
CITY OF MECHANICVILLE AND TOWN OF STILLWATER
INDUSTRIAL DEVELOPMENT AGENCY

AND

KCENY 1, LLC

UNIFORM AGENCY PROJECT AGREEMENT

DATED AS OF FEBRUARY 11, 2019

RELATING TO FINANCIAL ASSISTANCE GRANTED BY THE
AGENCY WITH RESPECT TO A CERTAIN PROJECT LOCATED
AT 30 SUBSTATION DRIVE IN THE TOWN OF STILLWATER,
SARATOGA COUNTY, NEW YORK.

UNIFORM AGENCY PROJECT AGREEMENT

THIS UNIFORM AGENCY PROJECT AGREEMENT dated as of FEBRUARY 11, 2019 (the "Uniform Agency Project Agreement") by and between CITY OF MECHANICVILLE AND TOWN OF STILLWATER INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at c/o Mechanicville City Hall, 36 North Main Street, Mechanicville, New York 12118 (the "Agency") and KCE NY 1, LLC, a limited liability company organized and existing under the laws of the State of Delaware having an office for the transaction of business located at 418 Broadway, 3rd Floor, Albany, New York 12207 (the "Company");

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 24 of the Consolidated Laws of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York, as amended; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 582 of the Laws of 1978 of the State of New York, (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, the Company has requested that the Agency undertake a project (the "Project") consisting of (A) (1) the acquisition of an interest in an approximately 6.023 acre parcel located at 30 Substation Drive in the Town of Stillwater, New York constituting a portion of Tax Parcel No. 241.-1-4 (the "Land"), (2) the construction on the Land of a utility scale lithium battery storage facility to provide backup services to the electrical grid (the "Facility") and (3) the acquisition and installation therein of certain machinery and equipment (the "Equipment" and together with the Land and the Facility, collectively, the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, mortgage recording taxes and real property taxes, (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on June 11, 2018 (the "Public Hearing Resolution"), the Agency (A) caused notice of a public hearing of the Agency (the "Public Hearing") pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on June 19, 2018 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be published on June 22, 2018 in The Daily Gazette, a newspaper of general circulation available to the residents of Town of Stillwater, Saratoga County, New York, (C) conducted the Public Hearing on July 2, 2018 at 7:00 o'clock p.m., local time at the Town of Stillwater Town Hall located at 881 Hudson Avenue in the Town of Stillwater, Saratoga County, New York; and

WHEREAS, by further resolution adopted by the members of the Agency on September 10, 2018 (collectively, the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement of even date herewith (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"); and

WHEREAS, pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company for a lease term ending on the earlier to occur of (1) December 31, 2034, (2) the termination of the Ground Lease (as defined in the Lease Agreement) or (3) the date on which the Lease Agreement is terminated pursuant to the optional termination provisions thereof; and

WHEREAS, the Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency of even date herewith (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises"); and (2) a bill of sale of even date herewith (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver a payment in lieu of tax agreement of even date herewith (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (C) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency has executed, or will execute, and deliver to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (E) the Agency has filed or will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, the Company desires to receive certain Financial Assistance from the Agency with respect to the Project, and accordingly is willing to enter into this Uniform Agency Project Agreement in order to secure such Financial Assistance from the Agency: and

WHEREAS, all things necessary to constitute this Uniform Agency Project Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Uniform Agency Project Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS TO WIT:

ARTICLE I

DEFINITIONS

SECTION 1.01. DEFINITIONS. All capitalized terms used herein and not otherwise defined herein shall have the same meanings as set forth in the Lease Agreement. The following words and terms used in this Uniform Agency Project Agreement shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent.

“Affected Taxing Jurisdiction” shall have the meaning ascribed to such term in Section 854(16) of the Act.

“AER” is the Company’s Annual Status Report described in Section 3.02 (A) hereof.

“Application” means the application submitted by the Company to the Agency with respect to the Project, a copy of which is attached as Schedule A, in which the Company (A) described the Project, (B) requested that the Agency grant certain Financial Assistance with respect to the Project, and (C) indicated the Public Benefits that would result from approval of the Project by the Agency.

“Benefit” shall mean the amount the Company saved by making payments in lieu of real property taxes pursuant to the Payment in Lieu of Tax Agreement in a particular year. For example, if the Company’s payment is equal to 75% of normal real property taxes, then the Company’s benefit for that year would be an amount equal to 25% of normal real property taxes.

“Completion Date” means the earlier to occur of (A) December 31, 2018 or (B) such date as shall be certified by the Company to the Agency as the date of completion of the Project pursuant to Section 4.2 of the Lease Agreement, or (C) such earlier date as shall be designated by written communication from the Company to the Agency as the date of completion of the Project.

“Cure Period” shall mean the period ending June 30th of the year following the Shortfall.

“Employment Obligation” shall mean the number of FTEs specified in Section 3.02 (D) hereof for the applicable year.

“Employment Obligation Term” shall mean the period during which the Company is receiving a Benefit.

“Equipment” shall have the meaning set forth in the Lease Agreement.

“Facility” shall have the meaning set forth in the Lease Agreement.

“Financial Assistance” means exemptions from certain sales and use taxes, real property taxes, and mortgage recording taxes as more particularly described in the Basic Documents.

“FTE” shall mean a full time employee that has a minimum of thirty-five (35) scheduled hours per week, or such other number of hours per week (but not less than twenty-five (25) hours) as established by existing written policies of the Company, and whose workplace location is in the vicinity of the Project Facility and throughout the Northeastern United States, including jobs that will be mostly likely contracted via Battery Energy Storage System Integrators and be added to their staff rather than staff of the Company. Hiring dates will be based upon FTEs employed as of September 1, 2018.

“Land” means approximately 6.023 acre parcel of land constituting a portion of tax map #241.-1-4 and located at 30 Substation Drive in the Town of Stillwater, Saratoga County, New York.

“Lease Agreement” means the lease agreement of even date herewith by and between the Agency, as landlord, and the Company, as tenant, pursuant to which, among other things, the Agency has leased the Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

“Leasing Documents” shall have the meaning set forth in the Lease Agreement, and includes this Uniform Agency Project Agreement.

“Payment in Lieu of Tax Agreement” means the payment in lieu of tax agreement of even date herewith by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Project Facility, as such agreement may be amended or supplemented from time to time.

“Per Employee Amount” shall mean an amount equal to the Benefit for the year of the Shortfall divided by the “Employment Obligation”.

“Project” shall have the meaning set forth in the Lease Agreement.

“Project Facility” means, collectively, the Land, the Facility and the Equipment.

“Reduction Event” either (i) a closure of the Facility, (ii) a significant change in the use of the Facility and/or the business operations of the Applicant or (iii) significant employment reductions at the Facility which are (a) not representative of (i) such Applicant’s normal business cycles and/or (ii) local and natural economic conditions and (b) inconsistent with employment projections set forth in the Application.

“Recapture Payment” means for the applicable year, an amount equal to the Per Employee Amount multiplied by the difference between the Employment Obligation and the number of FTEs shown on the AER.

“Shortfall” shall mean the difference between the Employment Obligation and the actual number of FTEs per the AER for the applicable year.

SECTION 1.2. INTERPRETATION. In this Uniform Agency Project Agreement, unless the context otherwise requires:

(A) the terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms as used in this Uniform Agency Project Agreement, refer to this Uniform Agency Project Agreement, and the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the date of this Uniform Agency Project Agreement;

(B) words of masculine gender shall mean and include correlative words of feminine and neuter genders;

(C) words importing the singular number shall mean and include the plural number, and vice versa;

(D) any headings preceding the texts of the several Articles and Sections of this Uniform Agency Project Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Uniform Agency Project Agreement nor affect its meaning, construction or effect; and

(E) any certificates, letters or opinions required to be given pursuant to this Uniform Agency Project Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Uniform Agency Project Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into this Uniform Agency Project Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Uniform Agency Project Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Uniform Agency Project Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Uniform Agency Project Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 2.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. Each entity comprising the Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is authorized to conduct business in the State of New York and has the power under the laws of the State of New York to enter into this Uniform Agency Project Agreement and to perform and carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement.

(B) Authorization. The Company is authorized and has the power under its articles of organization, operating agreement and the laws of the State of Delaware to enter into this Uniform Agency Project Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement. By proper action of its members, the Company has duly authorized the execution, delivery and performance of this Uniform Agency Project Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Uniform Agency Project Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement by (and the execution, delivery and performance of this Uniform Agency Project Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Uniform Agency

Project Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization, operating agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Uniform Agency Project Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Uniform Agency Project Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Uniform Agency Project Agreement by the Company or as a condition to the validity of this Uniform Agency Project Agreement.

ARTICLE III

COVENANTS AND AGREEMENTS

SECTION 3.01. FINANCIAL ASSISTANCE. (A) Financial Assistance. In the Application, the Company certified to the Agency employment information with respect to the Project Facility, and the operations of the Company. In reliance on the certifications provided by the Company in the Application, the Agency agrees to provide the Company with the following Financial Assistance related to the Project:

- | | |
|---|--------------|
| (1) sales and use tax exemptions: | \$584,000.00 |
| (2) a mortgage recording tax exemption: | \$30,000.00 |
| (3) a real property tax exemption: | \$79,963.00 |

(B) Description of Project and Public Purpose of Granting Financial Assistance to the Project. In the Application and in the discussions had between the Company and the Agency with respect to the Company's request for Financial Assistance from the Agency with respect to the Project, the Company has represented to the Agency as follows:

(1) That the Project is described as follows: (A) (1) the acquisition of an interest in an approximately 6.023 acre parcel located at 30 Substation Drive in the Town of Stillwater, New York constituting a portion of Tax Parcel No. 241.-1-4 (the "Land"), (2) the construction on the Land of a utility scale lithium battery storage facility to provide backup services to the electrical grid (the "Facility") and (3) the acquisition and installation therein of certain machinery and equipment (the "Equipment") and together with the Land and the Facility, collectively, (the "Project Facility"), (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency.

(2) That the Project will furnish the following benefits to the residents of the Town of Stillwater, New York (the "Public Benefits"): job creation and retention.

(C) Payment in Lieu of Tax Agreement. A copy of the Payment in Lieu of Tax Agreement is attached as Schedule B. The attached Payment in Lieu of Tax Agreement describes the dates the payments in lieu of taxes are to be made and includes a table describing the amount of payments in lieu of taxes to be made.

(D) Contingent Nature of the Financial Assistance. Notwithstanding the provisions of Section 3.01(A) of this Uniform Agency Project Agreement, the Agency and the Company agree that the amount of Financial Assistance to be received by the Company with respect to the Project shall be contingent upon, and shall bear a direct relationship to, the success or lack of success of the Project in delivering the promised Public Benefits.

SECTION 3.02. COMPANY AGREEMENTS. The Company hereby agrees as follows:

(A) Filing – Annual. To file with the Agency, by January 10th of each year this Agreement is in effect, the AER in the form provided by the Agency detailing the number of full and part time positions and confirming that the Company has attained the Employment Level, as defined in Section 3.02 (D) hereof for the most recently concluded calendar year. Failure to report within thirty (30) days of such date shall constitute an Event of Default hereunder without the necessity of a notice from the Agency.

(B) Employment Listing. To list new employment opportunities created as a result of the Project with the following entities (hereinafter, the “JTPA Entities”): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective August 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)).

(C) Employment Consideration. Except as otherwise provided by collective bargaining agreement, the Company agrees, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who may be referred by the JTPA Entities.

(D) Employment Level. In the Application, the Company projected the following employment level at the Facility (the “Employment Level”) during the term of the Uniform Agency Project Agreement, beginning following completion of the Project:

| Year | FTE's |
|---------------------|-------|
| As of End of Year 1 | 11 |
| As of End of Year 2 | 11 |
| As of End of Year 3 | 11 |

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

SECTION 4.01. EVENTS OF DEFAULT DEFINED. (A) The following shall be “Events of Default” under this Uniform Agency Project Agreement, and the terms “Event of Default” or “default” shall mean, whenever they are used in this Uniform Agency Project Agreement, any one or more of the following events:

(1) A default in the performance or observance of any of the covenants, conditions or agreements on the part of the Company in this Uniform Agency Project Agreement and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute the same with due diligence.

(2) The occurrence of an “Event of Default” under any other Basic Document after giving effect to any applicable grace or cure periods.

(3) Any material representation or warranty made by the Company herein or in any other Basic Document proves to have been false at the time it was made.

SECTION 4.02. REMEDIES ON DEFAULT. (A) Whenever any Event of Default hereunder shall have occurred, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

(1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.4 of the Lease Agreement, and (b) all other payments due under this Uniform Agency Project Agreement or any of the other Basic Documents; or

(2) terminate the Lease Agreement and the Payment in Lieu of Tax Agreement and convey to the Company all the Agency’s right, title and interest in and to the Project Facility (The conveyance of the Agency’s right, title and interest in and to the Project Facility shall be effected by the delivery by the Agency of the Termination of Lease to Agency and the Bill of Sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such transfer of title); or

(3) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Company under this Uniform Agency Project Agreement.

(B) No action taken pursuant to this Section 4.02 (including repossession of the Project Facility) shall relieve the Company from its obligations to make any payments required by this Uniform Agency Project Agreement and the other Basic Documents.

SECTION 4.03. REDUCTION OF REAL PROPERTY TAX ABATEMENT. Upon the occurrence of a Reduction Event at any time during the term of the Lease Agreement, the real property tax abatements

described in the PILOT Agreement are subject to reduction as set forth below at the discretion of the Agency:

| <u>PILOT YEAR</u> | <u>PERCENTAGE REDUCTION</u> |
|-------------------|-----------------------------|
| Year(s) 1 – 10 | 50% to 100% |
| Year 11 | 50% |
| Year 12 | 40% |
| Year 13 | 30% |
| Year 14 | 20% |
| Year 15 | 10% |

SECTION 4.04. RECAPTURE OF FINANCIAL ASSISTANCE. (A) General. The failure of the Company to satisfy the Employment Obligation in a particular year shall subject the Company to the obligation to make a Recapture Payment to the Agency, provided that the Company has not satisfied the Employment Obligation during the Cure Period. The Company shall be deemed to have failed to satisfy its Employment Obligation as of the beginning of the year subsequent to the year for which the Company files an AER if the total number of FTEs shown on such report for the applicable year is less than 80% of the applicable Employment Obligation for said year (Recapture Payments are only required if the Shortfall is more than 20% of the Employment Obligation).

(B) Shortfall Recapture Payments.

(i) If the Company shall be subject to a Recapture Payment, as contemplated in subsection (1) (A) above, then the Company shall pay to the Agency an amount equal to the Per Employee Amount multiplied by the difference between the Employment Obligation and the number of FTEs shown on the AER, in each instance for the applicable year. Any Recapture Payment shall be due and owing within thirty (30) days of the receipt by the Company of an invoice therefore from the Agency.

(ii) Notwithstanding any of the foregoing, a Shortfall shall not apply where the Shortfall is a result of a major casualty to or condemnation of the Project Facility. In the event of such major casualty or condemnation, the Company shall have no obligation to pay the Shortfall Payment.

(iii) The Agency shall have the right to reduce any payments required, under this policy, in extraordinary circumstances, in its sole discretion. After the expiration of the Employment Obligation Term, the Company shall have no further Obligation with respect to the Employment Obligation and shall not be liable for any of the Recapture Payments described above.

(C) Redistribution of Project Financial Assistance to be Recaptured. Upon the receipt by the Agency of any amount of any Recapture Payments pursuant to this Section 4.04, the Agency shall redistribute such amount within thirty (30) days of such receipt to the Affected Taxing Jurisdictions in proportion to the amounts which said Affected Taxing Jurisdictions would have received had not the Project Facility been acquired and owned by the Agency.

(D) Survival of Obligations. The Company acknowledges that the obligations of the Company in this Section 4.04 shall survive the conveyance of the Project Facility to the Company and the termination of the Lease Agreement.

(E) Agency Review of Recapture Determination. If the Agency preliminarily determines that a Recapture Payment is due and owing, it shall give written notice of such determination to the Company. The Company shall have thirty (30) days from the date the written notice is deemed given to submit a

written response to the Agency's determination and to request a written and/or oral presentation to the Agency as to why the Company should not be obligated to remit the proposed Recapture Payment to the Agency. The Company may make its presentation at a meeting of the Agency. The Agency shall then vote on a resolution confirming whether a Recapture Payment is due and owing.

SECTION 4.05. LATE PAYMENTS. (A) One Month. If the Company shall fail to make any payment required by this Uniform Agency Project Agreement within thirty days of the date that written notice of such payment is sent from the Agency to the Company at the address provided in Section 5.05 of this Uniform Agency Project Agreement, the Company shall pay the amount specified in such notice together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Uniform Agency Project Agreement when due and such delinquency shall continue beyond the thirty days after such notice, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the Agency until such payment in default shall have been made in full, and the Company shall pay the same to the Agency together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

SECTION 4.06. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. If the Company should default in performing any of its obligations, covenants or agreements under this Uniform Agency Project Agreement and the Agency should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency within thirty (30) days not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.06. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Uniform Agency Project Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of a Recapture Event or an Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency to exercise any remedy reserved to it in this Uniform Agency Project Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Uniform Agency Project Agreement.

(D) No Waiver. In the event any provision contained in this Uniform Agency Project Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Uniform Agency Project Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V
MISCELLANEOUS

SECTION 5.01. TERM. This Uniform Agency Project Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the execution and delivery of this Uniform Agency Project Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Uniform Agency Project Agreement shall continue to remain in effect until the termination of the Lease Agreement.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Uniform Agency Project Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Uniform Agency Project Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, property addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

KCE NY 1, LLC
418 Broadway, 3rd Floor
Albany, New York 12207
Attention: Daniel Fitzgerald

IF TO THE AGENCY:

City of Mechanicville and Town of Stillwater Industrial Development Agency
c/o Mechanicville City Hall
36 North Main Street
Mechanicville, New York 12118
Attention: Chairperson

WITH A COPY TO:

Lemery Greisler LLC
60 Railroad Place, Suite 502
Saratoga Springs, New York 12866
Attention: James A. Carminucci, Esq.

(C) Change of Address. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Uniform Agency Project Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Uniform Agency Project Agreement are intended to be for the benefit of the Agency.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Uniform Agency Project Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Uniform Agency Project Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Uniform Agency Project Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Uniform Agency Project Agreement shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 5.10. SURVIVAL OF OBLIGATIONS. The obligations of the Company to make the filings and listings required by Section 3.02 hereof shall survive the termination of this Uniform Agency Project Agreement, and all such filings and reports after such termination shall be made upon demand of the party to whom such filings and reports are due.

SECTION 5.11. JOINT AND SEVERAL LIABILITY. In the event that this Uniform Agency Project Agreement is executed by more than one entity comprising the Company, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against each such entity, whether or not action is brought against any other person or whether or not any other person is joined in such action or actions.

IN WITNESS WHEREOF, the Agency and the Company have caused this Uniform Agency Project Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

CITY OF MECHANICVILLE AND TOWN OF STILLWATER INDUSTRIAL DEVELOPMENT AGENCY

BY: *Sally Herrick*
Sally Herrick, Chairperson

KCE NY 1, LLC

BY: *[Signature]*
NAME: DANIEL FITZGERALD
TITLE: COO

STATE OF NEW YORK)
) ss:
COUNTY OF SARATOGA)

On the 21st day of February, in the year 2019, before me, the undersigned, a notary public in and for said state, personally appeared Sally Herrick personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public

JAMES A. CARMINUCCI
Notary Public, State of New York
Reg. No. 4864025-Saratoga County
Commission Expires 6/9/2022

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the 13th day of February, in the year 2019, before me, the undersigned, a notary public in and for said state, personally appeared DANIEL FITZGERALD, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Edward Hyde Clarke

EDWARD HYDE CLARKE
Notary Public, State of New York
Qualified in Albany County
No. 02CL6324092
Commission Expires May 04, 2019

Notary Public

SCHEDULE A

APPLICATION



June 28, 2018

Mechanicville- Stillwater Industrial Development Agency Board
28 Clinton Street
Saratoga Springs, NY 12866-2191

RE: Application for Tax Incentives for KCE NY 1, LLC

Members of the Board,

Please find attached the Revised Application for Tax Incentives for KCE NY 1, LLC. Per instructions via email received from James Carminucci on June 26, 2018 enclosed are is the revised Application with necessary edits made. It includes:

1. A revised narrative from Saratoga County Prosperity Partnership with an overview of the project.
2. A pro-forma relating to the project.
3. Eight (8) copies of a letter of intent or commitment letter from proposed lender for the Project.
4. Eight (8) copies of a site plan or building plan with respect to the project.
5. An original and Eight (8) copies of fully completed and executed Projected Employment Plan.(Attachment "A").
6. An original and Eight (8) copies of fully completed and executed Environmental Assessment Questionnaire.(Attachment "B").
7. An original and Eight (8) copies of fully completed and executed Employment Reporting Agreement and Plan.(Attachment "C").
8. An original and Eight (8) copies of fully completed and executed Sales Tax Reporting Agreement. (Attachment "D").

KCE NY 1 looks forward to your review of the application. Please advise us me if you require any additional information or clarification on the information submitted.

Thank you.

Daniel Fitzgerald
Chief Development Officer
Key Capture Energy, Inc.



TO: Mechanicville- Stillwater Industrial Development Agency Board
FROM: Saratoga County Prosperity Partnership on behalf of *Key Capture Energy NY 1, LLC*
RE: Application for Tax Incentives for *KCE NY 1, LLC*
DATE: May 16, 2018

Company Background and Request Justification

This request for assistance comes from *KCE NY 1, LLC*, ("KCE") a company established as a limited liability corporation in the state of New York and currently operating out Albany, New York. *KCE* is a limited liability company controlled by Jeff Bishop and Dan Fitzgerald. The primary partners in this project have years of experience in the alternative energy industry having led and managed projects throughout the country.

KCE is an independent developer of utility-scale battery storage projects. They identify, prospect, develop and deploy energy storage applications that address frequency regulation, voltage/reactive power support, black start, capacity, energy arbitrage, transmission deferral and non-wires alternatives. *KCE* is a team of experienced clean energy experts who have grown some of the world's largest renewable energy companies. With a focus on meeting the needs of the electric grid, and working closely with all local stakeholders, *KCE* is focused on developing projects throughout the eastern United States.

The Project

KCE has acquired control of approximately 6 acres adjacent to the existing combination National Grid and NYSEG substation in Luther forest Technology Campus that was built to serve the campus and GLOBALFOUNDRIES. *KCE NY 1* (the project) is a utility scale battery storage facility that will respond to the intermittent grid fluctuations to enhance the power grid reliability to service peak demand. The development will have no emissions, a low noise profile, and will be screened by existing vegetation and land masses. The system proposes to use Lithium-ion batteries organized in modules and installed in rack towers to control the exchange of power into and out of the system. The racks are organized into containers similar to shipping containers which are equipped with heating and cooling systems, fire suppression systems, and control systems. These containers are organized on the gravel pad and connected to the power substation to accept and release power as needed.

This is the first project of this type in the State of New York and there are certain unknowns associated with the financial modeling, including the real estate taxes to be paid and what, if any, sales taxes should be paid for the purchase of the equipment. The Project is not necessarily seeking a significant reduction in the amount of real property taxes but rather seeking certainty concerning the payments of taxes. Unlike solar or other forms of electrical generating equipment where there is clear guidance concerning the exemption for sales tax for the purchase of equipment, NYS rules and regulations have not established a policy concerning battery for an energy storage facility.

Assistance Request

KCE is seeking the following relief pursuant to the Mechanicville-Stillwater Industrial Development Agency Uniform Tax Exemption Policy (UTEP).

1. Assistance by the IDA will induce the location or expansion of the project in Saratoga County. **KCE** needs the inducement to complete the project in Saratoga County.
2. The project is owned and being proposed by a regional company and is the first of its type in Saratoga County and the State. This type of storage facility will become more common over time as the technology for battery storage become more economical and the energy reliability needs by our growing technology companies increase. Financial assistance from the IDA will induce their decision to build and complete the project in Saratoga County.
3. **KCE** has many opportunities to employ their capital and expertise elsewhere creating construction jobs and permanent jobs, so inducing this project will benefit the community.
4. While **KCE** has acquired control of the property in LFTC, and spent time acquiring the rights to develop it, there are no guarantees this will occur as the costs to complete the project is significant.
5. The 25 construction jobs will provide an economic boost. **KCE** will be using a substantial number of local contractors and subcontractors. After the incentives have run its course, the property will contribute property tax revenue to the community.
6. This project will not cause substantial disruption of existing employment at similar facilities in Saratoga County. This specialized facility will not provide any substantial competition for other projects of this type in the community. There are no other projects or businesses of this type currently being developed.
7. The project will provide employment for Saratoga County residents or provide a service which is demonstrated to be in the best interest of the public and the taxpayer. – While the project itself has a small employment footprint, it supports the economic prosperity of other employers in the area. Electric power reliability is important to the many advanced technology firms located in the County, including Global Foundries. In addition, as stated earlier, there are up to 25 temporary construction jobs estimated for this project and 9 full-time jobs associated with this project.
8. The project involves the development of new facilities. The company plans to build a new structure on the site.

Therefore, the request for tax incentives are as follows:

1. A fifteen-year 100% tax settlement on real estate improvements to the property at 30 Substation Drive off of Cold Spring Road, Stillwater, NY. **KCE** proposes to pay a PILOT equaling \$700 per megawatt of installed capacity at the facility which would equal \$14,000 in the first year. Each year the amount would increase by 1% for a total of \$225,357 in PILOT payments over the 15-year period leading to an incentive of \$79,963.
2. An exemption on the sales tax on the purchase or rental of materials, supplies, tools, equipment, or services to be incorporated into the facility or to be used exclusively in connection with the constructing or equipping of such facility. Based upon estimates in the application the total amount of exemption benefit due the company will be \$584,000, which is based upon the assumption that the components used for the facility are not exempt from sales tax like solar panels.

3. A full exemption from the N.Y.S. Mortgage Recording Tax allowed by law of .075% which would equal a benefit due the company of an estimated \$30,000.

The total benefit received in the form of property tax abatement, sales tax exemption and mortgage recording fee exemption by KCE under this application totals \$649,963.

It should be noted that under New York State law the company could have the entire property tax burden exempted under Municipal Law 487 but has chosen to use the IDA in order to provide some contribution to the community.

CITY OF MECHANICVILLE AND TOWN OF STILLWATER INDUSTRIAL DEVELOPMENT AGENCY
TO APPLICANTS

(Project Sponsor)

The City of Mechanicville and Town of Stillwater Industrial Development Agency was established by special act of the New York State Legislature in 1978.

Industrial Development Agencies were first legally authorized in 1969 when the New York State Legislature added a new Article 18-A to the General Municipal Law to provide for the establishment, by special act of the legislature, of local industrial development agencies as public benefit corporations.

Once established, a local industrial development agency is authorized to issue “taxable” industrial revenue bonds for the purposes of acquiring machinery, equipment, and other facilities deemed necessary or desirable in connection therewith, or incidental thereto, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes. Projects may also be financed through a “Straight Lease” transaction which may entail a conventional mortgage or other form of private financing.

Industrial Development Agencies offer attractive incentives to industry seeking new locations or expansion of existing facilities. The advantages to a business in financing a project through the Agency are substantial in providing the following:

- The project is exempt from real property taxes during the term of the bond issue and lease agreement. However, each project shall be required to enter into an agreement to pay a negotiated sum in lieu of taxes.
- Project related construction purchases and rentals as well as equipment purchases are exempt from state and local sales tax.
- A mortgage given by the Agency to secure project-related indebtedness is exempt from the state mortgage recording tax.

APPLICATION PROCEDURES

1. Completed application submitted to Agency with a check of \$500 for application fee.
2. Agency meeting scheduled for initial project review.
3. A meeting will be scheduled between project applicant and representatives of the Agency to review supporting financial data relating to the applicant and the Project.
4. If the application is deemed appropriate for Agency financial assistance, a public hearing to be held in the City of Mechanicville or Town of Stillwater, as applicable, is scheduled.
5. At least 10 days prior to the public hearing, notice of the hearing is published in a suitable newspaper and notice is given by mail to the chief executive officer of each affected taxing jurisdiction.
6. Following the close of the public hearing, the Agency will consider adoption of an inducement resolution which (1) grants preliminary authorization for the extension by the Agency of financial assistance for a project, (2) describes the financial assistance to be rendered, and (3) sets forth the conditions for final approval including, but not limited to, compliance by the Agency with the provisions of the new York State Environmental Quality Review Act.
7. Following drafting of the necessary financing documents and prior to the issuance of bonds or closing on conventional financing, the Agency will meet to adopt a bond resolution or financing resolution.
8. An administration fee will be due the Agency at closing.

It is the responsibility of the applicant to arrange for financing with respect to a given Agency project. Taxable bonds issued by the Agency are non-recourse to the Agency and the City of Mechanicville and Town of Stillwater and thus the credit-worthiness of a project is a factor solely of the applicant and the project itself.

The providing of financial assistance by the Agency triggers certain filing and/or reporting requirements with respect to employment and tax benefits received.

REQUIRED SUBMISSIONS

1. An original and eleven (11) fully completed and executed copies of the Application.
2. Non-refundable application fee in the amount of Five Hundred Dollars (\$500.00) payable to: CITY OF MECHANICVILLE AND TOWN OF STILLWATER INDUSTRIAL DEVELOPMENT AGENCY.
3. One copy of the audited (if available) financial statements of the applicant for the immediately preceding three (3) years together with pro-forma relating to the project (if project relates to new business operation).
4. If available, four (4) copies of a letter of intent or commitment letter from proposed lender for the Project.
5. Two (2) copies of a site plan or building plan with respect to the project.
6. An original and eleven (11) copies of fully completed and executed Projected Employment Plan. (Attachment "A").
7. An original and eleven (11) copies of fully completed and executed Environmental Assessment Questionnaire. (Attachment "B").
8. An original and eleven (11) copies of fully completed and executed Employment Reporting Agreement and Plan. (Attachment "C").
9. An original and eleven (11) copies of fully completed and executed Sales Tax Reporting Agreement. (Attachment "D").

PURSUANT TO THE PROVISIONS OF ARTICLE SIX OF THE NEW YORK STATE PUBLIC OFFICERS LAW, ALL SUBMISSIONS TO THE AGENCY ARE SUBJECT TO PUBLIC INSPECTION SUBJECT TO THE PROVISIONS OF SECTION 87(2) THEREOF.

Section I: Applicant Information

Please answer all questions. Use "None" or "Not Applicable" where necessary.

A) Applicant Information-company receiving benefit:

Applicant Name: KCE NY I, LLC
Applicant Address: 418 Broadway, 3rd Floor Albany, NY 12207
Phone: 518 429 0229 Fax: _____
Website: www.keycaptureenergy.com E-mail: dan.fitzgerald@keycaptureenergy.com
Federal ID#: 81-4105884 NAICS: 221118
State and Year of Incorporation/Organization: Delaware LLC, April 3, 2017
List of stockholders, members, or partners of Applicant: Jeff Bishop, Daniel Fitzgerald
Will a Real Estate Holding Company be utilized to own the Project property/facility? Yes or No
What is the name of the Real Estate Holding Company: _____
Federal ID# of Real Estate Holding Company: _____
State and Year of Incorporation/Organization: _____
List of stockholders, members, or partners of Real Estate Holding Company: _____
Agency assisting in application (SCPP or SEDC): SCPP

B) Individual Completing Application:

Name: Daniel Fitzgerald
Title: Chief Development Officer
Address: 418 Broadway, 3rd Floor Albany, NY 12207
Phone: 518 429 0229 Fax: _____
E-Mail: dan.fitzgerald@keycaptureenergy.com

C) Company Contact (if different from individual completing application):

Name: _____
Title: _____
Address: _____
Phone: _____ Fax: _____
E-Mail: _____

D) Company Counsel:

Name of Attorney: Robert A. Panasci

Firm Name: Young / Sommer LLC

Address: Executive Woods, Five Palisades Drive, Albany, NY 12205

Phone: 518.438.9907 Ext. 251 Fax: 518.438.9914

E-mail: rpanasci@youngsommer.com

E) Identify the assistance being requested of the Agency (select all that apply):

- 1. Exemption from Sales Tax Yes or No
- 2. Exemption from Mortgage Recording Tax Yes or No
- 3. Exemption from Real Property Tax Yes or No
- 4. Tax Exempt Financing * Yes or No

* (typically small qualified manufacturers)

F) Business Organization (check appropriate category):

- S Corporation
- Corporation Partnership
- Public Corporation Joint Venture
- Sole Proprietorship Limited Liability Company
- Other (please specify) _____

Year Established: 2017

State in which Organization is established: Delaware

G) List all stockholders, members, or partners with % of ownership greater than 20%:

| <u>Name</u> | <u>% of ownership</u> |
|-----------------------|-----------------------|
| <u>Jeff Bishop</u> | <u>60%</u> |
| <u>Dan Fitzgerald</u> | <u>40%</u> |

H) Applicant Business Description:

Describe in detail company background, products, customers, goods and services. Description is critical in determining eligibility: KCE NY 1 is a project company of Key Capture Energy, Inc (KCE), a developer of energy storage projects. KCE's mission is to develop, construct, and operate energy storage projects. KCE NY 1 is a Battery Energy Storage Project (BESS) that will deliver ancillary services to the New York State Grid via the New York State Independent System Operator (NYISO). In essence, it will provide grid services that benefit all users of electricity. This will be the largest grid-scale battery to be placed on the New York grid and will help to achieve the recently set goal of 1500 MW of energy storage in the state.

Estimated % of sales within Mechanicville or Stillwater: N/A

Estimated % of sales outside Mechanicville and Stillwater but within New York State: 100%

Estimated % of sales outside New York State but within the U.S.: NA

Estimated % of sales outside the U.S. NA

(*Percentage to equal 100%) -

D) What percentage of your total annual supplies, raw materials and vendor services are purchased from firms in Mechanicville and/or Stillwater. Include list of vendors, raw material suppliers and percentages for each. Provide supporting documentation including estimated percentage of local purchases.

It is the Applicant's intent to use as many local suppliers and vendors as possible, such as gravel and other materials needed for the BESS. The usage will depend upon the availability of these products and whether they meet the specifications from the battery supplier.

Section II: Project Description & Details

A) Project Location:

Municipality or Municipalities of current operations: None _____

Will the Proposed Project be located within the Municipality, or within a Municipality, identified above?

Yes or No

If Yes, in which Municipality will the proposed project be located? Stillwater

If No, in which Municipality will the proposed project be located? Stillwater

Provide the Property Address of the proposed Project:

30 Substation Drive off of Cold Spring Road, Stillwater, NY

SBL (Section, Block, Lot) # for Property upon which proposed Project will be located: 241.-1-4

Acreage: Not to exceed 6.023

What are the current real estate taxes on the proposed Project Site? The proposed Project Site is located on vacant land adjacent to the existing substation. The total taxes for 2017 were 4,421.65.

If amount of current taxes is not available, provide assessed value for each:

Land: \$334,700

Buildings(s): \$ 0

**** If available please include a copy of current tax bill.**

Are Real Property Taxes current? Yes or No. If no, please explain _____

Town/City/Village: Stillwater School District: Stillwater

Does the Applicant or any related entity currently hold fee title to the Project site? Yes or No

If No, indicate name of present owner of the Project Site: Luther Forest Technology Campus

Does Applicant or related entity have an option/contract to purchase the Project site? Yes or No

Describe the present use of the proposed Project site: Site is currently vacant land adjacent to NYSEG and National Grid substation.

B) Please provide narrative of project, the purpose of the project (new build, renovations, and/or equipment purchases), and the type of project (educational, recreational, historic preservation, etc.). Identify specific uses occurring within the project. Describe any and all tenants and any/all end users: (This information is critical in determining project eligibility – Attach additional pages if necessary):

KCE NY 1 is a utility scale battery storage facility that will respond to the intermittent grid fluctuations to enhance the power grid reliability to service peak demand. The development will have no emissions, a low noise profile, and will be screened by existing vegetation and land masses. The system proposes to use Lithium-ion batteries organized in modules and installed in rack towers to control the exchange of power into and out of the system. The racks are organized into containers similar to shipping containers which are equipped with heating and cooling systems, fire suppression systems, and control systems. These containers are organized on the gravel pad and connected to the power substation to accept and release power as needed.

Describe the reasons why the Agency's financial assistance is necessary, and the effect the Project will have on the Applicant's business or operations. Focus on competitiveness issues, project shortfalls, etc... Your eligibility determination will be based in part on your answer (attach additional pages if necessary): This is the first project of this type in the State of New York and there are certain unknowns associated with the financial modeling, including the real estate taxes to be paid and what, if any, sales taxes should be paid for the purchase of the equipment. The Project is not necessarily seeking a significant reduction in the amount of real property taxes but rather seeking certainty concerning the payments of taxes. Unlike solar or other forms of electrical generating equipment where there is clear guidance concerning the exemption for sales tax for the purchase of equipment, the NYS rules and regulations have not established a policy concerning battery for an energy storage facility.

Please confirm by checking the box below if there is likelihood that the Project would not be undertaken but for the Financial Assistance provided by the Agency?

Yes or No

If the Project could be undertaken without Financial Assistance provided by the Agency, then provide a statement in the space provided below indicating why the Project should be undertaken by the Agency: _____

If the Applicant is unable to obtain Financial Assistance for the Project, what will be the impact on the Applicant and County/City/Town/Village? The impact would be this Project would be moved to a new location. _____

C) Will Project include the leasing of any equipment? Yes or No

If Yes, please describe: Construction equipment.

D) Site Characteristics:

Will the Project meet zoning/land use requirements at the proposed location? Yes or No

Describe the present zoning/land use: PDD

Describe required zoning/land use, if different: _____

If a change in zoning/land use is required, please provide details/status/timeline of any request for change of zoning/land use requirements: _____

1. Utilities serving project site:

a. Water - Municipal: NA

Other (Describe): _____

b. Sewer - Municipal: NA

Other (Describe): _____

c. Electric – Utility: Local utility service from NYSEG.
Other (Describe): _____

d. Heat – Utility: NA
Other (Describe): _____

e. Gas – Utility: NA
Other (describe): _____

2. Are there public infrastructure improvements required or proposed? Yes No
If yes, please describe:

Is the proposed project located on a site where the known or potential presence of contaminants is complicating the development/use of the property? If yes, please explain: No

E) Has a Phase I Environmental Assessment been prepared or will one be prepared with respect to the proposed project site? Yes or No If yes, please provide a copy.

F) Have any other studies or assessments been undertaken with respect to the proposed project site that indicate the known or suspected presence of contamination that would complicate the site's development?
 Yes or No. If yes, please provide copies of the study

G) Provide any additional information or details: _____

H) Select Project Type for all end users at project site (you may check more than one):

** Please check any and all end users as identified below.

** Will customers personally visit the Project site for either of the following economic activities? If yes with respect to either economic activity indicated below, complete the Retail Questionnaire contained in **Section IV** of the Application.

Retail Sales: Yes or No

Services: Yes or No

For purposes of this question, the term “retail sales” means (i) sales by a registered vendor under Article 28 of the Tax Law of the State of New York (the “Tax Law”) primarily engaged in the retail sale of tangible personal property (as defined in Section 1101(b)(4)(i) of the Tax Law), or (ii) sales of a service to customers who personally visit the Project.

- | | | | |
|----------------------------------|--------------------------|------------------------------|-------------------------------------|
| Industrial | <input type="checkbox"/> | Back Office | <input type="checkbox"/> |
| Acquisition of Existing Facility | <input type="checkbox"/> | Mixed Use | <input type="checkbox"/> |
| Housing | <input type="checkbox"/> | Facility for Aging | <input type="checkbox"/> |
| Equipment Purchase | <input type="checkbox"/> | Other <u>Private Utility</u> | <input checked="" type="checkbox"/> |
| Multi-Tenant | <input type="checkbox"/> | | |
| Commercial | <input type="checkbox"/> | | |

I) Project Information:

Estimated costs in connection with Project:

- | | |
|--|-----------------------|
| 1. Land and/or Building Acquisition: | \$ <u> *</u> |
| <u>6</u> acres _____ square feet | |
| 2. New Building Construction: _____ square feet | \$ _____ |
| 3. New Building Addition(s): _____ square feet | \$ _____ |
| 4. Infrastructure Work | \$ _____ |
| 5. Reconstruction/Renovation: _____ square feet | \$ _____ |
| 6. Manufacturing Equipment: | \$ _____ |
| 7. Non-Manufacturing Equipment (furniture, fixtures, etc.): | \$ _____ |
| 8. Soft Costs: (professional services, etc.): | \$ <u> 200,000</u> |
| 9. Other, Specify: <u>BESS and accompanying electrical equipment</u> | \$ <u> 9,000,000</u> |
| TOTAL Capital Costs: | \$ <u> 9,200,000</u> |

*Land will be leased in an amount equal to Seven Thousand Two Hundred (\$7,200.00) per acre of the Property per year. The annual payment shall increase by one percent (1%) per year.

Project refinancing: estimated amount
(for refinancing of existing debt only) \$ 0

Sources of Funds for Project Costs:

| | |
|---|--------------|
| Bank Financing: (New York Green Bank) | \$ 4,000,000 |
| Equity (excluding equity that is attributed to grants/tax credits): | \$ 5,000,000 |
| Tax-Exempt Bond Issuance (if applicable): | \$ _____ |
| Taxable Bond Issuance (if applicable): | \$ _____ |
| Public Sources (Include sum total of all state and federal grants and tax credits): | \$ _____ |
| Identify each state and federal grant/credit: | |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| Other: _____ | \$ _____ |

| | |
|---|--------------|
| Total Sources of Funds for Project Costs: | \$ 9,000,000 |
| Total Investment by applicant: | \$ 9,000,000 |
| Total Amount being financed: | \$ 4,000,000 |
| Percent of total costs be financed through the public sector | _____ % |
| Percent of total costs be financed through the private sector | 44 % |

Have any of the above costs been paid or incurred as of the date of this Application? Yes or No

If Yes, describe particulars: Soft costs for the development of the Project including permitting and electrical interconnection work.

Mortgage Recording Tax Exemption Benefit: Amount of mortgage that would be subject to mortgage recording tax:

Mortgage Amount (include sum total of construction/permanent/bridge financing): \$ 4,000,000

Estimated Mortgage Recording Tax Exemption Benefit (product of mortgage amount as indicated above multiplied by .75% of current mortgage recording tax in Saratoga County):

\$ 30,000

Construction Cost Breakdown:

Total Cost of Construction (sum of 2,3,4,5, and/or 7 in Question I, above) \$ 650,000

Cost for materials \$ 8,350,000

% sourced in Mechanicville and/or Stillwater: Unknown %

% sourced in New York State: Unknown %

Cost for labor: \$ 650,000

Sales and Use Tax: Gross amount of costs for goods and services that are subject to State and local Sales and Use tax - said amount to benefit from the Agency's Sales and Use Tax exemption benefit:

\$ 8,350,000*

*As noted above, it is not clear that the purchase of the battery components are subject to sales tax. As a result, the number below assumes the components are subject to sales tax

Estimated State and local Sales and Use Tax Benefit (product of 7 % multiplied by the figure, above):

\$ 584,000

*** Note that the estimate provided above will be provided to the New York State Department of Taxation and Finance. The Applicant acknowledges that the transaction documents may include a covenant by the Applicant to undertake the total amount of investment as proposed within this Application, and that the estimate above represents the maximum amount of sales and use tax benefit that the Agency may authorize with respect to this Application. The Agency may utilize the estimate above as well as the proposed total Project Costs as contained within this Application, to determine the Financial Assistance that will be offered.*

Real Property Tax Benefit:

Identify and describe if the Project will utilize a real property tax exemption benefit OTHER THAN the Agency's PILOT benefit: No

IDA PILOT Benefit: Indicate the amount of PILOT Benefit based on estimated Project Costs as contained herein and anticipated tax rates and assessed valuation, including the annual PILOT Benefit abatement amount for each year of the PILOT benefit year and the sum total of PILOT Benefit abatement amount for the term of the PILOT as depicted in Section V of the Application.

Percentage of Project Costs financed from Public Sector sources: Calculate the percentage of Project Costs financed from Public Sector sources based upon Sources of Funds for Project Costs as depicted above in Section II(I) of the Application.

J) For the proposed facility, please indicate the square footage for each of the uses outlined below:

*If company is paying for FFE for tenants, please include in cost breakdown

| | Square Footage | Cost | % of Total Cost of Project |
|--------------------------------|----------------|------|----------------------------|
| Manufacturing/Processing | | | |
| Warehouse | | | |
| Research & Development | | | |
| Commercial | | | |
| Retail (see section K) | | | |
| Office | | | |
| Specify Other No buildings. | | | |

K) What is your project timetable (Provide dates):

1. Start date: acquisition of equipment or construction of facilities: June 15, 2018
2. Estimated completion date of project: December 31, 2018
3. Project occupancy – estimated starting date of operations: December 15, 2018
4. Have construction contracts been signed? Yes or No
5. Has financing been finalized? Yes or No
6. Indicate number of full-time construction jobs to be created by the project 25.

*** If construction contracts have been signed, please provide copies of executed construction contracts and a complete project budget. The complete project budget should include all related construction costs totaling the amount of the new building construction, and/or new building addition(s), and/or renovation.*

L) Have site plans been submitted to the appropriate Planning Department?

Yes or No

****** If yes, provide the Agency with a copy of the related State Environmental Quality Review Act (“SEQR”) Environmental Assessment Form.

Has the Project received site plan approval from the Local Planning Board? Yes or No.

If No, What is the anticipated approval date? _____

If Yes, provide the Agency with a copy of the Planning Board's approval resolution along with the related SEQR determination. [NOTE: SEQR Determination is required for final approval and sales tax agency appointment].

M) Is the project necessary to expand project employment: Yes or No

Is project necessary to retain existing employment: Yes or No

N) Employment Plan (Specific to the proposed project location): SEE ATTACHMENT "A"

Indicate number of construction jobs expected to be generated by the project and the expected duration of such jobs:

Number of Jobs 20 Length of Employment 3-6 months

Salary and Fringe Benefits for Jobs to be Retained and Created:

| Category of Jobs to be Retained and Created | Average Salary or Range of Salary | Average Fringe Benefits or Range of Fringe Benefits |
|---|-----------------------------------|---|
| Management | \$175,000 | \$25,000 |
| Professional | | |
| Administrative | | |
| Production | | |
| Independent Contractor | \$75,000 | \$15,000 |
| Other | | |

Annual Payroll Current: \$ 100,000
Annual Payroll, Yr. 1 (after project completion) \$ 325,000
Annual Payroll, Yr. 2 \$ 325,000

Employment at other locations in Mechanicville and/or Stillwater: (provide address and number of employees at each location):

| | Address | Address | Address |
|-----------|---------|---------|---------|
| Full time | | | |
| Part Time | | | |
| Total | | | |

O) Will any of the facilities described above be closed or subject to reduced activity? Yes or No

*** If any of the facilities described above are located within the State of New York, and you answered Yes to the question, above, you must complete Section IV of this Application.*

*** Please note that the Agency may utilize the foregoing employment projections, among other items, to determine the Financial Assistance that will be offered by the Agency to the Applicant. The Applicant acknowledges that the transaction documents may include a covenant by the Applicant to retain the number of jobs and create the number of jobs with respect to the Project as set forth in this Application.*

P) Is the project reasonably necessary to prevent the project occupant from moving out of New York State?
 Yes or No.

If yes, please explain and identify out-of-state locations investigated, type of assistance offered and provide supporting documentation if available: Similar prospect locations throughout northeastern US.

Q) What competitive factors led you to inquire about sites outside of New York State? _____

R) Have you contacted or been contacted by other Local, State and/or Federal Economic Development Agencies? Yes or No.

If yes, please identify which agencies and what other Local, State and/or Federal assistance and the assistance sought and dollar amount that is anticipated to be received: _____

Section III Retail Questionnaire

To ensure compliance with Section 862 of the New York General Municipal Law, the Agency requires additional information if the proposed Project is one where customers personally visit the Project site to undertake either a retail sale transaction or to purchase services.

Please answer the following:

- A. Will any portion of the project (including that portion of the cost to be financed from equity or other sources) consist of facilities or property that are or will be primarily used in making sales of goods or services to customers who personally visit the project site?

Yes or No. If the answer is yes, please continue. If no, proceed to section V

For purposes of Question A, the term "retail sales" means (i) sales by a registered vendor under Article 28 of the Tax Law of the State of New York (the "Tax Law") primarily engaged in the retail sale of tangible personal property (as defined in Section 1101(b)(4)(i) of the Tax Law), or (ii) sales of a service to customers who personally visit the Project.

- B. What percentage of the cost of the Project will be expended on such facilities or property primarily used in making sales of goods or services to customers who personally visit the project? 0 % . **If the answer is less than 33% do not complete the remainder of the retail determination and proceed to section V.**

If the answer to A is Yes AND the answer to Question B is greater than 33.33%, indicate which of the following questions below apply to the project:

1. Is the Project location or facility likely to attract a significant number of visitors from outside the (8) county economic development region (Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Washington, Warren Counties) in which the project will be located?

Yes or No

If yes, please provide a third party market analysis or other documentation supporting your response.

2. Is the predominant purpose of the project to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the municipality within which the proposed project would be located because of a lack of reasonably accessible retail trade facilities offering such goods or services?

Yes or No

If yes, please provide a third party market analysis or other documentation supporting your response.

3. Will the project preserve permanent, private sector jobs or increase the overall number of permanent, private sector jobs in the State of New York?

Yes or No.

If yes, explain _____

4. Is the project located in a Highly Distressed Area? Yes or No

“Highly distressed area” – As defined in NY General Municipal Law § 854 (18)

(a) a census tract or tracts or block numbering areas or areas or such census tract or block numbering area contiguous thereto which, according to the most recent census data available, has:

(i) a poverty rate of at least twenty percent for the year to which the data relates or at least twenty percent of households receiving public assistance; and

(ii) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates; or

(b) a city, town, village or county within a city with a population of one million or more for which:

(i) the ratio of the full value property wealth, as determined by the comptroller for the year nineteen hundred ninety, per resident to the statewide average full value property wealth per resident; and

(ii) the ratio of the income per resident; as shown in the nineteen hundred ninety census to the statewide average income per resident; are each fifty-five percent or less of the statewide average; or

(c) an area which was designated an empire zone pursuant to article eighteen-B of this chapter

Section IV Inter-Municipal Move Determination

The Agency is required by state law to make a determination that, if completion of a Project benefiting from Agency Financial Assistance results in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, Agency Financial Assistance is required to prevent the project occupant from relocating out of the state, or is reasonably necessary to preserve the project occupant’s competitive position in its respective industry.

Will the Project result in the removal of an industrial or manufacturing plant of the Project occupant from one area of the state to another area of the state?

Yes or No

Will the Project result in the abandonment of one or more plants or facilities of the Project occupant located within the state?

Yes or No

If Yes to either question, explain how, notwithstanding the aforementioned closing or activity reduction, the Agency's Financial Assistance is required to prevent the Project from relocating out of the State, or is reasonably necessary to preserve the Project occupant's competitive position in its respective industry: _____

Does the Project involve relocation or consolidation of a project occupant from another municipality?

Within New York State

Yes or No

Within Mechanicville or Stillwater

Yes or No

If Yes to either question, please, explain: _____

Section V: Estimate of Real Property Tax Abatement Benefits* and Percentage of Project Costs financed from Public Sector sources**

**** Section V of this Application will be: (i) reviewed & verified by IDA staff based upon information contained within the Application, and (ii) provided to the Applicant for ultimate inclusion as part of this completed Application.**

PILOT Estimate Table Worksheet

| Dollar Value of New Construction (including site grading) and Renovation Costs | Estimated New Assessed Value of Property Subject to IDA* | County Tax Rate/1000 | Local Tax Rate(s) (Town/City/Village)/1000 | School Tax Rate/1000 |
|--|--|--|--|----------------------|
| \$1,000,000 | \$690,000 (includes land value of \$13,000) | \$0.08547900 = \$58.98 NYS- 2.641199 = \$1,822.43 | Town – \$1.3552090 = \$935.09 Hwy – \$1.89327900 = \$1,306.36 | \$14.01 = \$9,666.90 |

*Apply equalization rate to value 19.985166

Company proposes to pay \$700 per MW of installed capacity for the Project, which is \$14,000

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|------------------|-----------|---------------------|--------------------|---------------------|------------------------|----------------------------|------------------------|
| PILOT Year | % Payment | County PILOT Amount | Local PILOT Amount | School PILOT Amount | Total PILOT (3+4+5) | Full Tax Payment w/o PILOT | Net Exemption (7-6) |
| 1st | 100% | \$1,820.00 | \$2,520.00 | \$9,660.00 | \$14,000.00 | \$20,354.61 | \$6,354.61 |
| 2nd | 100% | \$1,838.20 | \$2,545.20 | \$9,756.60 | \$14,140.00 | \$20,354.61 | \$6,214.61 |
| 3rd | 100% | \$1,856.58 | \$2,570.65 | \$9,854.17 | \$14,281.40 | \$20,354.61 | \$6,073.21 |
| 4th | 100% | \$1,875.15 | \$2,596.36 | \$9,952.71 | \$14,424.21 | \$20,354.61 | \$5,930.40 |
| 5th | 100% | \$1,893.90 | \$2,622.32 | \$10,052.23 | \$14,568.46 | \$20,354.61 | \$5,786.15 |
| 6th | 100% | \$1,912.84 | \$2,648.55 | \$10,152.76 | \$14,714.14 | \$20,354.61 | \$5,640.47 |
| 7th | 100% | \$1,931.97 | \$2,675.03 | \$10,254.28 | \$14,861.28 | \$20,354.61 | \$5,493.33 |
| 8th | 100% | \$1,951.29 | \$2,701.78 | \$10,356.83 | \$15,009.89 | \$20,354.61 | \$5,344.71 |
| 9th | 100% | \$1,970.80 | \$2,728.80 | \$10,460.40 | \$15,159.99 | \$20,354.61 | \$5,194.62 |
| 10th | 100% | \$1,990.51 | \$2,756.09 | \$10,565.00 | \$15,311.59 | \$20,354.61 | \$5,043.02 |
| 11th | 100% | \$2,010.41 | \$2,783.65 | \$10,670.65 | \$15,464.71 | \$20,354.61 | \$4,889.90 |
| 12th | 100% | \$2,030.52 | \$2,811.48 | \$10,777.36 | \$15,619.36 | \$20,354.61 | \$4,735.25 |
| 13th | 100% | \$2,050.82 | \$2,839.60 | \$10,885.13 | \$15,775.55 | \$20,354.61 | \$4,579.06 |
| 14th | 100% | \$2,071.33 | \$2,868.00 | \$10,993.98 | \$15,933.31 | \$20,354.61 | \$4,421.30 |
| 15 th | 100% | \$2,092.04 | \$2,896.68 | \$11,103.92 | \$16,092.64 | \$20,354.61 | \$4,261.97 |
| TOTAL | | \$21,051.64 | \$29,148.42 | \$111,735.62 | \$225,356.53 | \$305,319.14 | \$79,962.60 |

*** Estimates provided are based on current property tax rates and assessment value (current as of date of application submission) and will be reviewed and verified by IDA staff

Percentage of Project Costs financed from Public Sector Table Worksheet:

| Total Project Cost | Estimated Value of Property Tax Exemptions | Estimated Value of Sales Tax Exemptions | Estimated Value of Mortgage Tax Exemptions | Total of Other Public Incentives (Tax Credits, Grants, ESD Incentives, etc.) |
|--------------------|--|---|--|--|
| \$10,000,000 | \$79,963 | Up to \$540,000 | \$30,000.00 | |

Percentage of Project Costs financed from Public Sector (Est. Property Tax + Est. Sales Tax + Est. Mortgage Tax+ Other) / Total Project Cost): 6.5 %

Section VI Representations, Certifications and Indemnification

**** This Section of the Application can only be completed upon the Applicant receiving, and must be completed after the Applicant receives, IDA staff confirmation that Section I through Section V of the Application are complete.**

Daniel E. Fitzgerald (name of CEO or other authorized representative of Applicant) confirms and says that he/she is the Authorized Representative (title) of KCE NY 1 (name of corporation or other entity) named in the attached Application (the "Applicant"), that he/she has read the foregoing Application and knows the contents thereof, and hereby represents, understands, and otherwise agrees with the Agency and as follows:

- A. Job Listings: In accordance with Section 858-b(2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the "DOL") and with the administrative entity (collectively with the DOL, the "JTPA Entities") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA") in which the Project is located.
- B. First Consideration for Employment: In accordance with Section 858-b(2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, where practicable, the Applicant will first consider persons eligible to participate in JTPA programs who shall be referred by the JTPA Entities for new employment opportunities created as a result of the Project.
- C. Annual Sales Tax Filings: In accordance with Section 874(8) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any sales tax exemptions as part of the Financial Assistance from the Agency, in accordance with Section 874(8) of the General Municipal Law, the Applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the Applicant and all consultants or subcontractors retained by the Applicant. Copies of all filings shall be provided to the Agency.
- D. Employment Reports: The Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, the Applicant agrees to file, or cause to be filed, with the Agency, at least annually or as otherwise required by the Agency, reports regarding the number of people employed at the project site, salary levels, contractor utilization and such other information (collectively, "Employment Reports") that may be required from time to time on such appropriate forms as designated by the Agency. Failure to provide Employment Reports within 30 days of an Agency request shall be an Event of Default under the PILOT

Agreement between the Agency and Applicant and, if applicable, an Event of Default under the Agent Agreement between the Agency and Applicant. In addition, a Notice of Failure to provide the Agency with an Employment Report may be reported to Agency board members, said report being an agenda item subject to the Open Meetings Law.

- E. The Applicant acknowledges that certain environmental representations will be required at closing. The Applicant shall provide with this Representation, Certification and Indemnification Form copies of any known environmental reports, including any existing Phase I Environmental Site Assessment Report(s) and/or Phase II Environmental Investigations. The Agency may require the Company and/or owner of the premises to prepare and submit an environmental assessment and audit report, including but not necessarily limited to, a Phase I Environmental Site Assessment Report and a Phase II Environmental Investigation, with respect to the Premises at the sole cost and expense of the owner and/or the Applicant. All environmental assessment and audit reports shall be completed in accordance with ASTM Standard Practice E1527-05, and shall be conformed over to the Agency so that the Agency is authorized to use and rely on the reports. The Agency, however, does not adopt, ratify, confirm or assume any representation made within reports required herein.
- F. The Applicant and/or the owner, and their successors and assigns, hereby release, defend and indemnify the Agency from any and all suits, causes of action, litigations, damages, losses, liabilities, obligations, penalties, claims, demands, judgments, costs, disbursements, fees or expenses of any kind or nature whatsoever (including, without limitation, attorneys', consultants' and experts' fees) which may at any time be imposed upon, incurred by or asserted or awarded against the Agency, resulting from or arising out of any inquiries and/or environmental assessments, investigations and audits performed on behalf of the Applicant and/or the owner pursuant hereto, including the scope, level of detail, contents or accuracy of any environmental assessment, audit, inspection or investigation report completed hereunder and/or the selection of the environmental consultant, engineer or other qualified person to perform such assessments, investigations, and audits.
- G. Hold Harmless Provision: The Applicant acknowledges and agrees that the Applicant shall be and is responsible for all costs of the Agency incurred in connection with any actions required to be taken by the Agency in furtherance of the Application including the Agency's costs of general counsel and/or the Agency's bond/transaction counsel whether or not the Application, the proposed Project it describes, the attendant negotiations, or the issue of bonds or other transaction or agreement are ultimately ever carried to successful conclusion and agrees that the Agency shall not be liable for and agrees to indemnify, defend, and hold the Agency harmless from and against any and all liability arising from or expense incurred by: (i) the Agency's examination and processing of, and action pursuant to or upon, the Application, regardless of whether or not the Application or the proposed Project described herein or the tax exemptions and other assistance requested herein are favorably acted upon by the Agency; (ii) the Agency's acquisition, construction and/or installation of the proposed Project described herein; and (iii) any further action taken by the Agency with respect to the proposed Project including, without limiting the generality of the foregoing, all causes of action and attorney's fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. Applicant hereby understands and agrees, in accordance with Section 875(3) of the New York General Municipal Law and the policies of the Agency that any New York State and local sales and use tax exemption claimed by the Applicant and approved by the Agency, any mortgage recording tax exemption claimed by the Applicant and approved by the Agency, and/or any real property tax abatement claimed by the Applicant and approved by the Agency, in connection with the Project, may be subject to recapture and/or termination by the Agency under such terms and conditions as will be established by the

Agency and set forth in transaction documents to be entered into by and between the Agency and the Applicant. The Applicant further represents and warrants that the information contained in this Application, including without limitation information regarding the amount of the New York State and local sales and use tax exemption benefit, the amount of the mortgage recording tax exemption benefit, and the amount of the real property tax abatement, if and as applicable, to the best of the Applicant's knowledge, is true, accurate and complete.

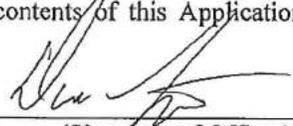
- H. This obligation includes an obligation to submit an Agency Fee Payment to the Agency in accordance with the Agency Fee policy effective as of the date of this Application
- I. By executing and submitting this Application, the Applicant covenants and agrees to pay the following fees to the Agency and the Agency's general counsel and/or the Agency's bond/transaction counsel, the same to be paid at the times indicated:
 - (i) a non-refundable \$500 application and publication fee (the "Application Fee");
 - (ii) unless otherwise agreed to by the Agency, an amount equal to 0.75 percent (.75%) of the total project costs.
 - (iii) All fees, costs and expenses incurred by the Agency for (1) legal services, including not limited to those provided by the Agency's general counsel and/or the Agency's bond/transaction counsel, thus note that the Applicant is entitled to receive a written estimate of fees and costs of the Agency's general counsel and the Agency's bond/transaction counsel; and (2) other consultants retained by the Agency in connection with the proposed project, with all such charges to be paid by the Applicant at the closing.
- J. If the Applicant fails to conclude or consummate the necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable proper or requested action, or withdraws, abandons, cancels, or neglects the Application, or if the Applicant is unable to find buyers willing to purchase the bond issue requested, or if the Applicant is unable to facilitate the sale/leaseback or lease/leaseback transaction, then, upon the presentation of an invoice, Applicant shall pay to the Agency, its agents, or assigns all actual costs incurred by the Agency in furtherance of the Application, up to that date and time, including but not necessarily limited to, fees of the Agency's general counsel and/or the Agency's bond/transaction counsel.
- K. The Applicant acknowledges and agrees that all payment liabilities to the Agency and the Agency's general counsel and/or the Agency's bond and/or transaction counsel as expressed in Sections H and I are obligations that are not dependent on final documentation of the transaction contemplated by this Application.
- L. The cost incurred by the Agency and paid by the Applicant, the Agency's general counsel and/or bond/transaction counsel fees and the processing fees, may be considered as a cost of the Project and included in the financing of costs of the proposed Project, except as limited by the applicable provisions of the Internal Revenue Code with respect to tax-exempt bond financing.
- M. The Applicant acknowledges that the Agency is subject to New York State's Freedom of Information Law (FOIL). **Applicant understands that all Project information and records related to this application are potentially subject to disclosure under FOIL subject to limited statutory exclusions.**

- N. The Applicant acknowledges that it has been provided with a copy of the Uniform Tax Exemption Policy, Attachment A, being the Uniform Modification of Real Property Tax Abatement AND Claw Back Penalty for Failure to Meet Employment Levels. The Applicant covenants and agrees that it fully understands that the Termination and Recapture Policy is applicable to the Project that is the subject of this Application, and that the Agency will implement the Termination and Recapture Policy if and when it is so required to do so. The Applicant further covenants and agrees that its Project is potentially subject to termination of Agency financial assistance and/or recapture of Agency financial assistance so provided and/or previously granted.
- O. The Applicant understands and agrees that the provisions of Section 862(1) of the New York General Municipal Law, as provided below, will not be violated if Financial Assistance is provided for the proposed Project:
- § 862. Restrictions on funds of the agency. (1) No funds of the agency shall be used in respect of any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.
- P. The Applicant confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the proposed Project is in substantial compliance with applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.
- Q. The Applicant confirms and acknowledges that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any Financial Assistance and the reimbursement of an amount equal to all or part of any tax exemption claimed by reason of the Agency's involvement the Project.
- R. The Applicant confirms and hereby acknowledges that as of the date of this Application, the Applicant is in substantial compliance with all provisions of Article 18-A of the New York General Municipal Law, including, but not limited to, the provision of Section 859-a and Section 862(1) of the New York General Municipal Law.
- S. The Applicant and the individual executing this Application on behalf of Applicant acknowledge that the Agency and its counsel will rely on the representations and covenants made in this Application when acting hereon and hereby represents that the statements made herein do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein not misleading.

STATE OF NEW YORK)
COUNTY OF SARATOGA) ss.:

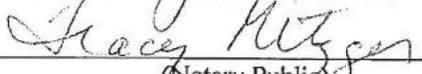
Daniel Fitzgerald, being first duly sworn, deposes and says:

1. That I am the Authorized Representative (Corporate Office) of KCG NY I, LLC (Applicant) and that I am duly authorized on behalf of the Applicant to bind the Applicant.
2. That I have read the attached Application, I know the contents thereof, and that to the best of my knowledge and belief, this Application and the contents of this Application are true, accurate and complete.



(Signature of Officer)

Subscribed and affirmed to me under penalties of perjury
this 26 day of June, 2018.



(Notary Public)

State of New York - Albany County
Sworn and subscribed on Date 6/26/18
Daniel Fitzgerald personally
appeared before me and took an oath under penalties
of perjury that the foregoing statement is true and correct.
TRACY METZGER, Notary Public # 11691505
My Commission Expires September 15, 2018

NOTE: THIS APPLICATION WILL NOT BE ACCEPTED BY THE AGENCY UNLESS THE FOLLOWING HOLD HARMLESS AGREEMENT IS SIGNED BY THE APPLICANT.

HOLD HARMLESS AGREEMENT

Applicant hereby releases the City of Mechanicville and Town of Stillwater Industrial Development Agency and the members, officers, servants, agents and employees thereof (hereinafter collectively referred to as the "Agency") from, agrees that the Agency shall not be liable for and agrees to indemnify, defend and hold the Agency harmless from and against any and all liability arising from or expense incurred by (i) the Agency's examination and processing of, and action pursuant to or upon, the attached Application, regardless of whether or not the application or the Project described therein or the issue of bonds requested thereof are favorably acted upon by the Agency, and (ii) the Agency's financing of the Project described herein; including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. If, for any reason, the Applicant fails to conclude or consummate necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable, proper or requested action, or withdraws, abandons, cancels or neglects the Application, or if the Agency or the Applicant are unable to find buyers willing to purchase the total bond issue requested, then, upon presentation of an invoice itemizing the same, Applicant shall pay to the Agency, its agents or assigns, all actual costs incurred by the Agency in the processing of the Application, including attorneys' fees.



Applicant

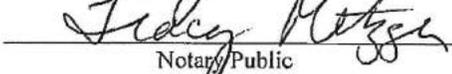
Applicant

By:

By:

Sworn to before me this

28th day of June, 2018



Notary Public

State of New York - Albany County

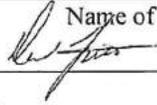
Sworn and subscribed on Date 6/28/18
Don Koty, Notary personally
appeared before me and took an oath under penalties
of perjury that the foregoing statement is true and correct.
TRACY METZGER, Notary Public # 11691505
My Commission Expires September 15, 2018

ATTACHMENT "C"

EMPLOYMENT REPORTING AGREEMENT AND PLAN

In consideration of the extension of financial assistance by CITY OF MECHANICVILLE AND TOWN OF STILLWATER INDUSTRIAL DEVELOPMENT AGENCY, KCE NY 1, LLC (Project Beneficiary), agrees to cause any new employment opportunities created in connection with projects financed by the proceeds of such obligations to be listed with the New York State Department of Labor Community Services Division and with the Saratoga County Dept. of Employment & Training. KCE NY 1, LLC (Project Beneficiary) also agrees to report to the City of Mechanicville and Town of Stillwater Industrial Development Agency on or before January 10 of each year on the status of employment plans filed with the Department of Economic Development, including the number of new employment opportunities created, the number listed and the number filled. KCE NY 1, LLC (Project Beneficiary) further agrees, subject to the requirements of any existing collective bargaining agreement, to first consider for new employment opportunities those persons eligible for service under the Job Training Partnership Act. SEE ATTACHMENT "C-1" FOR FORM OF EMPLOYMENT PLAN STATUS REPORT.

DATED: 05/24/2018

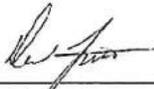
KCE NY 1, LLC
Name of Applicant
By: 
Its: CDO

ATTACHMENT "D"

Report to Agency added 09/14/09
Abatement requires Cert. 05/14/12
Recapture language in bold 08/12/13

SALES TAX REPORTING AGREEMENT

Upon being designated as an agent of the City of Mechanicville and Town of Stillwater Industrial Development Agency in conjunction with the issuance of Industrial Revenue Bonds or the provision of other forms of financial assistance by the Agency, _____
KCE NY 1, LLC (Project Beneficiary) agrees to annually file a statement with the New York State Department of Taxation and Finance on a form and in such manner as is prescribed by the Commissioner, describing the value of all sales tax exemptions claimed by _____
KCE NY 1, LLC (Project Beneficiary) as agent for the City of Mechanicville and Town of Stillwater Industrial Development Agency, including but not limited to, consultants and subcontractors. The _____
KCE NY 1, LLC (Project Beneficiary) recognizes that failure to file such statement will result in its removal of authority to act as an agent of the Agency. _____
KCE NY 1, LLC (Project Beneficiary) further agrees that it will provide the Agency a report of all sales tax abated during any applicable calendar year. Such report shall include the name, city and state of any company providing materials or a service which was subject to New York State and local sales tax; a description of the materials purchased or service provided the cost of those materials or services and the amount of sales tax abated in each case. The report shall be submitted by the last day in February following the close of the calendar year in which sales tax abatement occurred. **The Company acknowledges and agrees to the extent it (i) utilizes the exemption from New York State and local sales and use tax in a manner inconsistent with the intent of this application and/or (ii) attempts to obtain an exemption from New York State and/or local sales and/or use tax which exceeds the scope of the exemption provided in this application it will be subject to a recapture of such inconsistent or excessive exemption benefits by the Agency in accordance with the provisions of Section 875 of the General Municipal Law of the State, the provisions of which are hereby incorporated herein by reference. The Company agrees to cooperate with the efforts of the Agency to recapture such inconsistent or excessive exemption benefits and shall pay said amounts to the Agency or the State of New York as required and any failure to do so shall constitute an Event of Default.**



Signature

5/24/2018

Date

Chief Development Officer

Title

NOTE: Abatement of NYS Sales Tax on eligible purchases of goods and services by approved companies is subject to the issuance of a valid sales tax exemption certificate by the Agency.



Confidential

| Battery Parameters | |
|--------------------|-------|
| Power (MW) | 20.00 |

| Returns | |
|-------------|-----|
| 15-year IRR | 14% |

Confidential

| Project Capital Expenditures | |
|------------------------------|--------------|
| System All in | \$ 9,000,000 |

KCE NY 1: Luther Forest

Lithium-Ion Model
 Construction Start Date
 1/Sep/18
 Commercial Operations Date
 30/Dec/18

| Taxes & Inflation | |
|-------------------------|-----------|
| Depreciation | Expensing |
| Federal Income Tax Rate | 21.00% |
| State Income Tax Rate | 6.50% |
| Inflation | 2.30% |

| Terminal Value of Project | |
|---------------------------|-------|
| Years | 15.00 |
| Terminal Value Percent | 10.0% |

| Interval | | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 |
|--|-----------|-------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-------------|
| Interval ending date | 31-Dec-18 | 30-Jun-19 | 29-Jun-20 | 29-Jun-21 | 29-Jun-22 | 30-Jun-23 | 29-Jun-24 | 29-Jun-25 | 29-Jun-26 | 30-Jun-27 | 29-Jun-28 | 29-Jun-29 | 29-Jun-30 | 30-Jun-31 | 29-Jun-32 | 29-Jun-33 | 29-Jun-34 |
| Year | | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 | 2029 | 2030 | 2031 | 2032 | 2033 | 2034 |
| Battery capacity (MW, after degradation) | | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 | 20.0 |
| Revenues | | | | | | | | | | | | | | | | | |
| NYISO Market Revenues | \$ | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 |
| Terminal Value | \$ | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | 900,000 |
| Total Revenue | \$ | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 1,894,876 | 2,794,876 |
| Expenses | | | | | | | | | | | | | | | | | |
| Total Expenses | \$ | (360,105) | (365,298) | (371,688) | (378,205) | (384,854) | (391,636) | (398,554) | (405,612) | (412,812) | (420,157) | (427,651) | (435,296) | (443,096) | (451,055) | (459,175) | (467,459) |
| EBITDA | \$ | 1,534,770 | 1,529,578 | 1,523,188 | 1,516,670 | 1,510,022 | 1,503,240 | 1,496,322 | 1,489,264 | 1,482,064 | 1,474,719 | 1,467,225 | 1,459,579 | 1,451,779 | 1,443,821 | 1,435,701 | 2,327,416 |
| Project Depreciation | | | | | | | | | | | | | | | | | |
| First Year Expensing | \$ | 100.00% | | | | | | | | | | | | | | | |
| Taxable Income | \$ | (7,465,230) | 1,529,578 | 1,523,188 | 1,516,670 | 1,510,022 | 1,503,240 | 1,496,322 | 1,489,264 | 1,482,064 | 1,474,719 | 1,467,225 | 1,459,579 | 1,451,779 | 1,443,821 | 1,435,701 | 2,327,416 |
| State and Federal Taxes | \$ | - | - | - | - | - | (30,700) | (391,064) | (389,219) | (387,137) | (385,418) | (383,459) | (381,461) | (379,422) | (377,343) | (375,220) | (608,270) |
| Total Costs (with taxes) | \$ | (360,105) | (365,298) | (371,688) | (378,205) | (384,854) | (422,336) | (789,618) | (794,831) | (800,149) | (805,575) | (811,110) | (816,757) | (822,519) | (828,397) | (834,395) | (1,075,730) |
| After Tax Net Income | \$ | 1,534,770 | 1,529,578 | 1,523,188 | 1,516,670 | 1,510,022 | 1,472,540 | 1,105,258 | 1,100,045 | 1,094,727 | 1,089,301 | 1,083,766 | 1,078,118 | 1,072,357 | 1,066,478 | 1,060,481 | 1,719,146 |

VISION

May 22nd, 2018

RIDGE

PARTNERS

Vision Ridge Partners
1011 Walnut Street, Ste. 200
Boulder, CO
80302

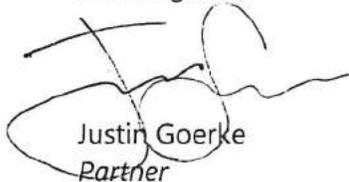
Dear Sir / Madam,

Vision Ridge Partners is a clean energy-oriented investment firm active in renewable energy, green buildings, future utility business models and advanced transportation sectors. In line with our mission to accelerate the transition to a global low carbon future, Vision Ridge invests in transformative growth companies with a focus on sustainability.

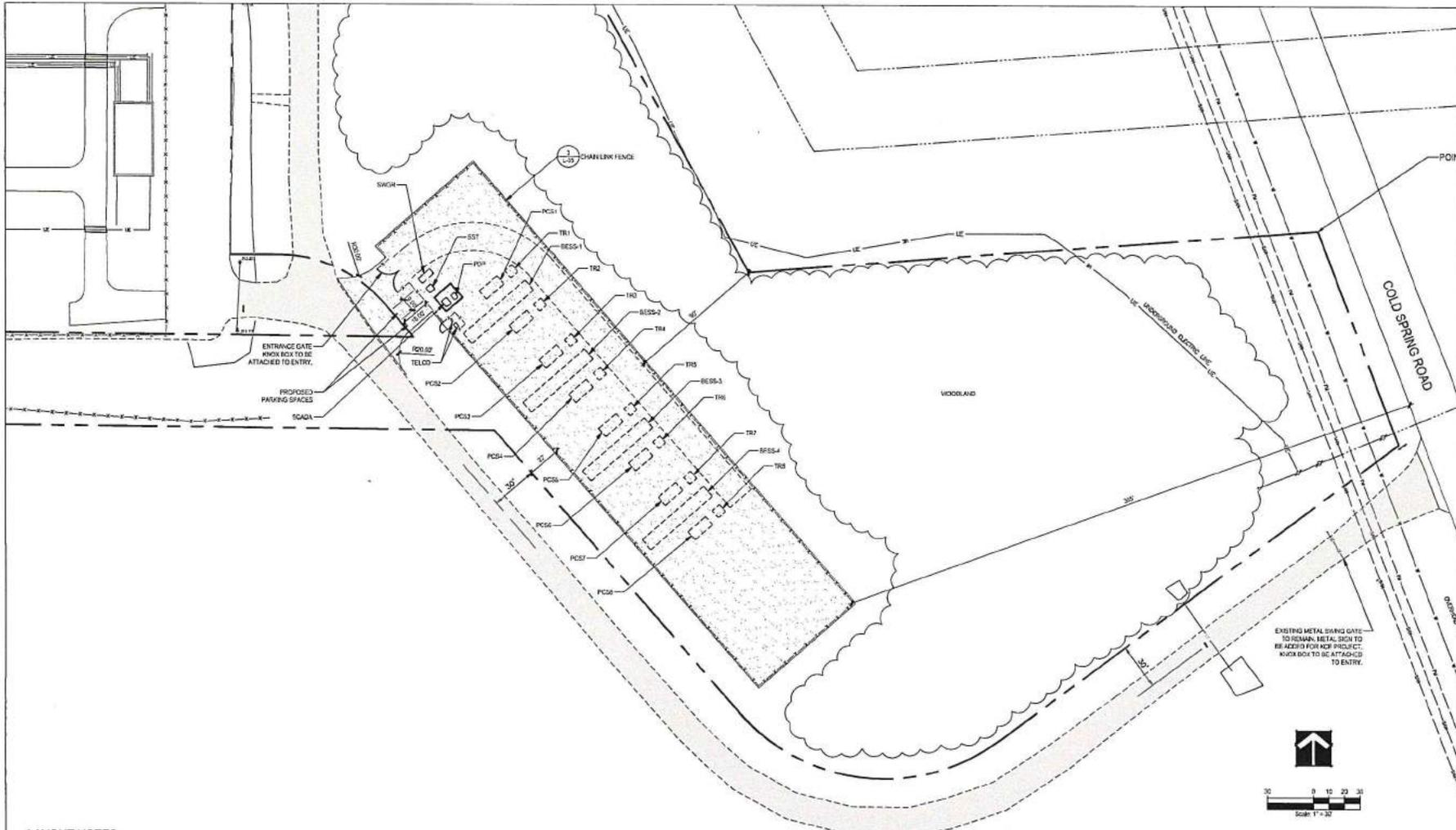
Our firm was founded in 2008 and is based in Boulder, Colorado. We currently invest in companies through our Sustainable Asset Fund II which has assets under management of approximately \$550 million. Our portfolio companies are active in renewable power generation, agriculture, water, waste-to-energy, transportation, energy efficiency, and land, and include New York-based projects such as a portfolio of electric vehicle (EV) charging infrastructure managed by EVgo, a leading national public EV charging company.

Vision Ridge is currently in final negotiations around an equity investment in KCE as a pathway to deploying \$50-100 million into energy storage projects across the North Eastern region. It is expected that this agreement will be finalized by June 1, 2018.

Best Regards,



Justin Goerke
Partner



| | | |
|-------------|-------------|------|
| Project No. | 2017079 | |
| Design | JCB | |
| Client | KCE | |
| Date | 06/15/17 | |
| Scale | 1" = 30' | |
| Rev | Description | Date |
| | | |
| | | |
| | | |
| | | |

Drawing Title
Site Layout

LAYOUT NOTES:

1. ALL LINE AND GRADE INFORMATION SHALL BE Laid OUT BY A NEW YORK STATE REGISTERED SURVEYOR ENGAGED BY THE CONTRACTOR.
2. ALL NEW WORK SHALL BE STAKED OUT PRIOR TO CONSTRUCTION. THE OWNER'S REPRESENTATIVE SHALL BE NOTIFIED OF ANY DISCREPANCIES. FIELD ADJUSTMENTS MUST BE APPROVED BY THE OWNER'S REPRESENTATIVE PRIOR TO CONSTRUCTION.
3. ALL LINES AND DIMENSIONS ARE PARALLEL OR PERPENDICULAR TO THE LINES FROM WHICH THEY ARE MEASURED UNLESS OTHERWISE NOTED.
4. FIELD ADJUSTMENTS MUST BE APPROVED BY THE OWNER'S REPRESENTATIVE AND IF NECESSARY APPROPRIATE TECHNICAL SPECIFICATIONS.
5. ALL PROPOSED PAVEMENTS, LIGHTS AND SITE IMPROVEMENTS SHALL BE STAKED IN THE FIELD FOR APPROVAL BY THE OWNER'S REPRESENTATIVE PRIOR TO CONSTRUCTION.
6. CONTRACTOR SHALL COORDINATE LOCATION OF ALL UTILITIES (PILES, DUCTS, CONDUITS, SLEEVES, FOOTINGS, ETC.) WITH LOCATIONS OF PROPOSED LANDSCAPE ELEMENTS (WALLS, FENCE, FOOTINGS, TREE ROOTBALLS, PROPOSED LIGHTING FOOTINGS, ETC.). CONTRACTOR SHALL REPORT ANY DISCREPANCIES TO OWNER'S REPRESENTATIVE PRIOR TO CONTINUING WORK.
7. ALL EXISTING UTILITIES ARE SHOWN IN THEIR RELATIVE POSITION. CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE VERTICAL & HORIZONTAL POSITION OF EXISTING UTILITIES PRIOR TO CONSTRUCTION.

LEGEND

- PROPERTY LINE
- - - CHAIN LINK FENCE
- ~ TREELINE
- GRAVEL PAVING
- BESS BATTERY ENERGY STORAGE SYSTEM
- PCS POWER CONVERSION SYSTEM
- TR TRANSFORMER
- TELCO TELECOMMUNICATIONS AREA
- SCADA SUPERVISORY CONTROL AND DATA ACQUISITION
- PDP POWER DISTRIBUTION PANEL
- SST SERVICE STATION TRANSFORMER
- SWGR SWITCHGEAR

**Full Environmental Assessment Form
Part 1 - Project and Setting**

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either "Yes" or "No". If the answer to the initial question is "Yes", complete the sub-questions that follow. If the answer to the initial question is "No", proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the project sponsor to verify that the information contained in Part 1 is accurate and complete.

A. Project and Sponsor Information.

| | | |
|---|-----------|--|
| Name of Action or Project: Key Capture Battery Energy Storage System | | |
| Project Location (describe, and attach a general location map): Substation Drive along Cold Springs Road Malta NY | | |
| Brief Description of Proposed Action (include purpose or need): | | |
| Name of Applicant/Sponsor: Key Capture Energy | | Telephone: 518-429-0229 E-Mail: dan.fitzgerald@keycaptureenergy.com |
| Address: 418 Broadway 3rd floor | | |
| City/PO: Albany | State: NY | Zip Code: 12207 |
| Project Contact (if not same as sponsor; give name and title/role): Dan Fitzgerald | | Telephone: E-Mail: |
| Address: | | |
| City/PO: | State: | Zip Code: |
| Property Owner (if not same as sponsor): Luther Forest Technology Campus Economic Development Corporation - Tom Roohan | | Telephone: 518-587-4500 E-Mail: troohan@roohanrealty.com |
| Address: 519 Broadway | | |
| City/PO: Saratoga Springs | State: NY | Zip Code: 12866 |

B. Government Approvals

| B. Government Approvals Funding, or Sponsorship. ("Funding" includes grants, loans, tax relief, and any other forms of financial assistance.) | | |
|--|---|---|
| Government Entity | If Yes: Identify Agency and Approval(s) Required | Application Date (Actual or projected) |
| a. City Council, Town Board, or Village Board of Trustees <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| b. City, Town or Village Planning Board or Commission <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Town of Stillwater Planning Board | August 23, 2017 |
| c. City Council, Town or Village Zoning Board of Appeals <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| d. Other local agencies <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| e. County agencies <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Saratoga County Planning Board Advisory Opinion | |
| f. Regional agencies <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| g. State agencies <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| h. Federal agencies <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| i. Coastal Resources. <i>i.</i> Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, <i>ii.</i> Is the project site located in a community with an approved Local Waterfront Revitalization Program? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>iii.</i> Is the project site within a Coastal Erosion Hazard Area? <input type="checkbox"/> Yes <input type="checkbox"/> No | | |

C. Planning and Zoning

| C.1. Planning and zoning actions. | |
|---|--|
| Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No • If Yes, complete sections C, F and G. • If No, proceed to question C.2 and complete all remaining sections and questions in Part 1 | |
| C.2. Adopted land use plans. | |
| a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, identify the plan(s): _____ _____ _____ | |
| c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, identify the plan(s): _____ _____ _____ | |

| | |
|---|---|
| C.3. Zoning | |
| a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. If Yes, what is the zoning classification(s) including any applicable overlay district? <u>Luther Forest PUD</u> | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| b. Is the use permitted or allowed by a special or conditional use permit? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| c. Is a zoning change requested as part of the proposed action? If Yes, i. What is the proposed new zoning for the site? _____ | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| C.4. Existing community services. | |
| a. In what school district is the project site located? <u>Stillwater Central School District</u> | |
| b. What police or other public protection forces serve the project site? <u>NYS Troopers and Saratoga County Sheriffs</u> | |
| c. Which fire protection and emergency medical services serve the project site? <u>Arvin Hart Volunteer Fire Company</u> | |
| d. What parks serve the project site? _____ | |

D. Project Details

| | |
|---|---|
| D.1. Proposed and Potential Development | |
| a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)? <u>Public Utility</u> | |
| b. a. Total acreage of the site of the proposed action? _____ <u>6.023</u> acres b. Total acreage to be physically disturbed? _____ <u>1.25</u> acres c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ <u>248.44</u> acres | |
| c. Is the proposed action an expansion of an existing project or use? i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % _____ Units: _____ | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| d. Is the proposed action a subdivision, or does it include a subdivision? If Yes, i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types) _____ ii. Is a cluster/conservation layout proposed? _____ iii. Number of lots proposed? _____ iv. Minimum and maximum proposed lot sizes? Minimum _____ Maximum _____ | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| e. Will proposed action be constructed in multiple phases? i. If No, anticipated period of construction: _____ <u>9</u> months ii. If Yes: • Total number of phases anticipated _____ • Anticipated commencement date of phase 1 (including demolition) _____ month _____ year • Anticipated completion date of final phase _____ month _____ year • Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: _____ _____ _____ | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

f. Does the project include new residential uses? Yes No
 If Yes, show numbers of units proposed.

| | One Family | Two Family | Three Family | Multiple Family (four or more) |
|---------------|------------|------------|--------------|--------------------------------|
| Initial Phase | _____ | _____ | _____ | _____ |
| At completion | _____ | _____ | _____ | _____ |
| of all phases | _____ | _____ | _____ | _____ |

g. Does the proposed action include new non-residential construction (including expansions)? Yes No
 If Yes,

i. Total number of structures _____

ii. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; and _____ length

iii. Approximate extent of building space to be heated or cooled: _____ square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? Yes No
 If Yes,

i. Purpose of the impoundment: _____

ii. If a water impoundment, the principal source of the water: Ground water Surface water streams Other specify: _____

iii. If other than water, identify the type of impounded/contained liquids and their source. _____

iv. Approximate size of the proposed impoundment. Volume: _____ million gallons; surface area: _____ acres

v. Dimensions of the proposed dam or impounding structure: _____ height; _____ length

vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete): _____

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite) Yes No
 If Yes:

i. What is the purpose of the excavation or dredging? _____

ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?

- Volume (specify tons or cubic yards): _____
- Over what duration of time? _____

iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them. _____

iv. Will there be onsite dewatering or processing of excavated materials? Yes No
 If yes, describe. _____

v. What is the total area to be dredged or excavated? _____ acres

vi. What is the maximum area to be worked at any one time? _____ acres

vii. What would be the maximum depth of excavation or dredging? _____ feet

viii. Will the excavation require blasting? Yes No

ix. Summarize site reclamation goals and plan: _____

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? Yes No
 If Yes:

i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): _____

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

iii. Will proposed action cause or result in disturbance to bottom sediments? Yes No
If Yes, describe: _____

iv. Will proposed action cause or result in the destruction or removal of aquatic vegetation? Yes No
If Yes:

- acres of aquatic vegetation proposed to be removed _____
- expected acreage of aquatic vegetation proposed to be removed _____
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): _____
- proposed method of plant removal: _____
- if chemical/herbicide treatment will be used, specify product(s): _____

v. Describe any proposed reclamation/mitigation following disturbance: _____

c. Will the proposed action use, or create a new demand for water? Yes No
If Yes:

i. Total anticipated water usage/demand per day: _____ gallons/day

ii. Will the proposed action obtain water from an existing public water supply? Yes No
If Yes:

- Name of district or service area: _____
- Does the existing public water supply have capacity to serve the proposal? Yes No
- Is the project site in the existing district? Yes No
- Is expansion of the district needed? Yes No
- Do existing lines serve the project site? Yes No

iii. Will line extension within an existing district be necessary to supply the project? Yes No
If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____
- Source(s) of supply for the district: _____

iv. Is a new water supply district or service area proposed to be formed to serve the project site? Yes No
If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- Proposed source(s) of supply for new district: _____

v. If a public water supply will not be used, describe plans to provide water supply for the project: _____

vi. If water supply will be from wells (public or private), maximum pumping capacity: _____ gallons/minute.

d. Will the proposed action generate liquid wastes? Yes No
If Yes:

i. Total anticipated liquid waste generation per day: _____ gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): _____

iii. Will the proposed action use any existing public wastewater treatment facilities? Yes No
If Yes:

- Name of wastewater treatment plant to be used: _____
- Name of district: _____
- Does the existing wastewater treatment plant have capacity to serve the project? Yes No
- Is the project site in the existing district? Yes No
- Is expansion of the district needed? Yes No

• Do existing sewer lines serve the project site? Yes No
 • Will line extension within an existing district be necessary to serve the project? Yes No
 If Yes:
 • Describe extensions or capacity expansions proposed to serve this project: _____

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? Yes No
 If Yes:
 • Applicant/sponsor for new district: _____
 • Date application submitted or anticipated: _____
 • What is the receiving water for the wastewater discharge? _____

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge, or describe subsurface disposal plans):

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? Yes No
 If Yes:
 i. How much impervious surface will the project create in relation to total size of project parcel?
 _____ Square feet or .689 acres (impervious surface)
 _____ Square feet or 6.023 acres (parcel size)
 ii. Describe types of new point sources. Infiltration basins

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?
On-site infiltration basins

• If to surface waters, identify receiving water bodies or wetlands: _____

• Will stormwater runoff flow to adjacent properties? Yes No

iv. Does proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? Yes No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? Yes No
 If Yes, identify:
 i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

 ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

 iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? Yes No
 If Yes:
 i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) Yes No
 ii. In addition to emissions as calculated in the application, the project will generate:
 • _____ Tons/year (short tons) of Carbon Dioxide (CO₂)
 • _____ Tons/year (short tons) of Nitrous Oxide (N₂O)
 • _____ Tons/year (short tons) of Perfluorocarbons (PFCs)
 • _____ Tons/year (short tons) of Sulfur Hexafluoride (SF₆)
 • _____ Tons/year (short tons) of Carbon Dioxide equivalent of Hydroflouorocarbons (HFCs)
 • _____ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? Yes No

If Yes:

i. Estimate methane generation in tons/year (metric): _____

ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? Yes No

If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust): _____

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? Yes No

If Yes:

i. When is the peak traffic expected (Check all that apply): Morning Evening Weekend
 Randomly between hours of _____ to _____.

ii. For commercial activities only, projected number of semi-trailer truck trips/day: _____

iii. Parking spaces: Existing _____ Proposed _____ Net increase/decrease _____

iv. Does the proposed action include any shared use parking? Yes No

v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe: _____

vi. Are public/private transportation service(s) or facilities available within ½ mile of the proposed site? Yes No

vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? Yes No

viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? Yes No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? Yes No

If Yes:

i. Estimate annual electricity demand during operation of the proposed action: _____

ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other): _____

iii. Will the proposed action require a new, or an upgrade to, an existing substation? Yes No

l. Hours of operation. Answer all items which apply.

i. During Construction:

- Monday - Friday: _____ 7am - 7pm _____
- Saturday: _____ 7am - 7pm _____
- Sunday: _____ 9am - 5pm _____
- Holidays: _____

ii. During Operations:

- Monday - Friday: _____ 24 hours _____
- Saturday: _____ 24 hours _____
- Sunday: _____ 24 hours _____
- Holidays: _____ 24 hours _____

m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? Yes No
 If yes:
 i. Provide details including sources, time of day and duration:
During construction sound will be above the ambient noise

ii. Will proposed action remove existing natural barriers that could act as a noise barrier or screen? Yes No
 Describe: _____

n. Will the proposed action have outdoor lighting? Yes No
 If yes:
 i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:
Down lighting along the outside of the fence line for security on switches

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? Yes No
 Describe: _____

o. Does the proposed action have the potential to produce odors for more than one hour per day? Yes No
 If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures:

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products (185 gallons in above ground storage or an amount in underground storage)? Yes No
 If Yes:
 i. Product(s) to be stored _____
 ii. Volume(s) _____ per unit time _____ (c.g., month, year)
 iii. Generally describe proposed storage facilities: _____

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? Yes No
 If Yes:
 i. Describe proposed treatment(s):

ii. Will the proposed action use Integrated Pest Management Practices? Yes No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? Yes No
 If Yes:
 i. Describe any solid waste(s) to be generated during construction or operation of the facility:
 • Construction: _____ tons per _____ (unit of time)
 • Operation : _____ tons per _____ (unit of time)
 ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:
 • Construction: _____

 • Operation: _____

 iii. Proposed disposal methods/facilities for solid waste generated on-site:
 • Construction: _____

 • Operation: _____

s. Does the proposed action include construction or modification of a solid waste management facility? Yes No

If Yes:

i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): _____

ii. Anticipated rate of disposal/processing:

- _____ Tons/month, if transfer or other non-combustion/thermal treatment, or
- _____ Tons/hour, if combustion or thermal treatment

iii. If landfill, anticipated site life: _____ years

t. Will proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? Yes No

If Yes:

i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: _____

ii. Generally describe processes or activities involving hazardous wastes or constituents: _____

iii. Specify amount to be handled or generated _____ tons/month

iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: _____

v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? Yes No

If Yes: provide name and location of facility: _____

If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility: _____

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.

i. Check all uses that occur on, adjoining and near the project site.

Urban Industrial Commercial Residential (suburban) Rural (non-farm)

Forest Agriculture Aquatic Other (specify): Utility services

ii. If mix of uses, generally describe: _____

b. Land uses and covertypes on the project site.

| Land use or Covertype | Current Acreage | Acreage After Project Completion | Change (Acres +/-) |
|--|-----------------|----------------------------------|--------------------|
| • Roads, buildings, and other paved or impervious surfaces | | | |
| • Forested | | | |
| • Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural) | | | |
| • Agricultural (includes active orchards, field, greenhouse etc.) | | | |
| • Surface water features (lakes, ponds, streams, rivers, etc.) | | | |
| • Wetlands (freshwater or tidal) | | | |
| • Non-vegetated (bare rock, earth or fill) | | | |
| • Other Describe: _____ | | | |

c. Is the project site presently used by members of the community for public recreation? Yes No
i. If Yes: explain: _____

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? Yes No
If Yes,
i. Identify Facilities: _____

e. Does the project site contain an existing dam? Yes No
If Yes:
i. Dimensions of the dam and impoundment:
• Dam height: _____ feet
• Dam length: _____ feet
• Surface area: _____ acres
• Volume impounded: _____ gallons OR acre-feet
ii. Dam's existing hazard classification: _____
iii. Provide date and summarize results of last inspection: _____

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? Yes No
If Yes:
i. Has the facility been formally closed? Yes No
• If yes, cite sources/documentation: _____
ii. Describe the location of the project site relative to the boundaries of the solid waste management facility: _____

iii. Describe any development constraints due to the prior solid waste activities: _____

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? Yes No
If Yes:
i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:
The adjacent parcel had hazardous waste re mediated. _____

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? Yes No
If Yes:
i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: Yes No
 Yes – Spills Incidents database Provide DEC ID number(s): _____
 Yes – Environmental Site Remediation database Provide DEC ID number(s): _____
 Neither database
ii. If site has been subject of RCRA corrective activities, describe control measures: _____

iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? Yes No
If yes, provide DEC ID number(s): _____
iv. If yes to (i), (ii) or (iii) above, describe current status of site(s): _____

v. Is the project site subject to an institutional control limiting property uses? Yes No

- If yes, DEC site ID number: _____
- Describe the type of institutional control (e.g., deed restriction or easement): _____
- Describe any use limitations: _____
- Describe any engineering controls: _____
- Will the project affect the institutional or engineering controls in place? Yes No
- Explain: _____

E.2. Natural Resources On or Near Project Site

a. What is the average depth to bedrock on the project site? _____ >8' feet

b. Are there bedrock outcroppings on the project site? Yes No
 If Yes, what proportion of the site is comprised of bedrock outcroppings? _____ %

c. Predominant soil type(s) present on project site: _____ %
 _____ %
 _____ %

d. What is the average depth to the water table on the project site? Average: _____ >8' feet

e. Drainage status of project site soils: Well Drained: _____ 100 % of site
 Moderately Well Drained: _____ % of site
 Poorly Drained _____ % of site

f. Approximate proportion of proposed action site with slopes: 0-10%: _____ % of site
 10-15%: _____ % of site
 15% or greater: _____ % of site

g. Are there any unique geologic features on the project site? Yes No
 If Yes, describe: _____

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? Yes No

ii. Do any wetlands or other waterbodies adjoin the project site? Yes No
 If Yes to either *i* or *ii*, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? Yes No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name _____ Classification _____
- Lakes or Ponds: Name _____ Classification _____
- Wetlands: Name _____ Approximate Size _____
- Wetland No. (if regulated by DEC) _____

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? Yes No
 If yes, name of impaired water body/bodies and basis for listing as impaired: _____

i. Is the project site in a designated Floodway? Yes No

j. Is the project site in the 100 year Floodplain? Yes No

k. Is the project site in the 500 year Floodplain? Yes No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? Yes No
 If Yes:
 i. Name of aquifer: _____

m. Identify the predominant wildlife species that occupy or use the project site: _____

n. Does the project site contain a designated significant natural community? Yes No
 If Yes:
 i. Describe the habitat/community (composition, function, and basis for designation): _____

 ii. Source(s) of description or evaluation: _____
 iii. Extent of community/habitat:
 • Currently: _____ acres
 • Following completion of project as proposed: _____ acres
 • Gain or loss (indicate + or -): _____ acres

o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? Yes No

p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? Yes No

q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? Yes No
 If yes, give a brief description of how the proposed action may affect that use: _____

E.3. Designated Public Resources On or Near Project Site

a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? Yes No
 If Yes, provide county plus district name/number: _____

b. Are agricultural lands consisting of highly productive soils present? Yes No
 i. If Yes: acreage(s) on project site? _____
 ii. Source(s) of soil rating(s): _____

c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? Yes No
 If Yes:
 i. Nature of the natural landmark: Biological Community Geological Feature
 ii. Provide brief description of landmark, including values behind designation and approximate size/extent: _____

d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? Yes No
 If Yes:
 i. CEA name: _____
 ii. Basis for designation: _____
 iii. Designating agency and date: _____

| | |
|---|---|
| e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on, or has been nominated by the NYS Board of Historic Preservation for inclusion on, the State or National Register of Historic Places? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| If Yes: | |
| <i>i.</i> Nature of historic/archaeological resource: <input type="checkbox"/> Archaeological Site <input type="checkbox"/> Historic Building or District | |
| <i>ii.</i> Name: _____ | |
| <i>iii.</i> Brief description of attributes on which listing is based: _____ | |
| f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| g. Have additional archaeological or historic site(s) or resources been identified on the project site? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If Yes: | |
| <i>i.</i> Describe possible resource(s): _____ | |
| <i>ii.</i> Basis for identification: _____ | |
| h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| If Yes: | |
| <i>i.</i> Identify resource: _____ | |
| <i>ii.</i> Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): _____ | |
| <i>iii.</i> Distance between project and resource: _____ miles. | |
| i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| If Yes: | |
| <i>i.</i> Identify the name of the river and its designation: _____ | |
| <i>ii.</i> Is the activity consistent with development restrictions contained in 6NYCRR Part 666? | |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | |

F. Additional Information

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name _____ Date _____

Signature _____ Title _____

**TOWN OF STILLWATER
PLANNING BOARD MEETING MINUTES
STILLWATER TOWN HALL
October 23, 2017 @ 7:00 PM**

Present:

Chairperson Carol Marotta
JoAnn Winchell, Member
John Murray, Member
Randy Rathbun, Member
Peter Buck, Member
Heather Ferris, Member
Marybeth Reilly, Alternate Member

Also Present:

Daryl Cutler, Attorney for the Town
Sean Doty, Chazen Companies-Engineer for the Town
Paul Male, Town Engineer
Lindsay Zepko, Director of Building and Planning
Ellen Vomacka, Town Board Liaison
Sheila Silic, Secretary

Pledge:

Chairperson Marotta called the meeting to order at 7:00 PM and led everyone in the Pledge to the Flag.

Review and approval of minutes of Planning Board meeting:

Ms. Winchell made a motion to approve the minutes as amended from the September 25, 2017 meeting, seconded by Mr. Rathbun. The motion passed unanimously.

PB2017-09, Key Capture Energy Site Plan, 30 Substation Drive

Chairperson Marotta recognized Mr. Matthew Brobston, RLA of the LA Group and Mr. Daniel Fitzgerald of Key Capture Energy. Mr. Brobston stated that the project is adjacent to the NYS Electric & Gas Substation, located at 30 Substation Drive which is off Cold Spring Road. Mr. Brobston stated that the applicant will be leasing a 6-acre parcel from the 154-acre parcel known as Pod 1 and the applicant will be using the existing access road into the site. Mr. Brobston stated that the battery storage system helps to enhance and stabilize the fluctuation of increasing or decreasing power to the electrical company's grid. Ms. Marotta asked what color the storage containers would be. Mr. Brobston stated that the applicant is open to a paint color for the storage units if the Planning Board were to request a color change. Mr. Brobston stated that they have addressed Chazen's Companies comment letter dated October 18, 2017. Mr. Brobston stated that at the previous meeting, the Board had some concerns regarding if a private utility is allowed under the current PDD Language, noise levels and visual buffers. Mr. Brobston stated that private utilities are allowed under the current PDD Language. Mr. Brobston stated that the noise level at the property line is 50db and it is 425 ft. to the property line. Mr. Brobston stated

that there is a 100 ft. no cut buffer from Cold Springs Road and that the battery storage units will be 300 ft. from the buffered area. The Board discussed the need for a Letter of Credit to be established that the Town could use in the event that the batteries were one day obsolete or abandoned. Mr. Fitzgerald stated that the Letter of Credit could be established and would include the estimate of the removal cost and the salvage cost.

Chairperson Marotta proceeded to open the public hearing and asked if anyone wished to comment and hearing none she proceeded to close the public hearing.

Chairperson Marotta asked about the infiltration basin. Mr. Brobston stated that they are not proposing a new stormwater basin. Mr. Brobston stated that the swale will have check dams to alleviate the run off and it meets all of the DEC regulations as outlined in the SWPPP. Chairperson Marotta asked if all the Fire Departments questions and/or concerns have been addressed. Mr. Brobston stated that they have addressed all of the Fire Departments questions and/or concerns. Mr. Male stated that there will be two Knox boxes on site. Chairperson Marotta stated that there would be fire training available to the Fire Department. Mr. Fitzgerald stated that is correct there will be training before construction and after construction. Mr. Brobston stated that this will include both Malta and Round Lake Fire Departments. Chairperson Marotta stated that when the original Luther Forest Tech Campus PDD was approved, there were issues with residents in the area due to noise that could be heard from Global Foundries. Chairperson Marotta asked if the noise from the battery storage units will be heard by the residents in the area. Mr. Doty stated that noise level during the day is 60db and the noise level at night is 50db. Mr. Doty stated that the applicant could muffle the noise just as Global Foundries has done. Chairperson Marotta asked if this is an unmanned site. Mr. Fitzgerald stated that is correct and that the battery storage units are constantly monitored by computers. Ms. Marotta stated that Mr. Male's comment letter dated September 22, 2017 has been addressed, Mr. Doty's comment letter dated October 18, 2017 has been addressed and the project is covered under the LFTC PDD regarding the need for SEQRA action. Chairperson Marotta asked Ms. Zepko if she received a response from the Saratoga County Planning Board. Ms. Zepko stated that Saratoga County Planning Board response states no inter-municipal or county wide impact. Chairperson Marotta asked if she received a response back from the Town of Malta. Ms. Zepko stated that the Town of Malta has no issues with the project.

Ms. Winchell asked Mr. Male about the review regarding the SWPPP and if all the criteria have been met. Mr. Male stated yes all the criteria have been met. Ms. Winchell asked if there are any plans to do any test drills with Global Foundries. Mr. Fitzgerald stated that they are working with NYS Electric & Gas on a study.

Mr. Buck asked if this project will benefit the NYS Electric & Gas customers. Mr. Brobston stated that it will benefit their customers.

Mr. Rathbun asked if the battery storage units are self-contained. Mr. Fitzgerald stated that they are self-contained units.

Mr. Murray asked about the removal of the containers if the company were to go out of business so it doesn't become a burden on the Town. Mr. Fitzgerald stated that the containers will be

removed for salvage or to be reused. Mr. Cutler asked the applicant why they want to remove the salvage cost from the letter of credit. Mr. Fitzgerald stated due to the contract being reviewed every 5 years for the salvage cost.

Mr. Doty stated that if the warranty is not what the applicant deems reasonable they can remove the containers.

Mr. Male stated that he would like a copy of the warranty to review. Mr. Fitzgerald stated that he not sure if he can give a copy of the warranty to the Planning Department. Mr. Fitzgerald stated that he would check with his lawyer.

Chairperson Marotta asked if anyone had any additional questions or concerns, hearing none she asked to move to discussion of SEQRA.

**TOWN OF STILLWATER
PLANNING BOARD
2017 RESOLUTION NO. 13**

WHEREAS, Key Capture Energy has submitted an application for site plan approval regarding property located at 30 Substation Road, more fully identified as Tax Map Number 241.00-1-4; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act (SEQRA), the proposed action is an unlisted action requiring SEQRA review; and

WHEREAS, pursuant to 6 NYCRR §617.6, the Stillwater Planning Board is the lead agency for SEQRA review; and

WHEREAS, the applicant has submitted a fully completed Short Environmental Assessment Form (EAF); and

WHEREAS, the Planning Board has duly determined that the proposed action is consistent with the prior LFTC SEQRA findings by the Town of Malta;

Now, therefore, be it

RESOLVED, that the Planning Board hereby determines that the proposed action by the applicant, Key Capture Energy, for site plan approval regarding property located at 30 Substation Drive, more fully identified as Tax Map Number 241.00-1-4, will not have a significant impact on the environment.

A motion by Member Winchell, seconded by Member Rathbun, to adopt Resolution No. 13.

A roll call vote was taken on Resolution No. 13 as follows:

| | |
|---------------------|-----|
| Chairperson Marotta | Yes |
| Member Buck | Yes |

| | |
|-----------------|-----|
| Member Ferris | Yes |
| Member Murray | Yes |
| Member Rathbun | Yes |
| Member Reilly | Yes |
| Member Winchell | Yes |

Resolution No. 13 was adopted at a meeting of the Planning Board of the Town of Stillwater duly conducted on October 23, 2017.

**TOWN OF STILLWATER
PLANNING BOARD
2017 RESOLUTION NO. 14**

WHEREAS, Key Capture Energy has submitted an application for site plan approval regarding property located at 30 Substation Drive, more fully described as Tax Map No. 241.00-1-4; and

WHEREAS, a public hearing was conducted on October 23, 2017 to consider the application, and no comments were received from the public; and

WHEREAS, the Planning Board completed a SEQRA review and has issued a negative declaration pursuant to Resolution No. 13 of 2017; and

WHEREAS, the Planning Board has duly considered the application;

Now, therefore, be it

RESOLVED, that the application of Key Capture Energy for site plan approval of lands located on 30 Substation Road, more fully identified as Tax Map Number 241.00-1-4 is hereby GRANTED; and be it further

RESOLVED, that the application is GRANTED, provided the applicant complies with the following conditions:

1. that prior to the issuance of a building permit, the applicant shall post a letter of credit of an amount satisfactory to the Town for the decommission of the site should the site be abandoned, which amount shall be reviewed every 5 years;
2. that the applicant shall provide information and training to the fire department as may be requested by the fire department; and
3. that the 100 foot buffer line be added to the plans; and be it further

RESOLVED, that the Secretary is authorized and directed to transmit a copy of this Resolution to the Applicant, the Town Clerk and the Building Inspector-Code Enforcement

Officer.

A motion by Member Rathbun seconded by Member Murray, to adopt Resolution No. 14.

A roll call vote was taken on Resolution No. 14 as follows:

| | |
|---------------------|-----|
| Chairperson Marotta | Yes |
| Member Buck | Yes |
| Member Ferris | Yes |
| Member Murray | Yes |
| Member Rathbun | Yes |
| Member Reilly | Yes |
| Member Winchell | Yes |

Resolution No. 14 was adopted at a meeting of the Planning Board of the Town of Stillwater duly conducted on October 23, 2017.

PB2017-10, Zecca Minor Subdivision, 18 Kellogg Road

**** Mr. Buck recused himself ****

Chairperson Marotta recognized Mr. Frederick Metzger of Fredrick Metzger Land Survey P.C. who is representing Mr. Joseph Zecca. Mr. Metzger stated that the property is located at 18 Kellogg Road which is both in the Town of Stillwater and the Village of Stillwater. Mr. Metzger stated that prior to this subdivision proposal, a Lot Line Adjustment was granted on August 28, 2017. Mr. Metzger stated that the townhouses meet all zoning code changes as outlined in the Route 4 Corridor Form-Based Code. Mr. Metzger stated that he would address all of Mr. Male's comments from the letter dated September 15, 2017 by the end of week. Mr. Metzger stated that the berms have been completed, the canopy has been removed and the turn arounds have been completed.

Chairperson Marotta proceeded to open the public hearing and asked if anyone wished to comment and hearing none she proceeded to close the public hearing.

Chairperson Marotta asked Ms. Zepko if she received a response from the Saratoga County Planning Board. Ms. Zepko stated that Saratoga County Planning Board response states no inter-municipal or county wide impact.

Mr. Rathbun asked about the number of subdivisions that had been approved on this parcel. Mr. Male stated that he was not sure of how many subdivisions have been approved in total for this parcel but believes that it is under the 4-lot threshold making it a Minor Subdivision.

Chairperson Marotta asked if anyone had any additional questions or concerns, hearing none she asked to move to discussion of SEQRA

**TOWN OF STILLWATER
PLANNING BOARD
2017 RESOLUTION NO. 15**

WHEREAS, Joseph Zecca Jr., has submitted an application for a minor subdivision regarding property located at 18 Kellogg Road, more fully identified as Tax Map Number 253.26-1-30; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act (SEQRA), the proposed action is an unlisted action requiring SEQRA review; and

WHEREAS, pursuant to 6 NYCRR §617.6, the Stillwater Planning Board is the lead agency for SEQRA review; and

WHEREAS, the applicant has submitted a fully completed Short Environmental Assessment Form (EAF); and

WHEREAS, the Planning Board has duly reviewed the EAF and has considered the criteria contained in 6 NYCRR §617.7(c), to determine if the proposed action will have a significant impact on the environment;

WHEREAS, the Planning Board reviewed each of the 11 factors contained in Part 2 of the EAF and determined that the proposed action will have no, or only a small, environmental impact;

Now, therefore, be it

RESOLVED, that the Planning Board hereby determines that the proposed action by the applicant, Joseph Zecca, Jr., for a minor subdivision regarding property located at 18 Kellogg Road, more fully identified as Tax Map Number 253.26-1-30, will not have a significant impact on the environment.

A motion by Member Winchell, seconded by Member Ferris, to adopt Resolution No. 15.

A roll call vote was taken on Resolution No. 15 as follows:

| | |
|---------------------|---------|
| Chairperson Marotta | Yes |
| Member Buck | Recused |
| Member Ferris | Yes |
| Member Murray | Yes |
| Member Rathbun | Yes |
| Member Reilly | Yes |
| Member Winchell | Yes |

Resolution No. 15 was adopted at a meeting of the Planning Board of the Town of Stillwater duly conducted on October 23, 2017.

**TOWN OF STILLWATER
PLANNING BOARD
2017 RESOLUTION NO. 16**

WHEREAS, Joseph Zecca, Jr., has submitted an application for a minor subdivision regarding property located at 18 Kellogg Road, more fully described as Tax Map No. 253.26-1-30; and

WHEREAS, a public hearing was conducted on October 23, 2017 to consider the application, and no comments were received from the public; and

WHEREAS, the Planning Board completed a SEQRA review and has issued a negative declaration pursuant to Resolution No. 15 of 2017; and

WHEREAS, the Planning Board has duly considered the application;

Now, therefore, be it

RESOLVED, that the application of Joseph Zecca, Jr., for a minor subdivision of lands located on 18 Kellogg Road, more fully identified as Tax Map Number 253.26-1-30, is hereby GRANTED; and be it further

RESOLVED, that the application is GRANTED, provided the applicant comply with the conditions contained in the engineer's review letter by Paul Male, P.E., dated September 15, 2017; and be it further

RESOLVED, that the applicant must file the approved subdivision map, with all required annotations (a copy of which is annexed hereto), with Saratoga County within 62 days of its execution, or the action by this Board shall become null and void; and be it further

RESOLVED, that the Secretary is authorized and directed to transmit a copy of this Resolution to the Applicant, the Town Clerk and the Building Inspector-Code Enforcement Officer.

A motion by Member Murray, seconded by Member Winchell, to adopt Resolution No. 16.

A roll call vote was taken on Resolution No. 16 as follows:

| | |
|---------------------|---------|
| Chairperson Marotta | Yes |
| Member Buck | Recused |
| Member Ferris | Yes |
| Member Murray | Yes |

| | |
|-----------------|-----|
| Member Rathbun | Yes |
| Member Reilly | Yes |
| Member Winchell | Yes |

Resolution No. 16 was adopted at a meeting of the Planning Board of the Town of Stillwater duly conducted on October 23, 2017.

****Mr. Buck returned to the Meeting****

PB2017-11, Wheeler Lot Line Adjustment, Brickhouse Road

Chairperson Marotta recognized Mr. Charles Wheeler who will be presenting the project to the Board this evening. Mr. Wheeler stated that the survey map was done by Mr. David Dickinson & Associates. Mr. Wheeler stated that he is seeking a Lot Line Adjustment which will provide a 70 ft. strip of land that will allow access to the land locked parcel in the rear. Mr. Wheeler stated the remaining parcel will consist of 3-acres. Mr. Wheeler stated that his surveyor is the making the changes to the map per Mr. Male’s comment letter dated September 25, 2017.

Mr. Male stated that the purchaser’s Attorney is rewriting the deeds to consolidate the parcels.

Ms. Winchell made a motion to waive the public hearing seconded by Mr. Buck. A roll call vote was taken.

| | |
|---------------------|-----|
| Chairperson Marotta | YES |
| Member Buck | YES |
| Member Ferris | YES |
| Member Murray | YES |
| Member Rathbun | YES |
| Member Reilly | YES |
| Member Winchell | YES |

Chairperson Marotta asked if anyone had any additional questions or concerns, hearing none she asked to move to discussion of SEQRA.

**TOWN OF STILLWATER
PLANNING BOARD
2017 RESOLUTION NO. 17**

WHEREAS, Charles Wheeler, Jr., has submitted an application for a lot line adjustment regarding property located at Brickhouse Road, more fully identified as Tax Map Numbers 219.-3-7.2 and 219.3-6.11; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act (SEQRA), the proposed action is an unlisted action requiring SEQRA review; and

WHEREAS, pursuant to 6 NYCRR §617.6, the Stillwater Planning Board is the lead agency for SEQRA review; and

WHEREAS, the applicant has submitted a fully completed Short Environmental Assessment Form (EAF); and

WHEREAS, the Planning Board has duly reviewed the EAF and has considered the criteria contained in 6 NYCRR §617.7(c), to determine if the proposed action will have a significant impact on the environment;

WHEREAS, the Planning Board reviewed each of the 11 factors contained in Part 2 of the EAF and determined that the proposed action will have no, or only a small, environmental impact;

Now, therefore, be it

RESOLVED, that the Planning Board hereby determines that the proposed action by the applicant, Charles Wheeler, Jr., for a lot line adjustment regarding property located at Brickhouse Road, more fully identified as Tax Map Numbers 219.-3-7.2 and 219.3-6.11 will not have a significant impact on the environment.

A motion by Member Ferris, seconded by Member Murray, to adopt Resolution No. 17.

A roll call vote was taken on Resolution No. 17 as follows:

| | |
|---------------------|-----|
| Chairperson Marotta | Yes |
| Member Buck | Yes |
| Member Ferris | Yes |
| Member Murray | Yes |
| Member Rathbun | Yes |
| Member Reilly | Yes |
| Member Winchell | Yes |

Resolution No. 17 was adopted at a meeting of the Planning Board of the Town of Stillwater duly conducted on October 23, 2017.

**TOWN OF STILLWATER
PLANNING BOARD
2017 RESOLUTION NO. 18**

WHEREAS, Charles Wheeler, Jr., submitted an application for a lot line adjustment regarding property located at Brickhouse Road, more fully described as Tax Map Nos. 219.-3-7.2 and 219.3-6.11; and

WHEREAS, the Town Zoning Law does not require that a public hearing be held in order for the Planning Board to act on an application for a lot line adjustment; and

WHEREAS, the Planning Board completed a SEQRA review and has issued a negative declaration pursuant to Resolution No. 17 of 2017; and

WHEREAS, the Planning Board has duly considered the application;

Now, therefore, be it

RESOLVED, that the application of Charles Wheeler, Jr., for a lot line adjustment on lands located on Brickhouse Road, more fully identified as Tax Map Numbers 219.-3-7.2 and 219.3-6.11, is hereby GRANTED; and be it further

RESOLVED, that the application is GRANTED, provided the applicant comply with the conditions set forth in the engineer review letter of Paul Male, P.E., dated September 25, 2017; and be it further

RESOLVED, that the Secretary is authorized and directed to transmit a copy of this Resolution to the Applicant, the Town Clerk and the Building Inspector-Code Enforcement Officer.

A motion by Member Rathbun, seconded by Member Buck, to adopt Resolution No. 18.

A roll call vote was taken on Resolution No. 18 as follows:

| | |
|---------------------|-----|
| Chairperson Marotta | Yes |
| Member Buck | Yes |
| Member Ferris | Yes |
| Member Murray | Yes |
| Member Rathbun | Yes |
| Member Reilly | Yes |
| Member Winchell | Yes |

Resolution No. 18 was adopted at a meeting of the Planning Board of the Town of Stillwater duly conducted on October 23, 2017.

PB2016-19, Turning Point PDD Amendment, Brickyard Road

Chairperson Marotta recognized Mr. Scott Lansing of Lansing Engineering, representing the applicant, Mr. Marshall Whalen who is also present this evening. Mr. Lansing stated that they are seeking an Amendment to the PDD to allow apartments and remove the commercial use in the original PDD. Mr. Lansing stated that the parcel is 25.9-acres and is located on the west side of Brickyard Road. Mr. Lansing stated that this parcel is vacant land which is wooded with some wetlands and it slopes down toward Brickyard Road. Mr. Lansing stated that the surrounding uses for the parcel are single-family, multi-family and industrial. Mr. Lansing stated that the

amendment to the PDD is for apartments which would consist of 13 buildings with 12 units per building with a boulevard access into the development built to fire code standards. The project would have public water and sewer, stormwater management on site, with trees and side walks throughout the development, along with a central public park area in the front of the development.

Ms. Zepko explained the PDD process to the Board and suggested scheduling a joint public hearing with the Town Board on November 16, 2017 to review the PDD Amendment.

Chairperson Marotta recapped the PDD Amendment and reviewed the Town Ordinance with Board. Chairperson Marotta asked about the property to the south of this parcel. Mr. Lansing stated that it is Donavon's Tree Service. Chairperson Marotta stated that there needs to be a 75 ft. buffer between this parcel and Donavon's Tree Service.

Ms. Winchell asked Mr. Lansing if the project is in the Mechanicville School District. Mr. Lansing stated he believes it is but will check to make sure. Ms. Winchell asked if the roadway will be connected to the Turning Point Development. Mr. Lansing stated that the roadways between the proposed new phase and the existing PDD development will be connected via a walking trail that will also be used for the waterline. Ms. Winchell asked about a recreational benefit for the residence. Mr. Lansing stated that there is a .5acre park area for passive recreation and the remaining open space on the parcel may also be used for passive recreation. Ms. Winchell asked about lot coverage. Mr. Lansing stated that he does not have a number for lot coverage. Ms. Winchell asked if the apartments are three story units. Mr. Lansing stated that the apartments are two story units.

Mr. Murray asked about the number of parking spaces per unit. Mr. Lansing stated that there will be two parking spaces per unit which conforms to the Town of Stillwater Zoning Code. Mr. Murray asked how many of the units have 1, 2 and 3 bedroom. Mr. Lansing stated that he was not sure. Mr. Whalen stated that there will be some units that have 1 and 2 bedrooms and a few that will have 3 bedrooms. Mr. Murray stated that there needs to be more than two parking spaces per unit to avoid congestion.

Chairperson Marotta stated that a motion is in order to schedule the joint public hearing for the November 16, 2017 Town/Planning Board meeting.

Ms. Winchell made a motion to hold the public hearing on November 16, 2017 seconded by Mr. Rathbun. A roll call vote was taken.

| | |
|---------------------|-----|
| Chairperson Marotta | YES |
| Member Buck | YES |
| Member Ferris | NO |
| Member Murray | YES |
| Member Rathbun | YES |
| Member Reilly | YES |
| Member Winchell | YES |

PB2017-03, Saratoga Hills PDD Amendment, County Route 76

Chairperson Marotta recognized Mr. Scott Shearing of Bohler Engineering who is representing Stillwater Elgen LLC, the owner of Saratoga Hills Mobile Home Park. Mr. Male assisted in the presentation before the Board. Mr. Shearing stated that they are seeking an Amendment to the PDD to establish the number of mobile home lots permitted as well as outline the uses allowed on the site. Mr. Shearing stated that the owner purchased approximately 18-acres adjacent to the mobile home park which is Zoned LDR in order to add some new mobile home lots. Mr. Shearing stated that the gazebo, mailboxes and the bus stop will be relocated closer to the main entrance of the park. Mr. Shearing stated that each lot has two parking spaces with five parking areas for 18 vehicles placed throughout the mobile home park. Mr. Shearing stated that the owner would like to add some storage units and a retail area. Mr. Male stated that the owner is removing old mobile homes and replacing them with new mobile homes. Mr. Male stated that the owner has been working with the Building, Planning and Development Department on the PDD Language for close to two years to bring the park into compliance with the Town Zoning Code and to create PDD language that is beneficial to both the applicant and the Town as the current language consists of only a couple of sentences. Mr. Male stated that the mobile home parks are required to obtain a yearly Operating Permit.

Chairperson Marotta stated that within the proposed PDD Language it refers to sheds, lighting, etc., but does not refer to decks. Mr. Male stated that the decks have to conform to the NYS State Building Code.

Mr. Buck asked how many mobile homes are in the park currently. Mr. Shearing stated that he is not sure how many mobile homes are currently in the park. Mr. Rathbun asked Mr. Shearing if he would estimate the number of mobile homes. Mr. Male stated that there are approximately 259 mobile homes. Mr. Male stated that the lots are being reconfigured and the new mobile homes are being placed on concrete slabs instead stone rubble.

Mr. Murray stated that there will fewer mobile homes on more acreage. Mr. Male stated that the mobile homes will be configured in one of four ways on the site.

Ms. Ferris asked what the acreage is of the parcel that was purchased. Mr. Shearing stated that the parcel is 18-acres. Ms. Winchell asked if the parcel fronts onto County Route 76. Mr. Shearing stated that is correct. Mr. Cutler stated that this portion of the original PDD had been subdivided and the owner is purchasing back a section of the parcel.

Chairperson Marotta stated that a motion is in order to schedule the joint public hearing for the November 16, 2017 Town/Planning Board meeting.

Mr. Murray made a motion to hold the public hearing on November 16, 2017 seconded by Ms. Winchell. A roll call vote was taken.

| | |
|-------------|-----|
| Chairperson | YES |
|-------------|-----|

| | |
|-----------------|-----|
| Marotta | |
| Member Buck | YES |
| Member Ferris | YES |
| Member Murray | YES |
| Member Rathbun | YES |
| Member Reilly | YES |
| Member Winchell | YES |

Discussion:

Mr. Murray stated he has concerns with the density and the number of parking spaces with the Hudson Heights (Turning Point PDD Amendment) project. Ms. Zepko stated that the Board could request the applicant to review the number of parking spaces and add an amount that would satisfy the Board. Mr. Murray stated that in comparison, the Saratoga Hills PDD proposal shows two parking spaces per mobile home with five parking areas that have 18 parking spaces.

Ms. Winchell stated regarding the Turning Point PDD, that she is not happy that the commercial component project has been removed. Ms. Winchell stated that she would like information showing how the commercial parcel was marketed.

Mr. Rathbun stated he has concerns with the traffic congestion onto Brickyard Road. Ms. Zepko stated that the Board could request a traffic study.

Motion to adjourn: made by Mr. Buck, seconded by Mr. Rathbun motion passed at approximately 9:15 PM.

SCHEDULE B
COPY OF PAYMENT IN LIEU OF TAX AGREEMENT

CITY OF MECHANICVILLE AND TOWN OF STILLWATER
INDUSTRIAL DEVELOPMENT AGENCY

AND

KCE NY 1, LLC

PAYMENT IN LIEU OF TAX AGREEMENT

DATED AS OF FEBRUARY 11, 2019

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of February 11, 2019 (the "Agreement") by and between the CITY OF MECHANICVILLE AND TOWN OF STILLWATER INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York and having its office at the Municipal Building, 36 North Main Street, Mechanicville, New York 12118 (the "Agency"), and KCE NY I, LLC, a limited liability company organized and existing under the laws of the State of Delaware having an office for the transaction of business located at 418 Broadway, 3rd Floor, Albany, New York 12207 (the "Company");

WITNESSETH:

WHEREAS, the New York State Industrial Development Agency Act, being Title I of Article 18-A of the General Municipal Law, Chapter 24, of the Consolidated Laws of the State of New York, as amended (the "Enabling Act"), authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any buildings or other improvements, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for, among other things, manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities; and

WHEREAS, the Agency was created pursuant to and in accordance with the provisions of the Enabling Act by Chapter 582 of the Laws of 1978 of the State of New York, as amended (said chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and improve their standard of living; and

WHEREAS, the Agency, by resolution adopted on September 10, 2018 (the "Resolution"), resolved to undertake a project (the "Project") consisting of (A) (1) the acquisition of an interest in an approximately 6.023 acre parcel located at 30 Substation Drive in the Town of Stillwater, New York constituting a portion of Tax Parcel No. 241.-1-4 as more particularly described on Schedule "A" attached hereto (the "Land"), (2) the construction on the Land of a utility scale lithium battery storage facility to provide backup services to the electrical grid (the "Facility") and (3) the acquisition and installation in the Facility of certain machinery and equipment (collectively, the "Equipment" and together with the Facility, collectively the "Project Facility") (B) the lease (with the obligation to purchase) or the sale of the Project Facility to the Company or such other person as may be designated by the company and agreed upon by the Agency and (C) the providing by the Agency of certain "financial assistance" (as defined in the Act) in the form of exemptions from mortgage recording tax, state and local sales tax and real property taxes; and;

WHEREAS, in connection therewith the Company has conveyed a leasehold interest in the Land to the Agency pursuant to the terms of an underlying lease agreement of even date herewith which has been recorded in the office of the Saratoga County clerk immediately prior to the recordation hereof; and

WHEREAS, the Land has been leased by the Agency to the Company pursuant to the terms of that certain lease agreement of even date herewith by and between the Agency, as lessor, and the Company, as lessee (as amended or supplemented from time to time, the "Lease Agreement"), which Lease Agreement has been recorded in the office of the Saratoga County clerk; and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the "Real Property Tax Law"), the Agency is not required to pay taxes or assessments upon any of the property acquired by it or under its jurisdiction, supervision or control or upon its activities; and

WHEREAS, pursuant to the provision of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of real estate taxes with respect to the Project Facility in the amounts and in the manner hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

DEFINITION OF TERMS. All words and terms used herein and not otherwise defined herein shall have the meanings assigned to such words and terms in the Lease Agreement.

ARTICLE I

REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS AND WARRANTIES OF COMPANY. The Company represents and warrants that:

(A) Power: The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is authorized to conduct business in the State of New York, has the power to enter into this Agreement and to carry out its obligations hereunder and by proper action of its members has authorized the execution, delivery and performance of this Agreement.

(B) Authorization: Neither the execution and delivery of this Agreement, the consummation by the Company of the transactions contemplated hereby nor the fulfillment by the Company of or compliance by the Company with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the articles of organization or operating agreement of the Company, or any order, judgment, agreement, or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing.

(C) Governmental Consent: No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition precedent to the execution, delivery or performance of this Agreement by the Company or as a condition precedent to the consummation by the Company of the transactions contemplated hereby.

SECTION 1.02. REPRESENTATIONS AND WARRANTIES OF THE AGENCY. The Agency represents and warrants that:

(A) Power: The Agency is duly established under the provisions of the Act and has the power to enter into this Agreement and to carry out its obligations hereunder. By proper official action, the Agency has been duly authorized to execute, deliver and perform this Agreement.

(B) Authorization: Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby by the Agency nor the fulfillment by the Agency or compliance by the Agency with the provisions of this Agreement will conflict with or result in a breach by the Agency of any of the terms, conditions or provisions of the Act, the by-laws of the Agency, or any order, judgment, restriction, agreement or instrument to which the Agency is a party or by which it is bound, or will constitute a default by the Agency under any of the foregoing.

(C) Governmental Consent: To the knowledge of the Agency no consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Agency is required as a condition precedent to the execution, delivery or performance of this Agreement by the Agency or as a condition precedent to the consummation by the Agency of the transactions contemplated hereby.

ARTICLE II

COVENANTS AND AGREEMENTS

SECTION 2.01. TAX-EXEMPT STATUS OF ADDITION.

(A) Assessment of Project Facility: Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto acknowledge that, upon acquisition of the Project Facility by the Agency, and for so long thereafter as the Agency shall own the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of title to the Project Facility. The Company shall promptly, following acquisition by the Agency of title to the Project Facility, cooperate to ensure that the Project Facility is assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, and for so long thereafter as the Agency shall own the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The Agency will cooperate with the Company and will take all action as may be necessary (subject to the provisions of Section 3.01 hereof) to preserve the tax exempt status of the Project Facility. The parties hereto acknowledge that the Project Facility shall not be entitled to such exempt status on the tax rolls of any Taxing Entity until the assessment roll corresponding to the Taxable Status Date of March 1, 2019 is prepared and filed. Pursuant to the provisions of the Lease Agreement, the Company will be required to pay to the appropriate Taxing Entity all taxes and assessments lawfully levied and/or assessed by the appropriate Taxing Entity against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the appropriate Taxing Entity.

(B) Special Assessments: The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay to the appropriate Taxing Entity all special assessments and special ad valorem levies lawfully levied and/or assessed by the appropriate Taxing Entity against the Project Facility.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES.

(A) Agreement to Make Payments: The Company agrees that it will make annual payments in lieu of real estate taxes with respect to the Project Facility to the Agency in the amounts hereinafter provided for redistribution to the respective Taxing Entities in proportion to the amounts which said Taxing Entities would have received had not the Project Facility been acquired and owned by the Agency.

(B) Amount of Payments in Lieu of Taxes:

(1) (a) Commencing on February 15, 2020 and continuing on February 15 of each year thereafter up to and including February 15, 2034, payments in lieu of real estate taxes shall be due, owing and payable by the Company to the Agency on account of town and county taxes and school taxes for the

Project Facility with respect to each appropriate Taxing Entity in the amounts set forth below for the date in question:

| Date | Amount Due | Relating to School/Town (+ County) Tax years |
|-------------------|-------------|--|
| February 15, 2020 | \$14,000.00 | 2019-20 School/2020 Town |
| February 15, 2021 | \$14,140.00 | 2020-21 School/2021 Town |
| February 15, 2022 | \$14,281.40 | 2021-22 School/2022 Town |
| February 15, 2023 | \$14,424.21 | 2022-23 School/2023 Town |
| February 15, 2024 | \$14,568.46 | 2023-24 School/2024 Town |
| February 15, 2025 | \$14,714.14 | 2024-25 School/2025 Town |
| February 15, 2026 | \$14,861.28 | 2025-26 School/2026 Town |
| February 15, 2027 | \$15,009.89 | 2026-27 School/2027 Town |
| February 15, 2028 | \$15,159.99 | 2027-28 School/2028 Town |
| February 15, 2029 | \$15,311.59 | 2028-29 School/2029 Town |
| February 15, 2030 | \$15,464.71 | 2029-30 School/2030 Town |
| February 15, 2031 | \$15,619.36 | 2030-31 School/2031 Town |
| February 15, 2032 | \$15,775.55 | 2031-32 School/2032 Town |
| February 15, 2033 | \$15,933.31 | 2032-33 School/2033 Town |
| February 15, 2034 | \$16,092.64 | 2033-34 School/2034 Town |

(b) If the Lease Agreement remains in effect, Commencing February 15, 2035 and continuing on each February 15 thereafter for such time as this Agreement is in effect, payments in lieu of real estate taxes shall be due, owing and payable by the Company to the Agency on account of town and county taxes and school taxes for the Project Facility with respect to each appropriate Taxing Entity in an amount to be determined by multiplying (i) the Assessed Value of the Project Facility by (ii) the tax rate or rates of such Taxing Entity applicable to the Project Facility for the current tax year of such Taxing Entity.

(2) (a) For purposes of this Section 2.02: (i) the “Assessed Value” of the Project Facility, shall be determined by the appropriate officer or officers of the Taxing Entity responsible for assessing properties in each Taxing Entity (said officer or officers being hereinafter collectively referred to as the “Assessor”). The Assessor shall (a) appraise the Project Facility, as applicable, (excluding, where permitted by law, personal property) in the same manner as other similar properties in said Taxing Entity and (b) place a value for assessment purposes upon the Project Facility, as applicable, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes.

(b) If the Company is dissatisfied with the amount of Assessed Value as initially established or as changed, the Company may pursue review of the Assessed Value under Article 7 of the New York State Real Property Tax Law or any other law or ordinance then in effect relating to disputes over assessed valuation of real property in the State of New York, and may take any and all other action available to it at law or in equity, for a period of seven (7) years from the date such Assessed Value is initially established or changed. IF THE COMPANY FAILS TO PURSUE REVIEW OF (i) THE INITIALLY ESTABLISHED ASSESSED VALUE, DURING THE SEVEN (7) YEAR PERIOD FOLLOWING SUCH ESTABLISHMENT, OR (ii) ANY INCREASE IN ASSESSED VALUE, DURING THE SEVEN (7) YEAR PERIOD FOLLOWING ANY SUCH INCREASE, THE COMPANY SHALL BE DEEMED TO HAVE WAIVED ANY RIGHT TO CONTEST OR DISPUTE SUCH ASSESSED VALUE AT ANY TIME FOR A SEVEN (7) YEAR PERIOD COMMENCING MARCH 1, 2017

NOTWITHSTANDING ANYTHING IN THE NEW YORK STATE REAL PROPERTY TAX LAW TO THE CONTRARY. THIS SEVEN (7) YEAR LIMITATION SHALL APPLY TO EACH AND EVERY ASSESSMENT MADE DURING THE PERIOD THAT THE AGENCY HOLDS TITLE TO THE ADDITION, AND SHALL BE FOR THE BENEFIT OF THE AGENCY AND THE OTHER TAXING ENTITIES. The Agency hereby irrevocably appoints the Company its attorney-in-fact and agent (coupled with an interest) for the purpose of commencing any proceeding, preparing and filing all documents and taking any and all other actions required to be taken by Agency, necessary or desirable, in the opinion of the Company, to contest or dispute any Assessed Value within such periods; provided, however, that the Agency shall incur no expense or liability in connection with any action taken or omitted to be taken by its attorney-in-fact and agent.

(c) The Company will file with the appropriate officer the filing required under Section 412-a (2) of the Real Property Tax Law of New York State on or before March 1, 2019. THE COMPANY ACKNOWLEDGES THAT THE FAILURE TO FILE SUCH FORM BY THE DATE INDICATED WILL RESULT IN A NULLIFICATION OF THE TERMS OF THIS AGREEMENT.

SECTION 2.03. INTEREST. If the Company shall fail to make any payment required by this Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with late fees and interest thereon equal to the greater of (A) any late fees and interest which would be applicable with respect to each Taxing Entity were the Project Facility owned by the Company and not the Agency and (B) the late fees and interest prescribed by subsection (5) of Section 874 of the General Municipal Law of the State of New York (or any successor statute thereto).

ARTICLE III

LIMITED OBLIGATION OF THE AGENCY

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY.

(A) No Recourse: All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenants or agreement contained in this Agreement, or otherwise based upon or in respect of this Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Agreement, it being expressly understood that this Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Agreement under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(B) Limited Obligation: The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the City of Mechanicville and Town of Stillwater, New York, and neither the State of New York nor the City of Mechanicville and Town of Stillwater, New York shall be liable thereon, and further such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights).

(C) Further Limitation: Notwithstanding any provision of this Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company satisfactory to the Agency to defend and hold harmless the Agency against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

ARTICLE IV

EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events (hereinafter an "Event of Default") shall constitute a default under this Agreement:

(A) Failure of the Company to pay any amount due and payable by it pursuant to this Agreement and continuance of said failure for a period of ten (10) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed by it hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period, and the Company shall have commenced action to cure the breach of such covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for a period not to exceed sixty (60) days from the date of receipt by the Company of such notice; or

(C) Any warranty or representation by the Company contained in this Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Agreement and such falsity or incorrectness has a material adverse affect on the Company's ability to perform its obligations under this Agreement.

SECTION 4.02. REMEDIES ON DEFAULT. Whenever any Event of Default shall have occurred and be continuing with respect to this Agreement, the Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Agreement including, without limitation, the exercise by the Agency of the remedy set forth in subsections (A)(3) and (A)(4) of Section 10.2 of the Lease Agreement. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of the State of New York, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. If an Event of Default should occur and be continuing under this Agreement and the Agency should employ attorneys or incur other reasonable expenses for the collection of any amounts due and payable hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor by the Agency, reimburse the Agency for the reasonable fees and disbursements of such attorneys and such other reasonable expenses so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE.

(A) No Remedy Exclusive: Notwithstanding anything to the contrary contained herein, no remedy herein conferred upon or reserved to the Agency or the Company is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay: No delay or omission in exercising any right or power accruing upon the occurrence of an Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required: In order to entitle the Agency to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement.

(D) No Waiver: In the event any provision contained in this Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V

MISCELLANEOUS

SECTION 5.01. TERM OF AGREEMENT.

(A) General: This Agreement shall become effective and the obligations of the Company and the Agency shall arise absolutely and unconditionally upon the execution and delivery of this Agreement by the Company and the Agency. This Agreement shall continue to remain in effect until the termination of the Lease Agreement in accordance with its terms.

(B) Extended Term: In the event that (1) if title to the Project Facility shall be conveyed to the Company, (2) if on the date on which the Company obtains title to the Project Facility, the Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities solely as a result of the Agency's prior ownership of the Project Facility, and (3) if the fact of obtaining title shall not immediately obligate the Company to make pro rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of New York (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Agreement shall remain in full force and effect but only to the extent set forth in this sentence and the Company shall be obligated to make payments to the Agency in amounts equal to the Normal Tax which would be due from the Company if the Project Facility were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Project Facility as the legal owner of record of the Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENT OF AGREEMENT. This Agreement may not be amended, changed, modified, altered, supplemented or terminated unless such amendment, change, modification, alteration or termination is in writing and unless signed by the party against which enforcement of the amendment, change, modification, alteration, supplement or termination shall be sought.

SECTION 5.05. NOTICES. All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (A) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery (including, but not limited to, overnight delivery) or (B) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery. The address to which notices, certificates and other communications hereunder shall be delivered are as follows:

(A) TO THE AGENCY:

City of Mechanicville and Town of Stillwater Industrial Development Agency
Municipal Building
36 North Main Street
Mechanicville, New York 12118
Attention: Chairperson

WITH A COPY TO:

Lemery Greisler LLC
60 Railroad Place
Suite 502
Saratoga Springs, New York 12866
Attention: James A. Carminucci, Esq.

(B) TO THE COMPANY:

KCE NY 1, LLC
418 Broadway, 3rd Floor
Albany, New York 12207
Attention: Daniel Fitzgerald

provided, that the Agency and the Company may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

SECTION 5.06. BINDING EFFECT. This Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. APPLICABLE LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance.

SECTION 5.09. ASSIGNMENT. This Agreement may not be assigned by the Company absent the prior written consent of the Agency.

IN WITNESS WHEREOF, the Agency and the Company have caused this Agreement to be executed in their respective names, all being done the date first above written.

CITY OF MECHANICVILLE AND TOWN OF STILLWATER
INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Sally Herrick, Chairperson

KCE NY 1, LLC

BY: _____
NAME: _____
TITLE: _____

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

On this ____ day of February, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared **SALLY HERRICK**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

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

On this ___ day of February, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

SCHEDULE "A"

METES AND BOUNDS DESCRIPTION OF THE LAND

DESCRIPTION – LEASE AREA
PORTION OF LANDS NOW OR FORMERLY OF
LUTHER FOREST TECHNOLOGY CAMPUS
ECONOMIC DEVELOPMENT CORPORATION
KEY CAPTURE ENERGY, INC.
TOWN OF STILLWATER, COUNTY OF SARATOGA, STATE OF NEW YORK
AREA = 1.83± ACRES OF LAND

All that certain tract, piece or parcel of land situate in the Town of Stillwater, County of Saratoga, State of New York, lying Westerly of Cold Spring Road, and being more particularly bounded and described as follows:

COMMENCING at a point on the Westerly 2010 highway boundary of Cold Spring road as described in Instrument No. 2009-010261 at its point of intersection with the division line between Lot 2 lands now or formerly of Luther Forest Technology Campus Economic Development Corporation as described in Book 1725 of Deeds at Page 95 on the South and Lot 1 lands now or formerly of the County of Saratoga Industrial Development Agency as described in Instrument No. 2009-025793 on the North as shown on a map entitled "Major Subdivision Lands Now Or Formerly Of Luther Forest Technology Campus Economic Development Corporation Tax Map ID No. 241.00-1-3.1," prepared by C.T. Male Associates, P.C., dated December 22, 2008, and revised January 20, 2009, and filed in the Saratoga County Clerk's Office on June 9, 2009 as Map No. M200987; thence from said point of commencement along said Westerly 2010 highway boundary of Cold Spring Road the following two (2) courses: 1) in a Southerly direction along a curve to the left having a radius of 1,130.80 feet, an arc length of 447.92 feet and a chord bearing of South 09 deg. 28 min. 48 sec. East 445.00 feet to a point of tangency; and 2) South 20 deg. 50 min. 07 sec. East 729.61 feet to a point; thence through said Lot 2 lands now or formerly of Luther Forest Technology Campus Economic Development Corporation the following three (3) courses: 1) South 53 deg. 20 min. 33 sec. West 317.68 feet to a point of curvature; 2) in a Westerly direction along a curve to the right having a radius of 145.00 feet, an arc length of 211.89 feet and a chord bearing of North 84 deg. 47 min. 25 sec. West 193.54 feet to a point of tangency; and 3) North 42 deg. 55 min. 43 sec. West 112.94 feet to the point or place of beginning and runs thence from said point of beginning continuing through said Lot 2 lands now or formerly of Luther Forest Technology Campus Economic Development Corporation and along the Southwesterly, Southerly, and Westerly boundary of the proposed 1.83± acre lease area the following five (5) courses: 1) North 40 deg. 47 min. 20 sec. West 125.00 feet to a point; 2) North 39 deg. 46 min. 24 sec. West 55.00 feet to a point; 3) South 75 deg. 16 min. 24 sec. West 56.00 feet to a point; 4) North 89 deg. 28 min. 46 sec. West 247.00 feet to a point; and 5) North 00 deg. 31 min. 14 sec. East 55.00 feet to a point; thence continuing through said Lot 2 lands now or formerly of Luther Forest Technology Campus Economic Development Corporation and along a portion of a 2.09± acre easement granted to New York State Electric and Gas South 89 deg. 28 min. 46 sec. East 196.16 feet to a point; thence continuing through said Lot 2 lands now or formerly of Luther Forest Technology Campus Economic Development Corporation the following six (6) courses: 1) North 23 deg. 37 min. 31 sec. East 103.29 feet to a point; 2) North 48 deg. 56 min. 59 sec. East 84.00 feet to a point of curvature; 3) in an Easterly direction along a curve to the right having a radius of 75.00 feet, an arc length 117.81 feet and a chord bearing of South 86 deg. 03 min. 01 sec. East 106.07 feet to a point of tangency; 4) South 41 deg. 03 min. 01 sec. East 174.00 feet to a point of curvature; 5) in a Southerly direction along a curve to the right having a radius of 75.00 feet, an arc length of 117.88 feet and a chord bearing of South 03 deg. 58 min. 34 sec. West 106.11 feet to a point of tangency; and 6) South 49 deg. 00 min. 08 sec. West 127.36 feet to the point or place of beginning and containing 1.83 acres of land more or less.

Subject to any covenants, easements, or restrictions of record.