

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

**2855 CLINTON ST., 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, January 24, 2018 at 9:00 a.m.

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

AMENDATORY INDUCEMENT RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE APPROVAL OF THE REVISION TO THE PROJECT DESCRIPTION AND THE EXECUTION AND DELIVERY OF A REVISED SALES TAX EXEMPTION PACKAGE AND RELATED DOCUMENTS WITH RESPECT TO THE 2855 CLINTON ST., 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, 2855 CLINTON ST., LLC, AND/OR INDIVIDUAL(S) OR AFFILIATES, SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (the "Company") has submitted an application to the Agency (the "Original Application") requesting the Agency's assistance with a certain project (the "Original Project") consisting of: (i) a portion of land located at 3254 Clinton Street, West Seneca, New York (the "Land") to be improved thereon with a 55,040+/- SF building to be utilized as manufacturing/processing, warehouse, and office space (the "Improvements"), and (ii) the acquisition and installation by the Company of certain items of machinery, equipment and other tangible personal property (the "Equipment", and collectively with the Land and Improvements, the "Facility"); and

WHEREAS, pursuant to General Municipal Law Section 859-a, on July 26, 2016 at 9:00 a.m. at the Town of West Seneca Town Hall, 1250 Union Road-Court Room (Room 100), West Seneca, New York 14224, the Agency held a public hearing with respect to the Original Project and the proposed financial assistance, as described below, 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, on August 24, 2016, the Agency determined that the Original Project will not have a "significant effect on the environment" as such quoted term is defined in Article 8 of the New York Environmental Conservation Law and 6 N.Y.C.R.R. Part 617 adopted pursuant thereto by the New York State Department of Environmental Conservation (collectively referred to as "SEQR"), that no "environmental impact statement" as such quoted term is defined in SEQR, need be prepared as related to the Original Project, and issued a Negative Declaration pursuant to 6 N.Y.C.R.R. § 617.7 of the SEQR regulations, thus concluding the Agency's uncoordinated review of the Original Project (the "SEQR Determination"); and

WHEREAS, by resolution adopted on August 24, 2016 (the "Initial Resolution"), the Agency authorized financial assistance to the Company with respect to the Original 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 construction and 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 seven (7) year term PILOT Agreement 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, based upon representations and warranties made by the Company in the Original Application, the Agency, within the terms of the Initial Resolution, authorized and approved the Company, as its agent, to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax in an amount up to \$942,500.00 which results in New York State and local sales and use tax exemption benefits not to exceed \$82,469.00, and required the Company to evidence that the total investment actually made with respect to the Project, at the time of Project completion, equals or exceeds \$2,324,750.00 (which represented the product of 85% multiplied by \$2,735,000.00 (being the total project cost as stated in the Original Application for financial assistance at that point in time)); and

WHEREAS, on January 10, 2018, the Agency received an amended application (the "Amended Application") from the Company requesting a revision to the scope of the Project to include the purchase of additional production equipment and materials totaling \$914,000.00 (the "Amended Project"), and requesting additional New York State and local sales and use tax exemption benefits in an amount not to exceed \$80,000.00 (the "Additional Sales Tax Exemption Benefit"); and

WHEREAS, the Additional Sales Tax Exemption Benefit will not exceed \$100,000 and, therefore, a public hearing is not required to be held by the Agency; and

WHEREAS, the Agency desires to amend the Initial Resolution and approve this Amendatory Resolution with respect to the Amended Project and the Additional Sales Tax Exemption Benefit in order to revise of the scope of the Project.

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 SEQR Determination and 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. With respect to the foregoing, and based upon the representations and warranties made by the Company in its Application, as amended, for financial assistance, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project (being the Original Project and the Amended Project) and that would otherwise be subject to New York State and local sales and use tax in an estimated amount up to \$1,856,500.00 (being the sum of \$942,500.00 as proposed in the Original Project and \$914,000.00 as proposed within the Amended Project) which may result in New York State and local sales and use tax exemption benefits not to exceed \$162,469.00 (representing the sum of \$82,469.00 being the sales and use tax exemption benefit as related to the Original Project and \$80,000.00 being the sales and use tax exemption benefit as related to the Amended Project). 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.

Section 3. Section 3(i) of the Initial Resolution is hereby replaced in its entirety to read as follows:

- (i) Investment Commitment - the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$2,565,300 [(which represents the product of 85% multiplied by \$3,018,000 (representing the total project cost as stated in the Company's amended application for financial assistance)];

Section 4. 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 and execute an amended Agent and Financial Assistance Agreement by and between the Agency and the Company, an amended NYS Form ST-60, "IDA Appointment of Project Operator or Agent", a bill of sale (the "Bill of Sale") and any and all other related documents.

Section 5. 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 6. 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 7. These Resolutions shall take effect immediately.

Dated: January 24, 2018