

SOUTHWORTH-MILTON, INC. d/b/a MILTON CAT

**RESOLUTION AUTHORIZING AN EXTENSION OF EXEMPTION AND
AUTHORIZING A PUBLIC HEARING IN CONNECTION WITH A
REQUEST FOR ADDITIONAL FINANCIAL ASSISTANCE
(3101-20-22B)**

A regular meeting of the Onondaga County Industrial Development Agency was convened in public session on June 8, 2023, at 8:30 a.m., local time, at 335 Montgomery Street, 2nd Floor, Syracuse, New York.

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
Susan Stanczyk
Kevin Ryan
Fanny Villarreal
Cydney Johnson
Elizabeth Dreyfuss

ABSENT:

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 Susan Stanczyk, second by Janice Herzog, to wit:

**RESOLUTION AUTHORIZING AN EXTENSION OF THE
SALES AND USE TAX EXEMPTION FOR A CERTAIN
PROJECT FOR SOUTHWORTH-MILTON, INC. d/b/a
MILTON CAT AND AUTHORIZING A PUBLIC HEARING
FOR ADDITIONAL FINANCIAL ASSISTANCE**

WHEREAS, Onondaga County Industrial Development Agency (the "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, by resolutions adopted by the Agency on January 12, 2021 and February 9, 2021 (collectively, the "Approving Resolution"), the Agency agreed to undertake a project (the "Project") on behalf of Southworth-Milton, Inc. d/b/a Milton Cat (the "Company") consisting of the following: (A)(1) the acquisition of a leasehold interest in 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 (collectively, the "Land"); (2) the construction of an approximately 75,000-85,000 square foot building (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"), 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, 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 Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Agency previously determined that based upon the Agency's review of the application and all related materials and other information concerning the Project, the Project qualifies as An Unlisted action under Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act"), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the "Regulations", and collectively with the SEQR Act, "SEQRA"), and therefore no further environmental review is required; and

WHEREAS, in connection with the Project and the granting of the Financial Assistance, the Agency and the Company entered into the following documents: (A) a certain underlying lease to agency and a memorandum thereof, dated as of June 1, 2021 (the "Underlying Lease") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company leased to the Agency the Land and all improvements then or thereafter located on the Land (collectively, the "Premises") for a lease term ending on June 30, 2023 (the "Termination Date"), (B) a certain lease to the Company and a memorandum thereof dated as of June 1, 2021 (the "Lease Agreement") by and between the Agency, as landlord, and the Company, as tenant, pursuant to which the Agency leased back to the Company the Premises for a lease term ending on the

Termination Date; (C) a bill of sale dated as of June 1, 2021 (the “Bill of Sale to Agency”), which conveyed to the Agency all right, title and interest of the Company in the Equipment, (D) a project agreement dated as of June 1, 2021 (the “Project Agreement”), which set forth the terms and conditions under which the Financial Assistance would be provided to the Company, and (E) 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 Report”) for the Company, filed with the New York State Department of Taxation and Finance by the Agency; and

WHEREAS, in connection with the Project, the Agency granted Financial Assistance in the form of an exemption from State and local sales and use taxes in the maximum amount of not to exceed \$1,040,000 (the “Original Maximum Sales Tax Exemption Amount”); and

WHEREAS, pursuant to the Approving Resolution and the Project Agreement, the appointment of the Company as agent of the Agency for State and local sales and use tax purposes expires June 30, 2023; and

WHEREAS, pursuant to correspondence dated May 23, 2023 (the “Request”), the Company has requested that the Agency (A) increase the Original Maximum Sales Tax Exemption Amount by \$200,000 to a maximum amount of not to exceed \$1,240,000 (the “Additional Financial Assistance”) due to the significant increase in construction costs, labor costs, lead times and the increased cost of materials that have increased by as much as thirty (30%), and (B) extend its appointment as temporary agent of the Agency for State and local sales and use tax purposes until December 31, 2023 (the “Extension”); and

WHEREAS, pursuant to Section 859-a of the Act, prior to the Agency providing any “financial assistance” (as defined in the Act) of more than \$100,000 to any project, the Agency, among other things, must hold a public hearing pursuant to Section 859-a of the Act with respect to said project; and

WHEREAS, the Additional Financial Assistance will cause the Agency to provide additional financial assistance in excess of \$100,000, therefore pursuant to Section 859-a of the Act, prior to the Agency approving the Additional Financial Assistance, the Agency, among other things, must hold a public hearing with respect to the Project and the Request; and

WHEREAS, in connection with the Extension, the Company will enter into an omnibus amendment to the Project Agreement and other Project Documents (the “Amendment”) and the Agency will file one or more Form ST-60 with the New York State Department of Tax and Finance (collectively, the “Form ST-60”); and

WHEREAS, pursuant to SEQRA, the Agency must determine the potential environmental significance of the Extension and execution and delivery of the Amendment and related documents (collectively, the “Transaction”); and

WHEREAS, the Agency desires to adopt a resolution authorizing a public hearing and approving the Extension.

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

Section 1. The Agency hereby authorizes the Executive Director, prior to the granting of the Additional Financial Assistance, after consultation with counsel to the Agency, (A) to establish a time, date and place for a public hearing of the Agency to hear all persons interested in the Project Facility and the Additional Financial Assistance being contemplated by the Agency, said public hearing to be held in the city, town or village where the Project Facility is located; (B) to cause notice of such public hearing to be given to the public by publishing a notice of such hearing in a newspaper of general circulation available to residents of the governmental units where the Project Facility is or is to be located, such notice and publication to comply with the requirements of Section 859-a of the Act; (C) to cause notice of said public hearing to be given to the chief executive officer of the county and each city, town, village and school district in which the Project Facility is or is to be located; (D) to conduct such public hearing; and (E) to cause a report of said public hearing fairly summarizing the views presented at a public hearing to be promptly prepared and cause copies of said report to be made available to the members of the Agency.

Section 2. Pursuant to SEQRA, the Agency hereby finds and determines that the Transaction does not constitute a significant change from the original Project that was reviewed under the SEQRA Resolution and therefore no further or additional review under SEQRA is required.

Section 3. The Agency, based upon representation made by the Company 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 Project constitutes a “project,” as such term is defined in the Act;

(C) The granting of the Extension of the appointment of the Company as temporary agent of the Agency for State and local sales and use tax purposes until December 31, 2023 will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Onondaga County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act.

Section 4. In consequence of the foregoing, the Agency hereby determines to extend the appointment of the Company as temporary agent of the Agency for sales and use tax purposes until December 31, 2023.

Section 5. The Agency is hereby authorized to do all things necessary or appropriate for the approval of the Extension, and all acts heretofore taken by the Agency with respect thereto are hereby approved, ratified and confirmed.

Section 6. The Agency is hereby authorized to execute and deliver the Amendment and

such other documents as may be necessary to effectuate the Extension (collectively, the "Sales Tax Documents") and execute and file the Form ST-60. The Chairman, Vice Chairman and/or the Executive Director of the Agency, with the assistance of Agency Counsel, are each authorized to negotiate and approve the form and substance of the Sales Tax Documents required in connection with the Extension.

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 State sales and use tax exemptions benefits.

Section 8. (A) The Chairman, Vice Chairman and/or the Executive Director of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Sales Tax Documents and the Form ST-60, 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, Vice Chairman and/or the Executive Director shall approve, the execution thereof by the Chairman, Vice Chairman and/or the Executive Director to constitute conclusive evidence of such approval.

(B) The Chairman, Vice Chairman and/or the Executive Director of the Agency are each 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 9. 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 Sales Tax 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 Sales Tax Documents binding upon the Agency.

Section 10. The Chairman, Vice Chairman and/or Executive Director of the Agency are hereby authorized and directed to distribute copies of this Resolution to the Operating Company and the Real Estate Holding Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 11. This Resolution 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:

	<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Patrick Hogan	X		
Janice Herzog	X		
Cydney Johnson	X		
Elizabeth Dreyfuss	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)

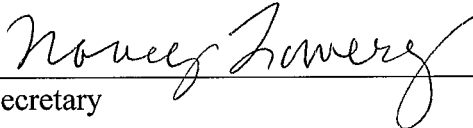
I, the undersigned Secretary of the Onondaga County Industrial Development Agency, DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on June 8, 2023, with the original thereof on file 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") 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 8 day of June, 2023.

(SEAL)


Secretary