

AMENDMENT NO. 1 TO PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AMENDMENT NO. 1 TO PAYMENT IN LIEU OF TAXES AGREEMENT (this "Amendment") dated as of March 8, 2024 (the "Effective Date"), by and between the COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at 201 West Third Street, Suite 115, Jamestown, NY 14701 (the "Agency"), and WELLS ENTERPRISES, INC., a corporation organized and existing under the laws of the State of Iowa and qualified to do business in the State of New York as a foreign corporation, having an address at 1 Blue Bunny Drive, Le Mars, IA 51031 (the "Company").

WITNESSETH:

WHEREAS, the Company previously presented an application for financial assistance (the "Original Application") to the Agency, which Original Application requested that the Agency consider undertaking a project (the "Original Project") consisting of, *inter alia*, the following: (A)(1) the acquisition of an interest in an approximately 2.9 acre parcel of land located at 115 West Doughty Street Extension, City of Dunkirk, County of Chautauqua, New York (the "New Land"), (2) the construction and installation of a power substation and related improvements on the Land (collectively, the "New Improvements" and together with the New Land, the "New Facility"), and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "New Equipment") necessary for the completion thereof (collectively, the "New Project Facility"), all of the foregoing for use by the Company and/or its affiliates as an electrical substation facility; (C) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes (collectively, the "Original Financial Assistance"); and (D) the lease (with an obligation to purchase), license or sale of the New Project Facility to the Company or such other entity(ies) as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on September 24, 2019 (the "Original Authorizing Resolution"), the Agency determined to proceed with the Original Project, to grant the Original Financial Assistance and to enter into the "straight lease transaction" (as such quoted term is defined in the Act) contemplated by the Lease Agreement (as hereinafter defined) and the other Transaction Documents (as defined in the Lease Agreement); and

WHEREAS, the Agency leased the New Facility from the Company pursuant to the terms and conditions set forth in that certain Company Lease Agreement dated as of March 1, 2021 (the "Company Lease") between the Applicant, as lessor, and the Agency, as lessee; and

WHEREAS, the Agency subleased the New Facility to the Company, all pursuant to the terms and conditions set forth in that certain Agency Lease Agreement (Uniform Project Agreement) dated as of March 1, 2021 (the "Lease Agreement") between the Agency and the Company and in the other Transaction Documents (as defined in the Lease Agreement); and

WHEREAS, pursuant to a certain Payment in Lieu of Taxes Agreement dated as of March 1, 2021 (the "PILOT Agreement") between the Company and the Agency, the Company agreed to make certain payments in lieu of real property taxes with respect to the New Facility; and

WHEREAS, pursuant to an application for financial assistance submitted to the Agency by the Company on or about August 17, 2023 (the "Application"), the Company has requested that the Agency consider undertaking a new project with respect to the New Project Facility (collectively, the "Project"), consisting of the following: (A) the extension of the term of the Agency's interest in the New Facility; and (B) the granting of certain additional "financial assistance" (within the meaning of Section 854(14) of the Act) in the form of an amended exemption from real property taxes (collectively, the "Additional Financial Assistance"); and

WHEREAS, by resolution adopted by the members of the Agency on December 19, 2023 (the "Authorizing Resolution"), the Agency determined to proceed with the Project, to grant the Additional Financial Assistance and to amend the Company Lease, the Lease Agreement and the other Transaction Documents in connection with the Project; and

WHEREAS, the Agency is willing to amend the PILOT Agreement to modify the terms and conditions of and extend the term of the PILOT Agreement, subject to the execution and delivery of this Amendment;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Company and the Agency mutually covenant, warrant and agree as follows:

SECTION 1. DEFINITIONS.

SECTION 1.1 Interpretation. For purposes of this Amendment, unless otherwise defined herein, all capitalized terms used herein including, but not limited to, those capitalized terms used and/or defined in the recitals hereto, shall have the respective meanings assigned to such terms in the Transaction Documents.

SECTION 2. AMENDMENTS.

SECTION 2.1 The following subsection (b) is added to Section 1 of the PILOT Agreement:

“(b) Lessee shall complete, and the Agency shall endeavor to submit to be filed, an amended application for tax exemption pursuant to Section 412-a of the Real Property Tax Law giving notice to the applicable tax assessors and Taxing Entities of the amendment of the payment terms of and extension of the Term of the PILOT (as defined below) with respect to the New Facility. Such amended application shall be submitted to the tax assessor of each Taxing Entity. Subject to acceptance of such amended application by the appropriate tax assessors, it is the intention of the parties that the effective date of the revised PILOT payment schedule provided for in Section 2(b) of this Agreement shall be first day of the 2024/25 School Tax Year for purposes of School Taxes and the first day of the 2025 General Tax Year for purposes of General and City Taxes (such dates, the “Amended PILOT Commencement Date.”

SECTION 2.2 The following subsection (b) is added to Section 2 of the PILOT Agreement:

“(b) From the Amended PILOT Commencement Date through and including the last day of the tenth (10th) fiscal tax year thereafter (such date, the “Abatement Expiration Date” and such period, the “Term of the PILOT”), the Company shall make payments in lieu of general real estate taxes to the Agency for the account and benefit of each Taxing Entity with respect to the New Facility as follows (collectively, the “PILOT Payments”):

| PILOT Year | Annual PILOT Payment |
|-------------------|-----------------------------|
| 1 | \$15,800 |
| 2 | \$15,958 |
| 3 | \$16,118 |
| 4 | \$16,279 |
| 5 | \$16,442 |
| 6 | \$16,606 |
| 7 | \$16,772 |
| 8 | \$16,940 |
| 9 | \$17,109 |
| 10 | \$17,280 |

From and after the Amended PILOT Commencement Date through and including the Abatement Expiration Date, the provisions of subsection (c) of this Section 2 shall be deemed replaced and superseded by the provisions of this subsection (b).”

SECTION 2.3 Effective as of the Amended PILOT Commencement Date, subsection (d) of Section 2 of the PILOT Agreement is hereby deleted in its entirety and replaced with the following:

“(d) Maximum Payment. Notwithstanding anything to the contrary herein, the PILOT Payments shall not exceed the amount Lessee would pay under normal calculations for any period. Hence, if the general real estate tax (calculated as if Lessee were the record owner of the New Facility and the Agency held no interest therein, and the New Facility were assessed at full value for purposes of taxation) otherwise due any Taxing Entity decreases due to a reduction in tax rates or otherwise below the PILOT Payments specified in Section 2(b) above, then the PILOT Payments due that Taxing Entity shall be decreased to equal the tax that would otherwise be due. If, however, a PILOT Payment has been so reduced, and the taxes that would otherwise be due subsequently increase, the PILOT Payment shall similarly increase, but not in excess of the amount specified in Section 2(b) above. Except as set forth in this paragraph, such PILOT Payments shall not be reduced during the Term of the PILOT, regardless of any reduction in the underlying assessment for the New Facility.”

SECTION 2.4 Section 7 of the PILOT Agreement is hereby amended by deleting the notice addresses for the Company and replacing them with the following:

“To the Company: Wells Enterprises, Inc.
1 Blue Bunny Drive
Le Mars, IA 51031
Attention: Dick Kennedy

With a copy to: Wright Calimeri, PLLC
525 Fairmount Avenue
Jamestown, NY 14701
Attention: Edward P. Wright, Esq.

SECTION 3. CONDITIONS.

SECTION 3.1 Conditions Precedent. This Amendment shall only become effective upon the fulfillment, prior to or contemporaneously with the delivery hereof, of the following conditions precedent:

(A) the execution and delivery by the Company and the Agency of an original or counterpart originals of this Amendment;

(B) the Company shall deliver such other documents, instruments and agreements as the Agency may reasonably require in connection with the transactions contemplated by this Amendment;

(C) all other documents and legal matters in connection with this Amendment and the transactions contemplated by the PILOT Agreement as amended by this Amendment shall be satisfactory in form and substance to the Agency; and

(D) the Company shall pay the fees and expenses (including reasonable attorneys' fees and expenses) imposed or incurred by the Agency in connection with the preparation, execution and delivery of this Amendment and the closing of the transactions contemplated hereby.

SECTION 4. MISCELLANEOUS.

SECTION 4.1 Representations and Warranties.

(A) All terms, conditions, covenants, representations and warranties of the Company contained in the Transaction Documents, except as expressly modified by this Amendment or by any document, instrument or agreement executed in connection with this Amendment, are ratified, confirmed and reaffirmed by the Company as of the date hereof, remain in full force and effect as of the date hereof, and are subject to the terms of this Amendment.

(B) The Company represents and warrants to the Agency that it has the necessary power and has taken all necessary action to make this Amendment the valid and enforceable obligation it purports to be, and that this Amendment constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(C) The Company represents and warrants to the Agency that no Event of Default specified in any of the Transaction Documents has occurred and no event which with notice or lapse of time or both would become such an Event of Default has occurred and is continuing.

(D) Neither the Company nor any Affiliate of the Company has employed or retained any appointed or elected government official to solicit or secure the Agency's agreement to enter into this Amendment upon an agreement or understanding for a commission or percentage, brokerage or contingent fee.

SECTION 4.2 Additional Matters. All other documents and legal matters in connection with this Amendment and the transactions contemplated by the PILOT Agreement as amended by this Amendment shall be satisfactory in form and substance to the Agency.

SECTION 4.3 Survival of Representations and Warranties. All representations and warranties made in this Amendment or any other document, instrument or agreement furnished in connection with this Amendment shall survive the execution and delivery of this Amendment and no investigation by the Agency or any closing shall affect the representations and warranties or the right of the Agency to rely upon them.

SECTION 4.4 Reference to PILOT Agreement. The PILOT Agreement, the Transaction Documents and any and all other agreements, documents, or instruments heretofore, now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the PILOT Agreement, are hereby amended so that any reference to the PILOT Agreement in the PILOT Agreement, the Transaction Documents or such other agreements, documents or instruments executed in connection with the PILOT Agreement shall mean a reference to the PILOT Agreement, as amended by this Amendment.

SECTION 4.5 Governing Law. This Amendment, the transactions described herein and the obligations of the parties hereto shall be construed under, and governed by, the laws of the State of New York, as in effect from time to time, without regard to principles of conflicts of laws.

SECTION 4.6 Successors and Assigns. The Company and the Agency, as such terms are used herein, shall include the legal representatives, successors and assigns of those parties.

SECTION 4.7 Counterparts. This Amendment may be executed in any number of counterparts and by the Company and the Agency on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same Amendment. This Amendment may be modified only by a written agreement signed by Authorized Representatives of the Company and the Agency.

SECTION 4.8 Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

SECTION 4.9 Conflicting Provisions. In the event of any conflict in the terms and provisions of this Amendment and the terms and provisions of the PILOT Agreement, the terms and provisions of this Amendment shall govern.

SECTION 4.10 No Waiver. Except as expressly provided herein, this Amendment shall not be construed to be a waiver or modification, express or implied, of any of the terms or provisions of the PILOT Agreement, any other Transaction Document or any other agreement, document or instrument executed and/or delivered in connection with any of the foregoing, or of any of the Agency's rights thereunder, all of which are and shall remain in full

force and effect. This Amendment shall not be construed to constitute a consent to other or further action by the Company or to entitle the Company to any other consent.

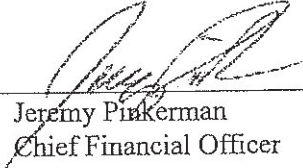
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SECTION 4.11 Entire Agreement. This Amendment constitutes the entire agreement and understanding between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior negotiations, understandings, and agreements between such parties with respect to such transaction.

IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto as of the day and year first above written.

Company:

WELLS ENTERPRISES, INC.

By: 
Jeremy Pinkerman
Chief Financial Officer

By: _____
Mark Meyer
Chief Operating Officer

By: _____
Mark Meyer
Chief Operating Officer

Agency:

**COUNTY OF CHAUTAUQUA INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Richard E. Dixon
Chief Financial Officer

[Signature Page to Amendment No. 1 to Payment in Lieu of Taxes Agreement]

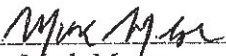
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Company:

WELLS ENTERPRISES, INC.

By: _____
Jeremy Pinkerman
Chief Financial Officer

By:  _____
Mark Meyer
Chief Operating Officer

By:  _____
Liam Killeen
Chief Executive Officer

Agency:

COUNTY OF CHAUTAUQUA INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Richard E. Dixon
Chief Financial Officer

[Signature Page to Amendment No. 1 to Payment in Lieu of Taxes Agreement]

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Company:

WELLS ENTERPRISES, INC.

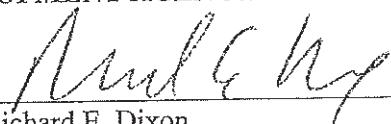
By: _____
Jeremy Pinkerman
Chief Financial Officer

By: _____
Mark Meyer
Chief Operating Officer

By: _____
Mark Meyer
Chief Operating Officer

Agency:

COUNTY OF CHAUTAUQUA INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Richard E. Dixon
Chief Financial Officer

[Signature Page to Amendment No. 1 to Payment in Lieu of Taxes Agreement]

STATE OF)
)SS.:
COUNTY OF)

On the ___ day of February, 2024, before me, the undersigned, personally appeared Jeremy Pinkerman, 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 Iowa)
)SS.:
COUNTY OF Plymouth)

On the 20 day of February, 2024, before me, the undersigned, personally appeared Mark Meyer, 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.

Barbara J. Knutson

Notary Public

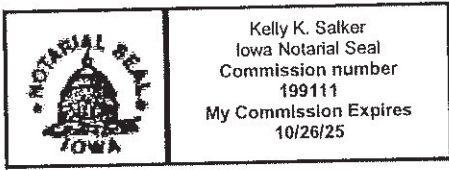
BARBARA J. KNUTSON
Commission Number 7
My Commission Expires
November 16, 2024

[Acknowledgment Page to Amendment No. 1 to Payment in Lieu of Taxes Agreement]

STATE OF Iowa)
COUNTY OF Polk)SS.:

On the 27th day of February, 2024, before me, the undersigned, personally appeared Liam Killeen, 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.

Kelly K. Salker
Notary Public



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

On the ___ day of February, 2024, before me, the undersigned, personally appeared Richard E. Dixon, 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

[Acknowledgment Page to Amendment No. 1 to Payment in Lieu of Taxes Agreement]

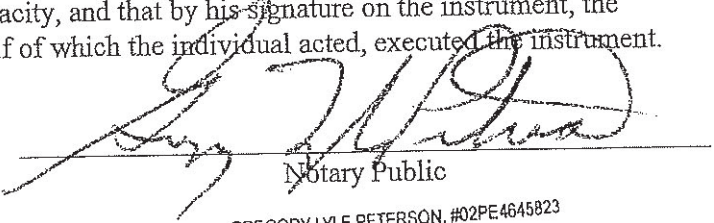
STATE OF)
)SS.:
COUNTY OF)

On the ___ day of February, 2024, before me, the undersigned, personally appeared Liam Killeen, 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)
)SS.:
COUNTY OF CHAUTAUQUA)

On the 15 day of February, 2024, before me, the undersigned, personally appeared Richard E. Dixon, 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

GREGORY LYLE PETERSON, #02PE4645823
Notary Public, State of New York
Qualified in Chautauqua County
My Commission Expires June 30, 2027

[Acknowledgment Page to Amendment No. 1 to Payment in Lieu of Taxes Agreement]