

RESOLUTION OF THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, RECONSTRUCTION AND EQUIPPING OF A CERTAIN FACILITY FOR EDO LLC AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the Town of Babylon Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of Laws of 1969 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 177 of the Laws of 1973 of New York, as amended, constituting Section 907-a 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, renovating, improving, maintaining, equipping and furnishing of, among others, manufacturing, warehousing, research, commercial or industrial facilities, 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, pursuant to an application (the "Application") submitted to the Agency by EDO LLC (the "Company"), the Company has requested that the Agency undertake a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in approximately 8 acres of land located at 1250 New Horizons Blvd. (Tax Map #0100-126.01-1-3.002) (the "1250 New Horizons Land") and approximately 8 acres located at 1500 New Horizons Blvd. (Tax Map #0100-126.01-1-4.016) (the "1500 New Horizons Land" and collectively, with 1250 New Horizons Land, the "Land"), both in the Hamlet of North Amityville in the Town of Babylon (the "Town"), Suffolk County (the "County"), New York (the "State"), the renovation and reconstruction of an existing approximately 100,000 square foot building located on the 1250 New Horizons Land (the "1250 New Horizons Improvements") and an existing approximately 125,000 square foot building located on the 1500 New Horizons Land (the "1500 New Horizons Improvements" and collectively, with the 1250 New Horizons Improvements, the "Improvements"), and the acquisition and installation therein and thereon of certain equipment (the "Equipment"; and, together with the Land and the Improvements, the "Facility"), which Facility is to be leased and subleased by the Agency to the Company and will be used by the Company as commercial office space and manufacturing facilities for the design and manufacture of electromechanical systems and performance electronic assemblies for military and space applications; (B) the granting of certain "financial assistance" (within the meaning of section 854(14) of the Act) with respect to the foregoing limited to potential exemptions from certain sales and use taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Agency is the nominal fee owner of the 1250 New Horizons Land and the 1250 New Horizons Improvements pursuant to a deed previously delivered to the Agency by the

Winona Realty Ventures III, LLC and Morgan Steel, II LLC as tenants in common (collectively, the “1250 New Horizons Property Owner”), in connection with a project previously undertaken by the Agency; and

WHEREAS, the Agency will lease its interest in the 1250 New Horizons Land and the 1250 New Horizons Improvements to the 1250 New Horizons Property Owner pursuant to an overlease agreement (the “1250 New Horizons Overlease”) by and between the Agency and the 1250 New Horizons Property Owner; and

WHEREAS, the 1250 New Horizons Property Owner will sublease its interest in the 1250 New Horizons Land and the 1250 New Horizons Improvements to the Company pursuant to a sublease agreement; and

WHEREAS, the Agency is the nominal fee owner of the 1500 New Horizons Land and the 1500 New Horizons Improvements pursuant to a deed previously delivered to the Agency by Amity Steel, LLC (the “1500 New Horizons Property Owner”), in connection with a project previously undertaken by the Agency; and

WHEREAS, the Agency will lease its interest in the 1500 New Horizons Land and the 1500 New Horizons Improvements to the 1500 New Horizons Property Owner pursuant to an overlease agreement (the “1500 New Horizons Overlease”) by and between the Agency and the 1500 New Horizons Property Owner; and

WHEREAS, the 1500 New Horizons Property Owner will sublease its interest in the 1500 New Horizons Land and the 1500 New Horizons Improvements to the Company pursuant to a sublease agreement; and

WHEREAS, representatives of the Company have indicated that the Project will result in permanent full time jobs being located within the Town; and

WHEREAS, in order to induce the Company to proceed with the Project within the Town it appears necessary for the Agency to assist the Company by taking leasehold title to the Facility so as to afford the Company certain relief from real property taxation and relief from sales and use taxation for a limited period; and

WHEREAS, the Agency (A) caused notice of 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 to the chief executive officers of the County, the Town, the Copiague Public Schools (the “School District”) and the Copiague Memorial Public Library (the “Library”) (collectively, the “Affected Tax Jurisdictions”), (B) caused notice of the Public Hearing to be published on September 10, 2016 in Newsday, a newspaper of general circulation available to the residents of the Town of Babylon, New York, (C) conducted the Public Hearing on September 20, 2016 at 10:00 a.m. at the offices of the Agency, 47 West Main Street, Babylon, New York, and (D) prepared a report of the Public Hearing (the “Report”) which fairly summarized the views presented at said public hearing and distributed same to the members of the Agency; and

WHEREAS, pursuant to Section 859-a(5)(d) of the Act, the Agency caused to be mailed on September 26, 2016 a letter to Nassau County and the Town of Islip notifying said county and town that the Company currently leases space at 585 Johnson Avenue, Bohemia, New York 11716 (the “Current Facility”) and that the Company has informed the Agency that the Company will abandon the Current Facility; 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: (A) the 1250 New Horizons Overlease; (B) the 1500 New Horizons Overlease; (C) a company lease agreement (and a memorandum thereof) (the “Company Lease”) by and between the Company and the Agency, pursuant to which, among other things, the Agency will acquire a leasehold interest in the Land and the improvements now or hereafter located on the Land from the Company; (D) a lease and project agreement (and a memorandum thereof) (the “Lease Agreement”) by and between the Agency and the Company, pursuant to which, among other things, the Company will agree to undertake and complete the Facility as agent of the Agency, the Company will agree to lease the 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 and the Company further will agree to make certain payment in lieu of taxes; and (E) various certificates relating to the Project (the “Certificates” and, collectively with the Company Lease and the Lease Agreement, the “Agency Documents”); and

WHEREAS, in connection with the Project, (A) the Company will execute and deliver to the Agency a bill of sale (the “Bill of Sale to Agency”), which conveys from the Company to the Agency all right, title and interest of the Company in the Equipment; and

WHEREAS, the Agency will file with the assessor and mail to the chief executive officers of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a 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 Facility under Section 412-a of the Real Property Tax Law) (a “Real Property Tax Exemption Form”) relating to the Project; and

WHEREAS, simultaneously with the execution of the Agency Documents, 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 Form”); and

WHEREAS, for purposes of exemption from New York State (the “State”) sales and use taxation as part of the Financial Assistance requested, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight;

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

Section 1. The Agency, based upon the representations made by the Company to the Agency in the Application 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) The Project constitutes a “project”, as such term is defined in the Act; and

(C) The acquisition, renovation and equipping of the Facility and the leasing of the Facility to the Company will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Babylon and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(D) The acquisition, renovation and equipping of the Facility and the leasing of the Facility to the Company, is reasonably necessary to induce the Company to maintain and expand their business operations in the State; and

(E) Based upon representations of the Company and counsel to the Company, the Facility conforms with the local zoning laws and planning regulations of the Town and all regional and local land use plans for the area in which the Facility is located; and

(F) The completion of the Facility will result in the removal of a plant or facility of the Company or any other proposed occupant of the Facility from one area of the State of to another area of the State or in the abandonment of a plant or facility of the Company or of any proposed occupant of the Facility located in the State but the Project is reasonably necessary to discourage the Company from removing such other plant or facility to a location outside the State of New York or is reasonably necessary to preserve the competitive position of the Company in its respective industry; and

(G) The Project Facility does not constitute a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (A) proceed with the Project; (B) acquire/retain nominal fee interests in the 1250 New Horizons Land and the 1250 New Horizons Improvements and the 1500 New Horizons Land and the 1500 New Horizons Improvements pursuant to new deeds and/or deeds previously delivered by the 1250 New Horizons Property Owner and the 1500 New Horizons Property Owner, respectively, to the Agency, in connection with previous Agency projects, as applicable; (C) lease the 1250 New Horizons Land and the 1250 New Horizons Improvements to the 1250 New Horizons Property Owner pursuant to the 1250 New Horizons Overlease; (D) lease the 1500 New Horizons Land and the 1500 New Horizons Improvements to the 1500 New Horizons Property Owner pursuant to the 1500 New Horizons Overlease; (E) acquire (i) a leasehold interest in the Land and all improvements now or

hereafter located on the Land from the Company pursuant to the Company Lease and (ii) title to the Equipment pursuant to the Bill of Sale to Agency; (F) lease the Facility to the Company pursuant to the Lease Agreement; (G) acquire, construct, reconstruct and equip the Facility, or cause the Facility to be acquired, reconstructed, and equipped, as provided in the Lease Agreement; and (H) grant to the Company the Financial Assistance with respect to the Project. In the event of the occurrence of a recapture event under the Lease Agreement, the Agency will pursue recapture of Financial Assistance as provided therein.

Section 3. The Agency is hereby authorized to acquire/retain an interest in the Facility and to do all things necessary or appropriate for the accomplishment of the Project, and all acts heretofore taken by the Agency with respect to such Project are hereby approved, ratified and confirmed.

Section 4. (A) The Agency Documents shall be in form and substance satisfactory to the Chief Executive Officer ("CEO") and the Agency Counsel and shall be in substantially similar form to the documents used in connection with prior Agency projects. The CEO, the Chief Financial Officer, the Chairman and the Secretary (each an "Authorized Representative") are each hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents and the Loan 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.

(B) The CEO and any other Authorized Representatives are each hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives to execute any Agency Documents or certificates of the Agency authorized pursuant to this Resolution and determine the terms of the Agency 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 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 6. The Agency hereby delegates to the Company, as agent of the Agency, the authority to designate (following the execution and delivery of the Agency Documents), agents and sub-agents of the Agency (each, a "Sub-Agent") for purposes of utilizing the Agency sales and use tax exemption with respect to the acquisition, reconstruction and installation of the Facility; provided that any such sub-agency designation shall become effective only upon submission to the Agency within fifteen (15) days of such agency and sub-agency designation: (1) an executed sub-agent appointment agreement (in a form approved by the Agency) and (2) a completed Form ST-60 of the New York State Department of Taxation and Finance (IDA Appointment of Project Sublessee or Agent for Sales Tax Purposes). Such agents and sub-agents may include contractors and subcontractors involved in the acquisition, reconstruction and installation of the Project Facility.

Section 7. The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Company shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from New York State sales and use exemptions benefits.

Section 8. This resolution shall take effect immediately upon adoption.

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

I, Chris Ferencsik, the undersigned Secretary of the Town of Babylon Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on September 27, 2016, 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 set forth 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.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 27 day of September, 2016.


Secretary

(SEAL)