

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
FIRST AMENDMENT TO INDUCEMENT RESOLUTION
(Amendatory Resolution)

1016 EAST DELAVAN, 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, March 27, 2024 at 12:00 p.m.

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

AMENDATORY RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE APPROVAL OF (i) A REVISED SALES TAX EXEMPTION BENEFIT AND A REVISED MORTGAGE RECORDING TAX EXEMPTION BENEFIT, (ii) THE ELIMINATION OF A REAL PROPERTY TAX ABATEMENT BENEFIT, AND (iii) CERTAIN REVISED MATERIAL TERMS AND CONDITIONS RELATED TO THE PROVISION OF FINANCIAL ASSISTANCE WITH RESPECT TO THE 1016 EAST DELAVAN, LLC PROJECT (AS MORE FULLY DESCRIBED BELOW)

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, 1016 EAST DELAVAN, LLC or on behalf of an affiliated entity formed or to be formed (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 1016-1044 East Delavan Avenue, City of Buffalo, Erie County, New York, and all other lands in the City of Buffalo where, by license or easement or other agreement, the Company or its designees are making improvements that benefit the Project (the “Land”); (ii) the construction on the Land of an approximately 67,000+/- square-foot, single-story commissary kitchen for the sole use of the Buffalo Public Schools to prepare and distribute school meals to all schools in the district. The facility will cook onsite, using locally grown products, creating fresh and high-quality meal options for students. The new facility will include two industrial kitchens with large meal preparation tables and large, commercial ovens as well as office spaces for administration and a "test kitchen" that will serve as a conference room/community space that will be available for local community meetings and training for food service employees (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"). The Facility will be initially operated and/or managed by the Company; and

WHEREAS, by resolution adopted on July 26, 2023 (the "Original Resolution") the Agency authorized financial assistance to the Company with respect to the Application 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 acquisition, construction, reconstruction and/or renovation, rehabilitation or equipping of the Facility, (b) a mortgage recording tax exemption benefit for the financing related to the Project, and (c) a partial abatement from real property taxes benefit through a ten (10) year "payment in lieu of tax agreement" (the "PILOT Agreement") with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project, (collectively, the sales and use tax exemption benefit, the mortgage recording tax exemption benefit, and the partial abatement from real property taxes benefit, are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, the Agency received notification from the Company dated January 31, 2024, stating that Project costs have increased and that the Buffalo School District intends to purchase the building post construction and on February 6, 2024, the Agency received an amended application for Financial Assistance (the "Amended Application") from the Company requesting an increase in New York State and local sales and use tax exemption benefits from \$1,177,537 up to an amount not to exceed \$1,263,247 (the "Revised Sales Tax Exemption Benefit") and an increase in mortgage recording tax exemption benefits from \$175,249 up to an amount not to exceed \$216,750 (the "Revised Mortgage Recording Tax Exemption Benefit"). The Company also advised the Agency that it would no longer require the Agency's PILOT Agreement and related real property tax abatement benefits; and

WHEREAS, pursuant to General Municipal Law Section 859-a, on February 26, 2024, at 9:00 a.m., at the Agency's offices, at 95 Perry Street, Suite 403, Buffalo, NY 14203, the Agency held a public hearing with respect to the Project and the Revised Sales Tax Exemption Benefit and the Revised Mortgage Recording Tax Exemption Benefit being contemplated by the Agency (the "Public Hearing") whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, the Agency desires to amend the Original Resolution with respect to the Revised Sales Tax Exemption Benefit and Revised Mortgage Recording Tax Exemption Benefit, to eliminate the PILOT Agreement real property tax abatement benefit, and to revise material terms and conditions as so related thereto.

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 Original 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. Based upon the representations made by the Company to the Agency in the Company's Amended Application and any other correspondence submitted by the Company to the Agency, public hearing comments, if any, Agency Policy Committee review of and recommendations related to the Project and its February 26, 2024 resolution to recommend Agency approval of the Project's Revised Sales Tax Exemption Benefit and Revised Mortgage Recording Tax Exemption Benefit, the Policy Committee and Agency board member review of the Project's cost benefit ratio, the costs of incentives so applied for, the anticipated new tax revenues to be generated by the Project, as well as the Project's contemplated community benefits, and Agency board member review, discussion, and consideration of same, the Agency hereby finds authorizes and approves of the Revised Sales Tax Exemption Benefit, the Revised Mortgage Recording Tax Exemption Benefit, and the elimination of the real property tax abatement benefit as approved within the Original Resolution.

Based upon the representations and warranties made by the Company in its Amended Application, subject to the terms and conditions as described herein, and Agency Board member review, discussion, and consideration of same, the Agency hereby finds, determines and hereby amends Section 3(A) of the Original Resolution in its entirety to read as follows:

(i) authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount estimated up to \$14,437,113, and, therefore, the value of the sales and use tax exemption benefits ("sales and use tax exemption benefits") authorized and approved by the Agency cannot exceed \$1,263,247, however, the Agency may consider any requests by the Company for increases to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services; and

(ii) authorizes and approves that the value of the mortgage recording tax exemption benefit ("mortgage recording tax exemption benefits") shall not exceed \$216,750.

Section 4. Based upon the representations and warranties made by the Company in its Amended Application, subject to the terms and conditions as described herein, and Agency Board member review, discussion and consideration of same, the Agency hereby finds, determines and hereby amends Section 3(i) of the Original Resolution in its entirety to read as follows:

(i) Investment Commitment – the total investment made with respect to the Project at the time of Project completion equals or exceeds \$29,014,821 (which represents the product of 85% multiplied by \$34,135,084, being the total project cost as stated in the Company's Amended Application).

Section 5. Any and all references to the term “PILOT Agreement” and/or “a partial abatement from real property taxes benefit” as so contained within the Original Resolution are hereby eliminated and removed as if such terms were never set forth within the Original Resolution and such terms shall be of no impact or effect.

Section 6. Unless otherwise amended pursuant to the terms contained herein, the terms of the Original Resolution shall remain unchanged.

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 and to 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 7. 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, as agent of the Agency, are hereby authorized to continue to undertake the Project.

Section 8. These Resolutions shall take effect immediately.

Dated: March 27, 2024