

GERALD W. TRACEY & TRACEY ROAD EQUIPMENT, INC.

**RESOLUTION AUTHORIZING ADDITIONAL FINANCIAL ASSISTANCE IN THE
FORM OF AN INCREASE IN THE SALES AND USE TAX EXEMPTION
(3101-20-03B)**

A regular meeting of the Onondaga County Industrial Development Agency convened in public session on September 14, 2021, at 8:00 a.m., local time at 333 West Washington Street, 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
Victor Ianno
Steve Morgan
Susan Stanczyk
Fanny Villarreal

ABSENT: Kevin Ryan

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

The following resolution was offered by Janice Herzog, second by Steve Morgan, to wit:

**RESOLUTION APPROVING ADDITIONAL FINANCIAL ASSISTANCE
IN CONNECTION WITH A CERTAIN PROJECT FOR GERALD W.
TRACEY AND TRACEY ROAD EQUIPMENT, INC.**

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 resolution adopted by the Agency on or about September 15, 2020 (the "Approving Resolution"), the Agency agreed to undertake a project (the "Project") on behalf of Tracey Road Equipment, Inc. (the "Operating Company") and Tracey Holdings LLC (the "Real Estate Holding Company") consisting of the following: (A)(1) the acquisition of a leasehold interest in approximately 2.75 acres of land located at 6803 Manlius Center Drive (tax map no. 014.-01-05.1) and in approximately 7 acres of land located on Claymaster Drive (tax map nos. 14.-1-7.2, 14.-1-7.4 and 14.-1-7.6) in the Town of Dewitt, Onondaga County, New York (collectively, the "Land") and the existing building thereon (the "Existing Building"); (2) the construction on the Land of an approximately 27,692 square foot expansion to the Existing Building (the "Expansion" and, collectively, with the Existing 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 "Real Estate Owner Project Facility"), which Real Estate Owner 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 (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the "Equipment," and together with the Real Estate Owner Project Facility, the "Project Facility"), such Project Facility to be used as commercial truck repair facilities; (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 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, 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 Project had been subject to an environmental review resulting in the issuance of a Negative Declaration by the Agency by resolution dated September 15, 2020 (the "SEQRA Resolution"); and

WHEREAS, on or about November 30, 2020, the Real Estate Holding Company informed the Agency that the Land is owned by Gerald W. Tracey (the "Real Estate Owner"), an individual owning One Hundred Percent (100%) of the membership interests of the Real Estate Holding Company either outright or in trust, and would be taking the place of the Real Estate Holding Company with respect to the Project; and

WHEREAS, in connection with the Project and the granting of the Financial Assistance, the Agency, the Operating Company and the Real Estate Owner entered into the following

documents: (A) a certain lease to agency dated as of December 1, 2020 (the “Underlying Lease”) by and between the Real Estate Owner, as landlord, and the Agency, as tenant, pursuant to which the Real Estate Owner 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 the date of termination of the Payment in Lieu of Tax Agreement, (B) a certain lease to the Real Estate Owner dated as of December 1, 2020 (the “Lease Agreement”) by and between the Agency, as landlord, and the Real Estate Owner, as tenant, pursuant to which the Agency leased back to the Real Estate Owner the Premises for a lease term ending on the date of the termination of the Payment in Lieu of Tax Agreement (C) a bill of sale dated as of December 1, 2020 (the “Bill of Sale to Agency”), which conveyed to the Agency all right, title and interest of the Real Estate Owner in the Facility Equipment, (D) a bill of sale dated as of December 1, 2020 (the “Equipment Bill of Sale to Agency”), which conveyed to the Agency all right, title and interest of the Operating Company in the Equipment, (E) an equipment lease agreement dated as of December 1, 2020 (the “Equipment Lease Agreement”) pursuant to which the Agency leased the Equipment to the Operating Company, (F) a project agreement dated as of December 1, 2020 (the “Project Agreement”), which set forth the terms and conditions under which the Financial Assistance would be provided to the Real Estate Owner and the Operating Company, (G) 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 each of the Real Estate Owner and the Operating Company, filed with the New York State Department of Taxation and Finance by the Agency, (H) a payment in lieu of tax agreement dated as of December 1, 2020 (the “Payment in Lieu of Tax Agreement”), pursuant to which the Real Estate Owner and the Operating Company agreed to pay certain payments in lieu of taxes with respect to the Real Estate Owner Project Facility, and (I) a copy of a New York State Board of Real Property Services Form 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 Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the Payment in Lieu of Tax Agreement, filed with the assessor and mailed to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act); and

WHEREAS, in connection with the Project, the Agency granted Financial Assistance in the form of an exemption from sales and use taxes in the maximum amount of not to exceed \$160,000 (the “Original Maximum Sales Tax Exemption Amount”); and

WHEREAS, pursuant to correspondence dated July 19, 2021 (the “Request”), the Real Estate Owner and the Operating Company have requested that the Agency increase the Original Maximum Sales Tax Exemption Amount by \$100,000 to a maximum amount of not to exceed \$260,000 (the “Additional Financial Assistance”) due to the increased cost of the Project; 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, pursuant to Section 859-a of the Act, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) 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 August 26, 2021 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is located, (B) caused notice of the Public Hearing to be published on August 29, 2021 in The Post-Standard, a newspaper of general circulation available to the residents of the Town of Dewitt, Onondaga County, New York, (C) conducted the Public Hearing on September 9, 2021 at 11:30 a.m., local time at the Dewitt Town Hall, 5400 Butternut Drive, East Syracuse, New York, 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, in connection with the increase in the amount of the sales and use tax exemption granted to the Real Estate Owner and Operating Company, the Real Estate Owner and the Operating Company will enter into an amendment to the Project Agreement (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, the Agency desires to adopt a resolution (A) acknowledging that the Public Hearing was held in compliance with the Act, and (B) authorizing the Additional Financial Assistance; and

WHEREAS, pursuant to 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 (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the Agency must determine the potential environmental significance of granting additional financial assistance in the form of additional sales and use tax exemption to the Real Estate Owner and Operating Company and executing and delivering the Amendment and related documents (collectively, the "Transaction").

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

Section 1. Pursuant to SEQRA, the Agency hereby finds and determines that the grant of Additional Financial Assistance and 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 2. The Public Hearing held by the Agency on September 9, 2021 at 11:30 a.m., local time at the Agency offices, concerning the Project and the Additional Financial Assistance being contemplated by the Agency was duly held in accordance with the Act, including, but not limited to, the giving of at least ten (10) days published notice of the Public Hearing to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is located and affording interested parties a reasonable opportunity, both orally and in writing, to present their views with respect to the Project.

Section 3. The Agency, based upon representation made by the Real Estate Owner and the Operating 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 Project site is located entirely within the boundaries of Onondaga County, New York;

(D) 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 of New York to another area in the State of New York 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 of New York;

(E) (1) The Project Facility does not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project, and accordingly the Project is not prohibited by the provisions of Section 862(2)(a) of the Act, and (2) accordingly the Agency is authorized to provide the Additional Financial Assistance in respect of the Project pursuant to Section 862(2)(a) of the Act;

(F) The granting of the Additional 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 of New York and improve their standard of living, and thereby serve the public purposes of the Act;

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

(H) The Project should receive the Additional Financial Assistance in the form of the increased exemption 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 submitted in connection with the Project, and failure by the Real Estate Holding Company and the Operating Company to meet the expected public benefits will result in a recapture event, as described in the Project Agreement.

Section 4. In consequence of the foregoing, the Agency hereby determines to grant the Additional Financial Assistance with respect to the Project.

Section 5. The Agency is hereby authorized to do all things necessary or appropriate for the granting of the Additional Financial Assistance, 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 grant of the Additional Financial Assistance (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, is authorized to negotiate and approve the form and substance of the Sales Tax Documents required in connection with the grant of the Additional Financial Assistance.

Section 7. (A) The Chairman, Vice Chairman and/or the Executive Director of the Agency is 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 is 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 8. 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 9. The Chairman, Vice Chairman and/or the Executive Director of the Agency are hereby authorized and directed to distribute copies of this Resolution to the Real Estate Owner and the Operating 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 10. 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		
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 on September 14, 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") 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 16th day of September, 2021.

(SEAL)


Secretary