

PROJECT AUTHORIZING RESOLUTION
(Cayuga Milk Ingredients, LLC – 2020 Expansion Project)

A regular meeting of Cayuga County Industrial Development Agency was convened on Tuesday, June 16, 2020 at 4:00 p.m.

The following resolution was duly offered and seconded, to wit:

Resolution No. 06/2020 - __

RESOLUTION OF THE CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) APPOINTING CAYUGA MILK INGREDIENTS, LLC (THE “COMPANY”) AS ITS AGENT TO UNDERTAKE A CERTAIN PROJECT (AS MORE FULLY DESCRIBED BELOW); (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT; (iii) AUTHORIZING THE PROVISION OF CERTAIN FINANCIAL ASSISTANCE TO THE COMPANY (AS FURTHER DEFINED HEREIN); (iv) ADOPTING FINDINGS WITH RESPECT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT (“SEQRA”); AND (v) AUTHORIZING THE EXECUTION OF RELATED DOCUMENTS WITH RESPECT TO THE PROJECT.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 688 of the Laws of 1970 of the State of New York, (hereinafter collectively called the “Act”), the **CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called the “Agency”) was created with the authority and power to promote, develop, encourage and assist in acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research, and recreational facilities as authorized by the Act, and in connection therewith to issue its revenue bonds, enter into straight lease transactions and provide other forms of financial assistance; and

WHEREAS, pursuant to and in accordance with a certain Project Authorizing Resolution adopted by the Agency on September 25, 2012 (the “2012 Project Authorizing Resolution”), the Agency previously undertook a certain project (the “2012 Project”) consisting of (A) the sale or lease by the Agency to **CAYUGA MILK INGREDIENTS, LLC** (hereinafter, the “Company”) of an approximately 25-acre parcel of land located off Eagle Drive within the Agency-owned Cayuga County Industrial Park (the “Park”), Town of Aurelius, Cayuga County, New York (the “Land”, being all or portions of TMID Nos. 114.00-3-2, 114.00-3-3, 114.00-3-06 and 114.00-3-7, as further defined herein); (B) the planning, design, construction and operation on the Land by the Company of an approximately 108,000 square-foot dairy ingredients processing facility (the “2012 Improvements”); (C) the acquisition and installation in and around the Improvements of certain machinery, equipment and other items of tangible personal property (the “2012 Equipment”); (D) the planning, design, construction and operation on the Land by the Company of certain wastewater treatment and solid waste disposal building improvements and related equipment to serve the Improvements (the “2012 Treatment Facility”, and collectively with the

Land, Improvements and the Equipment, the “2012 Facility”); (E) at the election of the Company, the issuance by the Agency of its Exempt Facility Revenue Bonds (Cayuga Milk Ingredients, LLC Project) in a principal amount not to exceed \$30,000,000 (the “Bonds”) for the purpose of financing the Treatment Facility in accordance with applicable provisions of the Internal Revenue Code (the “Code”) relating to sewer treatment and solid waste disposal; (F) paying certain costs and expenses incidental to the issuance of the Bonds and/or establishment of debt service reserve funds (the costs associated with item (D) above being hereinafter collectively referred to as the “Treatment Facility Costs”); and (G) the lease (with an obligation to purchase) or sale of the Agency’s interest in the Facility back to the Company; and

WHEREAS, the Agency and Company undertook the 2012 Project pursuant to a Straight Lease Transaction, as defined within the Act, which included and was memorialized by certain project documents (the “2012 Project Documents”, each dated as of April 8, 2013), including (i) a certain Warranty Deed (the “Warranty Deed”), (ii) a Lease Agreement (the “Lease Agreement”), (iii) a Leaseback Agreement (the “Leaseback Agreement”), (iv) a Payment-in-lieu-of Tax Agreement (the “PILOT Agreement”), (v) a PILOT Mortgage Agreement (the “PILOT Mortgage”, as amended), (vi) a Bill of Sale (the “Bill of Sale to Agency”), and (vii) related documents; and

WHEREAS, the Company, has submitted an application to the Agency requesting the Agency’s assistance with a certain project (the “Project”) consisting of the appointment of the Company as agent of the Agency to undertake the planning, design, construction and operation of approximately 3,000 sf of building additions to the 2012 facility, including an approximately 2,408 sf addition at approximately 104 feet tall to house product evaporation and finishing equipment, an approximately 500 sf silo tank hall and dryer addition, along with additional building and site improvements and modifications within and around the 2012 Improvements (collectively, the “Improvements”); (iii) the acquisition of and installation in and around the Land and 2012 Improvements and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property, including silos, tanks, membranes, boilers and wastewater treatment equipment (the “Equipment” and, collectively with, the Land and the Improvements, the “Facility”); and

WHEREAS, on May 19, 2020, the Agency adopted an initial project resolution (the “Initial Project Resolution”) which (i) accepted the Company’s application, (ii) authorized the scheduling and conduct of a public hearing in compliance with the Act, (iii) described the contemplated forms of financial assistance to be provided by the Agency (the “Financial Assistance”, as described herein); and (iv) authorized the negotiation of an Agent and Financial Assistance and Project Agreement (the “Agent Agreement”) to be entered into with respect to the Project; and

WHEREAS, in accordance with the Initial Project Resolution, the Agency published and forwarded a Notice of Public Hearing to the Town of Aurelius (the “Town”), the County of Cayuga (the “County”), and the Union Springs Central School District (the “School”, and together with the Town and County, the “Affected Tax Jurisdictions) at least ten (10) days prior to said Public Hearing are attached hereto as **Exhibit A**; and

WHEREAS, pursuant to Section 859-a of the Act, the Agency held a public hearing on June 16, 2020 at 3:30 p.m. local time at the Town of Aurelius Town Hall, 1241 W Genesee Street Rd, Auburn, New York 13021 with respect to the Project (the “Public Hearing”) and the proposed Financial Assistance (as further defined herein) being contemplated by the Agency whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views, a copy of the minutes of the Public Hearing also being attached hereto within Exhibit A; and

WHEREAS, pursuant to the State Environmental Quality Review Act, as codified under Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, “SEQRA”), and upon review of the Application, the Agency has identified the Project as a “Type II” Action pursuant to SEQRA for which no formal review is required; and

WHEREAS, in furtherance of the foregoing, the Agency desires to authorize (i) the appointment of the Company as agent of the Agency to undertake the Project; (ii) the execution and delivery of the Agent Agreement and related documents; (iii) the provision of the Financial Assistance to the Company, which shall include an exemption from all state and local sales and use taxes with respect to the qualifying personal property included in or incorporated into the Facility or used in the construction and equipping of the Facility.

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

Section 1. Based upon the representations made by the Company to the Agency in the Application, 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) It is desirable and in the public interest for the Agency to enter into the Agent Agreement and appoint the Company its agent to undertake the Project; and

(C) The action to be taken by the Agency will induce the Company to undertake the Project, thereby increasing employment opportunities in the Town, which is located within Cayuga County, New York, and otherwise furthering the purposes of the Agency as set forth in the Act; and

(D) The Project will not result in the removal of a facility or plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the “State”) to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company’s Application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other facility or plant to a location outside the State and/or is

reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

(E) Based upon a review of the Application, the Agency has identified the PROJECT AS A “Type II” Action pursuant to SEQRA for which no formal review is necessary.

Section 2. Subject to (i) the Company executing the Agent Agreement, and (ii) the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, renovation, construction, reconstruction, rehabilitation and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, construct and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however*, the Agent Agreement shall expire on June 30, 2021 (*unless extended for good cause by the Executive Director of the Agency*).

Section 3. Based upon the representation and warranties made by the Company the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to approximately \$3,385,913.00, which result in New York State and local sales and use tax exemption benefits (“sales and use tax exemption benefits”) not to exceed \$270,873.00. The Agency agrees to consider any requests by the Company for increase 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, and, to the extent required, the Agency authorizes and conducts any supplemental public hearing(s).

Section 4. Pursuant to Section 875(3) of the Act, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; (iv) the Company has made a material false statement on its application for financial assistance; (v) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project fails to comply with a material term or condition to use property or services in the manner

approved by the Agency in connection with the Project; and/or (vi) the Company obtains mortgage recording tax benefits and/or real property tax abatements and fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project (collectively, items (i) through (vi) hereby defined as a “Recapture Event”).

As a condition precedent of receiving sales and use tax exemption benefits and real property tax abatement benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, mortgage recording tax benefits and/or real property tax abatements abatement benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

Section 5. The Chairman, Vice Chairman and/or Executive Director (or Deputy Executive Director) of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agent Agreement and related documents with such changes as shall be approved by the Chairman, Vice Chairman, the Executive Director and counsel to the Agency upon execution.

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 and to execute and deliver all such 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 resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 7. These Resolutions shall take effect immediately upon adoption.

The question of the adoption of the foregoing Resolution was duly put to vote on roll call, which resulted as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Absent</u>	<u>Abstain</u>
Paul Lattimore	[X]	[]	[]	[]
Hon. Benjamin Vitale	[X]	[]	[]	[]
John Latanyshyn	[X]	[]	[]	[]
Raymond Lockwood	[X]	[]	[]	[]
Herb Marshall	[X]	[]	[]	[]
Gina Speno	[X]	[]	[]	[]
Andrew Rindfleisch	[X]	[]	[]	[]

The Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF CAYUGA)

I, the undersigned, Acting Secretary of the CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the regular meeting of the Cayuga County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on June 16, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of the Agency had due notice of said special meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY that 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 modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 16th day of June, 2020.


[SEAL]

EXHIBIT A
PUBLIC HEARING MATERIALS