

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
SUPPLEMENTAL INDUCEMENT RESOLUTION**

**283 SHIP CANAL PARKWAY, LLC, AND/OR INDIVIDUAL(S) OR AFFILIATE(S),
SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS
BEHALF**

A regular meeting of the Erie County Industrial Development Agency was convened on Wednesday, June 23, 2021 at 12:00 p.m.

The following resolution was duly offered and seconded, to wit:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (ii) APPROVING A DEVIATION FROM THE UNIFORM TAX EXEMPTION POLICY OF THE AGENCY WITH RESPECT TO A PAYMENT-IN-LIEU-OF-TAXES AGREEMENT; AND (iii) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A PAYMENT-IN-LIEU-OF-TAXES AGREEMENT AND RELATED DOCUMENTS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 293 of the Laws of 1970 of the State of New York, as amended (collectively, the “Act”), the ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the “Agency”) was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing, commercial and other facilities as authorized by the Act; and

WHEREAS, the Company has submitted an application to the Agency (the “Application”) requesting the Agency’s assistance with a certain project (the “Project”) consisting of: (i) the acquisition by the Agency of a leasehold interest in certain property located on 283 Ship Canal Parkway, City of Buffalo, Erie County, New York (the “Land”), (ii) the development and construction on the Land of an approximately 335,000+/- square-foot warehousing and distribution center within the Buffalo Lakeside Commerce Park (the “Improvements”), and (iii) the acquisition by the Company in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the “Equipment”); and, together with the Land and the Improvements, the “Facility”); and

WHEREAS, pursuant to General Municipal Law Section 859-a, and pursuant to Governor Cuomo’s Executive Order 202.15 issued on April 9, 2020, and as amended from time to time, authorizing the conduct of public hearings through the use of telephone conference, video conference and/or other similar service, the Agency, on April 26, 2021 at 9:00 a.m., held a public hearing with respect to the Project and the proposed Financial Assistance (as hereinafter defined) being contemplated by the Agency (the “Initial Public Hearing”) via live stream web broadcast at www.ecidany.com/streaming, at which the Agency provided interested parties a reasonable opportunity to provide oral comments and/or their views on the Project, and further instructed interested parties on the process to submit written comments with respect to the Project; and

WHEREAS, by resolution adopted on May 26, 2021, (the “Initial Resolution”) the Agency authorized financial assistance to the Company with respect to Project in the form of (a) an exemption benefit from all New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the construction and equipping of the Facility, and (b) a mortgage recording tax exemption benefit for the financing related to the Project (collectively, the sales and use tax exemption benefit and the mortgage recording tax exemption benefit, are hereinafter collectively referred to as the “Financial Assistance”); and

WHEREAS, as a condition of purchasing the Land from the Buffalo Urban Development Corporation (the “BUDC”), the Company has amended its Application and requested that the Agency enter into a payment in lieu of tax agreement (the “PILOT Agreement”) consisting of: (i) a fifteen year term PILOT Agreement with respect to the Facility, and (ii) a PILOT Agreement payment structure whereby the Company will make payment, for each tax fiscal year, in an amount equal to the amount of real property taxes that would be paid as if the Company owned the Facility and the Agency had no interest in the Facility, multiplied by the applicable percentage of 20% for PILOT Agreement years 1 and 2, 30% for PILOT Agreement years 3 and 4, 40% for PILOT Agreement years 5, 6, 7, 8, and 9, and 50% for PILOT Agreement years 10, 11, 12, 13, 14 and 15 (collectively, (i) and (ii), being the “PILOT Deviation”); and

WHEREAS, the PILOT Agreement will operate consistent with the Buffalo Lakeside Commerce Park Development and PILOT Redistribution Agreement, dated as of July 1, 2005, by and among BUDC, the City of Buffalo, the County of Erie, and the Agency (the “BLCP Agreement”); and

WHEREAS, the BLCP Agreement established the Buffalo Brownfield Redevelopment Fund (the “BBRF”) to be funded, in this case, with certain portions of the PILOT Agreement payments as herein described; and

WHEREAS, PILOT Agreement funds deposited in the BBRF are to be utilized for certain infrastructure costs associated with lands owned by BUDC adjacent to the Project Facility and/or for other comparable project undertaken by BUDC located with the City of Buffalo; and

WHEREAS, the BLCP Agreement requires that, with respect to the Project, PILOT Agreement payments be made to the Agency, and then (i) 50% of the PILOT Agreement payment will be submitted to the BBRF, and (ii) 50% of the PILOT Agreement payment will be remitted to the City and the County; and

WHEREAS, the proposed PILOT Agreement and PILOT Deviation as described in the preceding “Whereas” clauses deviates from the Agency’s Uniform Tax Exemption Policy (“UTEP”) in connection with the Agency’s undertaking of the Project; and

WHEREAS, the proposed PILOT Agreement and PILOT Deviation is a Type II action as defined by the New York State Environmental Quality Review Act (“SEQR”) and the implementing regulations set forth by the New York State Department of Environmental Conservation, and therefore, no further action or environmental review under SEQR is required in connection hereto; and

WHEREAS, as a result of the request for the PILOT Agreement and PILOT Deviation, and pursuant to General Municipal Law Section 859-a, and pursuant to Governor Cuomo's Executive Order 202.15 issued on April 9, 2020, and as amended from time to time, authorizing the conduct of public hearings through the use of telephone conference, video conference and/or other similar service, the Agency, on June 14, 2021 at 9:00 a.m., held a public hearing with respect to the Project and the PILOT Deviation being contemplated by the Agency (the "Second Public Hearing") via live stream web broadcast at www.ecidany.com/streaming, at which the Agency provided interested parties a reasonable opportunity to provide oral comments and/or their views on the Project and the PILOT Deviation, and further instructed interested parties on the process to submit written comments with respect to the Project; and

WHEREAS, Notice Letters detailing the PILOT Agreement and the PILOT Deviation as same deviate from the Agency's UTEP were mailed or delivered to the chief executive officers of each Affected Tax Jurisdiction on or about June 3, 2021; and

WHEREAS, at this June 23, 2021 regular meeting of the Agency, the Agency allowed representatives of all Affected Tax Jurisdictions present at the meeting to address the Agency with respect to the deviation from the Agency's Policy; and

WHEREAS, the Agency desires to amend the Initial Resolution as heretofore described and to authorize and approve the PILOT Agreement and PILOT Deviation.

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

Section 1. All recitals, findings and determinations of the Agency contained in the Initial Resolution are hereby reaffirmed, ratified, restated and incorporated herein by reference as if set forth herein in their entirety, except as modified by this Resolution.

Section 2. The proposed PILOT Agreement and PILOT Deviation request deviates from the terms of the Agency's UTEP to the extent that the Company has requested a PILOT Agreement providing for: (i) a fifteen year term whereby the Company will make payment, for each tax fiscal year, in an amount equal to the amount of real property taxes that would be paid as if the Company owned the Facility and the Agency had no interest in the Facility, multiplied by the applicable percentage of 20% for PILOT Agreement years 1 and 2, 30% for PILOT Agreement years 3 and 4, 40% for PILOT Agreement years 5, 6, 7, 8, and 9, and 50% for PILOT Agreement years 10, 11, 12, 13, 14 and 15, and (ii) PILOT Agreement payments be made to the Agency, and then (x) 50% of the PILOT Agreement payment will be submitted to the BBRF, and (y) 50% of the PILOT Agreement payment will be remitted to the City and the County. The Agency hereby approves of the deviation from its UTEP for this PILOT Deviation request and approves of the PILOT Agreement request as described herein. In making this determination, the Agency has considered the following factors as required by the Act and its UTEP, no single one of which is determinative:

- The extent to which the Project will create or retain permanent, private sector jobs. The Company has represented that construction jobs will be created during the construction time period, and that 76 new full-time employee positions related to the operation of the Facility will be created.

- The estimated value of tax exemptions to be provided. If the proposed PILOT Agreement is approved, the value of the real property tax exemption benefit to be provided over the term of the PILOT Agreement is estimated to be approximately \$1,960,000.00.
- Whether affected taxing jurisdictions shall be reimbursed by the Project occupant if the Project does not fulfill the purposes for which an exemption was provided. The Company will be subject to potential financial assistance recapture with respect to the sales tax exemption benefits and the mortgage recording tax exemption benefits that have already been approved by the Agency, and with respect to the real property tax exemption benefits, being the subject of this correspondence, in the event it does not adhere to the Agency's standard material terms and conditions of receipt of financial assistance.
- The impact of the proposed project on existing and proposed businesses and economic development projects in the vicinity. The impact of the Project is a positive one on the community, as it will continue to promote job opportunities, general prosperity and economic welfare for the residents of Erie County and the City of Buffalo.
- The amount of private sector investment generated or likely to be generated by the Project. The total private sector investment in the Project is expected to exceed approximately \$52,285,000.
- The demonstrated public support for a proposed Project. The City of Buffalo and the County of Erie have expressed support for the Project and the PILOT Agreement as herein described.
- The likelihood of accomplishing the proposed project in a timely fashion. It is anticipated that Project construction will begin immediately upon approval of the deviation request and will be completed on December 31, 2022.
- The Project will not result in any adverse environmental impacts.
- The extent to which the Project will require the provision for additional services. This Project will not require any additional services beyond those already in existence.
- The extent to which the Project will provide additional sources of revenue for municipalities and school districts. The benefit is a positive one economically, in that the PILOT Agreement payments will be greater than what would be collected in the event the Project is not undertaken.

Section 3. Any and all references to the term "Financial Assistance" in the Initial Resolution shall heretofore be defined as "collectively, the sales and use tax exemption benefit, the mortgage recording tax exemption benefit, and the partial abatement from real property taxes benefit".

Section 4. Section of the 3(A) of Initial Resolution is amended to add a new Section 3(A)(iii) to read as follows:

(iii) authorizes and approves that the real property tax abatement benefits (“PILOT benefits”) to be provided over the term of the PILOT Agreement are estimated to be approximately \$1,961,000, resulting in estimated total PILOT payments of \$1,307,400 over the term of the PILOT Agreement.

Section 5. Section 3(B) of the Initial Resolution is amended and replaced in its entirety as follows:

(B) Terms and Conditions of Financial Assistance. Pursuant to Section 875(3) of the New York General Municipal Law, and per the policies of the Agency, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any New York State and local sales and use tax exemption benefits, and/or mortgage recording tax exemption benefits, and/or partial abatements from real property taxes benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the New York State and local sales and use tax exemption benefits; (ii) the New York State and local sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the New York State and local sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; (iv) the Company has made a material false statement on its application for Financial Assistance; (v) the New York State and local sales and use tax exemption benefits and/or mortgage recording tax exemption benefits, and/or the partial abatement from real property taxes benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with the Investment Commitment, the Employment Commitment, and/or the Local Labor Commitment, said commitments, as described below, being a material term or condition to use property or services in the manner approved by the Agency in connection with the Project; and/or (vi) the New York State and local sales and use tax exemption benefits, and/or mortgage recording tax exemption benefits, and/or the partial abatement from real property taxes benefits are taken in cases where the Company fails to comply with the Equal Pay Commitment and/or the Unpaid Real Property Tax Policy Commitment, as described below, being a material term or condition to use property or services in the manner approved by the Agency in connection with the Project.

As a condition precedent of receiving Financial Assistance, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must cooperate with the Agency in its efforts to recover or recapture any Financial Assistance, and promptly pay over any such amounts to the Agency that the Agency demands.

Section 6. The first paragraph of Section 3(C) of the Initial Resolution is replaced in its entirety to read as follows:

(C) Commitments. As an additional condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Agency in connection with the Project, the Company covenants and agrees and understands that it must, subject to potential modification, termination and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, submit, on an annual basis or as otherwise indicated below through the termination of the PILOT Agreement, a certification, as so required by the Agency, confirming:

Section 7. The Chair, the Vice Chair, the President/Chief Executive Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer, are hereby authorized, on behalf of the Agency, to negotiate, execute and deliver (A) the Lease Agreement whereby the Company leases the Project to the Agency, (B) the related Leaseback Agreement whereby the Agency leases the Project back to the Company, (C) the PILOT Agreement, and (D) related documents; provided, however, that (i) the rental payments under the Leaseback Agreement to the Company include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's UTEP, or procedures for deviation have been complied with accordingly.

Section 8. 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 and to negotiate, execute and deliver all such certificates, instruments and documents, to 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 resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 9. All actions heretofore undertaken by the Agency and the Company as agent of the Agency are ratified and approved and the Agency and the Company are hereby authorized to continue to undertake the Project as amended and authorized herein.

Section 10. These Resolutions shall take effect immediately.

Dated: June 23, 2021