shall not be required to indemnify the Agency for the willful or grossly negligent conduct of the Agency.

(c) The Company shall, as agent for the Agency, comply with the requirements of Article 8 of the Labor Law of the State of New York, as amended, to the extent, if any, such Article is applicable to the Facility.

(d) The Company shall take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

4. General Provisions.

(a) This Preliminary Agreement shall take effect on the date of execution hereof until the Sale Agreement becomes effective. It is the intent of the Agency and the Company that this Preliminary Agreement be superseded in its entirety by the Lease Agreement.

(b) It is understood and agreed by the Agency and the Company that the execution of the Lease Agreement and related documents are subject to: (i) obtaining all necessary governmental approvals, (ii) approval of the members of the Agency; and (iii) agreement by the Agency and the Company upon mutually acceptable terms to a PILOT Agreement.

(c) The Company agrees that they will reimburse the Agency for all reasonable and necessary direct out-of-pocket expenses which the Agency may incur as a consequence of executing this Preliminary Agreement or performing its obligations hereunder, including but not limited to, the cost of causing a notice of any public hearing held with respect to the Facility to be published, the cost of making and transcribing records of said hearings and the reasonable fees and expenses charged and incurred by Agency's Counsel in connection with their representation of Agency in this matter and their preparation of any documents pertaining to the provisions of Financial Assistance.

(d) All commitments of the Agency under ¶1 hereof and of the Company under ¶¶2 and 3 hereof (excepting the obligations of the Company set forth in subparagraphs 3(b) and 4(c) hereof, which shall survive the termination of this Preliminary Agreement) are subject to the condition that the Lease Agreement and PILOT Agreement shall have been executed no later than

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fifteen (15) months from the date hereof (or such other date as shall be mutually satisfactory to the Agency and the Company).

IN WITNESS WHEREOF, the parties hereto have entered into this Preliminary Agreement as of the 19th day of April, 2016.

DUTCHESS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Sarah Lee, Executive Director

CRICKET VALLEY ENERGY CENTER, LLC

By: _____
Robert De Meyere, Vice President Development