

GERALD W. TRACEY & TRACEY ROAD EQUIPMENT, INC.

**AUTHORIZING EXECUTION OF LENDER DOCUMENTS
(3101-20-03B)**

A special meeting of the Onondaga County Industrial Development Agency (the "Agency") was convened in public session on June 29, 2021, at Washington Station, 1st Floor, 333 West Washington Street, Syracuse, New York.

The meeting was called to order by Patrick Hogan and, upon the roll being duly called, the following members were:

PRESENT: Patrick Hogan
Victor Ianno
Susan Stanczyk
Kevin Ryan
Fanny Villarreal

ABSENT: Steve Morgan
Janice Herzog

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 Susan Stanczyk, to wit:

RESOLUTION AUTHORIZING THE EXECUTION OF LENDER DOCUMENTS IN CONNECTION WITH A CERTAIN PROJECT FOR GERALD W. TRACEY AND TRACEY ROAD EQUIPMENT, INC. AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH.

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, 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)

WHEREAS, in order to finance the Project, the Real Estate Owner will obtain from Mercedes-Benz Financial Services USA LLC (the "Lender") a mortgage loan (the "Loan") in the maximum amount of \$5,500,000.00; and

WHEREAS, Real Estate Owner has asked the Agency to join in the execution of (A) a mortgage, security agreement and fixture filing and assignment of leases and rents by the Agency and the Real Estate Owner to the Lender to secure the Loan (as may be amended, modified or assigned from time to time, the "Mortgage"), which Mortgage grants a mortgage lien on and security interest in the Project Facility to the Lender; and (B) a consolidation, modification and extension agreement among the Real Estate Owner, the Agency and the Lender (the "Mortgage Consolidation" and, together with the Mortgage, the "Mortgage Documents") for the purpose of consolidating the Mortgage with that certain Consolidated Replacement Fixed Rate Promissory Note, dated December 30, 2015, which consolidated (i) that certain mortgage dated August 31, 2009, from Real Estate Owner to DCFS USA LLC (n/k/a Mercedes-Benz Financial Services USA LLC) recorded on September 4, 2009, in Book 15939, Page 144, as Instrument No. 35351, in the Onondaga County Clerk's Office, and which mortgage currently secures, among other things, the Fixed Rate Promissory Note dated August 31, 2009, by Real Estate Owner, in the original principal amount of \$1,800,000.00; (ii) that certain Mortgage, Security Agreement and Fixture Filing, and Assignment of Leases and Rents dated as of December 30, 2015, from Real Estate Owner to Lender, which secured the Demand Promissory Note dated as of December 30, 2015, by Real Estate Owner, in the principal amount

of \$788,000.00, and recorded on January 4, 2016, in Book 17923, Page 483, as Instrument No. 76, in the Onondaga County Clerk's Office; and (iii) the Mortgage; and

WHEREAS, the principal amount of the Mortgage and the amount of mortgage recording tax exemption thereon exceeded the \$3,900,000.00 of mortgage loans and the \$29,250.00 mortgage recording tax exemption benefit included in the Company's application to the Agency, approved by the Agency pursuant to the Approving Resolution and as set forth in the Project Agreement and therefore, the Financial Assistance will only apply to that portion of the mortgage recording tax previously granted an exemption pursuant to the Approving Resolution; 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 a mortgage to the Lender and executing and delivering the Mortgage Documents (collectively, the "Transaction").

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

Section 1. Pursuant to SEQRA, the Agency hereby finds and determines that:

(A) Pursuant to Section 617.5(c)(23) of the Regulations, the Transaction is an "Unlisted" action (as said quoted term is defined in the Regulations); and

(B) The action will not have a significant adverse effect on the environment, and the Agency hereby issues a negative declaration pursuant to SEQRA with respect to the Transaction.

Section 2. The Agency, based upon the representations made by the Operating Company and the Real Estate Owner 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; and

(B) Granting to the Lender a mortgage interest in and a lien on the Agency's interest in the Project Facility and executing the Mortgage Documents will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of the County of Onondaga, New York and the State of New York and improve their standard of living.

Section 3. In consequence of the foregoing, the Agency hereby determines to grant to the Lender a mortgage interest in and a lien on the Agency's interest in the Project Facility.

Section 4. The Agency is hereby authorized to execute and deliver the Mortgage Documents. The form and substance of the Mortgage Documents, in substantially the form presented to this meeting are hereby approved.

Section 5. (A) The Chairman, Vice Chairman and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Mortgage 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 substantially the forms thereof presented to this meeting with such changes, variation, omissions and insertions 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 Chair, 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.

Section 6. 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 Mortgage 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 Mortgage Documents binding upon the Agency.

Section 7. 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)

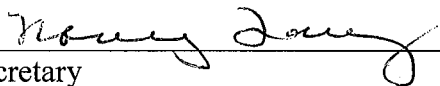
I, the undersigned Secretary of the Onondaga County Industrial Development Agency, DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on June 29, 2021, with the original thereof on file 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 29th day of June, 2021.

(SEAL)


Secretary