

# **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

## **APPLICATION FOR FINANCIAL ASSISTANCE**

Somerset Operating Company, LLC

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(Applicant Name)

6311 Inducon Corporate Drive, Suite One  
Sanborn, New York 14132  
Phone: 716-278-8760 Fax: 716-278-8769  
<http://niagaracountybusiness.com>

Updated March 2018

- I. Each applicant seeking financial assistance through the Niagara County Industrial Development Agency must complete and return the accompanying Application and Environmental Assessment forms. This information is necessary to determine project and/or applicant eligibility.
- II. Subject to the applicable statute, information provided by applicant will be treated as confidential until such time as the Agency takes action on the request. However, in accordance with Article 6 of the Public Officers Law, all records in possession of the Agency are open to public inspection and copy.
- III. The Niagara County Industrial Development Agency has a one thousand dollar (\$1000.00) non-refundable application fee that must accompany the application submission.
- IV. At the time of the project closing, project applicant is required to pay certain costs associated with the project. The applicant shall be responsible for the payment of an Agency fee in the amount of one percent (1.00%) of the total value of the project, together with Agency counsel fees as set forth in the Agency fee policy schedule, together with various related costs, including but not limited to public hearing expenses. Upon request, a fee summary will be provided to each applicant.
- V. One (1) original signed copy of the Application and Environmental Assessment form should be submitted with the Application for Assistance.

*The Niagara County Industrial Development Agency does not discriminate on the basis of race, color, religion, sex, sexual orientation, marital status, age, national origin, disability or status as a disabled or Vietnam Veteran or any other characteristic*

631.1 Inducon Corporate Drive ■ Sanborn, NY 14132-9099 ■ 716-278-8760  
Fax 716-278-8769 ■ [www.niagaracountybusiness.com](http://www.niagaracountybusiness.com)

# NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

## APPLICATION FOR FINANCIAL ASSISTANCE

### I. APPLICANT INFORMATION

Company Name: Somerset Operating Company, LLC

Mailing Address: 7725 Lake Road, Barker, New York 14012

Phone No.: (410) 770-9500

Fax No.: \_\_\_\_\_

Fed Id. No.: 36-4731063

Contact Person: Douglas Halliday, CFO Mailing Address: 9 Federal Street, Easton MD 21601; email: halliday@beowulfenergy.com

Principal Owners/Officers/Directors (list owners with 15% or more in equity holdings with percentage ownership):

Riesling Power LLC; 100% ownership; sole member

Corporate Structure (*attach schematic if applicant is a subsidiary or otherwise affiliated with another entity*)

Form of Entity

**Corporation**

Date of Incorporation: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

**Partnership**

General \_\_\_\_\_ or Limited \_\_\_\_\_

Number of general partners \_\_\_\_\_

If applicable, number of limited partners \_\_\_\_\_

Date of formation \_\_\_\_\_

Jurisdiction of Formation \_\_\_\_\_

**Limited Liability Company/Partnership** (number of members 1)

Date of organization: 2012

State of Organization: Delaware

**Sole Proprietorship**

If a foreign organization, is the applicant authorized to do business in the State of New York? Yes

If any of the above persons, or a group of them, owns more than a 50% interest in the company, list all other organizations which are related to the company by virtue of such persons having more than a 50% interest in such organizations.

Is the company related to any other organization by reason of more than 50% common ownership? If so, indicate name of related organization and relationship.

Riesling Power LLC, sole member of Applicant

Has the company (or any related corporation or person) made a public offering or private placement of its stock within the last year? If so, please provide offering statement used.

**APPLICANT'S COUNSEL**

Name: Harris Beach, PLLC

Address: 99 Garnsey Road, Pittsford, New York 14534

Phone No.: (585) 419-8606

Fax No.: email: candreucci@harrisbeach.com

**II. PROJECT INFORMATION**

A) Project Address: 7725 Lake Road

Tax Map Number 008.000-0001-001.(000C; 002; 011; 012; 000A; 000B);  
007.000-0003028.000 (Section/Block/Lot)

Located in City of \_\_\_\_\_

Located in Town of Somerset

Located in Village of \_\_\_\_\_

School District of Barker Central School District

B) Are utilities on site? Yes

Water \_\_\_\_\_ Electric \_\_\_\_\_

Gas \_\_\_\_\_ Sanitary/Storm Sewer \_\_\_\_\_

C) Present legal owner of the site Somerset Operating Company LLC

If other than from applicant, by what means will the site be acquired for this project? \_\_\_\_\_

D) Zoning of Project Site: Current: X Proposed: \_\_\_\_\_

E) Are any variances needed? N/A

F) Furnish a copy of any environmental application presently in process of completion concerning this project, providing name and address of the agency, and copy all pending or completed documentation and determinations.

G) Statement describing project (i.e. land acquisition, construction of manufacturing facility, etc.):

The Company was formed in 2012 as a result of the bankruptcy proceeding of the predecessor in interest. At that time, the Agency and the Company entered into a PILOT Agreement which was subsequently amended and restated in 2016. The PILOT Agreement was necessary for the Company to operate the Facility in an economical manner and retain employment within Niagara County. The PILOT Agreement expires on December 31, 2018 and if the Company is forced to pay unknown, excessive taxes, it may be forced to reduce current employment levels or, worse, cease its operations. The Company is seeking an extension of the existing PILOT Agreement for an additional two (2) years.

In 2016, the Company obtained a loan in the amount of \$25,000,000 from MUFJ Union Bank, N.A., which loan is secured by a Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Filing, dated September 1, 2016 (the "Mortgage"). Due to the Agency's leasehold interest in the Property, the Agency authorized the Executive Director to sign the Mortgage.

The Company is currently in discussions with the lender to increase the loan amount which will be secured by one or more revised mortgages on the Property, which will be required to be executed by the Company and the Agency. The increased mortgage amount does not exceed what was previously authorized by the Agency, therefore no additional benefits are being sought as part of this request. However, the Agency, through its counsel, will need to review the revised mortgage(s) documents to confirm that no additional benefits have been conferred and that the revised mortgage(s) is materially consistent with the prior mortgage documents. Accordingly, the Company hereby respectfully requests that the Agency authorize its appropriate officers, employees and agents to execute one or more revised mortgages in an amount not to exceed what was previously authorized by the Agency. The form of the revised mortgage(s) is still being finalized. A draft will be circulated to the Agency's counsel for review as soon as it is available.

H) Principal use of project upon completion:

- |  |                                       |   |                                      |
|--|---------------------------------------|---|--------------------------------------|
| <input type="checkbox"/> manufacturing | <input type="checkbox"/> warehousing  | <input type="checkbox"/> research         | <input type="checkbox"/> offices     |
| <input type="checkbox"/> industrial    | <input type="checkbox"/> recreation   | <input type="checkbox"/> retail           | <input type="checkbox"/> residential |
| <input type="checkbox"/> training      | <input type="checkbox"/> data process | <input checked="" type="checkbox"/> other |                                      |

If other, explain: Power Generation. Extension of Current PILOT Agreement to allow Company to continue to operate business in Niagara County and maintain material employment levels.

I) Estimated Project Costs, including: N/A

Value of property to be acquired: \$ \_\_\_\_\_ - \_\_\_\_\_

Value of improvements: \$ \_\_\_\_\_ - \_\_\_\_\_

Value of equipment to be purchased: \$ \_\_\_\_\_ - \_\_\_\_\_

Estimated cost of engineering/architectural services: \$ \_\_\_\_\_ - \_\_\_\_\_

Other: \$ \_\_\_\_\_ - \_\_\_\_\_

Total Capital Costs: \$ \_\_\_\_\_ - \_\_\_\_\_

Project refinancing; estimated amount  
(for refinancing of existing debt only) \$ \_\_\_\_\_ - \_\_\_\_\_

*Sources of Funds for Project Costs:*

Bank Financing: \$ \_\_\_\_\_ - \_\_\_\_\_

Equity (excluding equity that is attributed to grants/tax credits) \$ \_\_\_\_\_ - \_\_\_\_\_

Tax Exempt Bond Issuance (if applicable) \$ \_\_\_\_\_ - \_\_\_\_\_

Taxable Bond Issuance (if applicable) \$ \_\_\_\_\_ - \_\_\_\_\_

Public Sources (Include sum total of all state and federal  
grants and tax credits) \$ \_\_\_\_\_ - \_\_\_\_\_

Identify each state and federal grant/credit:

\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

Total Sources of Funds for Project Costs: \$ \_\_\_\_\_

J) Inter-Municipal Move Determination

Will the project result in the removal of a plant or facility of the applicant from one area of the State of New York to another?

Yes or  No

Will the project result in the removal of a plant or facility of another proposed occupant of the project from one area of the State of New York to another area of the State of New York?

Yes or  No

Will the project result in the abandonment of one or more plants or facilities located in the State of New York?

Yes or  No

If Yes to any of the questions above, explain how, notwithstanding the aforementioned closing or activity reduction, the Agency's Financial Assistance is required to prevent the Project from relocating out of the State, or is reasonably necessary to preserve the Project occupant's competitive position in its respective industry:

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Project Data

1. Project site (land)

(a) Indicate approximate size (in acres or square feet) of project site.

\_\_\_\_\_

(b) Are there buildings now on the project site?  Yes  No

(c) Indicate the present use of the project site.

\_\_\_\_\_ Power Generation \_\_\_\_\_

(d) Indicate relationship to present user of project.

\_\_\_\_\_ Applicant \_\_\_\_\_

2. Does the project involve acquisition of an existing building or buildings? If yes, indicate number, size and approximate age of buildings:

\_\_\_\_\_ No \_\_\_\_\_

3. Does the project consist of the construction of a new building or buildings? If yes, indicate number and size of new buildings:

\_\_\_\_\_ No \_\_\_\_\_

4. Does the project consist of additions and/or renovations to existing buildings? If yes, indicate nature of expansion and/or renovation:

\_\_\_\_\_ No \_\_\_\_\_

5. What will the building or buildings to be acquired, constructed or expanded be used for by the company? (Include description of products to be manufactured, assembled or processed, and services to be rendered. . .

\_\_\_\_\_ N/A \_\_\_\_\_

. . .including the percentage of building(s) to be used for office space and an estimate of the percentage of the functions to be performed at such office not related to the day-to-day operations of the facilities being financed.)

\_\_\_\_\_ N/A \_\_\_\_\_

6. If any space in the project is to be leased to third parties, indicate total square footage of the project amount to be leased to each tenant and proposed use by each tenant.

\_\_\_\_\_ N/A \_\_\_\_\_



7. List principal items or categories of equipment to be acquired as part of the project.

N/A

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8. Has construction work on this project begun? N/A

Complete the following

- |                            |           |          |                  |
|----------------------------|-----------|----------|------------------|
| (a) site clearance         | _____ Yes | _____ No | _____ % complete |
| (b) foundation             | _____ Yes | _____ No | _____ % complete |
| (c) footings               | _____ Yes | _____ No | _____ % complete |
| (d) steel                  | _____ Yes | _____ No | _____ % complete |
| (e) masonry work           | _____ Yes | _____ No | _____ % complete |
| (f) other (describe below) | _____ Yes | _____ No | _____ % complete |

*[Remainder of this Page Intentionally Left Blank]*

III. FINANCIAL ASSISTANCE REQUESTED

A) Benefits Requested: Extension of Current PILOT Agreement to allow Company to continue to operate business in Niagara County and maintain material employment levels.

Sales Tax Exemption     IRB     MRT Exemption     Real Property Agreement

B.) Value of Incentives:

IDA PILOT Benefit: Agency staff will indicate the amount of PILOT Benefit based on estimated Project Costs as contained herein and anticipated tax rates and assessed valuation, including the annual PILOT Benefit abatement amount for each year of the PILOT benefit year and the sum total of PILOT Benefit abatement amount for the term of the PILOT as depicted under the heading "Real Property Tax Benefit (Detailed)" of the Application.

Estimated duration of Property Tax exemption:

An extension of the existing PILOT Agreement for an additional two (2) years.

Sales and Use Tax: N/A

Estimated value of Sales Tax exemption for facility construction: \$ \_\_\_\_\_

Estimated Sales Tax exemption for fixtures and equipment: \$ \_\_\_\_\_

Estimated duration of Sales Tax exemption: \_\_\_\_\_

Mortgage Recording Tax Exemption Benefit: N/A

Estimated value of Mortgage Recording Tax exemption: \$ \_\_\_\_\_

IRB Benefit: N/A

IRB inducement amount, if requested: \$ \_\_\_\_\_

Is a purchaser for the Bonds in place?

Yes or  No

Percentage of Project Costs financed from Public Sector sources:

Agency staff will calculate the percentage of Project Costs financed from Public Sector sources based upon Sources of Funds for Project Costs as depicted above under the heading "Estimated Project Costs" (Section II(I)) of the Application.

C.) Likelihood of Undertaking Project without Receiving Financial Assistance

Please confirm by checking the box, below, if there is likelihood that the Project would not be undertaken but for the Financial Assistance provided by the Agency?

Yes (see below for explanation) or  No

The PILOT Agreement expires on December 31, 2018 and if the Company is forced to pay unknown, excessive taxes, it may be forced to reduce current employment levels or, worse, cease its operations

If the Project could be undertaken without Financial Assistance provided by the Agency, then provide a statement in the space provided below indicating why the Project should be undertaken by the Agency:

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IV. **EMPLOYMENT PLAN**

	Current # of jobs at proposed project location or to be relocated to project location	IF FINANCIAL ASSISTANCE IS GRANTED – project the number of FTE and PTE jobs to be RETAINED	IF FINANCIAL ASSISTANCE IS GRANTED – project the number of FTE and PTE jobs to be CREATED upon THREE Years after Project completion	Estimate number of residents of the Labor Market Area in which the Project is located that will fill the FTE and PTE jobs to be created upon THREE Years after Project Completion **
Full time (FTE)	78	78	-	-
Part Time (PTE)	0	0	-	-
Total Payroll	7,800,000	7,800,000	-	-

\*\* For purposes of this question, please estimate the number of FTE and PTE jobs that will be filled, as indicated in the third column, by residents of the Local Labor Marker Area, in the fourth column. The Local Labor Marker Area includes Niagara County, Erie County,

Chautauqua County, Cattaraugus County, Allegany County, Wyoming County, Genesee County, and Orleans County.

Salary and Fringe Benefits for Jobs to be Retained and/or Created:

Category of Jobs to be Retained and Created	Number of Jobs Per Category	Average Salary or Range of Salary	Average Fringe Benefits or Range of Fringe Benefits
Management			
Professional			
Administrative			
Production			
Independent Contractor			
Other			

III. REPRESENTATIONS BY THE APPLICANT

The Applicant understands and agrees with the Agency as follows:

- A. Job Listings In accordance with Section 858-b(2) of the New York General Municipal Law, the applicant understands and agrees that, if the proposed project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the proposed project must be listed with the New York State Department of Labor Community Services Division (the "DOL") and with the administrative entity (collectively with the DOL, the "JTPA Entitle") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA") in which the project is located.
- B. First Consideration for Employment In accordance with Section 858-b(2) of the General Municipal Law, the applicant understands and agrees that, if the proposed project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, where practicable, the applicant must first consider persons eligible to participate in JTPA programs who shall be referred by the JTPA Entities for new employment opportunities created as a result of the proposed project.
- C. A liability and contract liability policy for a minimum of three million dollars will be furnished by the Applicant insuring the Agency.

- D. Annual Sales Tax Filings In accordance with Section 874(8) of the General Municipal Law, the Applicant understands and agrees that, if the proposed project receives any sales tax exemptions as part of the Financial Assistance from the Agency, in accordance with Section 874(8) of the General Municipal Law, the applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the applicant and all consultants or subcontractors retained by the Applicant.
- E. Annual Employment Reports The applicant understands and agrees that, if the proposed project receives any Financial Assistance from the Agency, the applicant agrees to file, or cause to be filed, with the Agency, on an annual basis, reports regarding the number of people employed at the project site.
- F. Compliance with N.Y. GML Sec. 862(1): Applicant understands and agrees that the provisions of Section 862(1) of the New York General Municipal Law, as provided below, will not be violated if Financial Assistance is provided for the proposed Project:
- § 862. Restrictions on funds of the agency. (1) No funds of the agency shall be used in respect of any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.
- G. Compliance with Applicable Laws: The Applicant confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the proposed Project is in substantial compliance with applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.
- H. False and Misleading Information: The Applicant confirms and acknowledges that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any Financial Assistance and the reimbursement of an amount equal to all or part of any tax exemption claimed by reason of the Agency's involvement the Project.
- I. Recapture: Should the Applicant not expend or hire as presented, the Agency may view such information/status as failing to meet the established standards of economic performance. In such events, some or all of the benefits taken by the Applicant will be subject to recapture.
- J. Absence of Conflicts of Interest The applicant has received from the Agency a list of the members, officers, and employees of the Agency. No member, officers or employee of the Agency has an interest, whether direct or indirect, in any transaction contemplated by this Application, except as herein described.

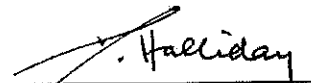
The Applicant and the individual executing this Application on behalf of applicant acknowledge that the Agency and its counsel will rely on the representations made in this Application when acting hereon and hereby represents that the statements made herein do not contain any

untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein not misleading.


STATE OF NEW YORK                    )  
COUNTY OF                            ) ss.:

Douglas Halliday, being first duly sworn, deposes and says:

1. That I am the Chief Financial Officer of Somerset Operating Company, LLC and that I am duly authorized on behalf of the Applicant to bind the Applicant.
2. That I have read the attached Application, I know the contents thereof, and that to the best of my knowledge and belief, this Application and the contents of this Application are true, accurate and complete.

  
\_\_\_\_\_  
(Signature of Officer)

Subscribed and affirmed to me under penalties of perjury  
this 9 day of July, 2018.

  
\_\_\_\_\_  
(Notary Public)

This Application should be submitted to the Niagara County Industrial Development Agency, 6311 Inducon Corporate Drive, Suite One, Sanborn, New York 14132.

Attach copies of preliminary plans or sketches of proposed construction or rehabilitation or both.

Attach the following Financial Information of the Company

1. Financial statements for last two fiscal years (unless included in company's Annual Reports).
2. Company's annual reports (or Form 10-K's) for the two most recent fiscal years.
3. Quarterly reports (Form 10Q's) and current reports (Form 8-K's) since the most recent Annual Report, if any.
4. In addition, please attach the financial information described above in items 1, 2 and 3 of any expected Guarantor of the proposed bond issue, if different from the company.

**HOLD HARMLESS AGREEMENT**

Applicant hereby releases the NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY and the members, officers, servants, agents and employees thereof (the "Agency") from, agrees that the Agency shall not be liable for and agrees to indemnify, defend and hold the Agency harmless from and against any and all liability arising from or expense incurred by (A) the Agency's examination and processing of, and action pursuant to or upon, the attached Application, regardless of whether or not the Application or the Project described therein or the tax exemptions and other assistance requested therein are favorably acted upon by the Agency, (B) the Agency's acquisition, construction and/or installation of the Project described therein and (C) any further action taken by the Agency with respect to the Project; including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. If, for any reason, the Applicant fails to conclude or consummate necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable, proper or requested action, or withdraws, abandons, cancels or neglects the Application, or if the Agency or the Applicant are unable to reach final agreement with respect to the Project, then, and in the event, upon presentation of an invoice itemizing the same, the Applicant shall pay to the Agency, its agents or assigns, all costs incurred by the Agency in processing of the Application, including attorneys' fees, if any.

*D. Halliday*  
(Applicant Signature)

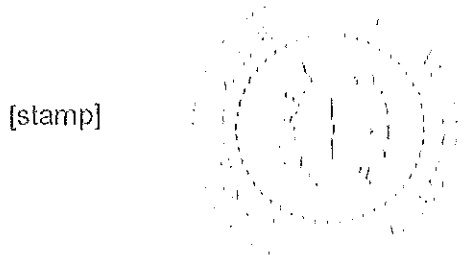
By: \_\_\_\_\_

Name: Douglas Halliday

Title: Chief Financial Officer

*K. Payne*  
(Notary Public)

Sworn to before me this 9 day  
of July, 2018



**Section V: Estimate of Real Property Tax Abatement Benefits\*\*\* and Percentage of Project Costs financed from Public Sector sources**

**\*\* Section V of this Application will be: (i) completed by IDA Staff based upon information contained within the Application, and (ii) provided to the Applicant for ultimate inclusion as part of this completed Application.**

**PILOT Estimate Table Worksheet – Somerset Operating Company**

Dollar Value of New Construction and Renovation Costs	Estimated New Assessed Value of Property Subject to IDA*	County Tax %	School Tax %	Town Tax %
N/A	N/A	31.50%	59.25%	9.25

\*Apply equalization rate to value

PILOT Year	% Payment	County PILOT Amount	School PILOT Amount	Town PILOT Amount	Spec. Dist	Total PILOT	Full Tax Payment w/o PILOT	Net Exemption
1	N/A	868,536	1,633,675	255,046	242,743	3,000,000	3,000,000	0
2	N/A	868,536	1,633,675	255,046	242,743	3,000,000	3,000,000	0

\*\*\* Estimates provided are based on current property tax rates and assessment value (current as of date of application submission) and have been calculated by IDA staff



**Cost Benefit Analysis:**

**To be completed/calculated by AGENCY**

	<u>Costs =</u> <u>Financial Assistance</u>	<u>Benefits =</u> <u>Economic Development</u>
*Estimated Sales Tax Exemption	\$ <u>0</u>	New Jobs Created Permanent 0 Temporary Existing Jobs Retained Permanent <u>78</u> Temporary
Estimated Mortgage Tax Exemption	\$ 82,500	Expected Yearly Payroll \$7,800,000
Estimated Property Tax Abatement	\$ 0	Expected Gross Receipts \$ _____ Additional Revenues to School Districts <u>\$1,633,675</u> _____ _____ Additional Revenues to Municipalities <u>\$868,536</u> <u>\$255,046</u> _____ _____ Other Benefits _____
Estimated Interest Savings IRB Issue	\$ <u>N/A</u>	Private Funds invested \$ Likelihood of accomplishing proposed project within three (3) years <input checked="" type="checkbox"/> Likely or <input type="checkbox"/> Unlikely

\* Estimated Value of Goods and Services to be exempt from sales and use tax as a result of the Agency's involvement in the Project. PLEASE NOTE: These amounts will be verified and there is a potential for a recapture of sales tax exemptions (see "Recapture" on page 11).

\$ 0 \_\_\_\_\_ (to be used on the NYS ST-60)