

Transcript Document No. 8(a)

**Inducement Resolution
63 Wurz Ave., LLC Facility**

RESOLUTION OF THE ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL ACTION TOWARD APPOINTING 63 WURZ AVE., LLC, THE PRINCIPALS OF 63 WURZ AVE., LLC, AND/OR AN ENTITY FORMED OR TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING AS AGENT OF THE AGENCY IN CONNECTION WITH A LEASE-LEASEBACK TRANSACTION, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT.

WHEREAS, 63 Wurz Ave., LLC, on behalf of itself and/or the principals of 63 Wurz Ave., LLC, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Oneida County Industrial Development Agency (the "Agency") to enter into a transaction in which the Agency will assist in the construction of a 9,600± square foot, six-bay, state-of-the-art fleet maintenance facility together with all infrastructure to service the same (collectively, the "Improvements") situated on parcels of land measuring 4.50± acres in the aggregate located at 55 – 63 Wurz Avenue, City of Utica, Oneida County New York (the "Land") and the acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of providing specialized service and repair of equipment used in the related recycling and containerized shipping businesses operated by Empire Recycling Corporation ("Empire Recycling Corporation") and ERL Intermodal ("ERL Intermodal") (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"); and

WHEREAS, the Company will lease the Facility to the Agency, pursuant to Article 18-A of the General Municipal Law of the State of New York and Chapter 372 of the Laws of 1970 of the State of New York, as may be amended from time to time (collectively, the "Act") and the Agency will lease the Facility back to the Company pursuant to a Leaseback Agreement (the "Leaseback Agreement"); and

WHEREAS, the Company will sublease the Facility to Truck 63, LLC (the "Sublessee") for its operation pursuant to a sublease agreement (the "Sublease Agreement"); and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from sales and use taxes and exemptions from real property taxes for a period of ten years, during which time the Company will make fixed PILOT Payments (the "Financial Assistance"), which financial assistance represents a deviation from the Agency's Uniform Tax Exemption Policy, and which will be more particularly set forth in a final authorizing resolution; and

WHEREAS, based upon representations made by the Company in the Application, the value of the Financial Assistance is described as follows:

- Sales and use tax exemption estimated at \$61,478 but not to exceed \$67,625
- Exemptions from real property taxes, with provision for the Company to make fixed PILOT Payments for ten years, valued at approximately \$65,261

WHEREAS, the Company has committed to create (or cause the Sublessee to create) 4 FTEs at the Facility by the end of the third lease year as a result of the Project and to retain (or cause ERC to retain) the existing 125 FTEs in Oneida County as a result of the Project, and the Agency will condition the proposed financial assistance on the Company achieving the same and maintaining all FTEs for the full lease term, or be subject to terminatino or recapture of financial assistance; and

WHEREAS, prior to the closing of a lease-leaseback transaction, and the granting of any tax benefits, a public hearing (the "Hearing") will be held so that all persons with views in favor of or opposed to either the financial assistance contemplated by the Agency, or the location or nature of the Facility, can be heard; and

WHEREAS, notice of the Hearing will be given prior to the closing of a lease-leaseback transaction, and the granting of any tax benefits, and such notice (together with proof of publication) will be substantially in the form annexed hereto as **Exhibit A**; and

WHEREAS, the minutes of the Hearing are or will be annexed hereto as **Exhibit B**; and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed lease-leaseback transaction is either an inducement to the Company to maintain and expand the Facility

in the County or is necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the “SEQR Act” or “SEQRA”), the Agency constitutes a “State Agency”; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form and related documents (the “Questionnaire”) with respect to the Facility, a copy of which is on file at the office of the Agency; and

WHEREAS, the City of Utica Planning Board is acting as lead agency for the purposes of SEQRA, and the Agency defers to the determination of the lead agency with respect to SEQRA; and

WHEREAS, prior to the granting of any tax benefits and following the determination of the lead agency, the Agency will complete its environmental review and make determinations for purposes of SEQRA.

NOW, THEREFORE, BE IT RESOLVED by the Oneida County Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

Section 1. (a) The construction and equipping of the Facility and the Agency’s Financial Assistance therefor, will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the County and the people of the State of New York and improve their standard of living, and thereby serve the public purposes of the Act and the same is, therefore, approved.

(b) It is desirable and in the public interest for the Agency to enter into a lease-leaseback transaction for the purpose of providing financial assistance for the construction and equipping of the Facility, as reflected in the Company’s application to the Agency and as amended from time to time prior to the closing of the lease-leaseback transaction.

Section 2. The form and substance of a proposed inducement agreement (in substantially the form presented to this meeting) by and among the Agency, the Company and the Sublessee setting forth the

undertakings of the Agency, the Company and the Sublessee with respect to the closing of the lease-leaseback transaction, and the development of the Facility (the "Agreement") is hereby approved. The Chairman of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agreement, with such changes in terms and form as the Chairman shall approve. The execution thereof by the Chairman shall constitute conclusive evidence of such approval.

Section 3.

The Agency shall assist the Company in the construction and equipping of the Facility and will provide financial assistance with respect thereto subject to (i) obtaining all necessary governmental approvals, (ii) approval of the members of the Company and the members of the Sublessee, (iii) approval of the members of the Agency, (iv) satisfactory completion of the environmental review of the Facility by the Agency in compliance with the State Environmental Quality Review Act, (v) agreement by the Agency and the Company upon mutually acceptable terms and conditions for the Leaseback Agreement and other documentation usual and customary to transactions of this nature, (vi) the condition that there are no changes in New York State Law which prohibit or limit the Agency from fulfilling its obligation and commitment as herein set forth to enter into the lease-leaseback transaction and (vii) payment by the Company of the Agency's transaction fee and the fees and disbursements of transaction counsel, more particularly described in the Inducement Agreement.

Section 4.

The Company is herewith and hereby appointed the agent of the Agency to construct, equip and complete the Facility. The Company is hereby empowered to delegate its status as agent of the Agency to the agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company may choose in order to construct, equip and complete the Facility. The terms and conditions for the appointment of the Company as agent of the Agency for the purposes described in this resolution are set forth in the form of the attached letter addressed to the Company, marked as **Exhibit C** to this resolution. The form of such letter is incorporated herein by reference and is approved and adopted by the Agency, and the Chairman or Executive Director of the Agency or any other duly authorized official of the Agency are authorized to execute and deliver such letter to the Company upon satisfaction of the conditions described in Section 3

hereof. The Agency hereby appoints the Company, the agents, subagents, contractors, subcontractors, materialmen, vendors and suppliers of the Company as agents of the Agency solely for purposes of making sales or leases of goods, services, and supplies to the Facility, and any such transaction between any agent, subagent, contractor, subcontractor, materialmen, vendor or supplier, and the Company, as agent of the Agency shall be deemed to be on behalf of the Agency and for the benefit of the Facility. The Company shall indemnify the Agency with respect to any transaction of any kind between and among the Company, the Sublessee, the agents, subagents, contractors, subcontractors, materialmen, vendors and/or suppliers and the Company, as agent of the Agency.

Section 5. The Agency is hereby authorized and directed to schedule the Hearing, so that the Agency may receive comments from all interested parties on the financial assistance contemplated by the Agency and the financial assistance requested by the Company.

Section 6. The law firm of Bond, Schoeneck & King, PLLC is appointed Transaction Counsel in connection with the lease-leaseback transaction.

Section 7. Counsel to the Agency and Transaction Counsel are hereby authorized to work with counsel to the Company and others to prepare, for submission to the Agency, all documents necessary to effect the lease-leaseback transaction.

Section 8. The Chairman of the Agency is hereby authorized and directed (i) to distribute copies of this resolution to the Company and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 9. This resolution shall take effect immediately.

STATE OF NEW YORK)
 : ss.:
COUNTY OF ONEIDA)

I, the undersigned Secretary of the Oneida County Industrial Development Agency DO HEREBY CERTIFY THAT:

I have compared the foregoing copy of a resolution of the Oneida County Industrial Development Agency (the "Agency"), with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of such resolution and of the proceedings of the Agency in connection with such matter.

Such resolution was passed at a meeting of the Agency duly convened in public session on May 15, 2020 at eight a.m., local time, at Rome, New York which the following members were:

Members Present: David Grow, Michael Fitzgerald, Ferris Betrus, Kirk Hinman, Steve Zogby; Gene Quadraro; Mary Faith Messenger, Ferris Betrus

Members Excused: None

The question of the adoption of the foregoing resolution was duly put to vote, which resulted as follows:

*F. Betrus voting aye;
D. Grow voting aye;
K. Hinman voting aye;
M.F. Messenger voting aye;
E. Quadraro voting aye; and
S. Zogby voting aye.*


M. Fitzgerald excused himself from the meeting for the duration of discussion regarding this resolution, and abstained from voting

and, therefore, the resolution was declared duly adopted.

The Agreement and the Application are in substantially the form presented to and approved at such meeting.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to the Novel Coronavirus (COVID-19) Emergency and State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 220.1 issued on March 12, 2020 suspending the Open Meetings Law, the meeting was held electronically via webinar instead of a public meeting open for the public to attend and public notice of the call-in information for said meeting was duly given, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of April 2021.



Shawna Papale, Secretary