

**Final Authorizing Resolution
Mohawk, Adirondack & Northern
Railroad Corp./Genesee &
Mohawk Valley Railroad Co., Inc.
2023 Lease and PILOT Extension**

Transcript Document No. []

Date: May 5, 2023

At a meeting of the Oneida County Industrial Development Agency (the "Agency") held at 584 Phoenix Drive, Rome, New York 13441 on the 5th day of May 2023, the following members of the Agency were:

Members Present: David Grow, Steve Zogby, Mike Fitzgerald, Mary Faith Messenger, Kirk Hinman, Gene Quadraro.

Members Present – WebEx: Ferris Betrus.

EDGE Staff Present: Shawna Papale, Maureen Carney, Tim Fitzgerald, Laura Cohen, Mark Kaucher, Chris Lawrence, Hannah Phillips.

EDGE Staff Present – WebEx: Bill Van Shufflin

Other Attendees: Mark Levitt, Levitt & Gordon; Rome Mayor Jackie Izzo, Shaun Kaleta, Oneida County.

Other Attendees – WebEx: Paul Goldman, Goldman Attorneys PLLC; Linda Romano and Laura Ruberto, Bond, Schoeneck & King; Greg Mountain, Collins Solar LLC; and Bailey Irwin, Sunlight General Capital, LLC

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to proposed financial assistance to Mohawk, Adirondack & Northern Railroad Corp. and Genesee & Mohawk Valley Railroad Co., Inc.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

David Grow
Mike Fitzgerald
Ferris Betrus
Kirk Hinman
Mary Faith Messenger
Gene Quadraro
Steve Zogby

Voting Nay

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE THE DEED, THE LEASE AGREEMENT, THE SECOND AMENDED AND RESTATED LEASEBACK AGREEMENT, THE SECOND AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT, THE FIRST AMENDED AND RESTATED ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT, THE RECAPTURE AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE MOHAWK, ADIRONDACK & NORTHERN RAILROAD CORP. AND GENESEE & MOHAWK VALLEY RAILROAD CO., INC. (2023 LEASE AND PILOT EXTENSION) FACILITY RUNNING FROM CITY OF UTICA TO THE ONEIDA COUNTY – LEWIS COUNTY LINE NORTH OF BOONVILLE, ONEIDA COUNTY.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 372 of the Laws of 1970 of the State of New York (collectively, the “Act”), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, Oneida County Industrial Development Agency (the “Agency”) acquired fee title to a certain industrial development facility consisting of a railroad yard in the City of Utica, trackage in the City of Rome and a line of rail running from City of Utica to the Oneida County – Lewis County line north of Boonville (collectively, the “Improvements”), all situated on several parcels of land measuring 450± acres in the aggregate running through the City of Rome, the City of Utica, the Village of Boonville, the Village of Remsen, the Village of Holland Patent, the Town of Boonville, the Town of Remsen, the Town of Steuben, the Town of Trenton and the Town of Marcy (collectively, the “Land”); and all equipment used in connection with the operation of the Improvements (the “Equipment”), all to be used for the purpose of providing essential rail service to customers in Oneida County (the Land, the Improvements and the Equipment referred to collectively as the “Facility”); and

WHEREAS, the Agency owns fee title to the Facility and leases the Facility to Mohawk, Adirondack & Northern Railroad Corp. and Genesee & Mohawk Valley Railroad Co., Inc. (collectively, the “Company”) for its operation pursuant to a First Amended and Restated Lease Agreement dated as of April 15, 2012 (the “First Amended Lease Agreement”); and

WHEREAS, the Facility is fully exempt from real property taxes pursuant to the terms of a First Amended and Restated PILOT Agreement dated April 15, 2012 (the “First Amended PILOT Agreement”); and

WHEREAS, the Company has requested the Agency extend the term of the First Amended Lease Agreement and the First Amended PILOT Agreement for ten years, all to support the Company to continue to provide uninterrupted railroad transportation

operations for its customers in Oneida County and to ensure the long term viability of local rail service in Oneida County (collectively, the “2023 Facility Extension”); and

WHEREAS, in its application, the Company has committed to retain 12 existing full time equivalent positions and create 2 additional full time equivalent positions prior to the third extended lease year as a result of the 2023 Facility Extension and as a condition of Financial Assistance (the “Employment Obligation”); and

WHEREAS, the Agency is contemplating approving financial assistance in furtherance of the Facility by extending the period of time during which the Facility will be fully exempt from real property taxes for a period of ten additional years (the “Financial Assistance”), which Financial Assistance is a deviation from the Agency’s Uniform Tax Exemption Policy (the “Policy”); and

WHEREAS, the Company estimates the value of the requested Financial Assistance is approximately \$1,000,000.00; and

WHEREAS, the Agency is contemplating deviating from its Policy for the following reasons:

- The nature of the proposed project: The Company provides necessary rail transportation services between businesses in Oneida County and CSX Corporation.
- The nature of the property before the project begins: The project has been under a PILOT and an extension under the current terms is essential for the long-term viability of local rail service in Oneida County and uninterrupted railroad transportation operations.
- The economic condition of the area at the time of the application: The Facility is located in an area that was designated an economic development zone pursuant to Article 18-B of the General Municipal Law, and is therefore located in a "highly distressed area" (as defined in Section 854(18) of the New York General Municipal Law) and remains a targeted area for development.
- The extent to which a project will create or retain permanent, private sector jobs: The company will be retaining 12 jobs and creating 2 jobs.
- The impact of the project and the proposed tax exemptions on affected tax jurisdictions: It will have no impact on affected tax jurisdictions insofar as the project has been under a 100% PILOT for 20+ years
- The impact of the proposed project on existing and proposed businesses and economic development projects in the County: Increasing of taxes on the project would result in increased fees to the users of the railroad service. The Company provides the sole rail service to the Griffiss Business & Technology Park and

several tenants within the Park rely on its service. The company is dedicated to meeting the rail obligations to businesses under the rail lines.

- o The extent to which the proposed project will provide a benefit (economic or otherwise) not otherwise available within the County of Oneida: The sole business of the Company is to provide essential rail transportation services in Oneida County.

WHEREAS, by resolution duly adopted on May 5, 2023, (the “Inducement Resolution”) the Agency decided to proceed under the provisions of the Act to lease the Facility and enter into the Lease Agreement and Second Amended Leaseback; and

WHEREAS, after sending written notice to all affected tax jurisdictions via certified mail, which notice included a copy of the inducement resolution and the reasons the Agency intends to deviate from Policy, the Agency conducted public hearings on April 18, 2023 and April 20, 2023 and has received all comments submitted with respect to the Financial Assistance and the nature and location of the Facility; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities which may arise in connection with the Project and the Agency’s leasehold interest in the Facility; and

NOW, THEREFORE, BE IT RESOLVED by the Oneida County Industrial Development Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

(a) 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; and

(b) The Facility constitutes a “project”, as such term is defined in the Act; and

(c) The 2023 Facility Extension and the Agency’s extended Financial Assistance with respect thereto, will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Oneida County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The 2023 Facility Extension is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and

(e) Based upon representations of the Company and Company’s Counsel, the Facility conforms with the local zoning laws and planning regulations of Oneida County and all regional and local land use plans for the area in which the Facility is located; and

(f) The SEQRA findings adopted by the Agency on March 16, 2012 as reaffirmed on May 5, 2023 encompassed the actions to be undertaken by this resolution and no changes have been made since that time to the proposed action that would create new or increased adverse environmental impacts; and

(g) It is desirable and in the public interest for the Agency to undertake the 2023 Facility Extension; and

(h) The Deed, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Agency conveys to the Company a fee interest in the Facility, subject in all respects to the First Amended Lease Agreement and such that no merger of the fee interest and leasehold interest shall occur; and

(i) The Lease Agreement, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Company grants the Agency a leasehold interest in the Facility; and

(j) The Second Amended Leaseback, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Agency leases the Facility back to the Company; and

(k) The Second Amended and Restated Payment-in-Lieu-of-Tax Agreement (the "Second Amended PILOT") between the Company and the Agency, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Agency and the Company set forth the terms and conditions of their Agreement regarding the Company's payments in lieu of real property taxes; and

(l) The First Amended and Restated Environmental Compliance and Indemnification Agreement (the "First Amended Environmental") between the Company and the Agency will be an effective instrument whereby the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws; and

(m) The Job Obligation and Recapture Agreement (the "Recapture Agreement") between the Company and the Agency will be an effective instrument whereby the Company agrees that the Financial Assistance is conditioned upon the Company meeting the Employment Obligation and other stated objectives of the Project.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) convey to the Company a fee interest in the Facility pursuant to the Deed; (ii) execute, deliver and perform the Deed, (iii) acquire a leasehold interest in the Facility pursuant to the Lease Agreement, (iv) execute, deliver and perform the Lease Agreement, (v) lease the Facility back to the Company pursuant to the Second

Amended Leaseback, (vi) execute, deliver and perform the Second Amended Leaseback, (vii) execute, deliver and perform the Second Amended PILOT, (viii) execute, deliver and perform the First Amended Environmental, (ix) execute, deliver and perform the Recapture Agreement and (x) deviate from Policy and provide the Financial Assistance to the Company in support of the Project, all subject to satisfaction of the conditions to closing described in the Inducement Agreement and Project Agreement between the Agency and the Company.

Section 3. The Agency is hereby authorized to convey to the Company a fee interest and accept a leasehold interest in the real property described in Exhibit A to the Lease Agreement and the personal property described in Exhibit B to the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 4. The form and substance of the Deed, the Lease Agreement, the Second Amended Leaseback, the First Amended Environmental, the Recapture Agreement and the Second Amended PILOT (each in substantially the forms presented to the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 5.

(a) The Chairman, Vice Chairman, Secretary or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the the Deed, the Lease Agreement, the Second Amended Leaseback, the First Amended Environmental, the Recapture Agreement and the Second Amended PILOT, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Secretary or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "Closing Documents"). The execution thereof by the Chairman, Vice Chairman, or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, Secretary or member of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Leaseback Agreement).

Section 6. 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 Closing Documents, and to execute and deliver all such additional certificates, instruments and documents, 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 Closing Documents binding upon the Agency.

Section 7. This resolution shall take effect immediately.

