

**CF ANACONDA SYR LLC  
SALES AND USE TAX EXEMPTION REALLOCATION**

**APPROVING RESOLUTION  
(3101-19-10A)**

A regular meeting of the Onondaga County Industrial Development Agency (the "Agency") was convened in public session, remotely by conference call or similar service pursuant to New York State Executive Order 202.92 on February 9, 2021, at 8:00 a.m., local time.

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

**PRESENT:** Patrick Hogan  
Janice Herzog  
Sue Stanczyk  
Kevin Ryan  
Victor Ianno  
Fanny Villarreal

**ABSENT:** Steve Morgan

**ALSO PRESENT:** Robert M. Petrovich, Executive Director  
Jeffrey W. Davis, Esq., Agency Counsel  
Amanda M. Fitzgerald, Esq., Agency Counsel

The following resolution was offered by Victor Ianno, seconded by Kevin Ryan, to wit:

**RESOLUTION AUTHORIZING THE REALLOCATION OF FINANCIAL  
ASSISTANCE AND THE EXECUTION OF DOCUMENTS IN  
CONNECTION THEREWITH IN CONNECTION WITH THE  
ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN  
FACILITY FOR CF ANACONDA SYR LLC**

WHEREAS, Onondaga County Industrial Development 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 435 of the Laws of 1970 of the State of New York and Chapter 676 of the Laws of 1975, as amended, constituting Section 895 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 manufacturing, warehousing, research, commercial 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 (the "State"), 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, reconstruct and install one or more “projects” (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, pursuant to a resolution dated October 31, 2020, the Agency agreed to undertake a project (the “Project”) on behalf of TC Syracuse Development Associates, LLC (the “Developer”) consisting of the following: (A)(1) the acquisition of a leasehold interest in an approximately 110 acre parcel of land located at 7211 and 7219 Morgan Road (tax map no. 114.-01-02.3) in the Town of Clay, Onondaga County, New York (the “Land”); (2) the construction of an approximately 3.7 million square foot, approximately five-story building for use as a warehouse and distribution facility (the “Facility”); and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the “Equipment”) (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 (subject to certain statutory limitations) (the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Developer or such other person as may be designated by the Developer and agreed upon by the Agency; and

WHEREAS, in connection with the Project, (A) the Agency (1) acquired a controlling interest in the Project pursuant to a certain underlying lease agreement (the “Underlying Lease”) by and between the Developer and the Agency dated as of July 1, 2020 pursuant to which the Developer leased to the Agency the Land and all improvements then or thereafter located on the Land and a memorandum of which was recorded in the Onondaga County Clerk’s office (the “Clerk’s Office”) on August 5, 2020 as instrument number 2020-00026026; (2) received a bill of sale dated as of July 1, 2020 (the “Bill of Sale”) from the Developer, which conveyed to the Agency all right, title and interest of the Developer in the Equipment; (3) entered into a certain lease agreement (the “Lease Agreement”) by and between the Developer and the Agency dated as of July 1, 2020, pursuant to which the Developer agreed to undertake the Project as agent of the Agency and the Developer further agreed 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, a memorandum of which was recorded in the Clerk’s Office on August 5, 2020 as instrument number 2020-00026027; (4) entered into a certain payment in lieu of tax agreement (the “PILOT Agreement”) by and between the Developer and the Agency, dated as of July 1, 2020; (5) entered into a project agreement (the “Project Agreement”) by and between the Agency and the Developer dated as of July 1, 2020 that complies with the requirements of Section 859-a(6) of the Act; (B) the Developer entered into numerous sub-agent agreements in the form of Exhibit B to the Project Agreement each between the Developer and one of the numerous sub-agents appointing same as sub-agent to the Agency for the purpose of sales and use taxes (collectively, the “Sub-Agent Agreements”); and (C) the Agency and the Developer executed various certificates relating to the Project (collectively, with the Underlying Lease, the Bill of Sale, the Lease Agreement, the PILOT Agreement, the Project Agreement and the Sub-Agent Agreements, the “Closing Documents”); and

WHEREAS, pursuant to the Project Agreement, the Agency filed 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 and use tax exemption benefits for the Project (the "Additional Thirty-Day Project Report"); and

WHEREAS, by a resolution of the Agency duly adopted on September 15, 2020, the Agency approved the sale of the Project Facility from the Developer to CF Anaconda SYR LLC (the "Company") pursuant to a certain purchase and sale agreement, provided its consent to the assignment and assumption of the Closing Documents (the "Assignment and Assumption Transaction") from the Developer to the Company, authorized the Developer to remain an agent of the Agency with the authority to designate agents and sub-agents of the Agency for sales and use tax exemption purposes and confirmed that the amount of State and local sales and use tax exemption benefit comprising the Financial Assistance shall remain the same as initially approved by the Agency which, for the purposes of clarity, meant it shall not exceed \$20,000,000.00 (the "Total Sales Tax Exemption") and shall expire on December 31, 2022; and

WHEREAS, in connection with the Assignment and Assumption Transaction, the Developer assigned to the Company and the Company assumed from the Developer all of the Developer's rights, covenants and obligations under the Closing Documents pursuant to an omnibus assignment and assumption agreement dated October 1, 2020 (the "Omnibus Assignment and Assumption Agreement") by and between the Developer and the Company and consented to by the Agency, which Omnibus Assignment and Assumption Agreement was recorded in the Clerk's Office on November 23, 2020 as instrument number 2020-00044731; and

WHEREAS, by a resolution of the Agency duly adopted on September 22, 2020, the Agency approved the lease of the Project Facility from the Company to Amazon.Com Services LLC (the "Tenant") pursuant to a certain lease agreement; and

WHEREAS, the Agency and the Company entered into an amendment to project agreement by and between the Agency and the Company dated as of October 1, 2020 (the "Amendment") which Amendment memorialized the ability of the Developer to appoint sub-agents for purposes of the Project subsequent to the Assignment and Assumption Transaction; and

WHEREAS, on January 6, 2021, the Tenant submitted a letter notifying the Agency that the Tenant will purchase a portion of the Equipment in the amount of \$100,000,000 (the "Tenant Equipment") and requesting the Agency approve a reallocation (the "Reallocation") of the Total Sales Tax Exemption such that the Company is able to use \$12,000,000 of the Total Sales Tax Exemption and the Tenant is able to use \$8,000,000 of the Total Sales Tax Exemption; and

WHEREAS, the members of the Agency adopted a resolution on January 12, 2021 (the "Public Hearing Resolution") authorizing a public hearing with respect to the Reallocation in compliance with the provisions of Section 859-a of the Act; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Executive Director 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 Reallocation being contemplated by the Agency, to be mailed on January 20, 2021 to the chief executive officers of the county and of each city, town, village and school district (collectively the “Affected Tax Jurisdictions”) in which the Project Facility is located, (B) caused notice of the Public Hearing to be published on January 21, 2021 in The Post-Standard, a newspaper of general circulation available to the residents of the Town of Van Buren, Onondaga County, New York, (C) conducted the Public Hearing on February 4, 2021 at 10:00 a.m., via Zoom meeting pursuant to New York Governor Andrew Cuomo’s Executive Order 202.1, as extended, and (D) 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; and

WHEREAS, the Agency has given due consideration to representations by the Company and the Tenant that authorizing the Reallocation with respect to the Project will further assist the Company and the Tenant to undertake the Project in Onondaga County, New York; and

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

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “SEQRA”), the Agency determined that the Project is a Type I Action as defined by SEQRA and issued a negative declaration with respect to the Project by resolution dated October 31, 2019 (the “Negative Declaration”); and

WHEREAS, the Reallocation is a de minimis change from what was previously subject to the Negative Declaration and therefore, no further review is required; and

WHEREAS, in order to consummate the Reallocation, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the “Agency Documents”): (A) an equipment lease agreement (the “Equipment Lease Agreement”) by and between the Agency and the Tenant, pursuant to which the Tenant will agree to lease the Tenant Equipment from the Agency; (B) an amendment to the Project Agreement (the “Project Agreement Amendment”) by and between the Agency and the Company; (C) a tenant project agreement (the “Tenant Project Agreement”) by and between the Agency and the Tenant; (D) one or more Thirty-Day Sales Tax Reports and any Additional Thirty-Day Project Report; and (E) various certificates relating to the Reallocation (the “Closing Documents”); and

WHEREAS, simultaneously with the execution and delivery of the Agency Documents, the Tenant will execute and deliver to the Agency one or more bills of sale to the Agency from the Tenant pursuant to which the Tenant will sell to the Agency the Tenant Equipment; and

WHEREAS, simultaneously with the execution and delivery of the Agency Documents, the Agency will file with the State Department of Taxation and Finance one or more the Thirty-Day Sales Tax Report and provide a copy of each Thirty-Day Sales Tax Report to the Company and the Tenant; and

WHEREAS, for purposes of exemption from the State sales and use taxation as part of the Reallocation, "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; and

WHEREAS, pursuant to the Act, the Agency desires to adopt a resolution approving the Reallocation.

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

Section 1. The Agency, based upon the representations made by the Company and the Tenant to 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 Agency has assessed all material submitted by the Company and the Tenant in connection with the request for the Reallocation necessary to afford a reasonable basis for the decision by the Agency to grant the Reallocation for the Project as described herein;

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

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

(E) The Company and the Tenant should be granted the Reallocation based on the description of expected public benefits to occur as a result of this Project and failure by the Company and the Tenant to meet the expected public benefits will result in a recapture event, as described in the Project Agreement, as amended, and the Tenant Project Agreement; and

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

Section 2. In consequence of the foregoing, the Agency hereby determines to: (A) lease the Tenant Equipment to the Tenant pursuant to the Equipment Lease Agreement; (B) enter

into the Project Agreement Amendment; (C) enter into the Tenant Project Agreement; and (D) permit and facilitate the Reallocation.

Section 3. The Agency is hereby authorized to appoint the Tenant as agent of the Agency to undertake such acquisition, construction and equipping of the Project Facility as described in the Agency Documents.

Section 4. The Chairman (or Vice Chairman) and the Executive Director of the Agency, with the assistance of Agency Counsel, are authorized to negotiate and approve the form and substance of the Agency Documents.

Section 5. (A) The Chairman (or Vice Chairman) and the Executive Director of the Agency are 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 Chairman (or Vice Chairman) and the Executive Director shall approve, the execution thereof by the Chairman (or Vice Chairman) and the Executive Director to constitute conclusive evidence of such approval.

(B) The Chairman (or Vice Chairman) and the Executive Director of the Agency are 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 6. Notwithstanding anything herein to the contrary, the amount of State and the local sales and use tax exemption benefit comprising the Financial Assistance shall not exceed **\$20,000,000, of which, \$12,000,000 shall be allocated to the Company and \$8,000,000 shall be allocated to the Tenant pursuant to the Reallocation. The State and local sales and use tax exemption benefit shall terminate on December 31, 2022.** The Agency may consider any requests by the Company and the Tenant for increases to the amount of the State and local sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services.

Section 7. The Agency shall maintain records of the amount of State and local sales and use tax exemption benefits provided to the Project and each agent or Project operator and shall make such records available to the State Commissioner of Taxation and Finance (the "Commissioner") upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Tenant's receipt of, or benefit from, any State or local sales and use tax exemptions, the Tenant must acknowledge and agree to make, or cause its agents and/or operators to make, all records and information regarding State and local sales and use tax exemption benefits available to the Agency upon request. The provisions of Section 875 of the Act are hereby incorporated herein as if set forth herein and the Agency agrees that it shall comply with the requirements of such Section 875 of the Act.

Section 8. The Agency hereby delegates to the Tenant, as agent of the Agency, and the Company hereby retains the authority, as an agent of the Agency, to designate agents and sub-agents

of the Agency (each, a "Sub-Agent") for purposes of utilizing the State and local sales and use tax exemption with respect to the acquisition, construction and equipping of the Project 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 Thirty-Day Sales Tax Report. Such agents and sub-agents may include contractors and subcontractors involved in the acquisition, construction and installation of the Project Facility.

Section 9. The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Company, the Tenant and/or any Sub-Agent shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from State and local sales and use tax.

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 upon adoption.

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

	<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Patrick Hogan	X		
Janice Herzog	X		
Victor Ianno	X		X
Steve Morgan			
Susan Stanczyk	X		
Kevin Ryan	X		
Fanny Villarreal	X		

The Resolution was thereupon declared duly adopted.



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

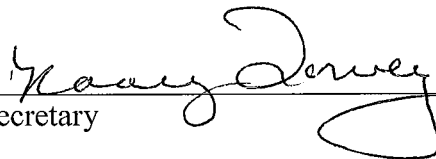
I, the undersigned Secretary of the Onondaga County Industrial Development Agency, DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on February 9, 2021, with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the Agency and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matter 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"), as modified by New York State Executive Order 202.92, 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 this 9<sup>th</sup> day of February, 2021.

(SEAL)

  
Secretary