

**RESOLUTION AMENDING AN EXISTING RESOLUTION DATED AUGUST 23, 2023
TO MODIFY THE PROJECT DESCRIPTION AND THE FINANCIAL ASSISTANCE
GRANTED BY THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY
TO EDUCATIONAL BUS TRANSPORTATION INC., E.B.T., INC. AND BABYLON
BUS LOT PROPERTY LLC**

WHEREAS, the Town of Babylon Industrial Development Agency (the “**Agency**”) adopted a resolution on August 23, 2023 (the “**Authorizing Resolution**”) having the following title: “RESOLUTION GRANTING APPROVAL OF AND AUTHORIZING THE GRANT OF CERTAIN FINANCIAL ASSISTANCE BY THE TOWN OF BABYLON INDUSTRIAL DEVELOPMENT AGENCY TO EDUCATIONAL BUS TRANSPORTATION INC., E.B.T., INC. AND BABYLON BUS LOT PROPERTY LLC IN CONNECTION WITH THE IMPROVEMENT OF A BUS DEPOT AND MAINTENANCE FACILITY”; and

WHEREAS, Educational Bus Transportation, Inc. and E.B.T., Inc. (collectively, the “**Company**”) and Babylon Bus Lot Property LLC, a limited liability company organized and existing under the laws of the State of New York or any other real estate holding entity formed by the principals of the Company (the “**Owner**”), now desire to modify (i) the description of the Project and remove the 115 & 117-119 Lamar Street parcel and (ii) the Financial Assistance granted by the Agency to (a) remove the mortgage recording taxes exemption, as the Company and Owner will no longer be obtaining financing for the Project, and (b) modify the amount of New York State and local Sales and Use Tax abatements, as the cost of goods and services related to the Project that are subject to such tax have decreased; and

WHEREAS, the Agency is authorized under the laws of the State of New York (the “**State**”), and in particular under the provisions of the New York State Industrial Development Agency Act and the Agency’s enabling legislation, respectively constituting Article 18-A and Section 907-a of the General Municipal Law (Chapter 24 of the Consolidated Laws of New York), as amended (the “**Act**”), to assist in providing for manufacturing, warehousing, research, civic, commercial and industrial facilities in the Town of Babylon, New York (the “**Town**”); and

WHEREAS, on September 24, 2010 the Agency entered into a straight lease transaction (as that term is defined under the Act) with the Lessee for the benefit of the Company and the Owner in order to provide financial assistance with respect to a project (the “**Original Project**”) located at 63, 73 and 85 Lamar Street and 70 and 76 Mahan Street, West Babylon, New York 11704 consisting of the acquisition by the Agency by deed of a 3.48 acre parcel of land and renovation and equipping of the approximately 28,000 square foot school bus depot, office and vehicle maintenance repair facility situated thereon all for use by the Company in its school bus transportation business (the “**Original Facility**”) and in accordance with such straight lease transaction, the Agency and the Lessee entered into a Lease Agreement (the “**Original Lease Agreement**”) dated September 24, 2010; and

WHEREAS, on March 24, 2016 the Agency entered into an Amended and Restated Lease Agreement with the Owner with respect to an additional project (the “**Additional Project**”) which consisted of the transfer by the Agency to the Owner of the land and the improvements constituting the Original Facility and the acquisition by the Agency of a leasehold interest in such land and

improvements and the further renovation and equipping of the Original Facility all for use by the Company in its school bus transportation business which Additional Project included increasing of parking, storage, maintenance capacity and scope of work for the Company's fleets of school bus, transit bus and motor coach operations and maintenance thereof and the undertaking and acquisition of yard lighting, security systems, fencing, paving and further development of a repair shop and all incidentals necessary for the expanded operations of the school bus and transit fleet (the "**Additional Facility**"); and

WHEREAS, representatives of the Owner and Company have filed or caused to be filed an application with the Agency concerning a new project and to accomplish the purposes of the Act, the Agency has entered into negotiations with the Owner and the Company for the new "project" (the "**Project**") consisting of (i) the expansion and development of the approximately 29,328 square foot 2-story building located on an approximately 5.8 acre lot, piece or parcel of land generally known as 63 Lamar Street in West Babylon, New York 11704, and (ii) the acquisition of a leasehold interest in an approximately 5.5 acre lot, piece or parcel of land located at 1000 Straight Path generally known as 200 Edison Avenue in West Babylon, New York 11704 (the "**Cemetery Parcel**") and the acquisition, construction and equipping on the Cemetery Parcel of an approximately 3,000 square foot commercial facility, and the improvement of the Cemetery Parcel including drainage, curbing, paving, exterior lighting, security cameras, gates, fleet fueling infrastructure, computer systems, vehicle maintenance lifts, air compressor, NG radiant heat, LED lighting inside and out and commercial electric vehicle charging infrastructure and the acquisition and installation of certain equipment and personal property on the Land and the buildings and facilities thereon (collectively, the "**Facility**"), which such facilities will be in addition to and incorporated into the Original Facility and the Additional Facility, all of the forgoing for use by the Company as a bus depot and maintenance facility for the Company's school bus, transit bus, motor coach and maintenance operations; and

WHEREAS, in order to induce the Owner and the Company to retain and grow jobs in the Town it appears necessary for the Agency to assist the Owner and the Company by taking leasehold title to or undertaking control of the Facility so as to afford the Owner and the Company of certain relief from real property taxation and sales and use taxation for a limited period; and

WHEREAS, it is contemplated that the Owner will cause the transfer or lease of the Facility to the Agency pursuant to an Amended and Restated Company Lease Agreement (the "**Company Lease**") and the Agency will assist the Owner and Company to undertake the Project and will lease or sublease the Facility to the Owner pursuant to an Amended and Restated Lease and Project Agreement (the "**Lease Agreement**"), by and between the Owner and the Agency pursuant to which the Owner agrees, among other things, to make lease payments in such amounts as specified in the Lease Agreement; and

WHEREAS, it is further contemplated that the Owner will sublease the Facility to the Company pursuant to a Sublease Agreement (the "**Sublease Agreement**") by and between the Owner and the Company pursuant to which the Company agrees, among other things, to make sublease payments in such amounts as equal to lease rentals as specified in the Lease Agreement; and

WHEREAS, pursuant to the Lease Agreement the Owner and Company will agree to make certain payments in lieu of real property taxes, with respect to the Facility, to the Agency; and

WHEREAS, in connection with the Agency's evaluation of the Project for the provision of financial assistance, the Agency has (i) assessed all material information relating to the project included in the Company's project application (the "**Project Application**") in order to afford a reasonable basis for the decision of the Agency to provide financial assistance to the Project; (ii) reviewed the Agency's written cost benefit analysis for the Project which identifies the extent to which (A) the Project will create or retain permanent, private sector jobs; (B) the estimated value of any tax exemption to be provided to the Project, (C) the amount of private sector investment generated or likely to be generated by the Project; (D) reviewed the likelihood of accomplishing the proposed project in a timely fashion; and (E) considered the extent to which the Project will provide additional sources of revenue for the Town and the school district where the Facility is located; and

WHEREAS, there has been submitted to the Agency a resolution of the Town of Babylon Department of Environmental Control (the "**Environmental Memorandum**"), Zoning Board of Appeals Application No. 22-238 dated January 25, 2023 with respect to the Cemetery Parcel portion of the Project pursuant to Article 8 of the New York State Environmental Quality Review Act of the New York State Environmental Conservation Act and the regulations promulgated thereunder ("**SEQRA**"); and

WHEREAS, in connection with the adoption of this resolution the Agency has reviewed the Project Application and the Company has confirmed in such Project Application that as of the date of the Project Application, as amended, the Company and Owner are in substantial compliance with the Act; and

WHEREAS, it is desired that the Agency authorize the granting of certain financial assistance to the Owner and the Company in connection with the Project and the Facility including exemption from real property taxes and State and local sales and use taxes.

WHEREAS, the Agency desires to amend the Authorizing Resolution and adopt this Amendatory Resolution (this "**Amendatory Resolution**") to address the changes as described above; and

WHEREAS, the Agency desires to adopt this Amendatory Resolution.

NOW, THEREFORE, BE IT DETERMINED, APPROVED AND RESOLVED by the members of the Agency as follows:

Section 1. With respect to the Agency's evaluation criteria for Manufacturing, Warehousing and Distribution Projects the Agency makes the following determinations:

- (a) It has reviewed the information in the Cost Benefit Analysis with respect to the Project.

- (b) The Company proposes a capital investment in the land, building, machinery and equipment and capital improvements in the Facility of approximately \$5,036,000.
- (c) The Project will not have significant impact from local labor construction in the Town.
- (d) The average annual salaries for the employees of the Company are \$95,925 for management employees, \$59,800 for professional employees, \$54,200 for administrative employees, \$64,364 for supervisor employees, \$53,640 for full-time laborer employees, \$27,808 for part-time laborer employees and \$32,371 for operator employees. The average annual salary for all employees of the Company is \$55,444.
- (e) The Project will not have a significant effect on in-region purchases or research and development.
- (f) The Project will include a vehicle charging facilities for electric vehicles utilized by the Company which will have a positive effect on energy efficiency.
- (g) The Company and the Facility is a significant employer of the Town providing one hundred sixty-seven (167) full time jobs and three hundred forty-seven (347) part time jobs in the Town. Improving current outside passenger vehicle storage and employee parking with respect to the Project afford the Company the ability to increase its transportation work.

Section 2. Based on the evaluation of the foregoing evaluation criteria:

(a) The Agency hereby finds and determines that (i) the Project constitutes a “Project” within the meaning of the Act; and (ii) the granting of real property tax abatements and sales and use tax abatements (collectively the “**Financial Assistance**”) by the Agency with respect to the Facility pursuant to the Act, will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the Town and the State and improve their standard of living, and thereby serve the public purposes of the Act.

(b) It is desirable and in the public interest for the Agency to grant the Financial Assistance to the Owner and the Company with respect to the Project and the Facility.

(c) The Agency shall grant Financial Assistance to the Owner and the Company in the form of New York State and local Sales and Use Tax abatements in a maximum amount not to exceed \$392,437 as provided in Section 5.2 of the Lease Agreement and in the event of the occurrence of a recapture event under the Lease Agreement the Agency will pursue recapture of the Financial Assistance as provided in Section 5.4 of the Lease Agreement.

Section 3. To accomplish the purposes of the Act, the Agency shall take legal fee or leasehold title to the Facility pursuant to the Company Lease, assist the Owner and Company to undertake the Project and sublease the Facility to the Owner pursuant to the Lease Agreement and

the Owner will further sub-lease the Facility to the Company pursuant to the Sublease Agreement.

Section 4. Pursuant to the Lease Agreement, the Owner will make certain payments in lieu of real property taxes (“**Pilots**”) which would be otherwise due and payable with respect to the Facility.

Section 5. In order to provide the Owner and the Company with Financial Assistance with respect to exemption from New York State and local Sales and Use Taxes with respect to the Project the Agency may issue one or more Sales Tax Agent Authorization Letters (“**Sales Tax Authorization Letters**”) which shall be used pursuant to the terms contained therein and in the Lease Agreement.

Section 6. The form and substance of the Lease Agreement in substantially the form previously approved by the Agency for other “straight lease” transactions is hereby approved.

Section 7. The form and substance of the Company Lease in substantially the form previously executed for other “straight lease” transactions is hereby approved.

Section 8. The form and substance of the Sublease Agreement in substantially the form previously approved by the Agency for other “straight lease” transactions is hereby approved.

Section 9. The Agency, as an involved agency, pursuant to the State Environmental Quality Review Act (SEQRA) (Article 8 of the Environmental Conservation Law) and implementing regulations contained in 6 N.Y.C.R.R., part 617 has reviewed the Environmental Memorandum and hereby finds that the Cemetery Parcel portion of the Project is a TYPE II Project under SEQRA.

In accordance with SEQRA, the Agency finds that proposed action constituting the portion of the Project exclusive of the Cemetery Parcel will not have any significant environmental impacts based upon the following:

- (a) The proposed action will not result in a substantial adverse change in existing air quality, traffic or noise levels.
- (b) The proposed action is consistent with existing zoning at the site of the Facility.
- (c) The proposed action will not result in the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character.
- (d) The proposed action will not result in the creation of a hazard to human health.
- (e) No other significant effects upon the environment that would require the preparation of an Environmental Impact Statement are foreseeable.

Section 10. The CEO of the Agency or any successor CEO of the Agency or any other authorized representative including the CFO, is hereby authorized, on behalf of the Agency, to execute and deliver final forms of the Company Lease, Lease Agreement, Sales Tax Agent Authorization Letters, and any other agreements or certificates consistent herewith (hereinafter collectively called the “**Agency Documents**”), all in substantially the forms previously executed by the Agency for other “straight lease” transactions acceptable to Agency Counsel, with such changes, variations, omissions and insertions in the Agency Documents as the CEO or the CFO of the Agency or any other authorized representative of the Agency shall upon advice of counsel approve. The execution thereof by the CEO or the CFO of the Agency or any other authorized representative shall constitute conclusive evidence of such approval.

The CEO or CFO of the Agency or any other authorized representative are further hereby authorized, on behalf of the Agency, to designate any additional authorized representatives including the Chairman, the Secretary or Assistant Secretary of the Agency, to execute any Agency Documents or certificates of the Agency authorized pursuant to this resolution and determine the terms of the Agency Documents.

The Secretary, Assistant Secretary or Counsel to the Agency is hereby authorized to attest to the CEO’s, the CFO’s or any other authorized representative’s signature on the foregoing documents and to impress or affix the seal or facsimile seal of the Agency thereto.

Section 11. The CEO of the Agency, the CFO of the Agency or any other authorized representative including the Chairman or the Secretary and any member of the Agency (as used in this resolution, the “**Authorized Representatives**”) are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to cause the transactions as described in the Company Lease, the Lease Agreement and the Sublease Agreement to be undertaken and in relation thereto, to execute and deliver any and all papers, instruments, agreements, opinions, certificates, affidavits and other documents, and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution, and the Agency Documents including such changes or revisions in the forms of such documents as may be requested by counsel to the Agency.

Section 12. 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, agreements and documents, 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 13. All covenants, stipulations, obligations and agreements of the Agency contained in this resolution, and the Agency Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties, affecting such covenants, stipulations, obligations and agreements shall be transferred by

or in accordance with law. Except as otherwise provided in this resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this resolution, and the Agency Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

Section 14. No covenant, stipulation, obligation or agreement contained in this resolution, or the Agency Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency or the Town in his or their individual capacity and neither the members of the Agency nor any officer shall be liable personally on the Agency Documents or be subject to any personal liability or accountability by reason of the execution thereof.

Section 15. The law firm Katten Muchin Rosenman LLP is hereby appointed transaction counsel to the Agency for this transaction.

Section 16. Notwithstanding the foregoing, the Agency will not grant any Financial Assistance to be granted hereunder in excess of \$100,000 to the Owner or the Company until the Agency has held a public hearing with respect to the grant of financial assistance in accordance with the provisions of the Act.

Section 17. This resolution shall take effect immediately.