

ULTRA DAIRY, LLC

LOCAL ACCESS POLICY WAIVER (3101-20-14G)

A special meeting of the Onondaga County Industrial Development Agency (the "Agency") was convened in public session on August 5, 2020, at 1:00 p.m. remotely by conference call or similar service pursuant to the New York State Executive Order 202.48.

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: Janice Herzog, Vice Chairperson
Kevin Ryan, Member
Susan Stanczyk, Member
Victor Ianno, Member
Steve Morgan, Member
Fanny Villarreal, Member

ABSENT: Patrick Hogan

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

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

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

RESOLUTION WAIVING THE AGENCY'S LOCAL ACCESS POLICY FOR A PORTION OF THE ULTRA DAIRY, LLC PROJECT.

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, pursuant to a resolution adopted by the members of the Agency on June 12, 2003, the Agency undertook a project (the "2003 Project") on behalf of Ultra Dairy, LLC (the "Company") consisting of the following: (A)(1) the acquisition of an interest in an approximately 21 acre parcel of land located at 6750 Benedict Road (tax map no. 042.-13-05.1) in the Town of Dewitt, Onondaga County, New York (the "Land"); (2) the construction on the Land of an approximately 31,000 square foot manufacturing and packaging facility for use by the Company (the "2003 Facility"); and (3) the acquisition and installation in the 2003 Facility of certain machinery and equipment (the "2003 Equipment" and collectively with the Land and the 2003 Facility, the "2003 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 estate transfer taxes and real property taxes; (C) the lease (with an obligation to purchase) or sale of the 2003 Project Facility to the Company ; and (D) assisting the Company in the financing of the 2003 Project Facility; and

WHEREAS, in connection with the 2003 Project, the Agency and the Company entered into, inter alia, an underlying lease agreement dated as of August 1, 2003, a memo of which was recorded in the Onondaga County Clerk's Office (the "Clerk's Office") on August 19, 2003 in Book 4793 at Page 0437 in which the Company leases its interest in the Land and the 2003 Facility to the Agency (the "2003 Underlying Lease"), a bill of sale dated as of August 1, 2003 pursuant to which the Company sold its interest in the 2003 Equipment to the Agency (the "2003 Company Bill of Sale"), a lease agreement dated as of August 1, 2003, a memo of which was recorded in the Clerk's Office on August 19, 2003 in Book 4793 at Page 443 in which the Agency leases its interest in the 2003 Project Facility to the Company (the "2003 Agency Lease") and a payment in lieu of tax agreement dated as of August 1, 2003 (the "2003 PILOT"); and

WHEREAS, pursuant to a resolution adopted by the members of the Agency on December 14, 2006 the Agency undertook a project (the "2007 Project") on behalf of the Company consisting of the following: (A)(1) construction of an approximately 4,000 square foot addition to and modification of the 2003 Facility (as modified and expanded, the "2007 Facility"); and (2) the acquisition and installation in the 2007 Facility of certain machinery and equipment (the "2007 Equipment") (the Land, the 2007 Facility and the 2007 Equipment are sometimes hereinafter collectively referred to as the "2007 Project Facility"); and (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; and

WHEREAS, pursuant to a resolution adopted by the members of the Agency on July 10, 2008 the Agency undertook a project (the "2008 Project") on behalf of the Company consisting of the following: (A)(1) construction of an approximately 55,000 square foot expansion of the 2007 Facility (as modified and expanded, the "2008 Facility"); and (2) the acquisition and installation in the 2008 Facility of certain machinery and equipment (the "2008 Equipment") (the Land, the 2008 Facility and the 2008 Equipment are sometimes hereinafter collectively referred to as the "2008 Project Facility"); and (B) the granting of certain "financial assistance" (within the meaning

of Section 85404) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes; and

WHEREAS, on March 1, 2010, the Agency and the Company entered into an amended and restated payment in lieu of tax agreement dated as of March 1, 2010 (the "2010 PILOT"), which amended and restated, in its entirety, the 2003 PILOT Agreement; and

WHEREAS, pursuant to a resolution adopted by the Agency on October 9, 2018, the Agency undertook a project (the "2019 Project") on behalf of the Company consisting of the following: (A) (1) the retention of the Agency's interest in the Land and the 2003 Project Facility; (2) the construction of an approximately 38,400 square foot addition, an approximately 2,970 square foot addition and an approximately 1,165 square foot addition to the 2008 Project Facility (the "2019 Improvements" and, together with the 2008 Facility, the "2019 Facility") located on the Land; and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the "2019 Equipment") (the Land, the Facility, the 2003 Equipment, the 2007 Equipment, 2008 Equipment and the 2019 Equipment being collectively referred to as the "2019 Project Facility"), such Project Facility to provide manufacturing, storage and cooling space for the manufacturing, storage and shipment of dairy and non-dairy food products; (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 and mortgage recording taxes subject to certain statutory limitations (collectively, the "2019 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, in connection with the 2019 Project, the Agency and the Company entered into, inter alia, an amended and restated underlying lease agreement dated as of May 1, 2019, a memo of which was recorded in the Onondaga County Clerk's Office (the "Clerk's Office") on January 9, 2020 as Instrument Number 2020-00001058, a bill of sale dated as of May 1, 2019 pursuant to which the Company sold its interest in the 2019 Equipment to the Agency, an amended and restated lease agreement dated as of May 1, 2019, a memo of which was recorded in the Clerk's Office on January 9, 2020 as Instrument Number 2020-00001059 and a payment in lieu of tax agreement dated as of May 1, 2019 (the "2019 PILOT"), which amended and restated, in its entirety, the 2010 PILOT Agreement; and

WHEREAS, pursuant to a resolution adopted by the Agency on August 5, 2020, the Agency undertook a project (the "2020 Project") (the "Project") on behalf of the Company consisting of the following: (A)(1) the addition of an approximately 26,000 square foot expansion (the "2020 Improvements") to the 2019 Project Facility (as renovated and expanded, the "Facility") on the Land; and (2) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the "Equipment") (the Land, the Facility, the 2003 Equipment, the 2007 Equipment, 2008 Equipment, the 2019 Equipment and the Equipment being collectively referred to as the "Project Facility"), such Project Facility to provide space for an aseptic dairy processing area; (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 and real property taxes (collectively, 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, it is estimated that the cost of the planning, development, construction and installation of the 2020 Improvements (collectively, the "Project Costs") will be approximately \$28,537,023; and

WHEREAS, the Agency has adopted a Local Access Policy (the "Policy") that requires any project receiving Financial Assistance from the Agency to use local general contractors, sub-contractors and labor for one-hundred percent (100%) of the construction of a project facility; and

WHEREAS, the Policy defines "local" as permanently residing or having a permanent office in the counties of Cayuga, Cortland, Herkimer, Jefferson, Madison, Oneida, Onondaga, Oswego, Tompkins or Wayne, in the State of New York (collectively, the "Local Labor Area"); and

WHEREAS, the Policy permits the Agency to grant a waiver to the Policy on a case-by-case basis where warranty issues, necessity of specialized skills, significant cost differentials between local and non-local services or other compelling circumstances exist; and

WHEREAS, on July 30, 2020, the Company requested (the "Waiver Request") that the Agency waive the requirements of the Policy with respect to using the services of Mullally Bros., Inc., of Troy, New York for the installation of the highly specialized ammonia refrigeration systems associated with the Company's cooling system; and

WHEREAS, the Agency desires to grant to the Company the Waiver Request in recognition of the difficulty faced by the Company in complying with the Policy in connection with the construction of the 2020 Improvements and, notwithstanding such difficulty, the good faith efforts the Company has taken to comply with the Policy.

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

Section 1. The Agency has reviewed the Waiver Request and based upon the representations made by the Company to the Agency in connection therewith and at this meeting and, based thereon, the Agency hereby makes the following findings and determinations.

(A) The Agency waives the Local Access Policy with respect to using the services of Mullally Bros., Inc., of Troy, New York for the installation of the highly specialized ammonia refrigeration systems associated with the Company's cooling system.

Section 2. The Chairman, Vice Chairman and Executive Director of the Agency are hereby authorized and directed to distribute copies of this Resolution to the 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 3. 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)

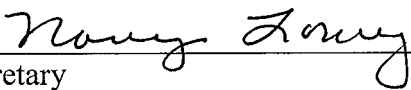
I, the undersigned Secretary of the Onondaga County Industrial Development Agency, DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on August 5, 2020, with the original thereof on 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 202.48, 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 5 day of August, 2020.

(SEAL)


Secretary