

**INDUCEMENT RESOLUTION**  
(New England Motor Freight, Inc./Orange Truck Corp.)

A regular meeting of the Town of Montgomery Industrial Development Agency was convened on Thursday, September 26, 2002, at 5:30 p.m.

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

Resolution No. 09/2002 - \_\_\_\_\_

RESOLUTION AUTHORIZING THE TOWN OF MONTGOMERY INDUSTRIAL DEVELOPMENT AGENCY TO (i) TAKE TITLE TO, OR A LEASEHOLD INTEREST IN, AN APPROXIMATELY 37.2-ACRE PARCEL OF LAND LOCATED AT 194 NEELYTOWN ROAD IN THE TOWN OF MONTGOMERY, ORANGE COUNTY, NEW YORK (THE "LAND"); (ii) APPOINT ORANGE TRUCK CORP. (THE "DEVELOPER") AND NEW ENGLAND MOTOR FREIGHT, INC. (THE "COMPANY") AS ITS AGENTS TO UNDERTAKE A CERTAIN PROJECT CONSISTING OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING ON THE LAND OF AN APPROXIMATELY 57,000 SQUARE-FOOT ADDITION (THE "ADDITION") TO AN EXISTING BUILDING LOCATED ON THE LAND, SAID ADDITION CONTAINING A 100-DOOR FREIGHT TERMINAL CONSISTING OF DOCK SPACE, OFFICE SPACE AND AN EQUIPMENT SHOP; (iii) NEGOTIATE AND EXECUTE A LEASE AGREEMENT, LEASEBACK AGREEMENT AND RELATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT; (iv) PROVIDE FINANCIAL ASSISTANCE TO THE DEVELOPER AND THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A PARTIAL REAL PROPERTY TAX ABATEMENT THROUGH THE PILOT AGREEMENT, AND (C) A MORTGAGE TAX EXEMPTION FOR THE FINANCING RELATED TO THE PROJECT; AND (v) EXECUTE 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 527 of the Laws of 1971 of the State of New York, as amended (hereinafter collectively called the "Act"), the **TOWN OF MONTGOMERY 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 and commercial facilities as authorized by the Act; and

WHEREAS, **NEW ENGLAND MOTOR FREIGHT, INC.** (the "Company") and **ORANGE TRUCK CORP.** (the "Developer") have jointly submitted an application (the "Application") to the Agency requesting that the Agency provide financial assistance for a certain project (the "Project") consisting of (a)(i) the construction of an approximately 57,000 square-foot addition (the "Addition") to an existing building located on an approximately 37.2-

acre parcel of land located at 194 Neelytown Road in the Town of Montgomery, Orange County, New York (tax map parcel 33-1-73) (the "Land"), which Addition shall contain a 100-door freight terminal consisting of dock space, office space and an equipment shop, (ii) the installation of approximately 3,500 linear feet of new fencing (collectively, the "Improvements"), and (iii) the acquisition and installation in and around the Improvements of certain machinery, equipment and other items of tangible personal property (the "Equipment") (the Land, the Improvements and the Equipment being collectively referred to as the "Facility"); and (b) the leasing (with the option to purchase) or installment sale of the Facility to the Developer and the Equipment to the Company pursuant to the Act; and

WHEREAS, the Developer and the Company have indicated in the Application that the maximum estimated cost of undertaking the Project will be approximately \$7,700,000; and

WHEREAS, the Agency have given due consideration to the Application, in which it is represented by the Developer and the Company that (i) (A) the Project will not result in the removal of a plant or facility of the Applicant or another proposed occupant from one area of New York State to another and (B) the Project will result in the abandonment of a facility by the Developer or the Company; and (ii) within five years after the Project is completed, it is estimated that the Facility will provide approximately 230 new full time jobs; and

WHEREAS, the Agency is contemplating providing financial assistance to the Developer and the Company for the Project (collectively, the "Financial Assistance") in the form of (1) one or more straight lease transactions (as defined in Section 854(15) of the General Municipal Law), pursuant to which (A) the Agency will acquire title to, or a leasehold interest in, the Land and the existing improvements, if any, thereon from the Developer for a period of time and sell or lease the Land and the Improvements back to the Developer, and (B) the Agency will acquire title to the Equipment and sell the Equipment to the Company; (2) sales and use tax exemptions on all building materials incorporated into the Improvements, all equipment and personal property leased in connection with the construction of the Improvements, the Equipment and all machinery or equipment leased in connection with the installation of the Equipment; (3) a mortgage tax exemption on any mortgages given to secure the financing of the Facility; and (4) the execution of an agreement regarding payments in lieu of real property taxes providing the Developer with a real property tax abatement consistent with the Agency's uniform tax-exemption policy; and

WHEREAS, following a notice duly published in the Times Herald-Record on August 23, 2002, and the Wallkill Valley Times on August 28, 2002, and notice duly provided to the chief executive of each Affected Taxing Jurisdiction on or prior to such date, as required by subdivision 3 of Section 859-a of the Act, the Agency, on September 26, 2002, at 5:30 p.m., local time, at Town of Montgomery Town Hall, 110 Bracken Road, 2nd Floor, Orange County, New York, held a public hearing with respect to the Project and the proposed Financial Assistance being contemplated, at which time interested parties were provided an opportunity to present their views with respect to the Project and the proposed Financial Assistance. A copy of the Minutes of said Public Hearing along with the Notice of Public Hearing published and forwarded to the affected taxing jurisdictions thirty (30) days prior to said Public Hearing are attached hereto as Exhibit A; and

WHEREAS, the Agency now intends to (i) determine that SEQR (as hereinafter defined) has been complied with respect to the Project; (ii) approve the Financial Assistance contemplated for the Project; (iii) designate the Developer as its agent for the purpose of acquiring and constructing the Project pursuant to an agent agreement (the "Developer Agent Agreement"); (iv) designate the Developer and the Company as its agents for the purpose of undertaking the Project; (v) approve two agreements (the "Agent Agreements") between the Agency and the Developer and between the Agency and the Company, respectively, relative to the proposed Project; (vi) approve the form and substance of a proposed Sale Agreement (Realty) between the Agency and the Developer, a proposed Sale Agreement (Personalty) between the Agency and the Company and a proposed payment-in-lieu-of-tax agreement between the Agency and the Developer; and (vii) authorize and direct the Chairman (or Vice Chairman) of the Agency to approve and execute such documents, on behalf of the Agency and to negotiate, approve and execute certain other documents in connection with the Project; and

WHEREAS, to aid the Agency in making a determination whether acquisition, construct and equipping of the Facility and the providing of the contemplated Financial Assistance will be in conformance with Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (said law and regulations hereinafter collectively referred to as "SEQR"), the Company has submitted to the Agency a full Environmental Assessment Form (the "EAF") attached hereto as Exhibit B, and a Negative Declaration dated January 14, 2002 adopted by the Town of Montgomery Planning Board, attached hereto as Exhibit C, pursuant to which the Town of Montgomery Planning Board determined that the Project would not have a significant effect on the environment (said materials being collectively referred to as the "SEQRA Proceedings").

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

Section 1. The Company and the Developer have jointly presented an Application in a form acceptable to the Agency. Based upon the representations made by the Company and the Developer to the Agency in the Application, 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; and

(B) It is desirable and in the public interest for the Agency to appoint the Company and the Developer as its agents for purposes of acquiring, constructing and equipping the Project; and

(C) The Agency has the authority to take the actions contemplated herein under the Act; and

(D) The action to be taken by the Agency will induce the Company and the Developer to develop the Project, thereby increasing employment opportunities, general prosperity and the

economic welfare of the inhabitants of Orange County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(E) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

Section 2. Based upon the review by the Agency of the Application, SEQRA Proceedings, copies of which are attached hereto as Exhibit B and Exhibit C and related documents delivered by the Company to the Agency and other representations made by the Company to the Agency in connection with the Project, the Agency hereby finds that (i) the Project constitutes an "Unlisted Action" within the meaning of SEQRA and a coordinated review is optional, (ii) the Agency shall conduct an uncoordinated review of the Project under SEQRA, (iii) the Project will result in no major impacts and, therefore, is one which may not cause significant damage to the environment, (iv) the Project will not have a "significant effect on the environment" as such quoted terms are defined in SEQR, and (v) no "environmental impact statement" as such quoted term is defined in SEQR, need be prepared for this action. This determination constitutes a negative declaration for purposes of SEQR. The Agency's findings are incorporated in Part II of the EAF.

Section 3. Subject to the conditions set forth in Section 5 of this Resolution, the Agency will (i) enter into one or more straight lease transactions, in accordance with the Sale Agreements (as hereinafter defined), pursuant to which the Agency will acquire title to the Facility and the Equipment, undertake the Project, and sell the Facility to the Developer and the Equipment to the Company; provided (a) the installment sale payments under the Sale Agreements include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Developer and the Company, as applicable, for actions taken by the Developer or the Company, as applicable, and/or claims arising out of or related to the Project; (b) the Developer is required to reacquire title to the Facility and the Company is required to acquire title to the Equipment (or such interests therein as were conveyed to the Agency) at the end of the term of the Sale Agreement or, if later, the end of the term of the PILOT Agreement (as hereinafter defined); and (c) the Agency's obligations thereunder shall be special obligations, limited solely to the Agency's interest in the Facility or the Equipment as applicable, (ii) grant the Developer a partial real property tax abatement for the Facility, in accordance with the terms of a proposed Payment in Lieu of Tax Agreement (the "PILOT Agreement") between the Agency and the Developer, and (iii) provide the other Financial Assistance.

Section 4. (A) Subject to Section 5 hereof, the Developer is hereby appointed the true and lawful agent of the Agency (1) to acquire and construct the Facility, (2) to make, execute acknowledge and deliver any contracts, orders, receipts, writings, and instructions, as the stated

agent for the Agency, and in general, to do all things which may be requisite or proper for completing the Facility, including the following as they relate to thereto, whether or not any materials or supplies described below are incorporated into or become an integral part of the Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with such acquisition and construction, and (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with such acquisition and construction, and (iii) all purchases, leases, rentals and uses of equipment, machinery, furnishings and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or around the Facility.

(B) Subject to Section 5 hereof, the Company is hereby appointed the true and lawful agent of the Agency (1) to acquire and install the Equipment in the Facility, (2) to make, execute acknowledge and deliver any contracts, orders, receipts, writings, and instructions, as the stated agent for the Agency, and in general, to do all things which may be requisite or proper for acquiring and installing the Equipment, including the following as they relate thereto, whether or not any materials or supplies described below are incorporated into or become an integral part of the Equipment: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with such acquisition and installation, and (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with such acquisition and installation, and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or around the Equipment.

Section 5. The grant of the Financial Assistance shall be subject to:

(A) execution and delivery by the Developer and the Company of the Agent Agreements, substantially in the forms attached hereto as Exhibit D, which Agent Agreements are to remain in effect through November 1, 2002 (unless hereinafter extended by the Agency) or such earlier date as the Sale Agreements and PILOT Agreement are entered into.

(B) the delivery to the Agency of a binder, certificate or other evidence of a liability insurance policy for the Project wherein the Agency, the Developer and the Company are named as insureds and having a coverage not less than that required by the Agent Agreements.

Section 6. The form and substance of the Agent Agreements (in substantially the forms presented to this meeting and attached hereto) are in all respects hereby approved. The Chairman (or Vice Chairman) of the Agency is hereby authorized, empowered and directed, in the name of and on behalf of the Agency, to execute and deliver the Agent Agreements in substantially the forms thereof presented to this meeting, with such changes in terms and form as the Chairman (or Vice Chairman) shall approve, such execution to constitute conclusive evidence of his approval of any and all changes and revisions from the form now before this meeting.

Section 7. The form and substance of the Sale Agreement (Realty) (in substantially the form presented to this meeting) is hereby approved, and the Secretary of the Agency is

hereby directed to include a copy of the form of the Sale Agreement (Realty) submitted to this meeting with the records of the Agency.

Section 8. The form and substance of the Sale Agreement (Personalty) (in substantially the form presented to this meeting) is hereby approved, and the Secretary of the Agency is hereby directed to include a copy of the form of the Sale Agreement (Personalty) submitted to this meeting with the records of the Agency.

Section 9. The form and substance of the PILOT Agreement (in substantially the form presented to this meeting) is hereby approved, and the Secretary of the Agency is hereby directed to include a copy of the form of the PILOT Agreement submitted to this meeting with the records of the Agency.

Section 10. The Chairman (or Vice Chairman) of the Agency is hereby authorized and directed to execute and deliver in the name and on behalf of the Agency the Sale Agreements and the PILOT Agreement in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman) shall hereinafter approve without further authorization or action of the Agency. The execution by the Chairman (or Vice Chairman) of each such document shall constitute conclusive evidence of such approval thereof.

Section 11. Upon satisfaction of the conditions enumerated in Section 5 of this Resolution, the Chairman (or Vice Chairman) of the Agency is hereby authorized in the name of and on behalf of the Agency, to execute and deliver to the Developer and the Company sales tax exemption certificates, in such forms as is approved by the Chairman (or Vice Chairman) indicating that purchases and rentals of materials and equipment included in or incorporated into the Facility or used in connection with the acquisition and installation of the Equipment are exempt from State and local sales and use taxes to the extent authorized by the Act, the Articles 28 and 29 of the New York Tax Law, this Resolution, and the Sale Agreement.

Section 12. The Chairman (or Vice Chairman) of the Agency are hereby authorized, on behalf of the Agency, to negotiate, execute and deliver any mortgages, security agreements, building loan agreements, UCC-1 Financing Statements and all other documents reasonably contemplated by this Resolution or required by the Developer's mortgage lender (hereinafter, with the Sale Agreements and the PILOT Agreement, collectively referred to as the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman) of the Agency shall approve, the execution thereof by the Chairman (or Vice Chairman) of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency's interest in the Facility.

Section 13. 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 by the provisions of the Sale Agreements and other Agency Documents and to execute and deliver all such additional certificates, instruments and deeds, 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 provision of the Sale Agreements and the other Agency Documents binding upon the Agency..

Section 14. These Resolutions 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:

	<i>Yea</i>	<i>Nea</i>	<i>Abstain</i>	<i>Absent</i>
Allen Abrahams	[ ✓ ]	[ ]	[ ]	[ ]
David Cocks	[ ]	[ ]	[ ]	[ ✓ ]
Albert C. Valk	[ ✓ ]	[ ]	[ ]	[ ]
Carl Helstrom	[ ✓ ]	[ ]	[ ]	[ ]
Donna Jennings	[ ✓ ]	[ ]	[ ]	[ ]
William J. Kelly, Jr.	[ ]	[ ]	[ ]	[ ✓ ]
James Partington	[ ✓ ]	[ ]	[ ]	[ ]

The Resolutions were thereupon duly adopted.

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

I, the undersigned Secretary of the Town of Montgomery Industrial Development Agency, DO HEREBY CERTIFY:


That I have compared the annexed extract of minutes of the meeting of the Town of Montgomery Industrial Development Agency (the "Agency"), including the resolution contained therein, held on September 26, 2002, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that 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 modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 26<sup>th</sup> day of September, 2002.

  
Secretary

[SEAL]