

COUNTIES OF WARREN AND WASHINGTON
INDUSTRIAL DEVELOPMENT AGENCY

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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 Monday, March 3rd, 2022 at 5:00 pm via Zoom.

The following were:

PRESENT:

Dave O'Brien	Chair
Ginny Sullivan	Member
Nick Caimano	Member
Michael Bittel	Sec/Treasurer
Mary King	Member
Brian Campbell	Park Chair
Chuck Barton	Member
Craig Leggett	Vice Chair

ABSENT:

Mike Wild	Member
Dan Bruno	Member

The following were also present:

Kara Lais, Esq.	FitzGerald Morris Baker Firth, PC
Mike Ostrander	Executive Director

<i>Minutes were taken by:</i>	Alie Weaver	Office Administrator
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Roll call was taken, and a quorum was confirmed.

Silbert Holdings, LLC contract revision – Ms. Lais stated that the lender for Silbert Holdings is requesting that the sale of property contract be amended regarding the “reversion of title” section.

Mr. Leggett made a motion to remove that section of the contract for Silbert Holdings and Mr. Bittel seconded. All voted in favor by roll call vote.

WCC Agreement – Mr. O'Brien stated that the expense sharing agreement and proformas had been sent to the board members for review. He stated that the agreement shares income and expenses with WCC regarding the rail operation.

Ms. Lais stated that the agreement automatically renews every year unless either party gives a 90-day termination notice. She noted that the agreement would automatically terminate upon the termination of the SMS Agreement or upon the sale or transfer of the rail line located on the property.

Mr. Ostrander stated that eBay placed a seller's restriction on the substation posting with a maximum amount of \$17,500 as a first-time seller. He also stated that he researched Auctions International and was advised that this also would not be a viable platform to try selling the substation at a reasonable price.

Mr. Campbell suggested reaching out National Grid or other electric companies to see if they would be interested in purchasing the substation.

Mr. Barton made a motion to authorize the Chair to sign the WCC expense and income sharing agreement pending completion of the additional verbiage to include IDA successors. Mr. Campbell seconded, and all voted in favor by roll call vote.

Braen Quarry – Mr. O'Brien stated that he will be sending the proposed term sheet to Braen Quarry and noted the potential revenue is projected to be between \$150,000 to \$200,000 per year. He also noted that the agreement will be sent to the board for review once completed.

Mr. O'Brien stated that working groups are being formed to help navigate the activities involving the Canalside Energy Park.

Building Rental – Mr. O'Brien stated that Hour Electric is interested in renting a building in the Canalside Energy Park on a month-to-month basis at a fee of \$3,000 per month. He noted that the revenue would help defray the cost of running the substation.

Ms. Lais stated that the building rental agreement would be contingent upon PAAA requirements of property disposition

Mr. Leggett made a motion to approve moving forward with drafting a rental agreement for Board review and Mr. Barton seconded. All voted in favor by roll call vote.

Adjournment – There being no further business, Mr. O'Brien adjourned the meeting at 5:39 pm.

EXPENSE SHARING AGREEMENT

This Expense Sharing Agreement is entered into as of _____, 2022, by and between Counties of Warren and Washington Industrial Development Agency, having an address of 5 Warren Street, Suite 210, Glens Falls, New York 12801 (the "WWIDA") and WCC, LLC, having an address of 269 Ballard Road, Wilton, New York 12831 (the "WCC").

WHEREAS, WWIDA owns the real property located at 470 Lock 8 Way in the Town of Fort Edward, County of Washington, State of New York and being tax map parcel number 163.15-1-4 and 163.-2-20.1 (the "Property A"); and

WHEREAS, WCC owns the real property located at Towpath Lane and East Street in the Town of Fort Edward, County of Washington, State of New York and being tax map parcel numbers 163.-2-16 and 163.19-1-1, respectively (the "Property B"); and

WHEREAS, Property A includes a rail line which is the subject of a Rail Line Service Agreement by and between SMS Rail Lines of New York, LLC and the WWIDA, by virtue of agreement, dated as of January 5, 2017, as amended (the "SMS Agreement"), a copy of which is attached hereto and incorporated herein by reference; and

WHEREAS, Property B controls the switch used for purposes of the rail line as described in the SMS Agreement, whereby the rail line cannot be used without the switch and cooperation of WCC; and

WHEREAS, per the SMS Agreement payments are to be made to the WWIDA for use of the rail line; and

WHEREAS, WWIDA and WCC agree that it should share in the revenues of the SMS Agreement and some of the expenses of Property A and Property B, as both properties are benefitted by the SMS Agreement and burdened by the expenses concerning same.

NOW, THEREFORE, BE IT RESOLVED THAT THE PARTIES HERETO AGREE AS FOLLOWS:

1. **Revenues.** WWIDA shall maintain copies, records and supporting documents of all correspondence, remittances, checks and other documents received pursuant to the SMS Agreement (the "SMS Documents"). WWIDA shall provide copies of the SMS Documents to WCC upon written request of same.
2. **Expenses.** WWIDA shall prepare a list of the following expenses on _____ basis:
 - a. Insurance premiums for affected properties.
 - b. Maintenance and repair work to the rail line, as said rail line is described in the SMS Agreement.

- c. Maintenance and repair work to the road to access the rail line, as said rail line is described in the SMS Agreement.
- d. Any and all expenses related to the generator located on Property A.
- e. Any and all expenses related to the substation located on Property A.
- f. Maintenance and repair work to the scales located on Property A.
- g. Any and all accounting, legal and other professional costs and expenses relating to this Agreement.
- h. Any other expenses mutually agreed to by the parties in writing.

Said list of expenses, inclusive of documentation supporting and/or evidencing said expenses shall be provided to WCC within twenty (20) days of the end of each quarter.

- 3. **True Up.** On a quarterly basis, the WWIDA shall calculate the total revenues received as described in Section 1 herein and reduce therefrom the expenses as described in Section 2 herein. In the event the revenues exceed the expenses, the WWIDA shall make payment to WCC in the amount of one half of the excess balance after expenses are deducted. Said payment shall be paid within thirty (30) days. In the event the expenses exceed the revenues, WCC shall make payment to WWIDA in the amount of one half of the deficiency between the expenses and revenues. Said payment shall be paid within thirty (30) days.
- 4. **Liability.** Each party shall indemnify, defend and hold the other party harmless from all liabilities, costs and expenses (including, without limitation, attorneys fees) that such party may suffer, sustain or become subject to as a result any misrepresentation or breach of warranty, covenant or agreement of the indemnifying party contained herein or the indemnifying party's gross negligence or willful misconduct in performance of its obligations under this Agreement.
- 5. **This section is intentionally left blank.**
- 6. **Compliance with Laws.** The parties agree to comply with all applicable federal, state and local laws and regulations.
- 7. **Notices.** Any notice required to be given by either party upon the other shall be in writing and shall be given by hand delivery, registered or certified mail (return receipt requested), or overnight delivery service at the addresses listed at the beginning of this Agreement or at such other address as may be specified by either party from time to time, in writing, delivered to the other party in accordance with this Section 7.
- 8. **Term.** This Agreement shall automatically renew on an annual basis on December 31 of each year unless either party gives written notice to the other on at least ninety (90) days prior to the expiration of any term of its intention not to renew this Agreement. This Agreement shall automatically terminate upon the termination of the SMS Agreement or upon the sale or transfer of the rail line located on Property A.

9. **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party.
10. **Enforceability.** Each party represents and warrants that it has the right, power and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder. This Agreement is a legal, valid and binding obligation of each party, enforceable against such party in accordance with its terms.
11. **Entire Agreement; Amendment.** This Agreement contains the entire agreement of the parties, and no covenants, representatives, inducements or promises, oral or otherwise, not embodied herein, shall be in force or effect. This Agreement may not be modified, nor any of its provisions waived, except by a writing signed by both parties.
12. **Successors.** This Agreement shall be binding on the successors and assigns of WCC.
13. **Governing Law.** This Agreement will be governed by and construed in accordance with the law of the State of New York.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date written above.

Counties of Warren and Washington
Industrial Development Agency

WCC, LLC

By: David O'Brien, Chairman

By:

Fort Edward Dewatering Facility					
		Budget			
Income	FED LLC Rail Car Switch / Grain				
Sales/ Misc Income		\$ 65,000			
Rental of Building		\$ 36,000			
Gross Profit			\$ 101,000		
Expenses					
Dues & Subscriptions		\$ 508			
Equipment Rental Expense		\$ 30,000			
Insurance		\$ -			
License Fees		\$ 2,000			
Land and Building Maintenance		\$ 1,500			
Accounting		\$ 1,500			
Utilities					
Substation		\$ 60,000			
National Grid - East Street Pump Station		\$ 1,000			
Water		\$ 1,000			
Total Expenses			\$ 97,508		
Net Income			\$ 3,492		
Pro Rata Split with WCC			\$ 1,745.88		

PROFORMA FOR OPERATION OF CANALSIDE ENERGY PARK FACILITY								
INCOME FROM OPERATIONS				2020	2021	2022		
GRAIN OPERATIONS				\$ 78,598	\$ 30,000	\$ 65,000		
Estimated Railcar Storage Fees Per Year				\$ 0	\$ 5,000	\$ 5,000		
RENTAL LARGE BUILDING						\$ 30,000		
Total Revenue				\$ 89,250	\$ 92,500	\$ 97,500		
ESTIMATED GENERAL INDUSTRIAL PARK EXPENSES								
Insurance				\$ 15,000	\$ 15,000	\$ 18,500		
Land & Building Maintenance				\$ 1,500	\$ 1,500	\$ 1,500		
Operation Expense				\$ 2,000	\$ 2,000	\$ 2,000		
Supplies				\$ 1,000	\$ 1,000	\$ 1,000		
Professional Fees				\$ 5,000	\$ 5,000	\$ 2,000		
Taxes Fire District				\$ 0	\$ 0	\$ -		
Road Maintenance				\$ 2,000	\$ 2,000	\$ 2,000		
Generator Lease				\$ 11,500	\$ 11,500	\$ 23,000		
Scale				\$ 3,900	\$ 3,900	\$ 6,000		
License Fees				\$ 2,500	\$ 2,500	\$ 2,000		
Power Substation				\$ 12,000	\$ 12,000	\$ 60,000		
Power East Street/Sign				\$	\$ -	\$ 2,000		
Water				\$ 375	\$ 375	\$ 1,000		
Total Expenses				\$ 68,775	\$ 69,015	\$ 121,000		
NET GAIN				\$ 20,475	\$ 23,485	\$ (23,500)		