



6122 South Park Avenue
Hamburg, New York 14075
716.648.4145
www.HamburgIDA.com

**Hamburg Industrial Development Agency
Board of Directors Meeting
June 16, 2021, 7:30am
Blasdell Village Hall & Zoom Teleconferencing, due to the COVID 19 Pandemic**

Present

Cam Hall - Zoom
Tom Moses
Janet Plarr
Bob Hutchison
Andy Palmer
Davis Podkulski
Robert Reynolds
Norma Rusert-Kelly-Zoom

Excused

Wence Valentin

Guests

Francesca Bond, Hamburg Sun - Zoom
Mary Doran, HIDA
Andy DeVincentis, Bayview Rd., Assoc.
Guy Agostinelli, Attorney Bayview Rd. Assoc.
Bob Murray, Attorney Amazon
Jennifer Strong, Neill & Strong

Executive Director

Sean Doyle

-Pledge

-Roll Call

-Motion to open the board meeting at 7:33am.

Moved: Andy Palmer

Seconded: Norma Rusert-Kelly

Ayes: Moses, Hutchison, Palmer, Podkulski, Reynolds, Rusert-Kelly, Hall

Nays: none

Carried

-Motion to approve the May 2021 board meeting minutes.

Moved: Bob Reynolds

Seconded: Bob Hutchison

Ayes: Moses, Hutchison, Palmer, Podkulski, Reynolds, Rusert-Kelly, Hall

Nays: none

Carried

Janet Plarr joined the meeting at 7:36am

NOTE : Doyle explained the reason for the difference on the April financials, however after the meeting it was discovered the tabled financials from May pertained to the HNYLDC not the HIDA. Although the board voted to approve the April HIDA financials they were already approved in May. It is the HNYLDC April financials that need to be approved.

Treasurer, Bob Reynolds, gave an update on the financials. Administrative fees of \$105,500.00 were received along with \$123.73 in interest income. The balance on the accounts as of May 31st is \$691,424.90.

-Motion to approve the May 2021 Treasurer Report.

Moved: Bob Hutchison **Seconded:** Andy Palmer

Ayes: Moses, Hutchison, Palmer, Podkulski, Reynolds, Plarr, Rusert-Kelly, Hall

Nays: none

Carried

Executive Director Update:

-Doyle stated he is continuing his training to become a Certified Economic Developer. Next week he will be in Albany for a training course on strategic planning, after that he will be half way thru the training process to become a Certified Economic Developer.

-Project closings, Doyle is continuing to work with 290 Lake Street to find tenants in order to keep the project moving along. The Camp Road corridor is part of the Gateway Revitalization initiative and the 290 Lake Street Project fits with its objectives. Additionally, E-One, K&H Industries and Bayview Road Associates are all moving along towards closings.

-The HIDA/HNYLDC received some nice press last week from the Palace Theatre loan closing.

-Investments – as a municipality the options are limited. Doyle looked into the CD rates, locally the best rate is 28 basis points, online Sallie Mae had the highest at 55 basis points. After talking with the Executive Committee, it was thought best to continue to monitor and wait and see what the Federal Government does in the next few months. Based on history CD rates should be increasing thus being more lucrative to wait it out.

-Legislative News – IDA consolidation did not gain any traction in the House or Senate. However another bill that was passed quietly by the House and Senate contained a proposal that would require local IDAs to charge the same fee their county IDA. In our case the ECIDA charges 1.25% of the project amount where the HIDA charges 1%. The board discussed and decided to have Doyle write a letter to the Governor not in favor of the proposed bill.

-Doyle requested the July meeting date be moved back 1 week from Wednesday July 21st to Wednesday July 28th same time and place.

Norma Rusert-Kelly stated she would not be able to attend the meeting on the 28th.

-Motion to move July's Board of Director's meeting to Wednesday July 28, 2021 at 7:30am at Blasdell Village Hall.

Moved: Cam Hall

Seconded: Bob Hutchison

Ayes: Moses, Hutchison, Palmer, Podkulski, Reynolds, Plarr, Rusert-Kelly, Hall

Nays: none

Carried

-Hamburg Development Corporation – Doyle sated with the PPP loans drawing down he is hoping for more action on the loan fund moving forward.

Unfinished Business-

-Doyle read the following resolution on Agency Policies:

**RESOLUTION OF THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY
CONFIRMING ITS POLICIES**

WHEREAS, the Town of Hamburg Industrial Development Agency has conducted an annual review of its existing policies.

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS THAT:

1. *The HAMBURG IDA hereby confirms and re-adopts the following existing policies:*

*HIDA By-Laws
Audit Committee Charter
Finance Committee Charter
Governance Committee Charter
Code of Ethics and Conflict of Interest Policy
Defense/Indemnification of Officers & Employees Policy
Financial Disclosure Policy
Investment Policy
Procurement Policy
Property Disposal Guidelines
Real Property Acquisition Policy
Reimbursement & Attendance Policy
Sexual Harassment Policy
Sexual Harassment Complaint Form
Travel Policy
Whistleblower Policy
Combined Fee Schedule
Data Gathering Procedure
Employee Compensation Program
Local Labor Policy
Memorandum of Understanding with County-Wide Policy
Recapture Policy
Uniform Tax Exemption & Deviation Policy
Access to Agency Records Policy;*

2. *Said policies will remain posted on the official website; and*

3. *This resolution shall take effect immediately.*

The question of the adoption of the foregoing resolution was duly put to a roll call vote at a regular meeting on June 16, 2021 which resulted as follows:

-Motion to approve the above resolution on agency policies:

Moved: Andy Palmer

Seconded: Bob Hutchison

Roll Call Vote:

Hall – aye, Moses – aye, Hutchison – aye, Palmer – aye, Podkulski – aye, Reynolds – aye, Plarr – aye, Rusert-Kelly – aye

Carried

-Bob Reynolds gave an update on the Erie Wind Project and local labor issue. He stated GE connected with the local labor union and they will be coordinating the necessary courses to train the local union workers to perform the specialized work needed on these types of projects. The board thanked Bob for his work and efforts in connecting the two parties.

The board further discussed the wording on the HIDA application which was brought forward at the last meeting. Should there be a question on the application that specifically asks if “specialized workers” are needed to complete the project. Doyle will review the application.

Privilege of the Floor -

-Doyle opened the floor up for public comment – none.

New Business -

Doyle read the following resolution on the Bayview Road Associates/Amazon Project:

**HAMBURG INDUSTRIAL DEVELOPMENT AGENCY
AMENDATORY INDUCEMENT RESOLUTION**

BAYVIEW ROAD ASSOCIATES AND AMAZON.COM SERVICES LLC

A regular meeting of the Hamburg Industrial Development Agency was convened on June 16, 2021 at 7:30 a.m.

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

AMENDATORY INDUCEMENT RESOLUTION OF THE HAMBURG INDUSTRIAL DEVELOPMENT AGENCY: (i) MAKING A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (ii) RATIFYING AND CONFIRMING THE PROVISION OF FINANCIAL ASSISTANCE TO BE PROVIDED TO BAYVIEW ROAD ASSOCIATES, LLC AND AMAZON.COM SERVICES LLC (AS MORE FULLY DESCRIBED BELOW); AND (iii) AUTHORIZING THE EXECUTION AND DELIVERY OF AMENDATORY PROJECT AGREEMENTS WITH BAYVIEW ROAD ASSOCIATES, LLC AND AMAZON.COM SERVICES LLC

WHEREAS, Bayview Road Associates, LLC (the "Company") and Amazon.com Services LLC, (the "Tenant") submitted an application (the "Application") to the Hamburg Industrial Development Agency (the "Agency") requesting that the Agency assist with a certain Project (the "Project"), consisting of: (A) the acquisition of a leasehold interest in an approximately 57.914 acre parcel of land located the corner of Lakeshore and Bayview Roads, Hamburg, New York (the "Land"); (B) the construction on the Land of an approximately 181,500 square foot warehouse/distribution facility, related infrastructure and associated exterior improvements (collectively, the

"Improvements"); and (C) the acquisition and installation therein, thereon or thereabout by the Company and the Tenant of certain material handling equipment, machinery, equipment and related personal property (the "Equipment" and, together with the Land and the Improvements, the "Facility"); all for sublease to the Tenant; and

WHEREAS, by resolution adopted on February 16, 2021 (the "Original Resolution") the Agency approved of the Project and authorized financial assistance to the Company and the Tenant in the form of a sales and use tax exemption benefit, a mortgage recording tax exemption benefit, and a real property tax exemption benefit (collectively, the "Financial Assistance"); and

WHEREAS, the Application specifically confirms that the Company, as landlord, will make a \$42,200,000 investment with respect to the Project, and of that amount, expenditures in the amount of \$15,200,000 will be made on goods and services that are subject to sales and use taxes, resulting in \$1,330,000 of sales and use tax exemption benefits as so authorized by the Original Resolution; and

WHEREAS, the Application also specifically confirms that the Tenant will make a \$5,000,000 investment with respect to the Project, and of that amount, expenditures in the amount of \$5,000,000 will be made on goods and services that are subject to sales and use taxes, resulting in \$437,500 of sales and use tax exemption benefits; and

WHEREAS, the Original Resolution authorizes expenditures in the total amount of \$47,200,000 with respect to the Project, however, the Agency desires to confirm the allocation of Financial Assistance to be provided to the Company and the Tenant, respectively; and

WHEREAS, the Application and the Original Resolution confirm that the Company will seek mortgage financing in the amount of \$33,760,000 (the "Original Mortgage Amount") however, the Company has informed the Agency that it now requires an additional \$6,240,000 in mortgage financing (the "Additional Mortgage Amount"), resulting in a consolidated mortgage amount of \$40,000,000 (the "Consolidated Mortgage Amount"), however, the Company confirms that it will not seek any mortgage recording tax exemption benefit on the Additional Mortgage Amount; 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 satisfy the requirements contained in SEQRA and the Regulations prior to making a final determination whether to undertake the Project; and

WHEREAS, the Project is located within the Lake Erie Commerce Center Project Site (the "LECC Project Site); and

WHEREAS, a Draft Generic Environmental Impact Statement (the "DGEIS") was approved by the Town of Hamburg (the "Town"), as lead agency as so defined under SEQRA, with respect to the LECC Project Site on January 23, 2012, a Final Generic Environmental Impact Statement (the "FGEIS") was approved by the Town with respect to the LECC Project Site on April 23, 2012, and on April 23, 2012, the Town adopted Findings (the "Findings Statement") containing certain required mitigation actions to be taken to avoid and/or minimize adverse environmental impacts as so related to future site development, and certain thresholds related thereto that, if exceeded, may require subsequent environmental assessment or a supplemental environmental impact statement; and

WHEREAS, the LECC Project Site is a Pre-Permitted Site as defined within Article LII of the Town Zoning Code and as such, and pursuant to same, the Town Planning Department and the Town Engineering Department are authorized to determine if proposed projects located therein are in conformity with the DGEIS, the FGEIS, and the Findings Statement; and

WHEREAS, on January 26, 2021, the Town Planning Department and the Town Engineering Department, in consultation with the Agency, confirmed that the Project was reviewed as part of the overall development considered under the DGEIS, the FGEIS and the Findings Statement, that no established thresholds and impacts as identified within the DGEIS and the FGEIS and Findings Statement are exceeded by the proposed Project, such that no new significant adverse impacts to the environment are anticipated, that no further environmental review is required for the proposed Project, and that no further SEQRA compliance is necessary in accordance with Section 617.10(d)(1) of

the SEQRA regulations because the Project conforms with the conditions and thresholds established in the DGEIS, the FGEIS, and the Findings Statement accepted and issued by the Town; and

WHEREAS, the Agency desires to confirm that the Project will be undertaken in conformance with the DGEIS, the FGEIS, and the Findings Statement.

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

Section 1. *All recitals, findings and determinations of the Agency contained in the Original Resolution are hereby reaffirmed, ratified, restated and incorporated herein by reference as if set forth herein in their entirety, except as modified by this Amendatory Inducement Resolution.*

Section 2. *In reviewing the Project pursuant to SEQRA, and in consideration of the DGEIS, the FGEIS, the Findings Statement, and the Town Planning Department and Town Engineering Department January 16, 2021 determination that no further SEQRA compliance is required for the Project because it will be carried out in conformance with the conditions and thresholds established in the Findings Statement, the Agency ratifies and confirms the Town's determination, as lead agency, pursuant to Section 617.10(d)(1) of the SEQRA regulations, that no further SEQRA compliance is required for the Project because it will be carried out in conformance with the conditions and thresholds established in the DGEIS, the FGEIS, and the Findings Statement.*

Section 3. *Section 4 of the Original Resolution is replaced in its entirety to read as follows:*

Section 4. The Chairman, Vice Chairman, Executive Director, Secretary and Assistant Secretary of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Company and the Tenant to assist in the acquisition and construction of the Project.

Section 4. *Section 5 of the Original Resolution is replaced in its entirety to read as follows:*

Section 5. The Company and Tenant are hereby authorized to undertake the construction of the approximately 181,500 square foot building to proceed with the acquisition and installation of Equipment in connection therewith at a combined cost not to exceed \$47,200,000.00, subject to the obtaining of all required approvals from the Town and other involved governmental agencies, and to advance such funds as may be necessary to accomplish such purposes. The Agency is hereby authorized to enter into such agreements with the Company and the Tenant, as the Chairman, Vice Chairman, Executive Director or other officer may deem necessary in order to accomplish the above.

Section 5. *Section 6 of the Original Resolution is replaced in its entirety to read as follows:*

Section 6. Financial Assistance and Agent Appointment.

A) Subject to the Company executing an Agent and Project Agreement, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, construct and/or renovate 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.

B) 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 estimated up to \$15,200,000, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$1,330,000, however, the Agency may consider any requests by the Company for increases 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.

C) The Agency hereby authorizes and approves that the value of the mortgage to be placed upon the facility shall not exceed \$40,000,000.00 and, based upon the Original Mortgage Amount as so authorized by the Agency within the Original Resolution and the Additional Mortgage Amount as authorized by this Amendatory Inducement Resolution, and notwithstanding the Additional Mortgage Amount and the new Consolidated Mortgage Amount, that the recording tax exemption benefit shall not exceed \$253,200.00, as so calculated based upon the Original Mortgage Amount.

D) Subject to the Tenant executing an Agent and Project Agreement, the Agency hereby authorizes the Tenant to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Tenant as the true and lawful agent of the Agency: (i) to acquire, construct and/or renovate 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 Tenant 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.

E) The Agency hereby authorizes and approves the Tenant, 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 estimated up to \$5,000,000, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$435,000, however, the Agency may consider any requests by the Tenant for increases 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.

9: Section 6. The Original Resolution is hereby amended by adding the following to the end of Section

“The Agency hereby authorizes and approves real property tax abatement benefits structured through a ten year payment in lieu of taxes agreement (“PILOT Agreement”) estimated to provided \$2,256,107 in real property tax abatement benefits, and resulting in estimated total payments in lieu of taxes of \$599,725 over the term of the PILOT Agreement.”

Section 7. Section 11 of the Original Resolution is replaced in its entirety to read as follows:

Section 11. The execution and delivery of a Project Agreement and/or Agent Agreement, Lease to Agency and a Leaseback Agreement between the Agency and the Company, and the Agency and the Tenant, as appropriate, each being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval

Section 8. Section 12 of the Original Resolution is replaced in its entirety to read as follows:

Section 12. The execution and delivery of a mortgage(s) from the Agency and the Company to a lender(s) selected by the Company and approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary in an amount not to exceed \$40,000,000 and other ancillary documents, if required, which mortgage(s) and ancillary documents shall be substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and

deliver such agreement(s) and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

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. All actions heretofore undertaken by the Agency and the Company as agent of the Agency, and the Tenant as agent of the Agency, are ratified and approved and the Agency and the Company, as agent of the Agency, and the Tenant as agent of the Agency, are hereby authorized to continue to undertake the Project.

Section 8. The resolutions contained within this Amendatory Inducement Resolution shall take effect immediately.

Attorney Strong explained to the committee, they are requesting a resolution to break down and clarify the benefits approved for each company. They are currently jointly listed on one resolution. This new resolution would protect each entity making it easier to track/recapture if one should go over their approved benefit amount. Additionally, building costs increased by 6 million since the start of the project. No new benefits are being granted on the additional costs but because Doyle is signing the contract and the mortgage amount has increased it has to be approved by the board, the closing documents require this approval.

-Motion to approve the above resolution for Bayview Road and Amazon:

Moved: Janet Plarr

Seconded: Davis Podkulski

Roll Call Vote:

Hall – aye, Moses – aye, Hutchison – aye, Palmer – aye, Podkulski – aye, Reynolds – aye, Plarr – aye, Rusert-Kelly – aye

Carried

-Carbon Activated Corporation, a public hearing was held on June 14, 2021 and was open for comments until the start of this board meeting. No verbal or written public comments were received.

Doyle read the following resolution:

RESOLUTION OF THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING CARBON ACTIVATED CORPORATION (THE "LESSEE") TO PURCHASE AND RENOVATE AN APPROXIMATELY 74,000 SQUARE FOOT EXISTING BUILDING LOCATED AT 3830 JEFFREY BOULEVARD IN THE TOWN HAMBURG, AS AGENT FOR THE AGENCY FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASEBACK TO THE LESSEE WHO WILL BE THE SOLE OCCUPANT OF THE FACILITY ALL FOR A BACK OFFICE, AND WAREHOUSE FACILITY, AND TO TAKE OTHER ACTION.

WHEREAS, CARBON ACTIVATED CORPORATION (the "Lessee") has entered into negotiations with the officials of the Town of Hamburg Industrial Development Agency (the "Agency") with respect to the purchase and renovation of an approximately 74,000 square foot existing building located at 3830 Jeffrey Boulevard, Hamburg, New York, by the Lessee, as Agent for the Agency, for lease to the Agency and subsequent Leaseback to the Lessee. The Lessee will be the sole occupant, all for the provision of a back office and warehouse Facility (the "Project"); and

WHEREAS, the assistance contemplated by the Agency will include mortgage tax abatement, sales tax exemption on any materials and/or equipment purchased for incorporation into Project and real property tax abatement in accordance with existing Agency Uniform Tax Exemption Policy and Guidelines; and

WHEREAS, the Lessee has submitted an Eligibility Questionnaire and other materials and information to the Agency (collectively hereinafter the "Eligibility Questionnaire") to initiate the accomplishment of the above; and

WHEREAS, the Agency has, after giving all required notices, held a public hearing on the Project pursuant to Section 859-A of the General Municipal Law; and

*WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: that the Lessee desires Agency assistance to renovate an existing building on a 10+/- acre parcel of land to allow for the continued growth of the Lessee, the Lessee needs a larger facility which is necessary to support the growth and the expansion of its operations; that at the time of the application the Lessee has 10 FTE employees and 5 PT employee , if the assistance is granted, **the Lessee will retain its existing employees and anticipates hiring another 12 FTE and 7 PT employees at the Project location** in the Town of Hamburg within two years following the completion of the Project; that the Project will result in substantial capital investment; that there will be no adverse disruption of existing employment at facilities of a similar nature in the Town of Hamburg; if Agency assistance is disapproved, the Lessee would have to scale back the Project negatively impacting future growth in New York; and that, therefore, Agency assistance is necessary to encourage the Lessee to proceed with the Project in the Town of Hamburg; and*

WHEREAS, the Agency desires to further encourage the Lessee with respect to the Project, if by so doing it is able to induce the Lessee to proceed with the Project in the Town of Hamburg.

NOW, THEREFORE, THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition, construction, equipping and installation of the Project and the financing or other assistance thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency further hereby determines, on the basis of the Eligibility Questionnaire and supplemental information furnished by the Lessee, as follows: (a) it would not have financed or otherwise assisted the Project except to induce the location of the Project in the area to be served by the Project as there is a demonstrable need for the Project; (b) that Agency financing and/or other assistance is reasonably necessary to promote economic development and to induce the Lessee to proceed with the Project; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area; (d) the Project will allow the Lessee to expand its business in the Town of Hamburg; (e) the Project will retain existing employment, create additional employment and provide substantial capital investment; The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that; (f) the Project as represented is reasonably necessary to provide the purposes of the Act, subject to verification and confirmation of such representations prior to the into a lease with mortgage or lease only transaction and (g) the Project is an integral part of the Lessee's plan to proceed with the Project in the Town of Hamburg.

Section 2. The Chairman, Vice Chairman, Executive Director, Secretary and Assistant Secretary of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Lessee to assist in the acquisition, construction and equipping of the Project.

*Section 3. The Lessee is authorized to initiate the purchase and renovation of an approximately 74,000 square foot existing building located at 3830 Jeffrey Boulevard, Hamburg, New York, by the Lessee, as Agent for the Agency, for lease to the Agency and subsequent Leaseback to the Lessee, who will be the sole occupant, all for the provision of a back office, and warehouse facility and to proceed with the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith at a total Project Cost not to exceed **\$5,750,000**, subject to the obtaining of all required approvals from the Town of Hamburg and other involved governmental agencies, and to advance such funds as may be necessary to accomplish such purposes.*

Section 4. The Agency is hereby authorized to enter into such agreements with the Lessee, as the Chairman, Vice Chairman, Executive Director or other officer may deem necessary in order to accomplish the above.

Section 5. The Lessee is authorized to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$700,000.00** which may result in a New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$61,250.00**. The Agency may consider any requests by the Lessee for increases in the amount of sales and use tax benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services necessary for the completion of the Project.

Section 6. Any such action heretofore taken by the Lessee in initiating the acquisition and construction of the Project is hereby ratified, confirmed and approved.

Section 7. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Lessee. By acceptance hereof, the Lessee agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof.

Section 8. The Agency hereby authorizes and approves real property tax abatement benefits structured through a **ten year payment in lieu of taxes agreement** ("PILOT Agreement") estimated to provide **\$604,314.50 in real property tax abatement benefits**, and resulting in estimated total payments in lieu of taxes of \$160,640.56 over the term of the PILOT Agreement.

Section 9. The Agency hereby authorizes and approves that the value of the mortgage to be placed upon the facility shall not exceed **\$3,900,000.00** and that the recording tax exemption benefit shall not exceed **\$29,250.00**.

Section 10. The execution and delivery of a Project and Agent Agreement, Closing Agreement, Lease to Agency, and Leaseback Agreement between the Agency and the Lessee, each being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 11. The execution and delivery of a mortgage from the Agency and the Lessee to a lender selected by the Lessee and approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary in an amount not to exceed **\$3,900,000** and other ancillary documents, if required, which mortgage and ancillary documents shall be substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 12. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Lessee's purposes or needs. The Lessee is satisfied that the Project is suitable and fit for Lessee's purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of

use thereof or for any loss of business howsoever caused, and the Lessee hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 13. The provisions of Section 875 of the General Municipal Law shall apply to this Project. In the event it is determined that an agent, project operator or other person or entity obtained state sales and use exemptions benefits for which they were not entitled or which were in excess of the amount authorized or which are for property or services not authorized or taken in cases where such Lessee, its agents, project operators or other person or entity failed to comply with a material term or condition to use property or services in the manner required by Agreements entered into between the Agency and the applicant with respect to the Project, the agent, project operator or other person or entity shall comply with all the provisions of Section 875 and pay back to the Agency the amount of the state sales and use tax exemptions benefits that they obtained but were not entitled to.

Section 14. Should the Agency's participation in this Project be challenged by any party, in the courts or otherwise, the Lessee shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from such challenge, including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Lessee hereunder or otherwise.

Section 15. This resolution is subject to compliance with all local building and zoning requirements.

Section 16. The Agency hereby determines, based upon information furnished to the Agency by the Applicant and such other information as the Agency has deemed necessary to make this determination, that the Project does not require the preparation of an environmental impact statement under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation Law ("SEQR"), as the contemplated actions are Type II actions that have been determined by SEQR not to have a significant adverse effect on the environment.

Section 17. The provisions of the Town of Hamburg Industrial Development Agency Policy for Recapture and/or Termination or Modification of Financial Assistance and Local Labor Policy shall be applicable to this Project.

Section 18. This Resolution shall take effect immediately and shall continue in full force and effect for one (1) year from the date hereof and on or after such one (1) year anniversary, the Agency may, at its option (a) terminate the effectiveness of this Resolution (except with respect to the obligations of the Lessee pursuant to Sections 12, 13, 14 and 17 of this Resolution which shall survive any expiration or termination) or (b) allow the Lessee additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions taken by the Lessee to complete such transactions. Upon any allowance of additional time to close, the Agency may charge the Lessee an extension fee in accordance with the Agency's fee schedule.

-Motion to approve the above resolution for Carbon Activated:

Moved: Andy Palmer

Seconded: Bob Reynolds

Roll Call Vote:

Hall – aye, Moses – aye, Hutchison – aye, Palmer – aye, Podkulski – aye, Reynolds – aye, Plarr – aye, Rusert-Kelly – aye

Carried

Bob Reynolds reiterated what a great project this is; 12 FT jobs at 50K and 7 PT jobs. It's a lot of money going back in in the community. Doyle has been working to get this site filled since he started, he is very pleased.

-Employment Contract for Mary Doran expires on June 30th. Doyle presented the board with a new proposed contract which had been reviewed by the Executive Committee. Notable changes; the hourly wage was increased to reflect market data and similar positions in the Town of Hamburg and the retirement contribution was increased by 1%. The contract was also reviewed by Attorney Strong and updated with current employment law standards.

-**Motion** to approve the 2 year employment agreement for Mary Doran

Moved: Janet Plarr

Seconded: Bob Hutchison

Ayes: Moses, Hutchison, Palmer, Podkulski, Reynolds, Plarr, Rusert-Kelly, Hall

Nays: none

Carried

-**Motion** to authorized Executive Director Doyle to write a letter on the HIDA's behalf to the Governor regarding the IDA project fee proposed bill which would make it mandatory to increase HIDA fee by .25% to be in line with the ECIDA fee – as discussed earlier in the meeting.

Moved: Andy Palmer

Seconded: Davis Podkulski

Ayes: Moses, Hutchison, Palmer, Podkulski, Reynolds, Plarr, Rusert-Kelly, Hall

Nays: none

Carried

-**Motion** to adjourn at 8:16am

Moved: Janet Palmer

Seconded: Bob Reynolds

Ayes: Moses, Hutchison, Palmer, Podkulski, Reynolds, Plarr, Rusert-Kelly, Hall

Nays: none

Carried

Sincerely,



Sean Doyle, Executive Director

**Next meeting July 28th
7:30am, Blasdell Village Hall**