

**Victoria Storrs**  
Chair

**David Kidera**  
Vice Chair

**Richard Kotlow**  
Treasurer

**Edward W. De Barbieri**  
Secretary

**Victor Franco**  
Member

**Georgette Steffens**  
Member

**Chris Welch**  
Member



**Town of Bethlehem  
Industrial Development Agency**  
445 Delaware Avenue  
Delmar, NY 12054  
(518) 439-4955  
[info@bethlehemida.com](mailto:info@bethlehemida.com)  
[www.bethlehemida.com](http://www.bethlehemida.com)

**Catherine M. Hedgeman, Esq.**  
Executive Director  
Agency Counsel  
(518) 752-3111

**Allen F. Maikels**  
Chief Financial Officer  
Contracting Officer  
(518) 487-4679

**John W. Taylor**  
Senior Economic Developer  
(518) 439-4955 x1189

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**Board Meeting Agenda**  
**Tuesday December 19, 2023 | 8:00am | Bethlehem Town Hall Room 101A**  
**Livestream:**

**<https://us02web.zoom.us/j/89279888945?pwd=U3VnVHlqV2hKT29VTmFvQ0pRUnN3QT09>**

- I. Call to Order/Roll Call/Quorum Approval (Storrs)**
- II. Approval of Minutes from the November 14, 2023 Board Meeting**
- III. Financial Report (Kotlow and Maikels)**
  - 1. Approval of the November 2023 Financials**
- IV. Updates from John Taylor, Senior Economic Director**
- V. New Business**
  - A. Items For Action**
    - 1. Resolution Approving Amendments To GB II NEW YORK, LLC PILOT Agreement (PSEG) (Hedgeman and Scott)**
    - 2. Resolution to Approve Agreement for Executive Director and a Retainer Agreement for Agency Counsel**
    - 3. Resolution to Approve Services Contract with Town of Bethlehem**
    - 4. Review of Insurance quotes- Cyber Security quote**

## **2024 MEETING DATES**

Wednesday: January 31, 2024

Wednesday: February 28, 2024

Wednesday: March 27, 2024

Wednesday: April 17, 2024

Wednesday: May 22, 2024

Wednesday: June 26, 2024

Wednesday: July 24, 2024

Wednesday: August 28, 2024

Wednesday: September 25, 2024

Wednesday: October 23, 2024

Wednesday: November 20, 2024

Wednesday: December 11, 2024

**Victoria Storrs**  
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Vice Chair  
Assistant Secretary

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Treasurer

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**Board Meeting Minutes**  
**Tuesday, November 14, 2023 | 8:00am | Bethlehem Town Hall Room 101A**  
**Livestream:**

**<https://us02web.zoom.us/j/84469068942?pwd=ZGVhUURTL3NrQjNkR3dDaEZrZ05adz09>**

**I. Call to Order/ Roll Call/ Quorum Approval**

The annual meeting of the Town of Bethlehem Industrial Development Agency was held on the above date at the Town Hall, 445 Delaware Avenue, Delmar, New York. The meeting was called to order at 8:00 a.m. The roll was called, and members present were:

Victoria Storrs, Chair  
D. Kidera  
V. Franco  
R. Kotlow  
G. Steffens  
C. Welch  
E. De Barbieri

Also present:

Al Maikels, Chief Financial Officer  
Catherine M. Hedgeman, Esq., Executive Director and Agency Counsel  
John Taylor, Senior Economic Developer  
Joseph Scott, Esq., Special Counsel  
Chris Canada, Esq., Special Counsel

Guests Present:

Liam Baker- Generation Bridge

Rich Brunson- Generation Bridge

Zoe Nadler – Hedgeman Law Firm

**II. Approval of Minutes from the October 25, 2023 Board Meeting**

Mr. Welch made a motion to approve the Minutes from the October 25, 2023 Board Meeting, seconded by Mr. Kotlow, with all members present in favor.

**III. Financial Report**

Mr. Maikels provided the October 2023 Financial Report.

**IV. Updates from John Taylor, Senior Economic Director**

Mr. Taylor stated that Industrial site inventory and assessment is now prominently positioned on the BIDA website. Mr. Taylor also stated that he is hoping for engagement, and he will provide another update within the next few weeks.

**V. New Business**

**a. Items for Action**

**i. Resolution giving authority to CFO to open bank accounts at KeyBank.**

Mr. Kotlow provided a brief explanation of why this resolution is necessary. The Board adopted a resolution granting authority to Mr. Kotlow to open bank accounts at KeyBank, with all members present in favor.

**ii. PSEG Letter Application**

Ms. Hedgeman explained that there is a potential opportunity for PSEG to extend their pilot application. Representatives from PSEG explained that they are seeking an extension to their pilot in order to provide them the time needed to negotiate a new agreement. The Board adopted a resolution to move forward with the review of the pilot extension, with all members present in favor.

**b. Presentation of Insurance Options**

**Greg Turner ~ Burt Anthony Associates ~ Charles B. Clarke Inc.**

Ms. Hedgeman explained that in light of recent litigation, it may be helpful for the IDA to acquire its own insurance policy, separate from the town's policy. Mr. Turner explained a few of the benefits of the IDA maintaining its own insurance policy. Mr. Franco made a motion to request a letter for a final vote on an insurance policy on December 19<sup>th</sup>, seconded by Mr. Kotlow, with all members present in favor.

**VI. Adjourn**

Mr. Welch made a motion to adjourn the meeting, seconded by Mr. Kotlow, with all members present in favor.

BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
STATEMENT OF NET ASSETS  
November 30, 2023

ASSETS	November 30, 2023
Current Assets	
Checking/Savings	
200.04 Cash-M&T Bank Agency Account	249,665.56
200.06 Cash-M&T CD	769,184.40
200.07 Cash-Citizens CD	200,000.00
200.02 Cash-Trustco CD	200,000.00
200.08 Cash- Key Bank CD	<u>200,000.00</u>
Total Checking/Savings	1,618,849.96
Other Current Assets	27,021.97
380 Fee Receivable	<u>279.60</u>
480 Prepaid Expense	27,301.57
Total Other Current Assets	
	<u>1,646,151.53</u>
Total Current Assets	
	<u>1,646,151.53</u>
<b>TOTAL ASSETS</b>	
<b>LIABILITIES &amp; EQUITY</b>	
Liabilities	
Current Liabili 601 Accrued Expenses	<u>33,209.15</u>
	<u>33,209.15</u>
Total Current Liabilites	
	<u>33,209.15</u>
Total Liabilities	
Equity	
924 Net Assets	<u>1,612,942.38</u>
924.3 Net Assets-Unassigned	1,612,942.38
Total 924 Net Assets	
	<u>1,612,942.38</u>
Total Equity	
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u>1,646,151.53</u>

BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
STATEMENT OF REVENUE AND EXPENSES  
November 30, 2023

ORDINARY INCOME/EXPENSE

Income

2116 FEE INCOME	350,208.35
2116.1 PSEG ENERGY REIMB	<u>121,879.75</u>

Total Income	<u>472,088.10</u>
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Expenses

6460.4 Contractual Expenses	131,931.35
6460.5 Business & Economic Development	<u>0.00</u>

Total Expenses	<u>131,931.35</u>
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NET ORDINARY INCOME	<u>340,156.75</u>
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Other Income/Expense

Other Income

2401 Interest Income	22,417.36
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Total Other Income	<u>22,417.36</u>
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NET INCOME	<u><u>362,574.11</u></u>
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BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY  
BUDGET VS ACTUAL  
November 30, 2023

Ordinary Income/Expense Income	Nov-23 YTD Budget	Variance	Annual Budget
2116 Fee Income	350,208.35	158,184.32	192,024.03
2106.1 PSE&G Energ Reimb	121,879.75	73,333.34	48,546.41
Total Income	472,088.10	231,517.66	240,570.44
Expenses			
6460.4 Contractual Expenses	131,931.35	146,758.34	-14,826.99
6460.5 Business and Economic Dev	0.00	91,666.66	-91,666.66
Total Expenses	131,931.35	238,425.00	-106,493.65
Net Ordinary Income	340,156.75	-6,907.34	347,064.09
Other Income/Expense			
2401 Interest Income	22,417.36	1,100.00	22,317.36
Total Other Income	22,417.36	1,100.00	22,317.36
Net Income	362,574.11	-5,807.34	368,381.45
			-18,549.00





HEDGEMAN LAW FIRM

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PO Box 177, Slingerlands, New York 12159 | 518-752.3111  
www.HedgemanLaw.com | cmh@hedgemanlaw.com

December 12, 2023

Bethlehem IDA  
445 Delaware Avenue  
Delmar, NY 12054

**Re: Engagement Arrangement Between the Hedgeman Law Firm and the Bethlehem Industrial Development Agency**

Dear Chair:

This retainer agreement is furnished to you in accordance with Part 1215 of the Joint Rules of the Appellate Division and supersedes and supplements the previous Retainer and Consultant Agreements dated December 8, 2021.

**SCOPE OF REPRESENTATION**

To represent **the Bethlehem Industrial Development Agency** (hereinafter the Client) as General Counsel and Executive Director as outlined in the Consulting Agreement dated \_\_\_\_\_, 2024. In addition, the Firm shall provide administrative support to the Clients follows:

- Meeting support (preparation of Agendas and supporting documents; posting open meetings notices; updating the BIDA website as needed with meeting and other materials; videotaping and livestreaming of IDA meeting; drafting of minutes for all board and committee meetings; assistance with scheduling meetings.
- Services shall be provided up to six hours a month. All additional services shall need Client Pre-Approval.

The representation you have sought from the Hedgeman Law Firm may be time-consuming. As with any estimate, the steps and time parameters may alter with time as events unfold of which we are presently unaware or which are not within our control.

## **NO GUARANTEE OF RESULT**

In providing legal advice to the Client, the Hedgeman Law Firm may from time to time express opinions or beliefs regarding the likely effectiveness of various courses of action or about results that may be anticipated. You understand that any such statements are opinions and beliefs only and are not promises or guaranties. We cannot and do not guarantee any particular course or outcome of the Representation.

## **FUTURE CONFLICTS OF INTEREST**

Our firm has few lawyers. We are undertaking this Representation on condition that the Client, in each such instance, reasonably grant written consent that we may represent other Client, including your adversaries, in the future in matters in which we do not represent the Client if the interests of the other Client are not materially adverse to the Client.

## **CONTACT AT THE FIRM**

Your primary contacts at the Hedgeman Law Firm will be, Catherine M. Hedgeman. Other attorneys and paralegals may also perform work in connection with your representation our associates. Hedgeman Law Firm reserves the right to appropriately staff the representation.

## **COMMUNICATION WITH THE FIRM**

We will endeavor to keep you fully advised with respect to the significant events occurring during the course of the representation. Should you have any questions or concerns at all, please communicate them to the attorneys working on your matter.

Hedgeman Law Firm communicates with its Client by telephone, mail, fax, e-mail and personal contact. You should be aware that communication by e-mail is not a secure means of communication and it is possible that others may have access to our communication by this method. If you have confidentiality concerns about communication by e-mail and prefer to not utilize this method of communication, please let us know and we will respect your wishes.

We will send you documents, correspondence and other information throughout the representation. These copies will be your file copies. We will also keep the information in a file in our office which will be our file. Please bring your copy of the file to any necessary meetings so that we both have all of the necessary information in front of us.

## **FILE RETENTION AND DESTRUCTION**

At the conclusion of the representation, should you desire a copy of those portions of the file that are considered the Client', please let us know and we will have a copy made for you at

your expense. Otherwise, the Hedgeman Law Firm retains the files for a period of seven years running from the conclusion of the representation, at which time the files are destroyed unless you notify us to the contrary in writing.

## **CLIENT'S RIGHT AND RESPONSIBILITIES**

The Appellate Divisions of the State of New York have enacted a Statement of Client' Rights, a copy of which is attached hereto. Also attached is a copy of the Statement of Client' Responsibilities which was promulgated at the same time. If you have any questions about the content of either of these documents, please let us know.

## **FEES, EXPENSES AND BILLING PRACTICE**

In consideration of our services, our fees are based on the amount of time we spend on this Representation. The flat annual fee for services shall be \$70,000 and shall be billed monthly in equal installments.

The Firm will keep track of actual time expended and shall provide invoices for information purposes at the hourly rates below:

- Catherine M. Hedgeman Billable hours: \$275.00 per hour
- Paralegal hours: \$150.00 per hour
- Legal Assistant/Admin Billable hours: \$75.00 per hour

## **ANCILLARY COSTS**

We pass along out-of-pocket costs and charges that we incur on our Client' behalf. These typically include messenger charges, deposition videography and transit charges, all of which shall be passed through at our actual cost and without any overhead or markup. Other charges are based on our actual cost, including document reproduction (\$0.15/page for black and white, \$0.30 for color), black and white scanning (\$0.30/page), black and white blowbacks (\$0.15), OCR (\$0.03), key term data filtering (\$200.00/GB), media creation and duplication (\$15.00-\$400.00); however, in no event shall electronic costs exceed the rates paid by the Client to third parties for similar services. Additionally, we charge for computerized legal research (Westlaw or Lexis fees, at our actual cost), travel costs from office, meal charges and parking charges (when we are working exclusively on your matter), filing fees, telephone toll charges, long-distance telephone, fax, transcripts, postage, overnight delivery, messengers, reasonable and actual fees for experts and other consultants retained on Client' behalf, and similar charges. These charges will be at cost.

## **ESTIMATES**

Client understands that it is impossible to determine in advance the amount of fees and costs needed to complete any given matter. At your request during the course of our Representation we will provide the Client with estimates of costs and fees or projected budgets for our work going forward. When we do provide them, we will make a good faith effort to estimate what the future cost will be, which may be reasonably relied upon by the Client. However, in no case can such projections be guarantees regarding what the actual cost will be. The cost of litigation may change dramatically based on factors we do not control, including actions taken by our adversaries, rulings by the court, or other developments in the litigation. The fees and costs which the Client will be liable for will be based on our time charges as set forth in this agreement.

## **ARBITRATION**

In the event that a dispute arises between us relating to our legal fees, the parties agree that the dispute shall be presented before an Arbitrator.

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**Initial Here:**

## **TERMINATION OF THE RELATIONSHIP**

Our representation of you will continue through the conclusion of this matter or until otherwise agreed in writing. Client may terminate this representation at any time, with or without cause. Subject, of course, to the requirements of the Code of Professional Responsibility and the rules of the tribunal in question, the firm also reserves the right to withdraw from this representation if, among other things, fees earned under this agreement are not remitted in a timely fashion as advance payment for the services to be rendered by the firm, if Client fails to cooperate or follow firm's advice on a material matter, or any fact or circumstance arises that, in firm's view, renders our continuing representation unlawful or unethical. Any termination of our representation of Client would be subject to such approval as may be required from any court in which we are appearing on your behalf. In the event of termination by either of us, fees and costs for work performed prior to termination will still be payable to the extent permitted by law.

## **DATE OF COMMENCEMENT AND TERMINATION OF THE REPRESENTATION**

The effective date of our Agreement to provide services is the date you execute this Agreement.

The Hedgeman Law Firm's representation of Client will be considered terminated at the earlier of (i) Client's termination of the representation, (ii) The Hedgeman Law Firm withdrawal from the representation, or (iii) the completion of firm's substantive work for Client.

## **OTHER LITIGATION OR PROCEEDINGS**

If, as a result of this Representation, and even if the Representation has ended, we are required to produce documents or appear as witnesses in any governmental or regulatory examination, audit, investigation or other proceeding or any litigation, arbitration, mediation or dispute involving the Client or related persons or entities, the Client shall be responsible for the costs and expenses we reasonably incur (including professional and staff time at our then-standard hourly rates). Similarly, if we are sued or subjected to legal or administrative proceedings as a result of our representation of Client in this matter, the Client agrees to indemnify us for any attorney's fees and expenses (including our own professional and staff time at our then-standard hourly rates) we incur as a result. This paragraph is not intended to apply to any claim arising from or related to alleged negligence or wrongdoing by the Hedgeman Law Firm.

## **BINDING AGREEMENT**

By signing below, Client agrees that she has had enough time to review this agreement, that we have advised you that you have the right to consult your own lawyer about the provisions relating to any aspects of this agreement as to which Client may wish to avail himself of such advice, that Client has done so and that Client is satisfied that he understands this agreement. Client also agrees that he has freely determined, without any duress, to sign and agree to these terms.

## **SEVERABILITY**

Should any part of this Agreement, or language within any provision of this Agreement, be rendered or declared invalid by a court of competent jurisdiction of the State of New York, such invalidation of such part or portion of this Agreement, or any language within a provision of this Agreement, should not invalidate the remaining portions thereof, and they shall remain in full force and effect.

On behalf of the firm, we are pleased to represent you in this matter. If you have any questions, please feel free to contact the undersigned.

Very truly yours,



Catherine M. Hedgeman

## **ACKNOWLEDGED AND AGREED:**

Victoria Storrs

By: \_\_\_\_\_  
Chair, Bethlehem Industrial Development Agency

**2024**  
**ADMINISTRATIVE SERVICES CONTRACT**

THIS AGREEMENT is made as of the 1<sup>st</sup> day of January, 2024, by and between the following parties:

**TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation organized and existing under the laws of the State of New York having a principal place of business located at 445 Delaware Avenue, Delmar, New York 12054, party of the first part (hereinafter referred to as the “Agency”); and

**TOWN OF BETHLEHEM, NEW YORK**, a municipal corporation of the State of New York having a principal place of business located at 445 Delaware Avenue, Delmar, New York 12054, party of the second part (hereinafter referred to as the “Municipality”).

**WITNESSETH:**

WHEREAS, the Agency is authorized and empowered by the provisions of the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 582 of the 1973 Laws of New York, as amended, constituting Section 909-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research, recreation and civic facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act (A) to make by-laws for the management and regulation of its affairs and (B) to appoint officers, agents and employees, to prescribe their qualifications and to fix their compensation and to pay the same out of funds of the Agency; and

WHEREAS, the Agency has employed an Chief Executive Officer/Executive Director (“Executive Director”) and Chief Financial Officer; and,

WHEREAS, pursuant to Section 858(6) of the Act, the Agency is authorized and empowered, with the consent of the Municipality, to use agents and employees of the Municipality, paying the Municipality its agreed proportion of the compensation or costs; and

WHEREAS, the Agency and the Municipality agree that the Municipality shall provide certain services of the staff of the Municipality and of the Municipality’s Department of Economic Development and Planning (“Department”), to act as the staff of the Agency on a part-time basis in

2022; and

WHEREAS, the revenues of the Agency are variable, episodic and unpredictable, and

WHEREAS, the Agency has adopted a policy dated May 5, 2020, requiring a fund balance two times the average annual audited expenses for the past three years ("Fund Balance Policy"); and

WHEREAS, the Agency wishes to compensate the Municipality for the Services within the limitations of Agency revenue and Fund Balance Policy as set forth on Exhibit A;

NOW, THEREFORE, the parties hereto agree as follows:

## SECTION I

### DUTIES AND RESPONSIBILITIES OF THE MUNICIPALITY

SECTION 1.1. SERVICES. (i) The Municipality shall provide the services of the Department's Senior Economic Developer to provide consulting services to the Agency on a part-time basis. The services of the of the Senior Economic Developer shall be to perform assignments for the Agency as described in Attachment B and to report to the Agency at its regular and special meetings about projects assigned by the Agency and the Department relating to economic development in the Municipality. (ii) The Municipality shall provide administrative and operational support as needed in the form of space for meetings, including public hearings, notifications and website postings as requested, and other general expenses associated with the Agency's activities.

(ii) [Intentionally Omitted]

(iii) [Intentionally Omitted]

(iv) [Intentionally Omitted]

SECTION 1.2. TERM. The term of this Agreement shall be from January 1, 2024 through December 31, 2024. The services to be provided by the Municipality hereunder shall be provided only during the term of this Agreement.

SECTION 1.3. STAFF. To accomplish the foregoing services, the Municipality is empowered to use such additional staff of the Municipality as the Department and its Director shall deem necessary to accomplish the Municipality's obligations under this Agreement.

## SECTION II

### DUTIES AND RESPONSIBILITIES OF THE AGENCY

SECTION 2.1 PAYMENTS. (A) Contribution. In full consideration for all the services performed by the

Municipality in a manner satisfactory to the Agency, the Agency shall pay to the Municipality the amount set forth in Exhibit A annexed hereto and made a part hereof, and one-half of said amount shall be paid on June 15, 2024, and one-half shall be paid on December 15, 2024. If at any time a staff position is vacant, a pro rata portion of the amount set forth in Exhibit A, corresponding to the period of vacancy, shall be deducted from the payment, unless the Agency specifically authorizes that the funds be used for another Agency purpose.

SECTION 2.2. RELEASE. The acceptance by the Municipality of the amount set forth in Section 2.1A hereof shall release the Agency from any and all claims, causes of action and liability to the Municipality, or to its legal representative; rising out of or relating to this Agreement.

SECTION 2.3. MEETINGS. The Agency shall notify the Municipality and the Department and its Director of all meetings of the governing body of the Agency.

### SECTION III

#### CANCELLATION OF AGREEMENT

SECTION 3.1. RIGHT TO CANCEL. Either party shall have the right to cancel this agreement upon sixty (60) days written notice to the other party, for any of the following reasons:

(A) For Cause: Upon any breach, default, or other defect of performance or breach of any representation, warranty or covenant under this Agreement, the Municipality and/or the Agency may cancel this Agreement. In addition, any breach of responsibilities on the part of the Director, including but not limited to theft, pilfering, willful refusal to follow instructions of the Board of the Agency, dereliction of duties, inefficiency in performing his duties, or other acts of a like nature, all as determined by the Agency, the Agency may cancel this Agreement.

(B) Upon Cancellation: Upon either party exercising its right to cancel this Agreement pursuant to paragraph (A) above, the Agency shall pay the prorated amount of Contribution to the Municipality pursuant to this Agreement.

SECTION 3.3 OWNERSHIP OF DOCUMENTS. Upon expiration or cancellation of this Agreement, all finished and unfinished documents, data, studies and reports, and other property purchased by the Municipality with funds provided by the Agency pursuant to this Agreement, shall become the property of the Agency.

### SECTION IV

#### RELATIONSHIP; INDEMNITY

SECTION 4.1. RELATIONSHIP. (A) The relationship of the Municipality to the Agency arising out of this Agreement shall be that of an independent contractor. The Municipality, in accordance with its status as an



independent contractor, covenants and agrees that neither the Municipality, nor any of its officers or employees, will, by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of the Agency including, but not limited to, worker’s compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

(B) All personnel of the Municipality shall be within the employ of the Municipality only, which alone shall be responsible for their work, their direction, and their compensation. Nothing in this Agreement shall impose any liability or duty on the Agency on account of any acts, omissions, liabilities or obligations of the Municipality or any person, firm, company, agency, association, corporation, or organization engaged by the Municipality as expert, consultant, independent contractor, specialist, trainee, employee, servant or agent, or for taxes of any nature including, but not limited to, unemployment insurance and worker’s compensation, and the Municipality hereby agrees to indemnify and hold harmless the Agency against any such liabilities.

SECTION 4.2. INDEMNITY. The Agency shall not be liable for any debts, liens or encumbrances incurred by the Municipality or its officers and employees. The Municipality hereby agrees to indemnify and save harmless, the Agency against any and all claims, liability, loss, damages, costs or expenses which the Agency may hereafter incur, suffer or be required to by reason of any negligent or willful act or omission of the Municipality in the performance of this Agreement.

SECTION V

MISCELLANEOUS PROVISIONS

SECTION 5.1. REQUIRED APPROVALS. (A) The Supervisor of the Municipality has executed this Agreement pursuant to motion adopted by the Board of the Municipality, on \_\_\_\_\_, 2024. This Agreement shall be executed at least in duplicate, and, after execution thereof, at least one copy thereof shall be permanently filed by the Municipality in the office of its Clerk.

(B) The Chairman of the Agency has executed this Agreement pursuant to Resolution adopted by the members of the Agency on \_\_\_\_\_, 2024. This Agreement shall be executed at least in duplicate, and, after execution thereof, at least one copy thereof shall be permanently filed by the Agency in the records of the Agency.

SECTION 5.2. NOTICES. (A) All notices and other communications hereunder shall be in writing and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

(1) To the Agency:

Town of Bethlehem Industrial Development Agency  
445 Delaware Avenue  
Delmar, NY 12054  
Attention: Chair

(2) To the Municipality:

Town of Bethlehem  
445 Delaware Avenue  
Delmar, NY 12054  
Attention: Supervisor

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

SECTION 5.2. WAIVER. No waiver of any breach of any provision of this Agreement shall be binding unless the same shall be in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

SECTION 5.3. SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Agency or the Municipality to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Agreement.

SECTION 5.4. ENTIRE AGREEMENT; AMENDMENTS. The foregoing contains the entire Agreement of the Agency and the Municipality and no modification thereof shall be binding unless the same is in writing and signed by the respective parties. This Agreement may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 5.5. EXECUTION OF COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.6. APPLICABLE LAW. This Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of New York.

SECTION 5.7. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The Table of Contents and the headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Agreement.

SECTION 5.8. BINDING EFFECT. All covenants and agreements herein contained by or on behalf of the Agency and the Municipality shall bind and inure to the benefit of the respective successors and assigns of the Agency and the Municipality, whether so expressed or not.

SECTION 5.9. ASSIGNMENT. The Municipality is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement, or of its right, title or interest in this Agreement, or of its power to execute this Agreement, to any other person or corporation, without the prior written consent of the Agency.

**SECTION 5.10. LIMITATION OF LIABILITY.** The obligations and agreements of the Agency contained herein shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent or employee of the Agency in his individual capacity, and the members, officers, agents and employees of the Agency shall not be liable personally hereon or be subject to any personal liability or accountability based upon or in respect hereof or of any transaction contemplated hereby. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York and the State of New York shall not 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 general funds of the Agency. 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 Municipality; and (B) if compliance with such request is reasonably expected to result in the incurrence by any member, officer, agent or employee of the Agency of any liability, fees, expenses or other costs, such person shall have received from the Municipality security or indemnity satisfactory to the Agency for protection against all such liability and for the reimbursement of all such fees, expenses and other costs.

WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

APPROVED AS TO FORM:

TOWN OF BETHLEHEM INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
Agency Counsel

BY: \_\_\_\_\_  
Chair

APPROVED AS TO FORM:

TOWN OF BETHLEHEM

BY: \_\_\_\_\_  
Municipality Attorney

BY: \_\_\_\_\_  
Supervisor

STATE OF NEW YORK            )  
  )  
COUNTY OF ALBANY            )

On the \_\_ day of \_\_\_\_\_ in the year 2024 before me, the undersigned, a notary public in and for said state, personally appeared Victoria L. Storrs 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.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK            )  
  )  
COUNTY OF ALBANY            )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2024 before me, the undersigned, a notary public in and for said state, personally appeared David VanLuven, 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.

\_\_\_\_\_  
Notary Public

Town of Bethlehem and Town of Bethlehem IDA  
2024 Administrative  
Services Contract  
Exhibit  
A

Position Allocation:	Cost of Services Requested
<u>Salaries</u>	
Senior Economic Developer and General Administrative Support	\$45,000
Total Estimated Costs Incurred by the Town, for the benefit of the IDA	<u>\$45,000.00</u>
Agreed upon amount for Services for 2024 (not to exceed amount)	

Town of Bethlehem and Bethlehem IDA  
2024 Administrative Services Contract  
Exhibit B

General description from the Municipality's job description: This Senior Economic Developer will serve as the initial point of contact for economic development and business inquiries and work closely with both existing and potential businesses to promote economic development projects while acting as a liaison for the town. The incumbent will act as support to the Economic Development and Planning Department and the Bethlehem Industrial Development Agency. Work is performed under the supervision of the Director of Planning. Does related work as required.

Services to be Provided to the Agency by the Senior Economic Developer

- Promotes and presents the town's economic development strategy to diverse audiences and supports the Director, Supervisor and Chair in these activities;
  - Attends all meetings of the IDA Board and supports their activities and informational needs as necessary;
  - Maintains constant contact with economic development prospects and shares information thereon at an appropriate level with the Director, Supervisor, Executive Director, and Chair;
  - Researches and compiles information to be used for writing grant applications relating to economic development. Identifies, writes and administers grants;
  - Prepares cost/benefit analyses and "if not for" tests of project financial outcomes to support the Agency's evaluation of projects requesting financial assistance;
  - Ensures that the Director, Supervisor, Executive Director, and Chair are aware of developing issues, contacts and opportunities;
  - Participates in other economic development related projects as required by the Director of Economic Development and Planning.
-

**RESOLUTION AUTHORIZING MODIFICATION AND AMENDMENT  
GB II NEW YORK, LLC  
(PSEG POWER NEW YORK INC. PROJECT)**

A regular meeting of Town of Bethlehem Industrial Development Agency (the “Agency”) was convened in public session at the offices of the Agency located at the Town of Bethlehem Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York on December 19, 2023, at 8:00, a.m., local time.

The meeting was called to order by the Chair of the Agency and, upon roll being called, the following members of the Agency were:

**PRESENT:**

Victoria Storrs	Chair
David Kidera	Vice-Chair
Richard Kotlow	Treasurer
Edward DeBarbieri	Secretary
Victor Franco	Member
Georgette Steffens	Member
Chris Welch	Member

**ABSENT:**

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Catherine Hedgeman, Esq.	Executive Director, Assistant Secretary and Agency Counsel
Allen F. Maikels	Treasurer, Chief Financial Officer and Contracting Officer
John Taylor	Senior Economic Developer
A Joseph Scott, III, Esq.	Agency Bond/Special Counsel
Christopher C. Canada, Esq.	Agency Bond/Special Counsel

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_, to wit:

Resolution No. 1223-\_\_\_\_

**RESOLUTION CONSENTING TO AND AUTHORIZING THE EXECUTION AND  
DELIVERY OF CERTAIN MODIFICATION DOCUMENTS (AS HEREINAFTER  
DEFINED) WITH RESPECT TO THE MODIFICATION AND AMENDMENT OF THE  
PSEG POWER NEW YORK INC. PROJECT.**

WHEREAS, Town of Bethlehem Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 582 of the 1973 Laws of New York, as amended, constituting Section 909-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of commercial, manufacturing and



industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on February 5, 2002 (the “Closing Date”), the Agency entered into a lease agreement dated February 5, 2002 (the “Original Lease Agreement”) by and between the Agency and the Original Company for the purpose of undertaking a project (the “Project”) consisting of the following: (A) (1) the acquisition by the Agency of an interest in the existing Albany Steam Station, including a portion of the switchyard, located on property roughly 84 acres in size along Route 144 in the Glenmont section in the Town of Bethlehem, Albany County, New York (the “Land”), (2) the construction on the Land of an electric generating plant, consisting of an approximately 82,000 square-foot turbine building and an approximately 17,500 square-foot plant services building, which would serve a nominal 750 megawatt, 763 megawatt maximum summer rating, 800 megawatt winter rating, natural gas-fired combined cycle turbine facility, utilizing three frame 7FA GE gas combustion turbines, the primary fuel for which would be natural gas with limited use of low sulfur distillate oil (0.04% sulfur) as a secondary fuel (collectively referred to as the “Improvements”), and (3) the acquisition by the Agency and the installation at and on the Land and Improvements of a variety of equipment, machinery, and other personal property (the “Equipment”) (the Land, the Improvements and the Equipment hereinafter collectively referred to as the “Facility”) including the following in connection with the appointment of the Original Company as the agent of the Agency, as they related to the construction, erection and completion of such Facility, whether or not any materials or supplies described therein were incorporated into or became an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with construction of the Facility, and (iii) all equipment, machinery, and other tangible personal property (including installation costs with respect thereto), both existing and to be acquired, installed or placed in, upon or under such Facility, all of the foregoing to be owned and operated by the Original Company as an electric generation facility and other directly and indirectly related activities; (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, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) of the Facility to the Original Company or such other person as may be designated by the Original Company and agreed upon by the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Original Lease Agreement (the “Closing”), (A) the Original Company executed and delivered to the Agency a warranty deed dated February 5, 2002 (the “Deed to Agency”) pursuant to which the Original Company transferred the Land to the Agency; (B) the Original Company and the Agency executed and delivered a certain payment in lieu of tax agreement dated February 5, 2002 (the “Original PILOT Agreement”) by and between the Agency and the Original Company, pursuant to which the Original Company agreed to pay certain payments in lieu of taxes with respect to the Facility; (C) the Agency filed with the assessor and mailed 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 Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Facility and the PILOT Agreement; (D) the Agency executed and delivered to the Original

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 filed 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, in February, 2022, the Company acquired the Original Company, including the Original Company’s interest in the Facility, and, in connection with such acquisition, the rights and obligations of the Original Company under the Agency Documents (as defined in the Original Lease Agreement) have been assumed by the Company; and

WHEREAS, pursuant to Section 3(b) of the Original PILOT Agreement, the Company is required to make certain payments in lieu of taxes (the “PILOT Payments”) to the Agency on behalf of the Taxing Entities (as defined in the Original PILOT Agreement) on January 1 and September 30 of each year during the term of the Original PILOT Agreement; and

WHEREAS, on or about September 30, 2023, the Company made the last scheduled PILOT Payment to the Agency pursuant to the terms of the Original PILOT Agreement; and

WHEREAS, pursuant to Section 5.2(b) of the Original Lease Agreement, the leasehold estate created by the Original Lease Agreement is scheduled to terminate on June 30, 2024 (the “Original Lease Term”); and

WHEREAS, the Agency has received a request from the Company (the “Request,” a copy of which is attached hereto as Exhibit A) dated November 8, 2023, which Request (A) described the Company’s intention to undertake a project (the “Proposed Project”) at the Facility, which Proposed Project would include new investments and capital improvements to the Facility, and (B) requested that the Agency extend the Original Lease Term, and, in connection with such extension, the Company proposed to make PILOT Payments during the term of such extension (the “Modification”); and

WHEREAS, pursuant to the Request, and in order to implement the Modification, the Company requested that the Agency enter into certain documents (collectively, the “Modification Documents”) to modify the terms of the Agency Documents, including (A) a first amendment to lease agreement (the “First Amendment to Lease Agreement”), and (B) a first amendment to payment in lieu of tax agreement (the “First Amendment to PILOT Agreement”), each dated as of December 1, 2023 by and between the Agency and the Company; and

WHEREAS, the Agency now desires to approve the Modification and authorize the execution and delivery of the Modification Documents; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), it appears that the Modification constitutes a Type II action under SEQRA; and

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Based upon an examination of the Modification, the Agency hereby makes the following determinations:

(A) The Modification constitutes a “Type II action” pursuant to 6 NYCRR 617.5(c), (27), and therefor that, pursuant to 6 NYCRR 617.6(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Modification.

(B) That since compliance by the Agency with the Modification will not result in the Agency providing more than \$100,000 of “financial assistance” (as such quoted term is defined in the Act) to the Company, Section 859-a of the Act does not require a public hearing to be held with respect to the Modification.

(C) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act.

(D) It is desirable and in the public interest for the Agency to enter into the Modification Documents.

Section 2. Subject to (A) compliance with the terms and conditions in the Agency Documents, (B) payment by the Company of all fees and expenses of the Agency in connection with the delivery of the Modification Documents by and between the Company and the Agency, including (i) the Agency’s administrative fee in the amount of \$50,000, which administrative fee will be credited towards the fees for the Proposed Project, and (ii) the fees of Agency Counsel and Special Agency Counsel, the Agency hereby (a) consents to the Modification and (b) determines to enter into the Modification Documents.

Section 3. The form and substance of the Modification Documents (in substantially the form as shall be presented to Agency) are hereby approved.

Section 4. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chair and/or Executive Director of the Agency is hereby authorized to execute and deliver the Modification Documents to the Company, all in substantially the form thereof as shall be presented to Agency, with such changes, variations, omissions and insertions as the Chair and/or Executive Director shall approve, the execution thereof by the Chair and/or Executive Director to constitute conclusive evidence of such approval.

Section 5. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Modification Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Modification Documents binding upon the Agency.

Section 6. This Resolution shall take effect immediately.

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

Victoria Storrs	VOTING	_____
David Kidera		
Richard Kotlow	VOTING	_____
Edward DeBarbieri	VOTING	_____
Victor Franco	VOTING	_____
Georgette Steffens	VOTING	_____
Chris Welch	VOTING	_____

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned (Assistant) Secretary of Town of Bethlehem Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on December 19, 2023 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this \_\_\_\_\_ day of December, 2023.

(Assistant) Secretary

(SEAL)

EXHIBIT A  
COMPANY REQUEST  
- SEE ATTACHED -

GB II New York LLC



November 8, 2023

VIA ELECTRONIC MAIL

Catherine Hedgeman, Executive Director & Agency Counsel  
Town of Bethlehem Industrial Development Agency  
445 Delaware Avenue  
Delmar, NY 12045

Re: Town of Bethlehem Industrial Development Agency ("Agency") / PSEG Power New York Inc. Transaction – Request for Short-Term Extension of Payment in Lieu of Tax ("PILOT") Agreement for the Bethlehem Energy Center.

Dear Ms. Hedgeman:

Generation Bridge II, LLC (the "Company"), a wholly-owned subsidiary of ArcLight Energy Partners Fund VII, L.P., a private equity fund managed by ArcLight Capital Partners, acquired PSEG Power New York Inc., which was subsequently renamed GB II New York, LLC (the "Project Company"), in February 2022. The Project Company owns the Bethlehem Energy Center (the "Facility"), a natural gas-fired, combined cycle electric-generating facility having a nominal generating capacity of 872 megawatts located in the Town of Bethlehem, New York.

The Project Company and the Agency entered into certain straight-lease transaction documents dated February 5, 2002, including a PILOT agreement (the "PILOT Agreement"), in connection with construction of the Facility. Payments under the PILOT Agreement benefit the Town of Bethlehem (the "Town"), the Bethlehem Central School District (the "School District") and the County of Albany (the "County", and together with the Town and School District, the "Affected Tax Jurisdictions"). The term of the PILOT Agreement is scheduled to expire on December 31, 2023.

Final payments under the PILOT Agreement have been made, with \$919,224 paid in January 2023 for Town and County purposes (subject to an offset for special district taxes) and \$3,676,895 paid in September 2023 for School District purposes. For perspective, however, when tax rates are applied to the Facility's assessed value of \$100,000,000 for those payment periods, the resulting payments would have totaled \$847,309 and \$2,295,383, respectively. In addition to PILOT payments, the Facility makes payments to the Agency for economic development purposes pursuant to Section 23 of the PILOT Agreement ("Energy Reimbursement Payments"). Energy Reimbursement Payments are paid quarterly and totaled \$410,294 for the last 8 quarters through the quarterly period ended July 2023, for an average quarterly payment of \$51,287.

GB II New York LLC  
C/O Eastern Generation LLC | 300 Atlantic Street, 5th Floor, Stamford, CT 06901

Presently, the Project Company maintains approximately 35 jobs with an annual payroll (including benefits) of approximately \$8.4 million in connection with operation of the Facility and spends an average of approximately \$2.5 million annually on local contractors and locally-sourced materials for routine maintenance. The Project Company also contributes approximately \$30,000 and 40-50 staff-hours annually to local community groups.

The Company plans to seek financial assistance from the Agency to induce continued investment in the Facility that would extend its service life. Those potential investments include currently projected CAPEX and major maintenance expenditures of approximately \$85 million during the 2024-2028 operating period. However, discussions regarding financial assistance and the future of the Facility are not likely to be concluded prior to expiration of the PILOT Agreement, and the Company believes it is in the best interests of the Agency and the Affected Tax Jurisdictions to preserve the status quo through a short-term extension of the PILOT Agreement.

Accordingly, the Company requests that the Agency extend the term of the PILOT Agreement and related transaction documents by one assessment roll year so that the Facility would remain classified as exempt for the remainder of the fiscal years associated with the 2023 assessment roll year and be classified as exempt on the 2024 assessment roll (i.e. for the 2024-2025 School District fiscal year and the 2025 Town and County fiscal years). Given the complexities surrounding determination of appropriate payment levels for the involved payment periods, the Company proposes that the last payments under the PILOT Agreement, including the PILOT payments and Energy Reimbursement Payments referenced above, be repeated during the extended period in order to maintain the position of all involved stakeholders. Such an extension would afford the parties sufficient time to work out the terms of a longer term PILOT Agreement, create budgeting and revenue certainty for the Agency and the Affected Tax Jurisdictions, avoid potential conflict regarding the valuation and taxation of the Facility, and help position the Facility for future investment.

We look forward to continuing our partnership with the Agency and advancing our discussions.

Sincerely,



Richard Brunson  
Senior Vice President and Controller

cc: A. Joseph Scott (via electronic mail)  
Liam Baker (via electronic mail)  
Kevin R. McAuliffe (via electronic mail)  
Matthew S. Moses (via electronic mail)



DRAFT FOR DISCUSSION PURPOSES ONLY  
DATED: DECEMBER 15, 2023

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TOWN OF BETHLEHEM  
INDUSTRIAL DEVELOPMENT AGENCY

AND

GB II NEW YORK, LLC

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FIRST AMENDMENT TO  
LEASE AGREEMENT

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DATED AS OF DECEMBER 1, 2023

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RELATING TO A LEASEHOLD INTEREST HELD BY THE  
AGENCY IN A CERTAIN PARCEL OF LAND KNOWN AS THE  
FORMER ALBANY STEAM STATION AND LOCATED ALONG  
ROUTE 144 (TAX MAP NO. 98.00-2-10.1) IN THE TOWN OF  
BETHLEHEM, ALBANY COUNTY, NEW YORK.

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(This Table of Contents is for convenience of reference  
only and is not part of the First Amendment to  
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## FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT dated as of December 1, 2023 is by and between TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 445 Delaware Avenue, Delmar, New York (the “Agency”), and GB II NEW YORK, LLC, as successor-in-interest to PSEG Power New York Inc. (the “Original Company”), a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 300 Atlantic Street, 5<sup>th</sup> Floor, Stamford, Connecticut (the “Company”);

### WITNESSETH:

WHEREAS, Title One of Article 18-A of the General Municipal Law of the State of New York (as amended, the “Enabling Act”) was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; 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, among others, 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 to lease or sell its projects and to charge and collect rent or the purchase price therefor; 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 1973 Laws of New York, as amended, constituting Section 909-b of said General Municipal Law (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 and improve their standard of living; and

WHEREAS, on February 5, 2002 (the “Closing Date”), the Agency entered into a lease agreement dated February 5, 2002 (the “Original Lease Agreement”) by and between the Agency and the Original Company for the purpose of undertaking a project (the “Project”) consisting of the following: (A) (1) the acquisition by the Agency of an interest in the existing Albany Steam Station, including a portion of the switchyard, located on property roughly 84 acres in size along Route 144 in the Glenmont section in the Town of Bethlehem, Albany County, New York (the “Land”), (2) the construction on the Land of an electric generating plant, consisting of an approximately 82,000 square-foot turbine building and an approximately 17,500 square-foot plant services building, which would serve a nominal 750 megawatt, 763 megawatt maximum summer rating, 800 megawatt winter rating, natural gas-fired combined cycle turbine facility, utilizing three frame 7FA GE gas combustion turbines, the primary fuel for which would be natural gas with limited use of low sulfur distillate oil (0.04% sulfur) as a secondary fuel (collectively referred to as the “Improvements”), and (3) the acquisition by the Agency and the installation at and on the Land and Improvements of a variety of equipment, machinery, and other personal property (the “Equipment”) (the Land, the Improvements and the Equipment hereinafter

collectively referred to as the “Facility”) including the following in connection with the appointment of the Original Company as the agent of the Agency, as they related to the construction, erection and completion of such Facility, whether or not any materials or supplies described therein were incorporated into or became an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with construction of the Facility, and (iii) all equipment, machinery, and other tangible personal property (including installation costs with respect thereto), both existing and to be acquired, installed or placed in, upon or under such Facility, all of the foregoing to be owned and operated by the Original Company as an electric generation facility and other directly and indirectly related activities; (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, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) of the Facility to the Original Company or such other person as may be designated by the Original Company and agreed upon by the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Original Lease Agreement (the “Closing”), (A) the Original Company executed and delivered to the Agency a warranty deed dated February 5, 2002 (the “Deed to Agency”) pursuant to which the Original Company transferred the Land to the Agency; (B) the Original Company and the Agency executed and delivered a certain payment in lieu of tax agreement dated February 5, 2002 (the “Original PILOT Agreement”) by and between the Agency and the Original Company, pursuant to which the Original Company agreed to pay certain payments in lieu of taxes with respect to the Facility; (C) the Agency filed with the assessor and mailed 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 Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Facility and the PILOT Agreement; (D) the Agency executed and delivered to the Original 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 filed 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, in February, 2022, the Company acquired the Original Company, including the Original Company’s interest in the Facility, and, in connection with such acquisition, the rights and obligations of the Original Company under the Agency Documents (as defined in the Original Lease Agreement) have been assumed by the Company; and

WHEREAS, pursuant to Section 3(b) of the Original PILOT Agreement, the Company is required to make certain payments in lieu of taxes (the “PILOT Payments”) to the Agency on behalf of the Taxing Entities (as defined in the Original PILOT Agreement) on January 1 and September 30 of each year during the term of the Original PILOT Agreement; and

WHEREAS, on or about September 30, 2023, the Company made the last scheduled PILOT Payment to the Agency pursuant to the terms of the Original PILOT Agreement; and

WHEREAS, pursuant to Section 5.2(b) of the Original Lease Agreement, the leasehold estate created by the Original Lease Agreement is scheduled to terminate on June 30, 2024 (the “Original Lease Term”); and

WHEREAS, the Agency has received a request from the Company (the “Request”) dated November 8, 2023, which Request (A) described the Company’s intention to undertake a project (the “Proposed Project”) at the Facility, which Proposed Project would include new investments and capital improvements to the Facility, and (B) requested that the Agency extend the Original Lease Term, and, in connection with such extension, the Company proposed to make PILOT Payments during the term of such extension (the “Modification”); and

WHEREAS, pursuant to the Request, and in order to implement the Modification, the Company requested that the Agency enter into certain documents (collectively, the “Modification Documents”) to modify the terms of the Agency Documents, including (A) a first amendment to lease agreement (the “First Amendment to Lease Agreement”), and (B) a first amendment to payment in lieu of tax agreement (the “First Amendment to PILOT Agreement”), each dated as of December 1, 2023 by and between the Agency and the Company; and

WHEREAS, by resolution adopted by the members of the Agency on December 19, 2023 (the “Modification Resolution”), the Agency approved the Request and authorized the execution and delivery of the Modification Documents; and

WHEREAS, further pursuant to the Modification Resolution, and pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), the Agency determined that the Modification, and the execution and delivery of the Modification Documents, constitute a “Type II action” pursuant to 6 NYCRR 617.5(c)(27), and therefor that, pursuant to 6 NYCRR 617.6(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Modification; and

WHEREAS, all things necessary to constitute this First Amendment to Lease 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 First Amendment to Lease Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

SECTION 1. DEFINITIONS. (A) Except as provided in subsection (B) below, unless the context or use indicates another or different meaning, initially capitalized terms used in this First Amendment to Lease Agreement, including in any instrument delivered pursuant hereto and in the recitals hereof, shall have the respective meanings specified in Article I to the Original Lease Agreement. Any term defined in both this First Amendment to Lease Agreement and in the Original Lease Agreement shall have the meaning specified in this First Amendment to Lease Agreement.

(B) The following definitions are equally applicable to both the singular and plural forms of any of the terms herein defined. As used in the Lease Agreement and herein:

“Agency Counsel” means the law office of Catherine M. Hedgeman, Esq.

“Applicable Laws” means all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to or affect the Facility or any part thereof or the conduct of work on the Facility or any part thereof or to the operation, use, manner of use or condition of the Facility or any part

thereof (the applicability of such statutes, codes, laws, acts, ordinances, orders, rules, regulations, directions and requirements to be determined both as if the Agency were the owner of the Facility and as if the Company and not the Agency were the owner of the Facility), including but not limited to (1) applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of Governmental Authorities having jurisdiction over the Facility, (2) restrictions, conditions or other requirements applicable to any permits, licenses or other governmental authorizations issued with respect to the foregoing, and (3) judgments, decrees or injunctions issued by any court or other judicial or quasi-judicial Governmental Authority.

“Company” means GB II New York, LLC, as successor to the Original Company, a limited liability company duly organized and validly existing under the laws of the State of New York, and its successors and assigns.

“Financial Assistance” shall have the meaning assigned to such term in the fifth recital clause to the First Amendment to Lease Agreement.

“First Amendment to Lease Agreement” means the first amendment to lease agreement dated as of December 1, 2023 by and between the Agency and the Company.

“First Amendment to PILOT Agreement” means the first amendment to payment in lieu of tax agreement dated as of December 1, 2023 by and between the Agency and the Company.

“Governmental Authority” means the United States of America, the State, any other state and any political subdivision thereof, and any agency, department, commission, court, board, bureau or instrumentality of any of them.

“Lease Agreement” means the Original Lease Agreement, as amended by the First Amendment to Lease Agreement, as said Lease Agreement may be further amended or supplemented from time to time.

“Modification Resolution” means the resolution duly adopted by the Agency on December 19, 2023, approving the extension of the term of the Original Lease Agreement and the PILOT Payments owed by the Company during the term of such extension and authorizing the execution and delivery of the Modification Documents to which the Agency is a party.

“Original Company” means PSEG Power New York Inc., a corporation, as of the Closing Date, duly organized and validly existing under the laws of the State of Delaware and authorized to do business in the State of New York, and its successors and assigns.

“Original Lease Agreement” means the lease agreement dated February 5, 2002 by and between the Agency, as landlord, and the Company, as tenant.

“Original PILOT Agreement” means the payment in lieu of tax agreement dated February 5, 2002 by and between the Agency and the Company.

“PILOT Agreement” means the Original PILOT Agreement, as amended by the First Amendment to PILOT Agreement, as said PILOT Agreement may be further amended or supplemented from time to time.

“Transaction Counsel” means the law firm of Hodgson Russ LLP.

SECTION 2. ADDITIONAL REPRESENTATIONS BY AGENCY. The Agency makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained.

(A) Except as modified by this First Amendment to Lease Agreement, the Agency confirms, as of the date hereof, the representations set forth in Section 2.1 of the Original Lease Agreement.

(B) The Agency further represents that (1) the Agency has the power under the Act to enter into the transactions contemplated by the Modification Documents to be executed by the Agency, (2) the Agency has not received notice that it is in default under the Agency Documents or the Modification Documents, and (3) the Agency has duly authorized the execution, delivery and performance of the Modification Documents to be executed by the Agency.

SECTION 3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY. The Company makes the following representations, warranties and covenants as the basis for the undertakings on its part herein contained:

(A) The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is qualified and authorized to do business in the State of New York and has the power to enter into this First Amendment to Lease Agreement and the other Modification Documents to which the Company is a party and to carry out its obligations hereunder and thereunder. By proper action of its members, the Company has been duly authorized to execute, deliver and perform this Lease Agreement and the other Modification Documents to which the Company is a party.

(B) Neither the execution and delivery of this First Amendment to Lease Agreement or the other Modification Documents to which the Company is a party, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the provisions of this First Amendment to Lease Agreement or the other Modification Documents to which the Company is a party will: (1) conflict with or result in a breach of any of the terms, conditions or provisions of the Company's articles of organization and operating agreement or any other restriction, order, judgment, agreement or instrument to which the Company is a party or by which the Company or any of its Property is bound, or (2) constitute a default by the Company under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon any Property of the Company under the terms of any such instrument or agreement, other than the Permitted Encumbrances, or (3) require consent (which has not been heretofore received) under any restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (4) require consent (which has not been heretofore obtained) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company.

(C) The Modification Documents to which the Company is a party constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms, except as may be limited by applicable bankruptcy, insolvency, moratorium, reorganization, or similar laws affecting the enforcement of creditors' rights and subject to general equitable principles.

(D) The Facility is, and so long as the Lease Agreement, as amended by this First Amendment to Lease Agreement, shall remain in effect, the Facility will continue to be a "project," as such quoted term is defined in the Act, and the Company will not take any action (or omit to take any action required by the Modification Documents or which the Agency advises the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way (1) cause the Facility not to constitute a "project", as such quoted term is defined in the Act, or (2) cause the Financial Assistance to be applied in a manner contrary to that provided in the Modification Documents.

(E) The Facility and the operation thereof will comply in all material respects with all Applicable Laws, and the Company will defend and save the Agency and its officers, members, agents and employees harmless from all fines and penalties due to the Company's failure to comply therewith. The Company shall cause all notices as required by all Applicable Laws to be given, and shall comply or cause compliance with all Applicable Laws, and the Company will defend and save the Agency and its officers, members, agents and employees harmless from all fines and penalties due to the Company's failure to comply therewith.

(F) Except as modified by this First Amendment to Lease Agreement, the Company ratifies and confirms, as of the date hereof, the representations set forth by the Original Company in Section 2.2 of the Original Lease Agreement that apply to the Company as successor to the Original Company.

(G) The Company further represents that (1) the Company has the power to enter into the transactions contemplated by the Modification Documents to be executed by the Company, (2) the Company has not received notice that it is in default under the Agency Documents or the Modification Documents, and (3) the Company has duly authorized the execution, delivery and performance of the Modification Documents to be executed by the Company.

SECTION 4. AMENDMENTS TO ORIGINAL LEASE AGREEMENT. The Original Lease Agreement is hereby amended as follows:

(A) Section 5.2(b) of the Original Lease Agreement shall be amended to read as follows:

“(b) Except as provided in Section 10.2 hereof, the leasehold estate created hereby shall terminate at 11:59 p.m. on December 31, 2025, upon termination of the PILOT Agreement or on such earlier date as may be permitted by Section 11.1 hereof, in all cases provided that title to the Facility has been transferred and conveyed to the Company.”

(B) Section 12.1 of the Original Lease Agreement shall be amended to read as follows:

“Notices. All notices, certificates, and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, postage prepaid, return receipt requested, addressed as follows or to such other address as any party may specify in writing to the other:

IF TO THE COMPANY

GB II New York, LLC  
c/o Eastern Generation LLC  
300 Atlantic Street, 5<sup>th</sup> Floor  
Stamford, Connecticut 06901  
Attention: Richard Brunson,  
Senior Vice President and Controller

WITH A COPY TO:

Barclay Damon LLP  
125 E. Jefferson Street  
Syracuse, New York 13202  
Attention: Matthew S. Moses, Esq.



IF TO THE AGENCY:

Town of Bethlehem Industrial Development Agency  
445 Delaware Avenue  
Delmar, New York 12054  
Attention: Chair

WITH COPIES TO:

Town of Bethlehem Industrial Development Agency  
445 Delaware Avenue  
Delmar, New York 12054  
Attention: Catherine M. Hedgeman, Agency CEO and Agency Counsel

Hodgson Russ LLP  
677 Broadway, Suite 401  
Albany, New York 12207  
Attention: A. Joseph Scott, III, Esq.

SECTION 5. PROVISIONS OF FIRST AMENDMENT TO LEASE AGREEMENT CONSTRUED WITH ORIGINAL LEASE AGREEMENT. All of the covenants, agreements and provisions of this First Amendment to Lease Agreement shall be deemed to be and construed as part of the Original Lease Agreement and vice versa to the same extent as if fully set forth verbatim therein and herein. In the event of any conflict or inconsistency between any covenant, agreement or provision contained in this First Amendment to Lease Agreement and any covenant, agreement or provision contained in the Original Lease Agreement, the covenant, agreement or provision contained herein shall govern.

SECTION 6. ORIGINAL LEASE AGREEMENT AS AMENDED TO REMAIN IN EFFECT. Except as amended by this First Amendment to Lease Agreement, the Original Lease Agreement shall remain in full force and effect and the terms and conditions thereof are hereby confirmed.

SECTION 7. RECORDING AND FILING. This First Amendment to Lease Agreement (or a memorandum thereof) shall be recorded by the Agency in such office or offices as may at the time be provided by law as the proper place or places for the recordation of filing thereof.

SECTION 8. EXECUTION OF COUNTERPARTS. This First Amendment to Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 9. EFFECTIVE DATE OF FIRST AMENDMENT TO LEASE AGREEMENT. This First Amendment to Lease Agreement shall be effective as of December \_\_, 2023.

[Balance of page intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this First Amendment to Lease Agreement to be duly executed in their respective names by their respective authorized officers or representatives thereof, all as of the day and date first above written.

TOWN OF BETHLEHEM INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chair

GB II NEW YORK, LLC

BY: \_\_\_\_\_  
Authorized Officer

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

On the \_\_\_\_ day of December, in the year 2023, before me, the undersigned, personally appeared VICTORIA STORRS, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

---

Notary Public

STATE OF \_\_\_\_\_ )  
 )ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of December, in the year 2023, before me, the undersigned, 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 upon behalf of which the individual acted, executed the instrument.

---

Notary Public

DRAFT FOR DISCUSSION PURPOSES ONLY  
DATED: DECEMBER 15, 2023

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TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY

AND

GB II NEW YORK, LLC

---

FIRST AMENDMENT TO  
PILOT AGREEMENT

---

DATED AS OF DECEMBER 1, 2023

---

RELATING TO A PARCEL OF LAND KNOWN AS THE FORMER  
ALBANY STEAM STATION AND LOCATED ALONG ROUTE 144  
(TAX MAP NO. 98.00-2-10.1) IN THE TOWN OF BETHLEHEM,  
ALBANY COUNTY, NEW YORK.

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(This Table of Contents is for convenience of reference  
only and is not part of the First Amendment to  
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FIRST AMENDMENT TO  
PAYMENT IN LIEU OF TAX AGREEMENT

THIS FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT dated as of December 1, 2023 is by and between TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 445 Delaware Avenue, Delmar, New York (the “Agency”), and GB II NEW YORK, LLC, as successor-in-interest to PSEG Power New York Inc. (the “Original Company”), a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 300 Atlantic Street, 5<sup>th</sup> Floor, Stamford, Connecticut (the “Company”);

W I T N E S S E T H :

WHEREAS, Title One of Article 18-A of the General Municipal Law of the State of New York (as amended, the “Enabling Act”) was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; 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, among others, 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 to lease or sell its projects and to charge and collect rent or the purchase price therefor; 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 1973 Laws of New York, as amended, constituting Section 909-b of said General Municipal Law (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 and improve their standard of living; and

WHEREAS, on February 5, 2002 (the “Closing Date”), the Agency entered into a lease agreement dated February 5, 2002 (the “Original Lease Agreement”) by and between the Agency and the Original Company for the purpose of undertaking a project (the “Project”) consisting of the following: (A) (1) the acquisition by the Agency of an interest in the existing Albany Steam Station, including a portion of the switchyard, located on property roughly 84 acres in size along Route 144 in the Glenmont section in the Town of Bethlehem, Albany County, New York (the “Land”), (2) the construction on the Land of an electric generating plant, consisting of an approximately 82,000 square-foot turbine building and an approximately 17,500 square-foot plant services building, which would serve a nominal 750 megawatt, 763 megawatt maximum summer rating, 800 megawatt winter rating, natural gas-fired combined cycle turbine facility, utilizing three frame 7FA GE gas combustion turbines, the primary fuel for which would be natural gas with limited use of low sulfur distillate oil (0.04% sulfur) as a secondary fuel (collectively referred to as the “Improvements”), and (3) the acquisition by the Agency and the

installation at and on the Land and Improvements of a variety of equipment, machinery, and other personal property (the “Equipment”) (the Land, the Improvements and the Equipment hereinafter collectively referred to as the “Facility”) including the following in connection with the appointment of the Original Company as the agent of the Agency, as they related to the construction, erection and completion of such Facility, whether or not any materials or supplies described therein were incorporated into or became an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with construction of the Facility, and (iii) all equipment, machinery, and other tangible personal property (including installation costs with respect thereto), both existing and to be acquired, installed or placed in, upon or under such Facility, all of the foregoing to be owned and operated by the Original Company as an electric generation facility and other directly and indirectly related activities; (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, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) of the Facility to the Original Company or such other person as may be designated by the Original Company and agreed upon by the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Original Lease Agreement (the “Closing”), (A) the Original Company executed and delivered to the Agency a warranty deed dated February 5, 2002 (the “Deed to Agency”) pursuant to which the Original Company transferred the Land to the Agency; (B) the Original Company and the Agency executed and delivered a certain payment in lieu of tax agreement dated February 5, 2002 (the “Original PILOT Agreement”) by and between the Agency and the Original Company, pursuant to which the Original Company agreed to pay certain payments in lieu of taxes with respect to the Facility; (C) the Agency filed with the assessor and mailed 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 Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Facility and the PILOT Agreement; (D) the Agency executed and delivered to the Original 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 filed 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, in February, 2022, the Company acquired the Original Company, including the Original Company’s interest in the Facility, and, in connection with such acquisition, the rights and obligations of the Original Company under the Agency Documents (as defined in the Original Lease Agreement) have been assumed by the Company; and

WHEREAS, pursuant to Section 3(b) of the Original PILOT Agreement, the Company is required to make certain payments in lieu of taxes (the “PILOT Payments”) to the Agency on behalf of the Taxing Entities (as defined in the Original PILOT Agreement) on January 1 and September 30 of each year during the term of the Original PILOT Agreement; and

WHEREAS, on or about September 30, 2023, the Company made the last scheduled PILOT Payment to the Agency pursuant to the terms of the Original PILOT Agreement; and



WHEREAS, pursuant to Section 5.2(b) of the Original Lease Agreement, the leasehold estate created by the Original Lease Agreement is scheduled to terminate on June 30, 2024 (the “Original Lease Term”); and

WHEREAS, the Agency has received a request from the Company (the “Request”) dated November 8, 2023, which Request (A) described the Company’s intention to undertake a project (the “Proposed Project”) at the Facility, which Proposed Project would include new investments and capital improvements to the Facility, and (B) requested that the Agency extend the Original Lease Term, and, in connection with such extension, the Company proposed to make PILOT Payments during the term of such extension (the “Modification”); and

WHEREAS, pursuant to the Request, and in order to implement the Modification, the Company requested that the Agency enter into certain documents (collectively, the “Modification Documents”) to modify the terms of the Agency Documents, including (A) a first amendment to lease agreement (the “First Amendment to Lease Agreement”), and (B) a first amendment to payment in lieu of tax agreement (the “First Amendment to PILOT Agreement”), each dated as of December 1, 2023 by and between the Agency and the Company; and

WHEREAS, by resolution adopted by the members of the Agency on December 19, 2023 (the “Modification Resolution”), the Agency approved the Request and authorized the execution and delivery of the Modification Documents; and

WHEREAS, further pursuant to the Modification Resolution, and pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), the Agency determined that the Modification, and the execution and delivery of the Modification Documents, constitute a “Type II action” pursuant to 6 NYCRR 617.5(c)(27), and therefor that, pursuant to 6 NYCRR 617.6(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Modification; and

WHEREAS, all things necessary to constitute this First Amendment to PILOT 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 First Amendment to PILOT Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

**SECTION 1. ADDITIONAL REPRESENTATIONS BY THE AGENCY.** The Agency does hereby represent, warrant and covenant as follows:

(A) Except as modified by this First Amendment to PILOT Agreement, the Agency confirms, as of the date hereof, the representations set forth in Section 1(b) of the Original PILOT Agreement.

(B) The Agency further represents that (1) the Agency has the power under the Act to enter into the transactions contemplated by the Modification Documents to be executed by the Agency, (2) the Agency has not received notice that it is in default under the Agency Documents or the Modification Documents, and (3) the Agency has duly authorized the execution, delivery and performance of the Modification Documents to be executed by the Agency.

SECTION 2. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. 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 New York, is duly authorized to do business in the State of New York and has the power under the laws of the State to enter into this First Amendment to PILOT 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 First Amendment to PILOT Agreement.

(B) Authorization. The Company is authorized and has the power under its articles of organization and its operating agreement to enter into this First Amendment to PILOT 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 First Amendment to PILOT Agreement. By proper action of its members, the Company has duly authorized the execution, delivery and performance of this First Amendment to PILOT Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this First Amendment to PILOT Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this First Amendment to PILOT Agreement by (and the execution, delivery and performance of this First Amendment to PILOT Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this First Amendment to PILOT 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 or its 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 First Amendment to PILOT Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this First Amendment to PILOT 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 First Amendment to PILOT 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 First Amendment to PILOT Agreement by the Company or as a condition to the validity of this First Amendment to PILOT Agreement.

(E) Except as modified by this First Amendment to PILOT Agreement, the Company ratifies and confirms, as of the date hereof, the representations set forth by the Original Company in Section 1(a) of the Original PILOT Agreement that apply to the Company as successor to the Original Company.

(F) The Company further represents that (1) the Company has the power to enter into the transactions contemplated by the Modification Documents to be executed by the Company, (2) the Company has not received notice that it is in default under the Agency Documents or the Modification

Documents, and (3) the Company has duly authorized the execution, delivery and performance of the Modification Documents to be executed by the Company.

SECTION 3. AMENDMENTS TO ORIGINAL PAYMENT IN LIEU OF TAX AGREEMENT. The Original PILOT Agreement is hereby amended as follows:

(A) The Agency and the Company agree that the “Schedule of PILOT Payments” used in determining the amount of payments in lieu of taxes (the “PILOT Payments”) payable by the Company under Section 3(b) of the Original PILOT Agreement is deleted in its entirety and in lieu thereof there is substituted the table set forth on Exhibit A to this First Amendment to PILOT Agreement.

(B) Section 3(c) of the Original PILOT Agreement shall be amended to read as follows:

“Payments after December 31, 2025. Beginning in 2026 and thereafter for so long as the Facility is owned by the Agency, the January and September PILOT Payments shall be equal to the product of the then current assessed value of the Facility as provided for in and established pursuant to RPTL Section 520 or any other applicable law, and (taking into account any exemption available under applicable law) as determined by the Town, multiplied by the then current applicable tax rates for the applicable Taxing Entities.”

(C) Section 5(a) of the Original PILOT Agreement shall be amended to read as follows:

“5. **Credit for Taxes Paid.**

(a) The parties agree that should the Company pay in any calendar year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other general governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company (but no including (i) sales and use taxes, and (ii) special assessments of any nature, special ad valorem charges of any nature or governmental charges in the nature of utility charges, including, but not limited to, water, solid waste, sewage treatment or sewer or other rents, rates and charges), then the Company’s obligation hereunder to make PILOT Payments in such calendar year shall be reduced by the amounts which the Company shall have so paid or be obligated to pay to such Taxing Entity in such calendar year. If the Company desires to claim a credit against any particular PILOT Payment due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provisions of this Paragraph 5, such notice to be given by the Company at least 10 days prior to the final date on which such PILOT Payment is due pursuant to the provisions of Paragraph 3.”

(D) Section 15 of the Original PILOT Agreement shall be amended to read as follows:

“Notices. All notices, certificates, and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, postage prepaid, return receipt requested, addressed as follows or to such other address as any party may specify in writing to the other:

IF TO THE COMPANY

GB II New York, LLC  
c/o Eastern Generation LLC  
300 Atlantic Street, 5<sup>th</sup> Floor  
Stamford, Connecticut 06901  
Attention: Richard Brunson,  
Senior Vice President and Controller

WITH A COPY TO:

Barclay Damon LLP  
125 E. Jefferson Street  
Syracuse, New York 13202  
Attention: Matthew S. Moses, Esq.  
IF TO THE AGENCY:

Town of Bethlehem Industrial Development Agency  
445 Delaware Avenue  
Delmar, New York 12054  
Attention: Chair

WITH COPIES TO:

Town of Bethlehem Industrial Development Agency  
445 Delaware Avenue  
Delmar, New York 12054  
Attention: Catherine M. Hedgeman, Agency CEO and Agency Counsel

Hodgson Russ LLP  
677 Broadway, Suite 401  
Albany, New York 12207  
Attention: A. Joseph Scott, III, Esq.”

(D) Section 22 of the Original PILOT Agreement shall be amended to add the following additional definitions:

“Agency Documents” shall have the meaning ascribed to such term in the Lease Agreement.

“Agreement” means the Original PILOT Agreement, as amended by the First Amendment to PILOT Agreement, as said Agreement may be further amended or supplemented from time to time

“Company” means GB II New York, LLC, as successor to the Original Company, a limited liability company duly organized and validly existing under the laws of the State of New York, and its successors and assigns.

“First Amendment to PILOT Agreement” means the first amendment to payment in lieu of tax agreement dated as of December 1, 2023 by and between the Agency and the Company.

“Original PILOT Agreement” means the payment in lieu of tax agreement dated February 5, 2002 by and between the Agency and the Company.

“Original Company” means PSEG Power New York Inc., a corporation, as of the Closing Date, duly organized and validly existing under the laws of the State of Delaware and authorized to do business in the State of New York, and its successors and assigns.

SECTION 4. PROVISIONS OF FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT CONSTRUED WITH ORIGINAL PAYMENT IN LIEU OF TAX AGREEMENT. All of the covenants, agreements and provisions of this First Amendment to PILOT Agreement shall be deemed to be and construed as part of the Original PILOT Agreement and vice versa to the same extent as if fully set forth verbatim therein and herein. In the event of any conflict or inconsistency between any covenant, agreement or provision contained in this First Amendment to PILOT Agreement and any covenant, agreement or provision contained in the Original PILOT Agreement, the covenant, agreement or provision contained herein shall govern.

SECTION 5. ORIGINAL PAYMENT IN LIEU OF TAX AGREEMENT AS AMENDED TO REMAIN IN EFFECT. Except as amended by this First Amendment to PILOT Agreement, the Original PILOT Agreement shall remain in full force and effect and the terms and conditions thereof are hereby confirmed.

SECTION 6. EXECUTION OF COUNTERPARTS. This First Amendment to PILOT Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 7. EFFECTIVE DATE OF FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT. This First Amendment to PILOT Agreement shall be effective as of December \_\_, 2023.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties have caused this First Amendment to PILOT Agreement to be duly executed in their respective names by their respective authorized officers or representatives thereof, all as of the day and date first above written.

TOWN OF BETHLEHEM INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chair

GB II NEW YORK, LLC

BY: \_\_\_\_\_  
Authorized Officer

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

On the \_\_\_\_ day of December, in the year 2023, before me, the undersigned, personally appeared VICTORIA STORRS, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public

STATE OF \_\_\_\_\_ )  
 )ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of December, in the year 2023, before me, the undersigned, 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 upon behalf of which the individual acted, executed the instrument.

Notary Public



**EXHIBIT A****REVISED SCHEDULE OF PILOT PAYMENTS**

<b>Calendar Year</b>	<b>County/Town PILOT Payments</b>	<b>School District PILOT Payments</b>	<b>Total</b>
<b><u>COMPLETED PILOT PAYMENTS</u></b>			
2003	\$800,000	\$3,200,000	\$4,000,000
2004	\$575,000	\$2,300,000	\$2,875,000
2005	\$589,375	\$2,357,000	\$2,946,875
2006	\$604,109	\$2,416,438	\$3,020,547
2007	\$619,212	\$2,476,849	\$3,096,061
2008	\$634,692	\$2,538,770	\$3,173,462
2009	\$650,560	\$2,602,239	\$3,252,799
2010	\$666,824	\$2,667,295	\$3,334,119
2011	\$683,494	\$2,733,978	\$3,417,472
2012	\$700,582	\$2,802,326	\$3,502,908
2013	\$718,096	\$2,872,385	\$3,590,481
2014	\$736,049	\$2,944,194	\$3,680,243
2015	\$754,450	\$3,017,799	\$3,772,249
2016	\$773,311	\$3,093,244	\$3,866,555
2017	\$792,644	\$3,170,575	\$3,963,219
2018	\$812,460	\$3,249,840	\$4,062,300
2019	\$832,771	\$3,331,086	\$4,163,857
2020	\$853,591	\$3,414,363	\$4,267,954
2021	\$874,931	\$3,499,722	\$4,374,653
2022	\$896,804	\$3,587,215	\$4,484,019
2023	\$919,224	\$3,676,895	\$4,596,119
<b><u>EXTENDED PILOT PAYMENTS<sup>1</sup></u></b>			
2024	\$919,224	\$3,676,895	\$4,596,119
2025	\$919,224	Normal Taxes	To be determined.

<sup>1</sup> The Extended PILOT Payments shall be due (a) on January 1, 2024 and January 1, 2025 with respect to the County/Town PILOT Payments then due, and (b) September 30, 2024 with respect to the School District PILOT Payment.