

**MILTON REAL PROPERTIES OF MASSACHUSETTS, LLC &
SOUTHWORTH-MILTON, INC. (DBA MILTON CAT)**

**APPROVING RESOLUTION
(3101-20-18A)**

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 202.67, on October 13, 2020, 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
Victor Ianno
Steve Morgan
Susan Stanczyk
Kevin Ryan
Fanny Villarreal

ABSENT: None

ALSO PRESENT: Robert M. Petrovich, Executive Director
Amanda M. Mirabito, Esq., Agency Counsel

The following resolution was offered by Susan Stanczyk, seconded by Victor Ianno, to wit:

**RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN
CONNECTION WITH A LEASE/LEASEBACK TRANSACTION FOR A
PROJECT FOR MILTON REAL PROPERTIES OF MASSACHUSETTS,
LLC & SOUTHWORTH-MILTON, INC.**

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, Southworth-Milton, Inc. (the “Operating Company”) and Milton Real Properties of Massachusetts, LLC (the “Real Estate Holding Company”) on behalf of themselves and/or entities formed or to be formed on behalf of the foregoing, have submitted an application (the “Application”) to the Agency, a copy of which Application is on file at the office of the Agency, which Application requests that the Agency consider undertaking a project (the “Project”) for the benefit of the Operating Company and the Real Estate Holding Company and/or entities formed or to be formed on their behalf, said Project consisting of the following: (A)(1) the acquisition of a license to an approximately 19.74 acres of land located at 7285 and 7309 Eastman Road (tax map nos. 055.-03-01 and 055.-03-02) in the Town of Cicero, Onondaga County, New York (the “Land”), the construction of an approximately 75,000-85,000 square foot building (the “Facility”) and the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property not part of the Equipment (as such term is defined herein) (collectively, the “Facility Equipment”) (the Land, the Facility and the Facility Equipment being collectively referred to as the “Company Project Facility”), which Company Project Facility is to be leased and subleased by the Agency to the Real Estate Holding Company and further subleased by the Real Estate Holding Company to the Operating Company, and (2) the acquisition and installation of fixtures, machinery, equipment and other tangible personal property (the “Equipment”, and together with the Company Project Facility, the “Project Facility”), all of the foregoing Project Facility to constitute a facility providing heavy equipment and power systems for the construction and business communities and a corporate headquarters; (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 (subject to certain statutory limitations) (the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Company Project Facility to the Real Estate Holding Company or such other person as may be designated by the Real Estate Holding Company and agreed upon by the Agency and the lease (with an obligation to purchase) or sale of the Equipment to the Operating Company or such other person as may be designated by the Operating Company and agreed upon by the Agency; and

WHEREAS, the Operating Company and/or the Real Estate Holding Company will sublease a portion of the Project Facility to SITECH Northeast, a related entity to the Operating Company, which will use the space in connection with its business selling and supporting the technology and automation of the Operating Company’s earthmoving business; and

WHEREAS, by resolution adopted by the members of the Agency on September 22, 2020 (the “Public Hearing Resolution”) the Agency authorized a public hearing with respect to the Project to be held pursuant to 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 Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed on

September 24, 2020 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 or is to be located, (B) caused notice of the Public Hearing to be published on September 24, 2020 in The Post-Standard, a newspaper of general circulation available to the residents of the Town of Cicero, Onondaga County, New York, (C) conducted the Public Hearing on October 8, 2020 at 10:30 a.m., local time 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 the Application, and to representations by the Real Estate Holding Company and the Operating Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Real Estate Holding Company and the Operating Company to undertake the Project in Onondaga County, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State to another area in the State and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State; and

WHEREAS, the Agency desires to encourage the Real Estate Holding Company and the Operating Company 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 an Unlisted action as defined by SEQRA and issued a negative declaration with respect to the Project by resolution dated October 13, 2020; and

WHEREAS, the Agency (A) has determined that the Project constitutes a “commercial project” within the meaning of the Act, (B) has found that although the Project Facility contains facilities to be used primarily in making retail sales to customers who personally visit such facilities and such facilities constitute more than one-third of the total Project cost, the predominant purpose of the Project is to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of the Town of Cicero, (C) has determined, following a review of the Public Hearing Report, that the Project would serve the public purposes of the Act by preserving and increasing the overall number of permanent, private sector jobs in the State, and (D) has determined that the Agency will proceed with the Project and the granting of the Financial Assistance; 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 (hereinafter collectively referred to as the “Agency Documents”): (A) a certain license agreement (the “License Agreement”) by and between the Real Estate Holding Company, as licensor, and the Agency, as licensee, pursuant to which the Real Estate Holding

Company will grant a license to the Agency to enter upon the Land for the purpose of undertaking and completing the Project and, in the event of any occurrence of an event of default under the Equipment Lease Agreements (as herein defined), for the purpose of pursuing its remedies under the Equipment Lease Agreements; (B) a certain equipment lease agreement (the "Facility Equipment Lease Agreement") by and between the Agency and the Real Estate Holding Company pursuant to which the Real Estate Holding Company agrees to undertake the Project as agent of the Agency and the Real Estate Holding Company further agrees to lease the Facility Equipment from the Agency and further sublease the Company Project Facility to the Operating Company 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; (C) an equipment lease agreement (the "Equipment Lease Agreement" and, collectively with the Facility Equipment Lease Agreement, the "Equipment Lease Agreements") by and between the Agency and the Operating Company, pursuant to which the Operating Company will agree to lease the Equipment from the Agency; (D) a project agreement (the "Project Agreement") by and among the Agency, the Real Estate Holding Company and the Operating Company regarding the granting of the Financial Assistance and the potential recapture of such assistance that complies with the requirements of Section 859-a(6) of the Act; (E) one or more New York State Department of Taxation and Finance forms 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 (F) various certificates relating to the Project (the "Closing Documents"); and

WHEREAS, simultaneously with the execution and delivery of the License Agreement, the Real Estate Holding Company will execute and deliver to the Agency one or more bills of sale to the Agency from the Real Estate Holding Company to the Agency pursuant to which the Real Estate Holding Company will sell to the Agency the Facility Equipment, and the Operating Company will execute and deliver to the Agency one or more bills of sale to the Agency from the Operating Company to the Agency pursuant to which the Operating Company will sell to the Agency the 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 the Thirty-Day Sales Tax Report and the Additional Thirty-Day Sales Tax Report, if any, and provide a copy of the Thirty-Day Sales Tax Report and the Additional Thirty-Day Sales Tax Report, if any, to the Real Estate Holding Company and the Operating Company; and

WHEREAS, for purposes of exemption from 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; and

WHEREAS, pursuant to the Act, the Agency desires to adopt a resolution describing the Project and the Financial Assistance that the Agency is contemplating with respect to the Project.

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 Real Estate Holding Company and the Operating Company to the Agency in the Application, hereby finds and determines that:

1. 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;

2. The Project constitutes a "project," as such term is defined in the Act;

3. The Project site is located entirely within the boundaries of Onondaga County, New York;

4. It is estimated at the present time that the costs of the planning, development, construction and installation of the Project Facility (collectively, the "Project Costs") will be approximately \$26,000,000.00;

5. The completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State to another area in the State and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State;

6. (1) Although the Project contains facilities that are primarily used in making retail sales to customers who personally visit such facilities, and such facilities will constitute more than one-third of the total Project cost, (x) the Project constitutes a project where the predominant purpose is to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of the Town of Cicero; and (y) undertaking the Project will serve the public purposes of the Act by preserving the overall number of permanent, private sector jobs in the State; and (2) the Agency is authorized to provide Financial Assistance in respect of the Project pursuant to Section 862(2)(b) of the Act; provided however, that no Financial Assistance shall be provided to the Project by the Agency until the applicable provisions of Section 862(2)(c) of the Act have been complied with;

7. The acquisition, construction and equipping of the Company Project Facility and the leasing of the Facility Equipment to the Real Estate Holding Company and the acquisition and installation of the Equipment and the lease of the Equipment to the Operating Company is reasonably necessary to induce the Real Estate Holding Company and the Operating Company to maintain and expand its business operations in the State;

8. Based upon representations of the Real Estate Holding Company, the Operating Company and their counsel, the Project Facility conforms with, or prior to the Agency entering into the Agency Documents, will conform with, the local zoning laws and planning regulations of Onondaga County and all regional and local land use plans for the area in which the Project Facility is located;

9. The granting of the Financial Assistance 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;

10. The Agency has reviewed the Public Hearing Report and has fully considered all comments contained therein;

11. The Project should receive the Financial Assistance in the form of exemptions from certain sales and use taxes based on the description of expected public benefits to occur as a result of this Project, as described in the Application, and failure by the Real Estate Holding Company and/or the Operating Company to meet the expected public benefits will result in a recapture event, as described in the Project Agreement;

12. It is desirable and in the public interest for the Agency to enter into the Agency Documents;

13. The Agency has assessed all material information included in connection with the Application necessary to afford a reasonable basis for the decision by the Agency to provide the Financial Assistance for the Project as described herein;

14. The Agency has prepared a written cost-benefit analysis identifying the extent to which the Project will create or retain permanent, private sector jobs, the estimated value of any tax exemption to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the Project in a timely fashion, and the extent to which the Project will provide additional sources of revenue for municipalities and school districts, and any other public benefits that might occur as a result of the Project; and

15. The Real Estate Holding Company and the Operating Company have provided a written statement confirming that the Project as of the date of the Application is in substantial compliance with all provisions the Act.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (A) accept the License; (B) lease the Facility Equipment to the Real Estate Holding Company pursuant to the Facility Equipment Lease Agreement and lease the Equipment to the Operating Company pursuant to the Equipment Lease Agreement; (C) acquire, construct and install the Project Facility, or cause the Project Facility to be acquired, installed and constructed; (D) enter into the Project Agreement; and (E) grant the Financial Assistance with respect to the Project.

Section 3. The Agency is hereby authorized to acquire, construct and equip the Project Facility as described in the Agency Documents, to appoint the Real Estate Holding Company and the Operating Company as agents of the Agency to undertake such acquisition, construction and equipping of the Project Facility as described in the Agency Documents, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and equipping are hereby ratified, confirmed and approved.

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 approved herein shall not exceed **\$1,040,000.00 and shall last no longer than two years from the execution and delivery of the Agency Documents.** The Agency may consider any requests by the Real Estate Holding Company and the Operating Company for increases to the amount of 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. Reserved.

Section 8. 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 Real Estate Holding Company's and the Operating Company's receipt of, or benefit from, any State or local sales and use tax exemptions, the Real Estate Holding Company and the Operating Company must each acknowledge and agree to make, or cause each of 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 9. The Agency hereby delegates to the Real Estate Holding Company and the Operating Company, as agents 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, 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 Form ST-60 of the New York State Department of Taxation and Finance (IDA Appointment of Project Operator or Agent for Sales Tax Purposes). Such agents and sub-agents may include contractors and subcontractors involved in the acquisition, construction and installation of the Project Facility.

Section 10. The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Real Estate Holding Company and the Operating Company 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 exemptions benefits.

Section 11. As a condition precedent to the granting of the Financial Assistance, the Real Estate Holding Company and the Operating Company agree to execute an agreement with the Agency setting forth the preliminary undertakings of the Agency, the Real Estate Holding Company and the Operating Company with respect to the Project. The form and substance of the proposed agreement, a form of which was available to the members of the Agency (the "Agreement") are hereby approved. The Chairman (or Vice Chairman) and the Executive Director of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Agreement, in substantially the same form as presented at this meeting with changes in terms and form as shall be consistent with this Resolution and as the Executive Director or (Vice) Chairperson shall approve. The execution thereof by the Executive Director or (Vice) Chairperson shall constitute conclusive evidence of such approval.

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 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 13. 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		
Steve Morgan	X		
Susan Stanczyk	X		
Kevin Ryan	X		
Fanny Villarreal	X		

The Resolution was thereupon declared duly adopted.

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

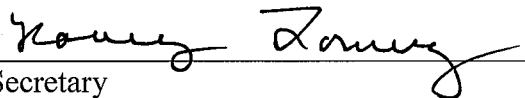
I, the undersigned Secretary of the Onondaga County Industrial Development Agency, DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held October 13, 2020, with the original thereof on file 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 202.67, 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 13th day of October, 2020.

(SEAL)


Secretary