
CLOSING MEMORANDUM

TOWN OF MONTGOMERY INDUSTRIAL DEVELOPMENT AGENCY
ORANGE COUNTY IRONWORKS, LLC PROJECT

Date of Closing: June 5, 2019
Place of Closing: VIA MAIL

I. DESCRIPTION OF THE TRANSACTION

In January, 2019, Orange County Ironworks, LLC (the “Company”), a limited liability company duly organized and validly existing under the laws of the State of New York, presented an application (the “Application”) to the Town of Montgomery Industrial Development Agency (the “Agency”), a public benefit corporation duly established under Chapter 1030 of 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”), which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project to include the following: (A) the acquisition and installation of certain Computer Numerical Controlled machinery and equipment used in the fabrication and welding of steel (the “Equipment”, and sometimes referred to as the “Project Facility”), to be located at the 45,000 square foot building to be constructed by the landlord where the Company will be a tenant under a lease agreement which will allow for the fabrication, storage and distribution of steel at 36 Maybrook Road, Town of Montgomery, Orange County, New York (the “Land”); (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 (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 as may be designated by the Company and agreed upon by the Agency.

Pursuant to the authorization contained in a resolution adopted by the members of the Agency on January 14, 2019 (the “Public Hearing Resolution”), the Chief Executive Officer 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 or 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 Facility is to be located, (B) caused notice of the Public Hearing to be posted on January 28, 2019 on a public bulletin board located at the 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 5:30 o’clock p.m., local time at the offices 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 “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency.

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, being 6NYCRR Part 617, as amended (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on March 11, 2019 (the “SEQR Resolution”), the Agency found and determined that the Project was part of a larger project that was the subject of a negative declaration issued by the Planning Board of the Town of Montgomery on October 29, 2018 (the “Negative Declaration”), which Negative Declaration was accepted by the members of the Agency with respect to said larger project on November 13, 2018, and accordingly that no environmental impact statement or any other determination or procedure under SEQRA is required by the Agency with respect to the Project.

By further resolution adopted by the members of the Agency on March 11, 2019 (the “Approving Resolution”), the Agency determined to (A) grant the Financial Assistance and to acquire and interest in and install the Equipment, or cause the Equipment to be acquired and installed and (B) sell the Equipment to the Company pursuant to an installment sale agreement dated as of June 1, 2019 (the “Installment Sale Agreement”) between the Agency and the Company pursuant to which, among other things, the Company shall be obligated (1) to pay all costs incurred by the Agency with respect to the Project and/or the Project Facility, including all costs of operation and maintenance, all taxes and other governmental charges, any required payments in lieu of taxes, and the reasonable fees and expenses incurred by the Agency with respect to or in connection with the Project and/or the Equipment and (2) to comply with the provisions of the Act applicable to beneficiaries of financial assistance from the Agency.

Simultaneously with the execution and delivery of the Installment Sale Agreement (the “Closing”), (A) the Company will execute and deliver to the Agency (1) a certain license agreement dated as of June 1, 2019 (the “License Agreement”) between the Company and the Agency, which grants to the Agency a license to enter upon the Land for the purpose of undertaking and completing the Project and (2) a bill of sale dated as of June 1, 2019 (the “Bill of Sale to Agency”), which conveys to the Agency all right, title and interest of the Company in the Equipment, (3) 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, and (4) a certain uniform project benefits agreement dated as of June 1, 2019 (the “Uniform Project Benefits Agreement”) relating to the granting of the Financial Assistance by the Agency to the Company, (B) the Agency will execute and deliver to the Company 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, and (C) the Agency will file with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”)

Since no real property tax exemption is intended to be granted by the Agency with respect to the Project, no New York State Board of Real Property Services Form RP-412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project under Section 412-a of the Real Property Tax Law) (a “Real Property Tax Exemption Form”) will be filed by the Agency with respect to the Project.

Among the actions taken by the Agency with respect to the Project prior to the Closing Date were the following:

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| January, 2019 | The Company filed an application (the “Application”) relating to the Project with the Agency. |
| January 14, 2019 | The Agency adopted the Public Hearing Resolution. |
| January 28, 2019 | Notice of the Public Hearing was mailed to the chief executive officers of the affected tax jurisdictions. |
| January 30, 2019 | Notice of Public Hearing was published. |
| February 12, 2019 | The Agency conducted the Public Hearing. |
| March 11, 2019 | The Agency adopted the SEQR Resolution. |
| March 11, 2019 | The Agency adopted the Approving Resolution. |

II. PARTIES REPRESENTED AT CLOSING

AGENCY: (A)
Jeffrey D. Crist, Chairman
Anthony Zambrotta, Assistant Secretary
Town of Montgomery Industrial Development Agency

AGENCY COUNSEL: (HR)
Robert J. McLaughlin, Esq.
Nadene E. Zeigler, Esq.
Hodgson Russ LLP

COMPANY: (C)
Marie Zeigler
Orange County Ironworks, LLC

COMPANY’S COUNSEL: (CC)
Christopher Massaroni, Esq.
McNamee Lochner P.C.

and

Jeremy H. Speich, Esq.
Harris Beach PLLC

III. ACTION TO BE TAKEN AT CLOSING

The following documents, or copies thereof, are to be delivered (except as indicated) to the Agency, Agency Counsel, the Company and Company’s Counsel, as follows:

		<u>Production Response.</u>	<u>Execution Response.</u>
A.	<u>Basic Documents</u>		
1.	License to Agency.	HR	C,A
2.	Bill of Sale to Agency.	HR,CC	C
3.	Installment Sale Agreement.	HR	A,C
4.	Section 875 GML Recapture Agreement.	HR	C,A
5.	Uniform Project Benefits Agreement.	HR	C,A
6.	Certificates (and policies, if available) of casualty, liability, workers' compensation and other required insurance.	C	--
7.	Closing Receipt.	HR	A,C
B.	<u>Items To Be Delivered By The Agency</u>		
1.	General Certificate of the Agency regarding incumbency and signatures of officers, execution of the Basic Documents, no litigation and continued existence, with the following items included as exhibits:	HR	A
	Exhibit A - Chapter 527 of the Laws of 1971;	HR	--
	Exhibit B - Certificate of Establishment and Certificates of Appointment of current members of the Agency, certified by the New York State Department of State, Miscellaneous Records Unit;	HR	--
	Exhibit C - By-Laws of the Agency;	HR	--
	Exhibit D - Public Hearing Resolution;	HR	A
	Exhibit E - Proof of mailing of Notice of Public Hearing to the chief executive officers of the affected tax jurisdictions;	HR	A
	Exhibit F - Affidavit of Publication of Notice of Public Hearing;	A	--
	Exhibit G - Affidavits of posting of Notice of Public Hearing;	A	--
	Exhibit H - Report of Public Hearing;	A	--
	Exhibit I - SEQR Resolution; and	HR	A

		<u>Production Response.</u>	<u>Execution Response.</u>
	Exhibit J - Approving Resolution;	HR	A
2.	Certificate Regarding No Conflicts of Interest.	HR	A
3.	Sales Tax Exemption Letter.	HR	A
4.	Thirty-Day Sales Tax Report.	HR,CC	A
5.	Proof of Mailing of Thirty-Day Sales Tax Report to the New York State Department of Taxation and Finance.	HR	HR
6.	Agency Counsel Disclosure Certificate.	HR	HR
C.	<u>Items To Be Delivered By The Company</u>		
1.	General Certificate of the Company regarding incumbency and signatures of officers, execution of the Installment Sale Agreement and other Basic Documents, no litigation and continued existence, with the following items included as exhibits:	HR,CC	C,CC
	Exhibit A - Articles of Organization of the Company, certified by the State of New York Department of State, Corporations Unit;	CC	--
	Exhibit B - Operating Agreement of the Company;	CC	--
	Exhibit C - Certificate of Good Standing relating to the Company, certified by the State of New York Department of State, Corporations Unit;	CC	--
	Exhibit D - Resolution of the Members of the Company approving and authorizing the execution and delivery by the Company of the Company Documents; and	CC	C
	Exhibit E - Pending Litigation.	CC	CC
2.	Affidavit of the Company.	HR,CC	C
D.	<u>Opinions of Counsel</u>		
1.	Opinion of Hodgson Russ LLP, counsel to the Agency, addressed to the Agency and the Company.	HR	HR
2.	Opinion of McNamee Lochner P.C., counsel to the Company, addressed to the Agency.	HR	CC

IV. ACTION TO BE TAKEN CONCURRENTLY WITH OR AFTER THE CLOSING

1. None of the Basic Documents will be recorded in the office of the County Clerk of Orange County, New York.
2. The Thirty-Day Sales Tax Report is to be mailed to the New York State Department of Taxation and Finance.