

**RESOLUTION AMENDING THE PRIOR RESOLUTION TO AUTHORIZE THE FINANCING OF AN INDUSTRIAL FACILITY FOR GB ARTHUR KILL STORAGE LLC, AS A STRAIGHT-LEASE TRANSACTION AND AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF VARIOUS AGREEMENTS IN CONNECTION THEREWITH**

**WHEREAS**, New York City Industrial Development Agency (the “Agency”) is authorized under the laws of the State of New York, and in particular 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, and Chapter 1082 of the 1974 Laws of New York, as amended (collectively, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

**WHEREAS**, pursuant to resolution adopted by the Agency on April 23, 2024 (the “Prior Resolution”), the Agency induced and authorized a straight-lease transaction for the benefit of Elevate Renewables F7, LLC, a Delaware limited liability company and a national renewable energy development company (the “Original Applicant”), is a portfolio company of ArcLight Energy Partners Fund VII, L.P. (the “Fund”) which Fund is sponsored by ArcLight Capital Partners, LLC (“ArcLight”) an infrastructure-focused investment firm which serves as the investment adviser to the Fund; and

**WHEREAS**, subsequent to the adoption of the Prior Resolution, the Original Applicant advised the Agency that GB Arthur Kill Storage LLC, a Delaware limited liability company would be substituted as the Applicant (the “New Applicant”, herein referred as the “Applicant”); and

**WHEREAS**; this resolution does not change the Project (defined below) or any benefits previously approved; and

**WHEREAS**, the Applicant, has entered into negotiations with officials of the Agency for the construction, and equipping of an approximately 2,560 square foot battery energy storage system with an estimated capacity of 15.1 megawatts (“MW”) consisting of batteries and other equipment, metering 60.4 MW hours of energy storage capacity (the “Battery System”) to be co-located at the Arthur Kill Generating Station (“Generating Station”), which is owned by Arthur Kill Power LLC, a portfolio company of the Fund, and is a dual-fuel capable power plant that produces electrical power for the electrical grid serving Staten Island and Manhattan, located on an approximately 96-acre parcel of land at 4401 Victory Boulevard in Staten Island, New York and an approximately 43,560 square foot portion of such Generating System is leased to the Applicant, a subsidiary of the Original Applicant, which will be operated by the Applicant as a Battery System capable of charging from, and discharging into, the New York power grid (the “Project”), and having a total project cost of approximately \$31,650,000; and

**WHEREAS**, the Applicant has submitted a Project Application (the “Application”) to the Agency to initiate the accomplishment of the above; and

**WHEREAS**, the Application sets forth certain information with respect to the Applicant and the Project, including the following: that the Applicant, is a developer of energy storage power projects; that approximately 1.5 full time equivalent employees will be employed and/or retained within three years following the completion of the Project; that the Applicant must obtain Agency financial assistance in the form of a straight-lease transaction to enable the Applicant to proceed with the Project and thereby expand

its operations in the City; that without the Agency's financial assistance the Applicant would not be able to complete the Project, and that, based upon the financial assistance provided through the Agency, the Applicant desires to proceed with the Project and expand its operations in the City; and

**WHEREAS**, based upon the Application, the Agency hereby determines that Agency financial assistance and related benefits in the form of a straight-lease transaction between the Agency and the Applicant is necessary to induce the Applicant to expand its operations in the City; and

**WHEREAS**, in order to provide financial assistance to the Applicant for the Project, the Agency intends to grant the Applicant financial assistance through a straight-lease transaction in the form of sales and use tax exemptions, all pursuant to the Act;

**NOW, THEREFORE, NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:**

**Section 1.** The Agency hereby determines that the Project and the provision by the Agency of financial assistance to the Applicant pursuant to the Act in the form of a straight-lease transaction will promote and is authorized by and will be in furtherance of the policy of the State of New York as set forth in the Act and hereby authorizes the Applicant to proceed with the Project. The Agency further determines that:

(a) the Project shall not result in the removal of any facility or plant of the Applicant or any other occupant or user of the Facility from outside of the City (but within the State of New York) to within the City or in the abandonment of one or more facilities or plants of the Applicant or any other occupant or user of the Facility located within the State of New York (but outside of the City);

(b) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State of New York; and

(c) not more than one-third of the total Project cost is in respect of facilities or property primarily used in making retail sales of goods or services to customers who personally visit such facilities within the meaning of Section 862 of the New York General Municipal Law.

**Section 2.** To accomplish the purposes of the Act and to provide financial assistance to the Applicant for the Project, a straight-lease transaction is hereby authorized subject to the provisions of this Resolution.

**Section 3.** The Agency hereby authorizes the Applicant to proceed with the Project as herein authorized. The Applicant is authorized to proceed with the Project on behalf of the Agency as set forth in this Resolution; provided, however, that it is acknowledged and agreed by the Applicant that (i) nominal leasehold title to or other interest of the Agency in the Facility shall be in the Agency for purposes of granting financial assistance, and (ii) the Applicant is hereby constituted the agent for the Agency solely for the purpose of effecting the Project, and the Agency shall have no personal liability for any such action taken by the Applicant for such purpose.

**Section 4.** The execution and delivery of an Agency Lease Agreement between the Agency and the Applicant, a Uniform Project Agreement between the Agency and the Applicant, a Sales Tax Agent Authorization Letter from the Agency to the Applicant, and, if applicable, a Guaranty Agreement from the Applicant, and/or the members of the Applicant and affiliates thereof to the Agency (the “Guaranty Agreement”) (each document referenced in this Section 4 being, collectively, the “Agency Documents”), each being substantively the same as approved by the Agency for prior transactions, is hereby authorized. The Chairperson, Vice Chairperson, Executive Director, Deputy Executive Director and General Counsel of the Agency are each hereby authorized to execute, acknowledge and deliver each such Agency Document. The execution and delivery of each such agreement by one of said officers shall be conclusive evidence of due authorization and approval.

**Section 5.** The officers of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Applicant to assist in the Project.

**Section 6.** All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution and contained in the Agency Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution or the Agency Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the Agency Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, director, officer, agent or employee of the Agency in his or her individual capacity and neither the members nor the directors of the Agency nor any officer executing any Agency Document shall be liable personally for any amounts payable thereunder or arising from claims thereon or be subject to any personal liability or accountability by reason of the execution and delivery or acceptance thereof.

**Section 7.** The officers of the Agency are hereby designated the authorized representatives of the Agency, and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution. The Agency recognizes that due to the unusual complexities of the transaction it may become necessary that certain of the terms approved hereby may require modifications which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairperson, Vice Chairperson, Executive Director, Deputy Executive Director or General Counsel to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution. The approval of such modifications shall be evidenced by a certificate of determination of an Agency officer.

**Section 8.** Any expenses incurred by the Agency with respect to the Project shall be paid by the Applicant. By acceptance hereof, the Applicant agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project.

**Section 9.** This Resolution is subject to approval based on an investigative report with respect to the Applicant. The provisions of this Resolution shall continue to be effective for one year from the date hereof, whereupon the Agency may, at its option, terminate the effectiveness of this Resolution (except with respect to the matters contained in Section 8 hereof).

**Section 10.** The Agency, as lead agency (“Lead Agency”), issued its determination pursuant to the State Environmental Quality Review Act (“SEQRA”) (Article 8 of the Environmental Conservation Law) and implementing regulations contained in 6 N.Y.C.R.R. Part 617. The determination is based upon the Agency’s review of information provided by the Applicant and such other information as the Agency has deemed necessary and appropriate to make its determination.

The Agency has determined that the proposed Project, an Unlisted Action in accordance with Article 8 of the Environmental Conservation Law, the State Environmental Quality Review Act (“SEQRA”) and the implementing regulations, would not have a significant effect on the environment and that a Draft Environmental Impact Statement will not be prepared. The reasons supporting this determination are as follows:

1. The proposed Project would not result in a substantial adverse change in existing traffic, air quality, or noise levels.
2. The proposed Project would not result in significant adverse impacts on cultural, archaeological, architectural, or aesthetic resources or the existing neighborhood. The proposed Project is located within an area of archaeological sensitivity. However, for development of the Project, there would be limited soil regrading and excavation. In addition, a Phase IB Archaeological Survey conducted in connection to the proposed Arthur Kill Power Plant Lateral concluded that soils in this area are extensively disturbed and no further archaeological study was considered necessary.
3. The proposed Project would not result in significant adverse impacts to natural resources, critical habitats, or water quality. The proposed Project site is located within New York City’s Coastal Zone Boundary. Having reviewed the materials submitted by the Applicant regarding this action, the Agency finds that the proposed action is consistent with the policies comprising New York City’s Waterfront Revitalization Program (“WRP”) and that the proposed action would not hinder the achievement of the WRP.

The proposed Project is also located within a State regulated wetland check zone. The Applicant requested a project-specific jurisdictional determination from the New York State Department of Environmental Conservation (“NYSDEC”) and, NYSDEC determined that the proposed project is not within the jurisdiction of the NYSDEC under the Freshwater Wetlands Act (Article 24 of the Environmental Conservation Law). Therefore, we do not anticipate any significant adverse impacts resulting from the proposed project due to wetlands.

4. The proposed Project would not result in a change in existing zoning or land use. The existing uses would be continuing to be as-of-right under zoning.
5. A Phase I Environmental Site Assessment and a subsurface soil investigation via a Soil Characterization Report (“SCR”) were completed for the site in February and April 2024, respectively. The Phase I identified a Controlled Recognized Environmental Condition (“CREC”) associated with past operations on the site. Building on the Phase I, the subsurface soil investigation identified a semi-volatile organic compound (“SVOC”), as phenanthrene, and the polychlorinated biphenyl (“PCB”), Aroclor 1260, in the 4-to-5-foot sample at

concentrations above the Unrestricted Use Soil Cleanup Objectives (“USCOs”) but well below the Industrial Use Soil Cleanup Objectives (“ISCOs”). Three metals (copper, nickel, and zinc) were detected above the USCOs, but below ISCOs, in the shallow sample. These exceedances are most likely due to the fill material at the site.

For development of the Project, there would be limited soil regrading and excavation. Soil should be properly tested, reused on site if found to meet NYSDEC regulations, and removed if found to be hazardous. Transportation of material leaving the site for disposal must be in accordance with applicable regulatory requirements. If groundwater dewatering of the site is needed, this would be performed in accordance with applicable regulations, including possibly obtaining a NYSDEC SPDES permit or NYC Department of Environmental Protection sewer discharge permit, as necessary. The Applicant has provided a Soil Management Plan and associated Construction Health and Safety Plan (“CHASP”) to the Agency to ensure there are no impacts from the project. If the actions outlined above are followed, we do not anticipate any significant adverse impacts resulting from the proposed Project due to hazardous materials.

6. No other significant effects upon the environment that would require the preparation of an Environmental Impact Statement are foreseeable.

**Section 11.** In connection with the Project, the Applicant and the covenants and agrees to comply, and to cause each of its contractors, subcontractors, agents, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3), as such provisions may be amended from time to time.

(1) The Applicant acknowledges and agrees that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Applicant New York State sales or use tax savings taken or purported to be taken by the Applicant, and any agent or any other person or entity acting on behalf of the Applicant, to which the Applicant is not entitled or which are in excess of the maximum sales or use tax exemption amount authorized in Section 12 of this Resolution or which are for property or services not authorized or taken in cases where the Applicant, or any agent or any other person or entity acting on behalf of the Applicant, failed to comply with a material term or condition to use property or services in the manner required by this Resolution or any agreements entered into among the Agency, the Applicant and/or any agent or any other person or entity acting on behalf of the Applicant. The Applicant shall, and shall require each agent and any other person or entity acting on behalf of the Applicant, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such New York State sales or use tax savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the “Commissioner”) to assess and determine New York State sales or use taxes due from the Applicant under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(2) The Applicant is hereby notified (provided that such notification is not a covenant or obligation and does not create a duty on the part of the Agency to the Applicant or any other party) that the Agency is subject to certain requirements under the General Municipal Law, including the following:

(i) In accordance with General Municipal Law Section 875(3)(c), if the Agency recovers, recaptures, receives, or otherwise obtains, any amount of New York State sales or use tax savings from the Applicant, any agent or other person or entity, the Agency shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amount. The Agency shall join the Commissioner as a party in any action or proceeding that the Agency commences to recover, recapture, obtain, or otherwise seek the return of, New York State sales or use tax savings from Applicant or any other agent, person or entity.

(ii) In accordance with General Municipal Law Section 875(3)(d), the Agency shall prepare an annual compliance report detailing its terms and conditions described in General Municipal Law Section 875(3)(a) and its activities and efforts to recover, recapture, receive, or otherwise obtain State sales or user tax savings described in General Municipal Law Section 875(3)(b), together with such other information as the Commissioner and the New York State Commissioner of Economic Development may require. Such report shall be filed with the Commissioner, the Director of the Division of the Budget of The State of New York, the New York State Commissioner of Economic Development, the New York State Comptroller, the Council of the City of New York, and may be included with the annual financial statement required by General Municipal Law Section 859(1)(b). Such report shall be filed regardless of whether the Agency is required to file such financial statement described by General Municipal Law Section 859(1)(b). The failure to file or substantially complete such report shall be deemed to be the failure to file or substantially complete the statement required by such General Municipal Law Section 859(1)(b), and the consequences shall be the same as provided in General Municipal Law Section 859(1)(e).

(3) The foregoing requirements of this Section 11 shall apply to any amounts of New York State sales or use tax savings that the Agency recovers, recaptures, receives, or otherwise obtains, regardless of whether the Agency, the Applicant, or any agent or other person or entity acting on behalf of the Applicant characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The foregoing requirements shall also apply to any interest or penalty that the Agency imposes on any such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that the Agency recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be New York State sales or use taxes and the Agency shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of New York State.

**Section 12.** In connection with the Project, the Agency intends to grant the Applicant sales and use tax exemptions in a total amount not to exceed \$2,262,495.