

Fulton County Industrial Development Agency

Adopted April 13, 2021

Introduced by Joe Semione
who moved its adoption.

Seconded by Joe Gillis

**RESOLUTION AMENDING AND RESTATING IN ITS ENTIRETY A RESOLUTION
ADOPTED AUGUST 11, 2020 TAKING PRELIMINARY ACTION TOWARD
UNDERTAKING A CERTAIN PROJECT, AS DEFINED HEREIN, APPOINTING
NEXUS RENEWABLES U.S. INC., OR AN ENTITY TO BE FORMED (THE
“COMPANY”), AS AGENT OF THE AGENCY FOR THE PURPOSE OF
CONSTRUCTING AND EQUIPPING THE PROJECT FACILITY (AS DEFINED
HEREIN) AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT
AGREEMENT AND CLOSING DOCUMENTS BY AND BETWEEN THE AGENCY
AND THE COMPANY**

WHEREAS, on August 11, 2020, the Fulton County Industrial Development Agency (the “Agency”) adopted a resolution entitled **“RESOLUTION TAKING PRELIMINARY ACTION TOWARD UNDERTAKING A CERTAIN PROJECT, AS DEFINED HEREIN, APPOINTING NEXUS RENEWABLES U.S. INC., OR AN ENTITY TO BE FORMED (THE “COMPANY”), AS AGENT OF THE AGENCY FOR THE PURPOSE OF CONSTRUCTING AND EQUIPPING THE PROJECT FACILITY (AS DEFINED HEREIN) AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT AGREEMENT AND CLOSING DOCUMENTS BY AND BETWEEN THE AGENCY AND THE COMPANY”**; and

WHEREAS, since the adoption of said resolution the scope of the project has been modified and it is the intention of this resolution to amend and replace in its entirety the August 11, 2020 resolution in order to formally approve the Project as it is now being planned; and

WHEREAS, the Fulton County Industrial Development Agency (the “Agency”) is a body corporate and politic duly organized and existing under Section 895-c of the General Municipal Law (“GML”) of the State of New York (the “State”), with its principal place of business at 1 East Montgomery Street, Johnstown, New York; and

WHEREAS, NEXUS Renewables U.S. Inc., a business corporation established pursuant to the laws of the State of Delaware, having an address of 4789 Yonge Street, Suite 916, Toronto, Canada M2N 0G3(the “Company”) has requested that the Agency provide financial assistance in the form of a mortgage recording tax abatement and a sales tax abatement regarding a project (the “Project”) to consist of: (i) the acquisition of a leasehold interest in approximately 29 acres of certain vacant real property located at County Highway 107 N in the Town of Johnstown, County of Fulton , New York and being a portion of tax map parcel number 164.-2-16.5 (the “Land”); (ii) the planning, design, expansion, renovation, operation and maintenance

by the Company of a 3.0 MWdc Photovoltaic Array, which includes the installation of 980+/- freestanding, tracking solar tables to be distributed among four (4) subdivided parcels of the Land (collectively, the “Improvements”); (iii) the acquisition of and installation in and around the Land and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the “Equipment” and, collectively with, the Land and the Improvements, the “Facility”); and (iv) entering into a lease transaction (within the meaning of subdivision (15) of Section 854 of the Act) for each of the subdivided parcels of the Land, pursuant to which the Agency will retain an ownership interest in the Facility and lease such interest in the Facility to the Company, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the “Act”), as amended; and

WHEREAS, under Article 18-A of the General Municipal Law (the “Act”), the Legislature of the State of New York has granted the Agency the power and authority to undertake the Project, as the Act authorizes the Agency to promote, develop, encourage and assists projects such as this Project and to advance job opportunities, health general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Project will require the Agency and the Company to enter into an agreement whereby the Company will acquire, by lease, and construct the Project Facility and the Agency will lease the Project Facility to the Company; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities which may arise in connection with the transactions contemplated by the lease of the Facility; and

WHEREAS, a lease agreement (the “Lease Agreement”) with respect to the Project, along with certain financing documents, will be executed by and between the Company and the Agency; and

WHEREAS, the Agency is a state agency under Section 8-0105 of the Environmental Conservation Law of the State of New York and the Project is an action under Article 8 of said law (Article 8 hereinafter being referred to as the “State Environmental Quality Review Act” or “SEQRA”) and under 6 NYCRR Part 617, §§ 617.2(b) and 617.3(g); and

WHEREAS, the Company has submitted to the Agency and the Agency has reviewed information needed to determine whether or not the Project will have a significant impact on the environment; and

WHEREAS, the Project is a Type I Action under SEQRA for which the Agency has acted as lead agency and on August 11, 2020, the Agency reviewed the Project plans and specifications as submitted by the Company and issued its negative declaration by determining that the acquisition, construction and equipping of the Project Facility are consistent with social, economic and other essential consideration and will not result in any adverse impacts on the environment; and

WHEREAS, through the adoption of its Negative Declaration on August 11, 2020, the Agency satisfied the requirements of Part 617 of Title 6 of the NY Code of Rules and Regulations and no further SEQRA review is required for the Project; and

WHEREAS, the acquisition, construction and installation of the Project Facility has not been commenced, and the Agency has not yet authorized the Project; and

WHEREAS, the Agency conducted a public hearing on July 28, 2020 pursuant to Article 18-A of the New York State General Municipal Law (the “Law”) before taking official action relating to the Project.

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. Findings. The Agency has reviewed the application to determine compliance with the requirements of the Act and based on the representations of the Company to the Agency in said application and elsewhere, the Agency hereby makes the following findings and determinations with respect to the Project:

(A) The Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes of the Act and to exercise all powers granted to it under the Act;

(B) The Project constitutes a “project”, as that quoted term is defined in the Act;

(C) The acquisition, construction and installation of the Facility and the lease of the Facility to the Company (i) will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the State of New York and the County of Fulton and improve their standard of living; and (ii) will not result in the removal of an industrial or manufacturing plant of the Company from one area of the State to another area of the State nor will the completion of the Project result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Facility located within the State of New York;

(D) It is in the public interest for the Agency to undertake the Project on behalf of the Company;

(E) The location of the site of the Project is acceptable to the Agency;

(F) The Facility is not known by the Agency to be in material violation of the local zoning laws and planning regulations of the Town of Johnstown and all regional and local land use plans for the area in which the Facility shall be located;

(G) The Facility and the operations of the Company are not known by the Agency to cause or result in the violation of the health, labor, environmental or other laws of the United States of America, the State of New York, the County of Fulton or the Town of Johnstown;

(H) The Agency further determines that the Project will consist of a private

investment of **\$5,600,000.00** and the Agency hereby determines this to be a Material Term, as defined in the Agency's Recapture of Benefits Policy, as amended from time to time, for the purposes of monitoring in accordance with the policies and procedures of the Agency; and

(I) The Agency further determines that the Project is in the best interests of the residents of the County of Fulton as the Project will generate real property tax revenues for the local taxing jurisdictions.

(J) The Agency further determines that the Project is in the best interests of the residents of the County of Fulton as the Project will generate additional revenues for the Agency to help sustain the day to day operations of the Agency.

(K) The Agency further determines that the Project is in the best interests of the residents of the County of Fulton as the Project will generate credits that will help local governments, the school district and local businesses reduce their monthly electric consumptions bills.

SECTION 2. Determinations. The Agency hereby determines to:

(A) enter into, execute and deliver a lease agreement from the Company to the Agency and the Lease Agreement with the Company for the Project Facility subject to the review and approval of said documents by the Chairman and counsel to the Agency; and

(B) execute and deliver all other certificates and documents subject to the review and approval of said documents by the Chairman and counsel to the Agency.

The Company shall complete the Project by **October 31, 2022** (the "Completion Date"). Unless an extension is granted by the Agency, the failure of the Company to complete the Project by the Completion Date shall be considered a "significant change in the use of the facility" as set forth in the Agency's Recapture of Benefits Policy, as amended from time to time.

SECTION 3. Company Appointed Agent of Agency.

(A) The Company is hereby appointed the true and lawful agents of the Agency to:

- (1) construct and install the Project Facility;
- (2) make, execute, acknowledge, and deliver all contracts, orders, receipts, instructions, and writings needed to complete the Project; and
- (3) do all other things requisite and proper for the completion of the Project.

(B) The Company is authorized to proceed with the acquisition, construction and installation of the Project Facility, subject to receiving appropriate municipal approvals needed prior to commencement of construction, and to advance such funds as may be necessary to accomplish these goals.

(C) The Company is also authorized to appoint third party agents to undertake the

Project and thereby make available to such third party agents an exemption from New York State sales and use taxes in connection with undertaking the Project. This provision is subject to the Company entering into an Agent Agreement with the Agency.

(D) The Agency hereby authorizes exemptions from State and local sales and use taxes for purchases and rentals related to the undertaking of the Project in an amount not to exceed **Two Hundred Forty Thousand Dollars (\$240,000.00)**, based on eligible Project costs of **Three Million Dollars (\$3,000,000.00)**; which exemption shall expire on **October 31, 2022**.

(E) The Agency hereby authorizes an exemption from mortgage recording tax for qualifying mortgages in the estimated amount of **Nineteen Thousand Dollars (\$19,000.00)** based on mortgages in the estimated amount of **One Million Nine Hundred Thousand Dollars (\$1,900,000.00)**.

(F) The Agency hereby approves of the Agent Agreement, a copy of which is incorporated herein by reference, with the Company which shall be subject to the termination and recapture of benefits policy of the Agency and, in the event a new entity is created for purposes of this Project, The Agency further authorizes the execution and delivery of the Agent Agreement and any additional documents relative thereto.

SECTION 4. Payment in Lieu of Tax (PILOT) Agreement. It is anticipated that the Company will enter into a PILOT Agreement with the Broadalbin-Perth Central School District and the Town of Johnstown for the payment of real property taxes. It is anticipated that the Company will pay any and all County taxes assessed to the Project Facility.

SECTION 5. Administrative and Legal Fees. The Company will pay all costs incurred by the Agency, including but not limited to attorney's fees, which arise out of Company's Application for Financial Assistance, whether or not such assistance is ultimately issued. Agency's attorney's fees will be calculated at a time rate of \$275.00 per hour for attorney's time and \$105.00 per hour for senior legal assistant's time, plus disbursements. Upon closing of all of the Project documents, the Company will pay to the Agency an administrative fee (the "Administrative Fee") of **\$42,000.00** based upon an estimated Project cost of **\$5,600,000.00** pursuant to the schedule set forth below and contained within the Company's Application for Financial Assistance:

First \$10 Million of Project Costs:	¾ of 1%
Next \$10 Million of Project Costs:	½ of 1%
Next \$10 Million of Project Costs:	¼ of 1 %
Above \$30 Million of Project Costs:	1/8 of 1%.

Following the completion of the Project Facility, the Company shall confirm, in writing, the actual Project cost. In the event that the total Project cost exceeds the estimate provided herein, the Agency may require the payment of the difference that would otherwise be due pursuant to the above-schedule.

SECTION 6. Insurance. The Company shall deliver to the Agency a certificate of insurance, complying with the requirements as required by the Agency, and indicating that:

(a) The Company maintains insurance with respect to the Facility providing the coverage against the risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, and mandated by the Agency, including, but not necessarily limited to the following:

(i) Insurance protecting the interests of the Company and the Agency against loss or damage to the Project Facility by fire, lightning and other casualties normally insured against with a uniform standard extended coverage endorsement, such insurance at all times to be in an amount not less than the total cash replacement value of the Project Facility, as determined by a recognized appraiser or insurer selected by the Company; provided, however, that the Company may, insure all or a portion of the Project Facility under a blanket insurance policy or policies covering not only the Project Facility or portions thereof but other property. The parties agree that for purposes of this Project the Company will be responsible for providing builders risk insurance.

(ii) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project Facility and for all contractors and subcontracts.

(iii) Insurance protecting the Company and the Agency against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the Property of others caused by any accident or occurrence, with a single combined limit of not less than \$2,000,000.00 per accident or occurrence on account of personal injury, including death resulting therefrom, and damage to the Property of others, excluding liability imposed upon the Company by any applicable workers' compensation law; and a blanket excess liability policy in the amount not less than \$5,000,000.00 protecting the Company and the Agency against any loss or liability or damage for personal injury, death or Property damage.

(iv) If applicable and if it is determined that the Project Facility is located within an area identified by the Secretary of Housing and Urban Development as having special flood hazards, insurance against loss by floods in an amount not less than \$1,000,000.00 or to the maximum limit of coverage made available, whichever is less.

(v) Other insurance coverage required by any Governmental Authority in connection with any Requirement.

- (b) all policies evidencing such insurance,
 - (i) name the Company and the Agency as insureds, as their interests may appear, and
 - (ii) provide for at least thirty (30) days' written notice to the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof.

SECTION 7. Authorized Representatives. (A) The Chairman or the Vice Chairman is hereby authorized to execute and deliver any and all documents necessitated by this Resolution. If required, the signature of the Chairman or Vice Chairman shall be attested by the Secretary or Treasurer of the Agency (or Agency Counsel, in the absence of a Secretary/Treasurer) who, if required, shall affix a facsimile of the Agency's seal to documents required to be under seal. (B) On the advice of Counsel to the Agency, the Chairman or Vice Chairman shall make such reasonable changes to the documents as shall be required to promote and protect the Agency's interests with respect to the Project. All such changes shall be made prior to the closing.

SECTION 8. Public Inspection. A copy of this resolution and a copy of the Company's Application for Assistance, together with all other application materials not protected under applicable Freedom of Information Laws, shall be placed on file in the office of the Agency. Such documents shall be available for public inspection during normal business hours.

SECTION 9. Document Preparation. Counsel to the Agency is hereby authorized and directed to cooperate with counsel to the Company, as well as all other necessary parties in order to prepare the documents need to undertake the Project and to effectuate the provisions of this Resolution.

SECTION 10. Distribution of Resolution. The Chairman of the Agency is hereby authorized to distribute copies of this resolution to the Company and all other persons requesting it.

SECTION 11. Public Hearing. A public hearing for this Project was duly authorized and held on July 28, 2020 in accordance with the provisions of Article 18-A of the General Municipal Law.

SECTION 12. Further Action. The Chairman of the Agency is authorized to take such further action as shall be necessary to give effect to and implement this resolution.

SECTION 13. Effective Date. This resolution shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to a vote by roll call and was thereupon declared duly adopted.

ROLL CALL VOTE	:	Aye	Nay	Abstain	Absent
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Joe Semione	<u>X</u>	_____	_____	_____
Jane Kelley	<u>X</u>	_____	_____	_____
Mike Fitzgerald	<u>X</u>	_____	_____	_____
Joseph Gillis	<u>X</u>	_____	_____	_____
Todd Rulison	_____	_____	_____	<u>X</u>
Dave D'Amore	<u>X</u>	_____	_____	_____

STATE OF NEW YORK)
) SS:
 COUNTY OF FULTON)

This is to certify that I, James Mraz, Executive Director for the Fulton County Industrial Development Agency, do hereby certify that the foregoing is a true and correct copy and the whole thereof of a Resolution duly adopted by the Fulton County Industrial Development Agency, Johnstown, New York on the 13th day of April, 2021.

In witness whereof, I have hereto set my hand and affixed the official seal of the Fulton County Industrial Development Agency on this 13th day of April, 2021.

[SEAL]

 James Mraz
 Fulton County
 Industrial Development Agency

Acknowledged and Agreed to

 By: _____
 Title: _____ of NEXUS Renewables U.S. Inc.