

**PRELIMINARY INDUCEMENT RESOLUTION  
ZINC8 ENERGY SOLUTIONS USA INC. PROJECT**

A regular meeting of Ulster County Industrial Development Agency (the "Agency") was convened in public session at the Ulster County Office Building, Legislative Chambers, 6<sup>th</sup> floor located at 244 Fair Street in the City of Kingston, Ulster County, New York on December 21, 2022 at 9:00 o'clock a.m., local time.

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

PRESENT:

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Steven Kelley	Treasurer
Michael J. Ham	Secretary
Rachel Silverman, Esq.	Assistant Treasurer
Rashida Tyler	Assistant Secretary
Kaustubh Wahal	Member

ABSENT:

Lynn Archer	Vice Chair
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ATTENDING BY PHONE:

Diane Eynon, Ph.D.	Chair
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AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

A. Joseph Scott, III, Esq.	Agency Counsel
Amber Feaster, CPA	Ulster County Administrative Staff

The following resolution was offered by Kaustubh Wahal, seconded by Steven Kelley, to wit:

Resolution No. 1222-\_\_\_\_\_

RESOLUTION TAKING OFFICIAL ACTION TOWARD THE ISSUANCE OF REVENUE BONDS IN AN AMOUNT SUFFICIENT TO FINANCE THE ACQUISITION, RENOVATION, RECONSTRUCTION, INSTALLATION AND LEASING OF A CERTAIN MANUFACTURING PROJECT FOR ZINC8 ENERGY SOLUTIONS USA INC. AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PRELIMINARY AGREEMENT WITH RESPECT TO SUCH TRANSACTION.

WHEREAS, Ulster County 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 787 of the 1976 Laws of New York, as amended, constituting Section 923 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 issue its industrial development revenue bonds to finance the cost of the acquisition, construction, reconstruction and installation of one or more "projects" (as defined in the Act), to acquire, construct, reconstruct and install said projects 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, Zinc8 Energy Solutions USA Inc. (the "Company"), has presented an application (the "Application") to the Agency, requesting that the Agency consider undertaking a project (the "Project") consisting of the following: (A) the acquisition and installation of certain machinery, equipment and other tangible personal property including, without limitation, tenant improvement and finish (collectively, the "Equipment") and the undertaking of various tenant and interior fit-up and other improvements (collectively, the "Improvements") (the Equipment and the Improvements being collectively referred to as the "Project Facility") to the building containing approximately 237,000 square feet of space (the "Facility") located on parcels of land at 300 Enterprise Drive (Tax Map Number: 48.7-1-29.800) in the Town of Ulster, Ulster County, New York (collectively, the "Land"), the Land and the Facility to be owned by iPark 87 LLC (the "Owner") and leased by the Owner to the Company to be used by the Company as a manufacturing/commercial/industrial facility for commercial, manufacturing, and warehouse space and related uses; (B) the financing of all or a portion of the costs of the foregoing by the issuance of taxable and/or tax-exempt revenue bonds of the Agency in one or more issues or series in an aggregate principal amount sufficient to pay all or a portion of the cost of undertaking the Project, together with necessary incidental costs in connection therewith, presently estimated to equal approximately \$10,000,000 (the "Obligations"); (C) the payment of a portion of the costs incidental to the issuance of the Obligations, including issuance costs of the Obligations and any reserve funds as may be necessary to secure the Obligations; (D) the granting of certain other "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including exemption from certain sales taxes (collectively with the Obligations, the "Financial Assistance"); and (E) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, pursuant to 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 (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the Agency has not yet made a preliminary determination as to the potential environmental significance of the Project and therefore has not yet determined whether an environmental impact statement is required to be prepared with respect to the Project; and

WHEREAS, pursuant to the Act, any preliminary approval of the Project contained herein is contingent upon a determination by the members of the Agency to proceed with the Project following satisfaction of (A) all requirements of SEQRA that relate to the Project and (B) the public hearing and notice requirements and other procedural requirements contained in Section 859-a of the Act; and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Company to undertake the Project in Ulster County, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

WHEREAS, the Agency desires to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of Ulster County, New York by undertaking the Project in Ulster County, New York; and

WHEREAS, interest on the Obligations will not be excludable from gross income for federal income tax purposes unless (A) pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations of the United States Treasury Department thereunder (the "Treasury Regulations"), the issuance of the Obligations is approved by the "applicable elected representative" of Ulster County, New York after the Agency has held a public hearing on the nature and location of the Project Facility and the issuance of the Obligations; (B) pursuant to Section 144(a) of the Code, at least ninety-five percent (95%) of the net proceeds of the Obligations are used to provide a "manufacturing facility", as defined in Section 144(a)(12)(C) of the Code; and (C) pursuant to Section 146 of the Code, there is allocated to the Obligations a portion of the private activity bond volume cap of the Agency and/or the State of New York sufficient to equal the face amount of the Obligations;

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

Section 1. The Agency has reviewed the Application and, based upon the representations made by the Company to the Agency in the Application and at this meeting and, based thereon, the Agency hereby makes the following findings and determinations with respect to the Project:

(A) Based on a preliminary review of the Application and subject to further review by the Agency staff and Agency Counsel, the Project constitutes a "project" within the meaning of the Act; and

(B) The completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

(C) The Project does not constitute a project where facilities or property are primarily used in making retail sales of goods or services to customers who personally visit such facilities or property; and

(D) The granting of the Financial Assistance by the Agency with respect to the Project, through the issuance of the Obligations and the granting of the various tax exemptions described in Section 2(E) of this Resolution, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Ulster County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act; and

(E) Undertaking the Project will serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State of New York; and

(F) Upon compliance with the provisions of the Act and SEQRA, the Agency would then be authorized under the Act to undertake the Project in order to promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Ulster County, New York and the State of New York and improve their standard of living.

provided, however, that the foregoing determinations shall not entitle or permit the Company to commence the acquisition, reconstruction, renovation or installation of the Project Facility, nor commit the Agency to grant any Financial Assistance with respect to the Project, unless and until the Agency shall decide to proceed with the Project following a determination by the Agency that all requirements of SEQRA that relate to the Project and to the issuance of the Obligations have been fulfilled.

Section 2. If, following full compliance with SEQRA and the requirements of the Act, including, but not limited to the holding of a public hearing pursuant to Section 859-a of the Act, the Agency adopts a future resolution (the "Future Resolution") determining to proceed with the Project and to grant the Financial Assistance with respect thereto and the Company complies with all conditions set forth in the Preliminary Agreement and the Future Resolution, then the Agency will (A) acquire an interest in the Project Facility from the Company pursuant to a deed, lease agreement or other documentation to be negotiated between the Agency and the Company (the "Acquisition Agreement"); (B) renovate and reconstruct the Facility and acquire and install the Equipment in the Facility or elsewhere on the Land; (C) lease (with the obligation to purchase) or sell the Project Facility to the Company pursuant to a lease agreement or an installment sale agreement (hereinafter, the "Project Agreement") between the Agency and the Company whereby the Company will be obligated, among other things, (1) to make payments to the Agency in amounts and at times so that such payments will be adequate to enable the Agency to timely pay all amounts due on the Acquisition Agreement and (2) to pay all costs incurred by the Agency with respect to the Project and/or the Project Facility, including all costs of operation and maintenance, all taxes and other governmental charges, and the reasonable fees and expenses incurred by the Agency with respect to or in connection with the Project and/or the Project Facility; (D) secure the Obligations in such manner as the Agency, the Company and the purchasers of the Obligations shall mutually deem appropriate; and (E) provide the Financial Assistance with respect to the Project, in accordance with the Agency's uniform tax exemption policy, including exemption from sales taxes relating to the acquisition, reconstruction, renovation and installation of the Project Facility, all as contemplated by the Preliminary Agreement and the Future Resolution.

Section 3. The Company is hereby authorized to conduct such environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary or convenient to enable the Agency to make its determination whether to proceed with the Project and to grant such Financial Assistance; provided, however, that such authorization shall not entitle or permit the Company to commence the acquisition, reconstruction, renovation or installation of the Project Facility unless and until the Agency shall determine that all requirements of SEQRA and Section 859-a of the Act that relate to the Project have been fulfilled. The officers, agents and employees of the Agency are hereby directed to proceed to comply with the provisions of SEQRA and to do such things or perform such acts as may allow the Agency to proceed to its final consideration of the Project. This Resolution constitutes an authorization to conduct concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning with respect to the Project within the meaning of Section 617.3(c)(2) of

the Regulations and a determination of compliance with technical requirements within the meaning of Section 617.3(c)(2) of the Regulations and does not constitute, and shall not be deemed to constitute, either an approval by the Agency of the Project for the purposes of the Act or SEQRA or a commitment by the Agency to approve the Project or to grant such Financial Assistance.

Section 4. If the Agency adopts the Future Resolution, the undertaking and completing of the Project by the Agency, and the granting of the Financial Assistance with respect to the Project as contemplated by Section 2 of this Resolution, shall be subject to: (A) the determination by the members of the Agency to proceed with the Project following a determination by the members of the Agency that all requirements of (1) SEQRA that relate to the Project have been fulfilled and (2) the public hearing requirements under Section 859-a of the Act have been satisfied; (B) execution and delivery by the Company of the Preliminary Agreement, which sets forth certain conditions for the undertaking and completing of the Project by the Agency, and satisfaction by the Company of all the terms and conditions of the Preliminary Agreement applicable to the Company; (C) agreement between the Agency and the Company as to the conveyance of the Land to the Agency; (D) agreement between the Company and the Agency as to payment of the administrative fee of the Agency with respect to the Project; (E) agreement by the Agency, the Company and the purchasers of the Obligations on mutually acceptable terms for as to the Obligations and for the sale and delivery thereof and mutually acceptable terms and conditions for the security for the payment thereof; (F) if interest on the Obligations is to be treated as excludable from gross income for federal income tax purposes, (1) at least ninety-five percent (95%) of the net proceeds of the Obligations must be used to provide a "manufacturing facility", as defined in Section 144(a)(12)(C) of the Code, (2) the County Executive of Ulster County, New York must have approved the issuance of the Obligations after a public hearing on the issuance of the Obligations and the nature and location of the Project Facility has been held by the Agency, as required by Section 147(f) of the Code, and (3) unless the Agency has sufficient unused allocation of private activity bond volume limit from the State of New York for the particular calendar year in which the Obligations are proposed to be issued and has determined to allocate to the Obligations a portion of such unused allocation of private activity bond volume limit, the Agency must have received notice from the New York State Commissioner of Economic Development that the Agency has received a supplemental allocation for the Obligations from a statewide bond reserve established pursuant to New York State law, all as provided in Section 146 of the Code, it being understood that by enacting this resolution the Agency is not committing itself to make such an allocation or to issue the Obligations if such an allocation is not made or received; (G) if any portion of the Financial Assistance to be granted by the Agency with respect to the Project is not consistent with the Agency's uniform tax exemption policy, the Agency must follow the procedures for deviation from such policy set forth in Section 874(b) of the Act prior to granting such portion of the Financial Assistance; and (H) the following additional condition(s): \_\_\_\_\_.

Section 5. The form, terms and substance of a preliminary agreement (the "Preliminary Agreement") (in the form typically used by the Agency and recommended by Agency Counsel in similar financings) are in all respects approved, and the Chair (or Vice Chair) of the Agency is hereby authorized, empowered and directed to execute and deliver said Preliminary Agreement in the name and on behalf of the Agency, said Preliminary Agreement to be substantially in the form presented to members of the Agency prior to execution and delivery, with such changes therein as shall be approved by the officer executing same on behalf of the Agency, the execution thereof by such officer to constitute conclusive evidence of such officer's approval of any and all changes or revisions therein from the form now before this meeting.

Section 6. From and after the execution and delivery of the Preliminary Agreement, the officers, agents and employees of the Agency are hereby authorized, empowered and directed to proceed

with the undertakings provided for therein on the part of the Agency and are further authorized to do all such acts and things and to execute all such documents as may be necessary or convenient to carry out and comply with the terms and provisions of the Preliminary Agreement as executed.

Section 7. It is intended that this Resolution shall constitute an affirmative "official intent" toward the issuance of the Obligations within the meaning of Section 1.103-8(a)(5) and Section 1.150-2(e)(1) of the United States Treasury Regulations.

Section 8. The law firm of Hodgson Russ LLP is hereby appointed Bond Counsel to the Agency with respect to all matters in connection with the Project. Bond Counsel for the Agency is hereby authorized, at the expense of the Company, to work with the Company, counsel to the Company, counsel to the Agency and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution.

Section 9. The Agency hereby authorizes the Chair of the Agency, prior to the issuance of any portion of the Obligations or the granting of any other Financial Assistance with respect to the Project, after consultation with the members of the Agency, (A) (1) to establish the time, date and place for a public hearing of the Agency to hear all persons interested in the Project and the proposed financial assistance being contemplated by the Agency with respect to the Project; (2) to cause notice of such public hearing to be given to the public by publishing a notice of such hearing in a newspaper of general circulation available to residents of the Town of Ulster, Ulster County, New York, such notice to comply with the requirements of Section 859-a of the Act and Section 147(f) of the Code and to be published no fewer than ten (10) days prior to the date established for such public hearing; (3) to cause notice of said public hearing to be given to the chief executive officer of the county and each county, town, village and school district in which the Project is to be located no fewer than ten (10) days prior to the date established for said public hearing; (4) to conduct such public hearing; and (5) to cause a report of said public hearing fairly summarizing the views presented at said public hearing to be promptly prepared and cause copies of said report to be made available to the members of the Agency and (B) to satisfy the public approval requirements contained in Section 147(f) of the Code.

Section 10. The Chair and/or Vice Chair of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 11. This Resolution shall take effect immediately.

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

Diane Eynon, Ph.D.	VOTING	<u>YES BY PHONE</u>
Lynn Archer	VOTING	<u>ABSENT</u>
Steven Kelley	VOTING	<u>YES</u>
Michael J. Ham	VOTING	<u>YES</u>
Rachel Silverman, Esq.	VOTING	<u>YES</u>
Rashida Tyler	VOTING	<u>YES</u>
Kaustubh Wahal	VOTING	<u>YES</u>

The foregoing Resolution was thereupon declared duly adopted.

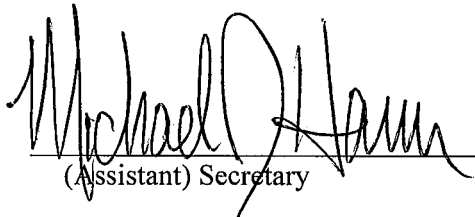
STATE OF NEW YORK        )  
                                      ) SS.:  
COUNTY OF ULSTER        )

I, the undersigned (Assistant) Secretary of Ulster County 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 21, 2022 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 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 21st day of December, 2022.

  
\_\_\_\_\_  
(Assistant) Secretary