

RESOLUTION

(D & W Diesel, Inc. – 2010-2011 Expansion Project)

A regular meeting of Cayuga County Industrial Development Agency was convened on Tuesday, November 9, 2010 at 4:00 p.m.

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

Resolution No. 11/2010 - 01

RESOLUTION OF THE CAYUGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) ACCEPTING THE APPLICATION OF D & W DIESEL, INC. WITH RESPECT TO A CERTAIN PROJECT (AS MORE FULLY DEFINED BELOW); (ii) AUTHORIZING A PUBLIC HEARING WITH RESPECT TO THE PROJECT; AND (iii) DESCRIBING THE FORMS OF FINANCIAL ASSISTANCE BEING CONTEMPLATED BY THE AGENCY

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, civic, 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, **D & W DIESEL, INC.**, for itself or on behalf of an entity to be formed (the "Company"), has submitted an application (the "Application") to the Agency requesting that the Agency consider undertaking a Project (the "2010-2011 Project") consisting of (A) the retention and/or acquisition of by the Agency of a leasehold interest in all or portions of certain parcels of real property located at 1503 Clark Street Road in the Town of Aurelius, New York (the "Land", as more particularly described herein and identified as all or portions of TMID Nos. 114.00-1-43.4, 114.00-1-43.6, and 114.00-1-43.7) and the existing approximately 64,000 square feet of structures located thereon operated by the Company for the remanufacture, warehouse and distribution of, among other things, diesel engine components, hose and couplings, pneumatic conveying equipment, vacuum and liquid pumps, hydraulic drive systems and tank trunk accessories (the "Existing Improvements"); (B) the reconstruction and reconfiguration of certain portions of the Existing Improvements, along with the construction of an approximately 30,000 square foot addition to the Existing Improvements, along with certain site work, parking and access improvements for use as additional warehousing and distribution facilities (collectively, the "Improvements"); and (C) the acquisition and installation in and around the Existing Improvements and Improvements of certain machinery, equipment and other items of tangible personal property (the "Equipment" and collectively with the Existing Improvements and the Improvements, the "2010-2011 Facility"); and

WHEREAS, the Agency previously undertook a certain project (the "1995 Project") for the benefit of **GREEN MEADOWS, LTD.** (as predecessor to the Company and herein, the "Assignor") and entered into, among other things, a certain Installment Sale Agreement, dated as of December 28, 1995 (the "Installment Sale Agreement"), such 1995 Project consisting of the acquisition, construction and equipping by the Assignor, as agent of the Agency, on a certain .43 acre subdivided parcel of land located at 1507 Clark Street Road in the Town of Aurelius, New York (the "1995 Project Land", being further identified as TMID No. 114.00-1-43.7) of certain portions of the Existing Improvements (the "1995 Facility"); and

WHEREAS, the Agency further undertook a certain additional project (the "2006 Project") for the benefit of the Company and entered into, among other things, a Lease Agreement, Leaseback Agreement and related Payment-in-lieu-of-Taxes Agreement ("PILOT Agreement"), each dated as of January 1, 2006 (the "2006 Agency Documents"), such 2006 Project consisting of the acquisition or by the Agency of leasehold title to a 7.90 acre parcel of land located at 1503 Clark Street Road in the Town of Aurelius, New York (the "2006 Project Land", being further identified as TMID No. 114.00-1-43.6) and the construction and equipping on the 2006 Project Land of an approximately 26,250 square-foot single-story building and related sitework improvements (being portions of the Existing Improvements, and herein, the "2006 Facility"); and

WHEREAS, pursuant to the Application, the Company is requesting the Agency's assistance with the 2010-2011 Project by acquisition or retention of an interest in (i) the 1995 Project Land (as may be merged into the 2006 Project Land and transferred by the Agency to the Assignor or Company by virtue of termination of the Installment Sale Agreement); (ii) the 2006 Project Land, and (iii) additional lands now comprised within TMID No. 114.00-1-43.4 (the "2010-2011 Project Land", as may be merged into the 2006 Project Land, and collectively herein with the 1995 Project Land and 2006 Project Land, the "Land"); and

WHEREAS, it is contemplated that the Agency will hold a public hearing and (i) negotiate and enter into an agent agreement (the "Agent Agreement"), pursuant to which the Agency will appoint the Company as its agent for the purpose of acquiring, constructing and equipping the 2010-2011 Facility (the "Agent Agreement"), (ii) negotiate and enter into an amended and restated lease agreement (the "Lease Agreement"), an amended and restated leaseback agreement (the "Leaseback Agreement") and amended and restated payment-in-lieu-of-tax agreement (the "PILOT Agreement"), (iii) acquire and retain a leasehold interest in the Land, the Existing Improvements, the Improvements, Equipment and personal property constituting the Facility (once the Lease Agreement, Leaseback Agreement and PILOT Agreement have been negotiated), and (iv) provide financial assistance to the Company in the form of sales and use tax exemptions for purchases and rentals related to the acquisition, construction and equipping of the 2010-2011 Facility, mortgage recording tax exemption(s) for financings related to the 2010-2011 Facility, and a partial real property tax abatement relating to the 2010-2011 Facility to be structured within the PILOT Agreement (collectively, the "Financial Assistance"); and

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the Financial Assistance that the Agency is contemplating with respect to the Project; and

WHEREAS, pursuant to Section 859-a of the Act, the Agency, among other things, must hold a public hearing with respect to the Project pursuant to and in compliance with the Act.

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

Section 1. The Company has presented the Application and related information in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency, 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) The Agency has the authority to take the actions contemplated herein under the Act; and

(C) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in 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.

Section 2. The Chairman (or Vice Chairman) and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to hold a public hearing in compliance with the Act and negotiate, but not execute, the terms of (A) an Agent Agreement, pursuant to which the Agency appoints the Company as its agent to undertake the Project, (B) a Lease Agreement, pursuant to which the Company leases its interest in the Land and Existing Improvements to the Agency, (C) a related Leaseback Agreement, pursuant to which the Agency conveys its interest in the Land, Existing Improvements and 2010-2011 Facility back to the Company, (D) the PILOT Agreement and (E) related documents; *provided*, the provisions of the Agent Agreement and the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the

Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project.

Section 3. The Agency is hereby authorized to conduct a public hearing in compliance with the Act.

Section 4. The Company is hereby authorized to conduct such environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary or convenient to enable the Agency to make its final determination whether to approve the Financial Assistance, and the Company is further authorized to advance such funds as may be necessary for such purpose.

Section 5. 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 6. These Resolutions shall take effect immediately.

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	[✓]	[]	[]	[]
Carol Contiguglia	[✓]	[]	[]	[]
John Latanyshyn	[✓]	[]	[]	[]
Raymond Lockwood	[✓]	[]	[]	[]
Herb Marshall	[✓]	[]	[]	[]
Gina Speno	[✓]	[]	[✓]	[]
Vijay Mital	[✓]	[]	[]	[]

The Resolution was thereupon declared duly adopted.

SECRETARY'S CERTIFICATION

STATE OF NEW YORK)
COUNTY OF CAYUGA) SS:

I, the undersigned Acting Secretary of the Cayuga County Industrial Development Agency, DO HEREBY CERTIFY:

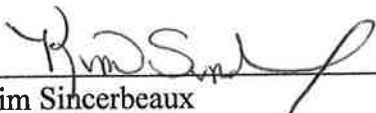
That I have compared the annexed extract of minutes of the meeting of the Cayuga County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on November 9, 2010, with the original thereof on file in my office, and that the same is a true and correct copy of the 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 said Agency had due notice of said 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 9th day of November, 2010.



Kim Sincerbeaux
Acting Secretary

[SEAL]