

COUNTIES OF WARREN AND WASHINGTON
INDUSTRIAL DEVELOPMENT AGENCY

5 Warren Street, Suite 210
Glens Falls, New York 12801

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A special meeting of the Counties of Warren and Washington Industrial Development Agency was held on Wednesday, August 24th, 2022 at 4:00 pm via Zoom.

The following were:

PRESENT:	Dave O'Brien	Chair
	Nick Caimano	Member
	Craig Leggett	Vice Chair
	Ginny Sullivan	Member
	Dan Bruno	Member
	Brian Campbell	Member

ABSENT:	Mike Wild	Member
	Mary King	Member
	Dan Bruno	Park Chair

The following were also present:

Kara Lais, Esq.	FitzGerald Morris Baker Firth, PC
Mike Ostrander	Executive Director, WWIDA
Tim Robinson	CFO
Chuck Barton	Former IDA Member
John Brodt	Behan Communications

Minutes were taken by: Alie Weaver Office Administrator

Roll call was taken, and a quorum was confirmed.

78-80 Main Street LLC Resolution – Mr. O'Brien stated the 78-80 Main Street LLC project has received the Queensbury Planning Board approval and SEQRA approval and entertained a motion to approve the resolution to execute the agent agreement and closing documents.

Mr. Campbell made a motion to approve the resolution and Mr. Caimano seconded. All voted in favor by roll call vote.

CEO Appointment – Mr. O'Brien entertained a motion to appoint Mr. Barton as CEO of the WWIDA, effective August 29th, 2022.

Mr. Caimano made a motion to move this appointment and Mr. Campbell seconded. All voted in favor by voice vote.

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NEPA for LaBella Contract – Mr. O'Brien stated that a National Environmental Policy Act (NEPA) study is required as Congressional member items grant approval. He also stated that LaBella provided a contract to perform a Professional Environmental Services study for \$7,500, which would be covered by the Northern Border Regional Commission (NBRC) grant.

Mr. Campbell made a motion to approve authorization for the Chair to sign this contract and Mr. Gonzales seconded. All voted in favor by voice vote.

CHPE Laydown Yards – Mr. O'Brien stated that Board authorization is needed to hire an appraiser for the eight acres of the Canalside Energy Park that TDI is looking to lease for three years. He noted that an appraisal is required as part of the ABO 90-day notice obligation and that the appraisal will cost approximately \$1,800.

Mr. Campbell made a motion to approve the authorization and Mr. Caimano seconded. All voted in favor by voice vote.

Adjournment – There being no further business to discuss, Mr. O'Brien adjourned the August 24th IDA Special Meeting at 4:12 pm.

Counties of Warren and Washington Industrial Development Agency

Resolution No. 22-_____
Adopted August 24, 2022

Introduced by _____
who moved its adoption.

Seconded by _____

RESOLUTION TAKING FINAL ACTION TOWARD UNDERTAKING A CERTAIN PROJECT, AS DEFINED HEREIN, APPOINTING 78-80 MAIN STREET LLC (THE "COMPANY"), AS AGENT OF THE AGENCY FOR THE PURPOSE OF CONSTRUCTING AND EQUIPPING THE PROJECT FACILITY (AS DEFINED HEREIN) AND, ON CERTAIN CONDITIONS, AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT AGREEMENT AND CLOSING DOCUMENTS BY AND BETWEEN THE AGENCY AND THE COMPANY

WHEREAS, the Counties of Warren and Washington Industrial Development Agency (the "Agency") is a body corporate and politic duly organized and existing under Sections 856 and 890-c of the General Municipal Law ("GML") of the State of New York (the "State"), with its principal place of business at 5 Warren Street, Glens Falls, New York; and

WHEREAS, the Agency conducted a public hearing on May 23, 2022 pursuant to Article 18-A of the New York State General Municipal Law (the "Law") before taking official action relating to the Project, as defined herein; and

WHEREAS, on May 31, 2022, the Agency adopted Resolution No. 22-15 taking preliminary action toward undertaking a project a certain project and appointing 78-80 Main Street LLC, as agent of the Agency for the purposes of undertaking a certain commercial project (the "Project") to consist of: (i) the acquisition by the Agency of a leasehold interest in certain real properties located at 78 Main Street and 80 Main Street in the Town of Queensbury, County of Warren, New York and being known as tax map parcel numbers 309.10-1-24 and 309.10-1-25 (the "Land"); (ii) the planning, design, construction, operation and maintenance by the Company of an approximately 12,000+/- square foot facility which will be used by the Company for a mixed-use facility that will consist of retail and residential space (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 straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the "Straight Lease Transaction"), 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 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 assist 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 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 approvals contained in Resolution No. 22-15 were contingent upon a determination by the members of the Agency to proceed with the Project following satisfaction of all requirements of SEQRA that relate to the Project.

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. Findings. The Agency hereby ratifies and reaffirms the Findings made in its Resolution No. 22-15 adopted on August 24, 2022.

SECTION 2. Determinations. The Agency hereby determines to:

(A) enter into, execute and deliver a lease agreement from the Company or its permitted assigns to the Agency and the Lease Agreement with the Company or its permitted assigns for the Project Facility subject to the 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.

(C) ratify and reaffirm any other Determinations made in its Resolution No. 22-15 adopted on August 24, 2022.

SECTION 3. Company Appointed Agent of Agency.

(A) The Company or its permitted assign 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.

SECTION 4. SEQRA Review. The Project is an "Unlisted Action" under SEQRA for which the Town of Queensbury Planning Board (the "Planning Board") has acted as lead agency.

On or about August 16, 2022, the Planning Board reviewed the Project Site Plan Application submitted on behalf of the Company and approved said Site Plan, and issued its Negative Declaration finding that the Project will not have a significant impact on the environment; and (ii) the Agency has thoroughly reviewed the environmental assessment form, negative declaration and related supporting information presented to the Agency within the Company's Application for Assistance in order to determine whether the Project might have any potential significant adverse impacts upon the environment. After conducting this review, the Agency has determined that the acquisition, construction and equipping of the Project Facility are consistent with social, economic and other essential considerations and will not result in any significant adverse impacts on the environment. The Agency hereby ratifies the findings and Negative Declaration of the Town of Queensbury Planning Board. In doing so, the Agency satisfies the requirements of Part 617 of Title 6 of the New York Code of Rules and Regulations and no further SEQRA review is required for the Project.

SECTION 5. Ratification. Except as modified by this Resolution, the Agency hereby ratifies and confirms, in all respects, all terms, provisions and requirements stated and approved in Resolution No. 22-15 adopted August 24, 2022.

SECTION 6. 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 7. 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.

{Acknowledgement to Follow}

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

This is to certify that I, Alie Weaver, Records Management Officer for the Counties of Warren and Washington 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 Counties of Warren and Washington Industrial Development Agency, Glens Falls, New York on the ____ day of August, 2022.

In witness whereof, I have hereto set my hand and affixed the official seal of the Counties of Warren and Washington Industrial Development Agency on this ____ day of _____, 2022.

[SEAL]

Alie Weaver
Counties of Warren and Washington
Industrial Development Agency

Professional Services Agreement

Agreement made the _____ day of _____, 20____
between

LaBella Associates, D.P.C.
("LaBella")

and

Warren Washington Industrial Development Agency
("Client")

for services related to the following Project:

Canalside Energy Park Infrastructure Improvements
Fort Edward, NY
("Project")

LaBella and Client hereby agree as follows:

Description of Services: LaBella shall perform the services set forth and described in LaBella's proposal, dated August 18, 2022, a copy of which is attached as *Exhibit A*, in accordance with the terms and conditions of this contract attached as *Exhibit B*.

Compensation for Services: Client shall compensate LaBella for its professional services as set forth in LaBella's proposal. LaBella shall submit invoices for services rendered monthly. Client shall make payment to LaBella no later than thirty (30) days after the date of each invoice.

Term: LaBella shall commence performing its services when Client gives notice to proceed. This Agreement shall terminate when LaBella's services are completed and final payment has been received from Client, or as otherwise provided in this Agreement.

Insurance: LaBella shall maintain, at its own expense, throughout the term of this Agreement and until the expiration of all applicable statutes of limitation, the following insurance coverages:

- Comprehensive general liability insurance with policy limits of not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate for bodily injury and property damage;
- Automobile liability insurance covering owned, non-owned, rented and hired vehicles operated by LaBella with policy limits of not less than \$1,000,000 combined single limit and aggregate for bodily injury and property damage;
- Umbrella liability insurance with policy limits of not less than \$10,000,000 each occurrence and \$10,000,000 in the aggregate;
- Worker's compensation insurance at statutory limits and employer's liability insurance with a policy limit of not less than \$1,000,000 for all employees engaged in the rendering of professional services under this Agreement; and
- Professional liability insurance with policy limits of not less than \$5,000,000 per claim and \$7,500,000 in the aggregate.

Client shall be named as an additional insured on a primary and non-contributory basis under the CGL, Automobile and Umbrella insurance policies. LaBella shall provide to the Client certificates of insurance evidencing compliance with the requirements of this Agreement. The certificates shall contain a provision that at least thirty (30) days prior written notice shall be given to Client in the event of cancellation, non-renewal, or reduction of the insurance.

Indemnification: To the fullest extent permitted by law, LaBella shall indemnify and hold the Client and its officers and employees harmless from and against liabilities, damages, losses and judgments, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts, errors or omissions of LaBella, its employees and its consultants in the performance of professional services under this Agreement.

In recognition of the relative risks and benefits of the Project to both Client and LaBella, the risks have been allocated such that Client agrees, to the fullest extent permitted by law, to limit the liability of LaBella and LaBella's consultants for any and all claims, liabilities, damages, losses, costs, and judgments of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of LaBella and LaBella's consultants shall not exceed \$50,000 or LaBella's total fee for services rendered on this Project, whichever is greater.

LaBella Associates, D.P.C.

**Warren Washington Industrial
Development Agency**

By: _____

By: _____

Name _____

Name _____

Title _____

Title _____

Date: _____

Date _____

Exhibit A
LaBella's Proposal

Exhibit B

Terms and Conditions

Terms and Conditions

LaBella's Responsibilities: LaBella shall designate a representative authorized to act on its behalf with respect to the Project. All notices required under this Agreement shall be given to that representative.

LaBella shall perform its services consistent with the professional skill and care ordinarily provided by members of the same profession practicing in the same or similar locality under the same or similar circumstances. LaBella shall perform its services as expeditiously as is consistent with such professional skill and care, and the orderly progress of the Project.

LaBella shall not at any time supervise, direct, control or have authority over any contractor or subcontractor's work, nor shall LaBella have authority over, or be responsible for, the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor or subcontractor, or the safety precautions and programs incident thereto, for safety or security at the Project location, nor for any failure of a contractor or subcontractor to comply with laws and regulations applicable to the performance of their work and the furnishing of materials on the Project. LaBella shall not be responsible for the acts or omissions of any contractor or subcontractor.

Client's Responsibilities: Client shall designate a representative authorized to act on its behalf with respect to the Project. All notices required under this Agreement shall be given to that representative.

Client shall provide LaBella with all available information regarding, and site access to, the Project necessary for LaBella to perform its professional services, including Client's requirements for the Project. Client also shall provide information regarding the Project site and any existing facilities, including destructive testing and investigation of concealed conditions and hazardous substances or injurious conditions. If Client does not perform destructive testing or investigation, nor provide information beyond that which is apparent by non-intrusive observations, or in the event documentation or information furnished by Client is inaccurate or incomplete, then any resulting damages, losses and expenses, including the cost of LaBella's changes in service or additional services, shall be borne by Client.

Client shall examine documents submitted by LaBella and render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of LaBella's services.

Additional Services: LaBella may provide additional services after execution of this Agreement without invalidating the Agreement. LaBella shall not proceed to provide any additional services, unless and until LaBella receives written direction from Client. Client shall compensate LaBella for additional services as set forth in LaBella's proposal, or any supplemental proposal or contract modification, or as agreed upon in writing signed by both parties.

Assignment: Neither party may assign any benefit or obligation under this Agreement without the prior written consent of the other party, except LaBella may use the services of persons and entities not in LaBella's employ when appropriate and customary to do so.

Confidentiality: During the Project, confidential and/or proprietary information of the Client might be furnished to LaBella. LaBella shall use such information for the purpose of providing its professional services on the Project, and for no other purpose. LaBella shall hold such information in strict confidence and shall not disclose such information to any person or entity, except sub-consultants engaged on the Project or as required by law. Upon completion of its services, LaBella shall return or destroy all confidential and/or proprietary information to the Client.

Instruments of Service: All documents prepared or furnished by LaBella pursuant to this Agreement are instruments of professional service, and LaBella shall retain its ownership and property interest therein, including all copyrights and the right to reuse the documents. Upon payment in full for services rendered, LaBella grants Client a license to use the instruments of service for the purposes of constructing, occupying and maintaining the Project. Reuse or modification of any documents by Client without LaBella's written permission shall be at Client's sole risk, and Client agrees to defend, indemnify, and hold LaBella harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by Client or by others acting through Client.

Client and Client's contractors and other consultants may rely only upon printed copies (also known as hard copies) of documents that are signed and sealed by a licensed professional employed by LaBella. If there is any discrepancy between printed copies and any electronic copies, the most recent version of the printed and certified copies shall govern. Any electronic copies (files) provided by LaBella will be provided solely as a convenience and shall not be considered "Contract Documents," "Construction Documents" or any type of certified document. All documents considered "Contract Documents," "Construction Documents" or any type of certified document shall consist only of printed copies having an original signature and seal of a licensed professional employed by LaBella. Client is advised that electronic copies of documents can deteriorate or be inadvertently modified without LaBella's consent or may otherwise be corrupted or defective. Accordingly, Client and Client's contractors or other consultants may not rely upon the accuracy of any electronic copies of documents.

Escalation: In the event the term of this Agreement is extended beyond the period of service set forth in LaBella's proposal, then compensation for professional services is subject to review and escalation by LaBella upon thirty (30) days written notice to Client.

Suspension: Client may suspend this Agreement in whole or in part at any time for convenience upon seven (7) days written notice. Upon receipt of notice, LaBella shall immediately discontinue all services. LaBella shall be entitled to compensation for all services rendered up to the date of suspension. If the suspension exceeds three (3) months, an equitable adjustment in compensation shall be negotiated to compensate LaBella for all reasonable costs incurred by LaBella on account of the suspension of the Project.

LaBella may suspend its performance under this Agreement if any delinquent amounts due for services and expenses have not been paid. LaBella may refuse to release drawings, plans, specifications, reports, maps, materials and any other instruments of service prepared by LaBella

for Client until all arrearages are paid in full. LaBella shall not be liable to Client for delay or any other damages due to any such suspension of services.

Termination: Either party may terminate this Agreement for cause upon seven (7) days written notice with an opportunity to cure any default during that period. In any event, without regard to the party terminating the Agreement, Client shall remit payment of all amounts that are not in dispute no later than thirty (30) days after the date of each invoice.

Disputes: The parties agree that mediation before a mutually agreeable neutral third party shall be a condition precedent to any legal action arising out of this Agreement, unless waived in writing by the parties. The cost of the mediation shall be borne equally by the parties. The mediation shall be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, unless the parties agree otherwise. No demand for mediation shall be made after the date that the applicable statute of limitations would bar a legal or equitable action based on the claim or dispute.

Venue and Jurisdiction: Any legal suit, action or proceeding arising out of or relating to this agreement shall be instituted in a court of competent jurisdiction located in the state and county where the project is located. The parties hereby waive any objection which they may have now or hereafter to the venue of any such suit, action or proceeding, and hereby irrevocably consent to the personal jurisdiction of any such court in any such suit, action or proceeding.

Choice of Law: This Agreement shall be interpreted, construed and enforced in accordance with the laws of the state where the project is located without giving effect or reference to any conflict of laws provisions.

Consequential Damages: In any suit, action or proceeding, the parties shall be entitled to recover compensatory damages incurred as a result of the breach of this Agreement, but, to the fullest extent permitted by law, neither party shall be liable to the other for any special, incidental, indirect, or consequential damages.

Late Fees, Costs and Attorneys' Fees: An additional charge of 1.5% of an invoice will be imposed each month on all past due accounts. Imposition of such charges does not constitute an extension of the payment due date. If LaBella must bring suit to collect payment of any invoices, then Client agrees to pay LaBella's costs and expenses, including reasonable attorneys' fees.

Remedies Cumulative: The rights and remedies available to a party under this Agreement are cumulative and in addition to, not exclusive of, or in substitution for, any other rights or remedies either party may have at law, or in equity, or under this Agreement. Nothing contained in this Agreement shall be deemed to preclude either party from seeking injunctive relief, if necessary, to prevent the other party from willfully or intentionally breaching its obligations under this Agreement or to compel the other party to perform its obligations hereunder.

Non-Waiver: Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement will not be construed as a waiver of any right

accruing under this Agreement, nor affect any subsequent breach, nor affect the effectiveness of this Agreement or any part hereof, nor prejudice either party as regards any subsequent action.

Force Majeure: Neither party to this Agreement shall be liable to the other for delays in performing the obligations called for by this Agreement, or the direct and indirect costs resulting from such delays, that are caused by labor strikes, riots, war, acts of government authorities other than the Client (if a governmental authority), extraordinary weather conditions, epidemics, pandemics or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

Severability: The provisions of this Agreement are hereby agreed and declared to be severable. Any term or provision of this Agreement which is held to be unenforceable by a court of competent jurisdiction shall be deemed to have been stricken from this Agreement, and the remaining terms and provisions of this Agreement shall be construed and enforced without such terms or provisions.

Counterparts: This Agreement may be executed in one or more counterparts, each one of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Scope of Agreement: This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral, except that terms specific to future projects shall be set forth in LaBella's proposals. This Agreement may be amended only by written instrument signed by both parties.



August 23, 2022

Dave O'Brien
Chair
Warren Washington IDA
5 Warren Street, STE 210
Glens Falls, NY 12801

RE: Professional Environmental Review Services
NEPA Review for Canalside Energy Park Infrastructure Improvements
Fort Edward, NY
LaBella Proposal No. P2204507

Dear Mr. O'Brien,

LaBella Associates, D.P.C. (LaBella) is pleased to submit the following proposal to provide you with Professional Environmental Services for the Canalside Energy Park. This project will involve approximately 3,000 linear feet of water line replacements along the East Street Corridor and construction of a new pump station and a force main, which will run along the Champlain Canal corridor. The project will likely also include a combined sewer separation component, consisting of the installation of 500 feet of new storm sewers.

We are very familiar with procedures for NEPA compliance and the HUD regulations that lie behind them. The intensity of construction and ground disturbing activities affects the classification of the project under NEPA and the level of environmental review needed. Under 24 CFR Section 58, a project is Categorical Excluded or it requires an Environmental Assessment or an Environmental Impact Statement. This classification determines the level of environmental review required.

Based on the information available to us, it appears that this project meets the criteria for an Environmental Assessment classification under 24 CFR 58. This review involves the preparation of the Compliance Factors and the Environmental Assessment Factors checklists. LaBella will use mapping, databases and other resources to prepare these forms.

SCOPE OF WORK & FEE

The Scope of Work proposed to be performed by LaBella Associates, P.C., consists of completing the tasks listed below.

- Coordination and communication with Federal and State regulatory agencies, as needed, to obtain resource information. This effort will include consultation with the U.S. Fish & Wildlife in order to comply with the Federal and State Endangered Species Acts, as well as coordination with SHPO to comply with the Federal and State Historic Preservation Acts.
- Preliminary classification of the action under NEPA. Based on information known to date, it appears the action will not qualify as "Exempt" or "Categorical Excluded" and will instead be classified as an "Environmental Assessment".



- Preparation of both the Compliance Factors and the Environmental Assessment Factors checklists, including compliance with related laws and authorities, preparation of source documentation, mapping, and preparation of the determination.
- Addressing hazardous conditions in HUD worksheets and forms, including review of any environmental reports.
- Coordination, as needed, with client such that preparation of the Environmental Assessment will also streamline the preparation of the legal notice and request for release of funds. Specifically, this includes edits or changes to the Environmental Assessment form.

FEE

LaBella's fee for the Scope of Work is outlined in the table below.

TASK	FEE
NEPA REVIEW AND DOCUMENT PREPARATION	\$7.500

SCHEDULE

We would plan to begin work immediately upon receiving notice to proceed, starting with agency outreach and coordination, as completion of the NEPA review for this site is dependent upon timely response of overseeing agencies (e.g. USFWS, SHPO). The timeframe to complete the NEPA documentation is typically estimated at 6 to 8 weeks. We will work closely with you to understand and meet your schedule constraints to the best of our ability.

If you agree with the provisions of this proposal, please sign the attached professional services agreement. I appreciate the opportunity to work with you and look forward to a successful completion of this project.

Respectfully submitted,

LABELLA ASSOCIATES, D.P.C.

Frances Kabat
Environmental Impact Group Manager