

**APPROVING RESOLUTION
BLUEWATER I LLC PROJECT**

A regular meeting of the Town of Montgomery Industrial Development Agency (the "Agency") was convened in public session in the Town Hall located at 110 Bracken Road in the Town of Montgomery, Orange County, New York on November 12, 2019 at 5:30 o'clock p.m., local time.

The meeting was called to order by the (Vice) Chairperson of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

Jeffrey D. Crist	Chairperson
Edwin Williams	First Vice Chairperson
Stephen Rainaldi	Second Vice Chairperson
Matthew P. Stoddard	Treasurer
John W. Dickson	Member
John Macioce	Member
Robert Santo	Member

ABSENT:

None

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Sue Hadden	Clerical and Recording Secretary
Robert J. McLaughlin, Esq.	Agency Counsel

The following resolution was offered by John W. Dickson, seconded by Matthew P. Stoddard, to wit:

Resolution No. _____

**RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION
WITH A LEASE/LEASEBACK TRANSACTION FOR A PROJECT FOR
BLUEWATER I LLC (THE "COMPANY").**

WHEREAS, Town of Montgomery Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 527 of the 1971 Laws of New York, as amended, constituting Section 911-c of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of commercial, manufacturing and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, in December, 2018, Bluewater I LLC, a Delaware limited liability company (the “Company”) or such other person(s) or entities as may be designated by the Company and agreed upon by the Agency (collectively, the “Company”), submitted an application (the “Application”) to the Agency, a copy of which Application is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 187 acre parcel of land located at NYS Route 17K and 747, AKA 635 International Drive in the Town of Montgomery, Orange County, New York (tax map numbers 31-1-64; 31-1-65.22; 31-1-70.2 and 31-1-89) (collectively the “Land”), (2) the construction on the Land of an approximately 1,010,880 square foot facility with related site work and exterior improvements (the “Facility”), and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other personal property (collectively, the “Equipment”), all of the foregoing to constitute a warehouse/distribution facility (the Land, the Facility and the Equipment being collectively referred to as the “Project Facility”); (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person(s) or entities 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 January 14, 2019 (the “Public Hearing Resolution”), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Chairperson of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed and hand delivered on January 28, 2019 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located; (B) caused notice of the Public Hearing to be posted on January 28, 2019 on a bulletin board located at Town Hall located at 110 Bracken Road in the Town of Montgomery, Orange County, New York; (C) caused notice of the Public Hearing to be published on January 30, 2019 in the Wallkill Valley Times, a newspaper of general circulation available to the residents of the Town of Montgomery, Orange County, New York; (D) conducted the Public Hearing on February 12, 2019 at 5:45 o’clock p.m., local time at the office of the Agency located at 110 Bracken Road in the Town of Montgomery, Orange County, New York; and (E) prepared a report of the Public Hearing (the “Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), the Company submitted to the Agency (A) the Final Environmental Impact Statement prepared with respect to the Project (the “FEIS”) which was submitted and accepted by the Town of Montgomery Planning Board (the “Town Board”), as the lead agency with respect to SEQRA on August 1, 2019, (B) the Town Board’s findings statement dated September 24, 2019 (the “Findings Statement”) and (C) an environmental assessment form (the “EAF”); and

WHEREAS, by resolution adopted by the members of the Agency on November 12, 2019 (the “SEQR Resolution”), the Agency adopted the Findings Statement as the Agency’s written Findings Statement relative to the Project, as required by 6NYCRR 6.17.11(c); and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Company to undertake the Project in the Town of Montgomery, Orange County, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

WHEREAS, the Agency desires to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of the Town of Montgomery, New York by undertaking the Project in the Town of Montgomery, Orange County, New York; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the “Agency Documents”): (A) a certain lease to agency (the “Lease to Agency” or the “Underlying Lease”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency the Land and all improvements now or hereafter located on said portion of the Land (collectively, the “Leased Premises”); (B) a certain license agreement (the “License to Agency” or the “License Agreement”) by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (1) a license to enter upon the balance of the Land (the “Licensed Premises”) for the purpose of undertaking and completing the Project and (2) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement (as hereinafter defined); (C) a lease agreement (and a memorandum thereof) (the “Lease Agreement”) by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency’s administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (D) a payment in lieu of tax agreement (the “Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility; (E) a uniform project benefits agreement (the “Uniform Project Benefits Agreement”) by and between the Agency and the Company regarding the granting of the financial assistance and the potential recapture of such assistance; (F) a certain recapture agreement (the “Section 875 GML Recapture Agreement”) by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (G) a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance; (H) a New York State Department of Taxation and Finance form entitled “IDA Appointment of Project Operator or Agency for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”) and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the “Additional Thirty-Day Project Report”); (I) if the Company intends to finance the Project with borrowed money, a mortgage and any other security documents and related documents (collectively, the “Mortgage”) from the Agency and the Company to the Company’s lender with respect to the Project (“the “Lender”), which Mortgage will grant a lien on and security interest in the Project Facility to secure a loan from the Lender to the Company with respect to the Project (the “Loan”); and (J) various certificates relating to the Project (the “Closing Documents”);

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

Section 1. All action taken by the Chairperson, any Vice Chairperson and/or Chief Executive Officer of the Agency with respect to the Public Hearing with respect to the Project is hereby ratified and confirmed.

Section 2. The law firm of Hodgson Russ LLP is hereby appointed Agency Counsel to the Agency with respect to all matters in connection with the Project. Agency Counsel for the Agency is hereby authorized, at the expense of the Company, to work with the Company, counsel to the Company, counsel to the Agency and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution. Agency Counsel has prepared and submitted an initial draft of the Agency Documents to staff of the Agency.

Section 3. The Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act;

(B) The Project constitutes a “project,” as such term is defined in the Act;

(C) The Project site is located entirely within the boundaries of the Town of Montgomery, Orange County, New York;

(D) It is estimated at the present time that the costs of the planning, development, acquisition, construction, reconstruction and installation of the Project Facility (collectively, the “Project Costs”) will be approximately \$75,000,000;

(E) The completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York;

(F) The Project Facility does not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project, and accordingly the Project is not prohibited by the provisions of Section 862(2)(a) of the Act, and (2) accordingly the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act;

(G) The granting of the Financial Assistance by the Agency with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of the Town of Montgomery, Orange County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;

(H) The Agency has reviewed the Public Hearing Report and has fully considered all comments contained therein;

(I) The Project should receive the Financial Assistance in the form of exemption from

sales and use tax, real property tax, real estate transfer tax and mortgage recording tax based on the Agency's Uniform Criteria for the Evaluation of Projects Policy, the cost benefit analysis undertaken by the Agency and the description of expected public benefits to occur as a result of this Project, as described on Exhibit A attached hereto and failure by the Company to meet the expected public benefits will result in a recapture event, as described on Exhibit B attached hereto; and

(J) It is desirable and in the public interest for the Agency to enter into the Agency Documents.

(K) Based on the Application and the cost benefit analysis undertaken by the Agency, the Project has a Project Score of a minimum of 12 points under the Agency's Uniform Tax Exemption Policy entitling the Project to Level 3 Benefits under such Policy.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (A) accept the License Agreement; (B) sub-lease the Project Facility to the Company pursuant to the Sub-Lease or Lease Agreement; (C) acquire, construct and install the Project Facility, or cause the Project Facility to be acquired, installed and constructed; (D) enter into the Payment in Lieu of Tax Agreement; (E) enter into the Uniform Agency Project Agreement; (F) enter into the Section 875 GML Recapture Agreement; (G) secure the Loan by entering into the Mortgage; and (H) grant the Financial Assistance with respect to the Project.

Section 5. The Agency is hereby authorized (A) to acquire a license in the Licensed Premises pursuant to the License Agreement, (B) to acquire a leasehold interest in the Leased Premises pursuant to the Underlying Lease, (C) to acquire title to the Equipment pursuant to a bill of sale (the "Bill of Sale to Agency") from the Company to the Agency, and (D) to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisitions are hereby approved, ratified and confirmed.

Section 6. The Agency is hereby authorized to acquire, construct and install the Project Facility as described in the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and installation are hereby ratified, confirmed and approved.

Section 7. The Payment in Lieu of Tax Agreement shall contain the following schedule of payments:

<u>Tax Year</u>	<u>Percentage of Exemption</u>
1 to 5	90%
6	50%
7	45%
8	40%
9	35%
10	30%
11	25%
12	20%
13	15%
14	10%
15	5%
16 and thereafter	0%

Section 8. The Chairperson (or Vice Chairperson) of the Agency, with the assistance of Agency Counsel and/or Special Counsel, is authorized to negotiate and approve the form and substance of the Agency Documents.

Section 9. (A) The Chairperson (or Vice Chairperson) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in the forms thereof as the Chairperson (or Vice Chairperson) shall approve, the execution thereof by the Chairperson (or Vice Chairperson) to constitute conclusive evidence of such approval.

(B) The Chairperson (or Vice Chairperson) of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 10. 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 or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional 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 Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 11. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Jeffrey D. Crist	VOTING	YES
Edwin Williams	VOTING	YES
Stephen Rainaldi	VOTING	NO
Matthew P. Stoddard	VOTING	YES
John W. Dickson	VOTING	YES
John Macioce	VOTING	YES
Robert Santo	VOTING	NO

The foregoing Resolution was thereupon declared duly adopted.


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

I, the undersigned, ^{Chair}~~(Assistant) Secretary~~ of the Town of Montgomery Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on November 12, 2019 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

15 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this day of November, 2019.



Officer's Certificate

(SEAL)

EXHIBIT A

DESCRIPTION OF THE EXPECTED PUBLIC BENEFITS

In the discussions had between the Project Beneficiary and the Agency with respect to the Project Beneficiary's request for Financial Assistance from the Agency with respect to the Project, the Project Beneficiary has represented to the Agency that the Project is expected to provide the following benefits to the Agency and/or to the residents of Orange County, New York (the "Public Benefits"):

Description of Benefit		Applicable to Project (indicate Yes or No)		Expected Benefit
1.	Retention of existing jobs	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Zero (0) full time equivalent existing jobs at the Project Facility (vacant or abandoned land).
2.	Creation of new permanent jobs	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	750 full time equivalent new jobs at the Project Facility within 3 years of the date hereof.
3.	Creation of construction employment for local labor (i.e., labor resident in the area comprised of Hudson Valley Region as described in Agency Local Labor Policy)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Average of 300 full time equivalent construction jobs at the Project Facility for local labor during an estimated construction period of 18 months, commencing within 6 months of the date hereof.
4.	Private sector investment	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	\$75,000,000 at the Project Facility within 2 years of the date hereof.
5.	Creation of new revenues for local taxing jurisdictions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	\$26,000,000 of new revenues for local taxing jurisdictions with respect to the Project Facility within 15 years of the date hereof.
6.	Attract customers from outside the Economic Development Region	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Warehouse project.

7.	Provide infrastructure necessary to support existing businesses or proposed businesses	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Describe: Applicant will develop a waste water treatment plant (WWTP) within 2 years of the date hereof to provide sanitary sewer for the Project. The WWTP may be deeded to the Town of Montgomery for a to be formed sewer district for future business development.
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EXHIBIT B

DESCRIPTION OF THE RECAPTURE EVENTS

In connection with the Project and the granting of the Financial Assistance, the Agency and the Project Beneficiary agree that the following shall constitute recapture events with respect to the Project and the granting of the Financial Assistance:

1.	Failure of the Project Beneficiary to document to the satisfaction of the Agency the commencement of the acquisition, construction, reconstruction, renovation, and/or installation of the Project Facility within 6 months of the date hereof.
2.	Failure of the Project Beneficiary to document to the satisfaction of the Agency the completion of the acquisition, construction, reconstruction, renovation, and/or installation of the Project Facility within 2 years of the date hereof.
3.	Intentionally omitted.
4.	Failure by the Project Beneficiary to document to the satisfaction of the Agency the creation of at least 80% of the average full time equivalent local labor construction jobs at the Project Facility listed on Exhibit A during the construction period described on Exhibit A.
5.	Failure by the Project Beneficiary to document to the satisfaction of the Agency the creation of at least 80% of the full time equivalent new jobs at the Project Facility listed on Exhibit A attached hereto within 2 years of the date hereof.
6.	Failure by the Project Beneficiary to document to the satisfaction of the Agency that at least 80% of the private sector investment described on Exhibit A occurred with respect to the Project Facility within 3 years of the date hereof.
7.	Failure by the Project Beneficiary to document to the satisfaction of the Agency that at least 60% of the new revenues for local taxing jurisdictions described on Exhibit A attached hereto were created within 15 years of the date hereof.
8.	Intentionally omitted.
9.	Failure by the Project Beneficiary to document to the satisfaction of the Agency that the Project provided the infrastructure necessary to support existing businesses or proposed businesses described on Exhibit A within 2 years of the date hereof.
10.	Intentionally omitted.
11.	Liquidation of substantially all of the Project Beneficiary's operating assets at the Project Facility and/or cessation of substantially all of the Project Beneficiary's operations at the Project Facility.

12.	Relocation of all or substantially all of Project Beneficiary's operations at the Project Facility to another site, or the sale, lease or other disposition of all or substantially all of the Project Facility.
13.	Failure by the Project Beneficiary to comply with the annual reporting requirements or to provide the Agency with requested information.
14.	Sublease or assignment of all or part of the Project Facility in violation of any Project Facility Agreement.
15.	A change in the use of the Project Facility, other than as described on Exhibit A and other directly and indirectly related uses, in violation of any Project Facility Agreement.