

A regular meeting of the Town of Colonie Industrial Development Agency (the "Agency") was convened in public session at the Town of Colonie Public Operations Center, 347 Old Niskayuna Road, Latham, Albany County, New York on October 16, 2017 at 6:00 p.m., local time.

The meeting was called to order by the Chairman and, upon roll being called, the following members of the Agency were:

PRESENT: Carm Basile
Peter Gannon
John Kearney
Eric Phillips
Gary Rinaldi
Benjamin Syden

ABSENT: David DeLuca

The following persons were also present:

Joseph LaCivita	Executive Director
Christopher Kelsey	Chief Financial Officer
M. Cornelia Cahill, Esq.	Barclay Damon LLP
Melissa Bennett, Esq.	Barclay Damon LLP

The following resolution was offered by Peter Gannon, seconded by Benjamin Syden, to wit:

A RESOLUTION AUTHORIZING THE ISSUANCE AND SALE BY THE TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY OF ITS TAX-EXEMPT REVENUE REFUNDING BOND (ONE MUSTANG DRIVE II, LLC), SERIES 2017 IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$5,210,000 AND THE EXECUTION OF RELATED DOCUMENTS.

WHEREAS, Town of Colonie Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of Laws of 1969 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 594 of the Laws of 1980 of New York, as amended, constituting Section 911-d 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, renovating, improving, maintaining, equipping and furnishing of commercial 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, 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 “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, One Mustang Drive II, LLC (the “Company”) presented an application (the “Application”) to the Agency requesting that the Agency consider undertaking a project (the “Project”) consisting of the following: (A) the refunding of the Agency’s \$5,880,000 Multi-Modal Tax-Exempt Revenue Bonds, Series 2010A (One Mustang Drive II, LLC Project) (the “Series 2010A Bonds”); (B) the issuance of tax-exempt and/or taxable revenue bonds of the Agency (the “Series 2017 Bonds”) in one or more issues or series in an aggregate principal amount sufficient to finance the refunding of the Series 2010A Bonds, in an amount estimated to be approximately \$5,500,000; and (C) the granting of the mortgage recording tax exemption (except as limited by Section 874 of the Act) with respect to the recording of any mortgage with the County Clerk of the County of Albany (the “Financial Assistance”); and

WHEREAS, the Series 2010A Bonds financed a portion of the costs of: (1) the acquisition of two adjacent parcels of land totaling approximately 11 acres located at 1 Mustang Drive in the Town of Colonie, Albany County, New York (the “Land”) and the existing 115,000 square foot facility located thereon (the “Existing Facility”), (2) the rehabilitation and renovation of the Existing Facility (the “Facility”) for use as a manufacturing facility and office space, and (3) the acquisition and installation therein and thereon of various machinery and equipment (the “Equipment”, and together with the Land and the Facility, the “Project Facility”); 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”), by resolution adopted by the members of the Agency on August 14, 2017, the Agency made the determination, based on its classification of the Project as a Type II Action under SEQRA, that the Project will not have a “significant effect on the environment” (within the meaning of such term as used in SEQRA); and

WHEREAS, pursuant to the authorization contained in a preliminary inducement resolution adopted by the Agency on August 14, 2017, the Agency (A) caused notice of public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed on October 3, 2017 to the chief executive officers of the county, the town and the school district in which the Project Facility is located, (B) caused notice of the Public Hearing to be published on October 1, 2017 in the Times Union, a newspaper of general circulation available to the residents of the Town of Colonie, Albany County, New York, and (C) conducted the Public Hearing on October 16, 2017 at 6:00 p.m. at the Town of Colonie Public Operations Center, 347 Old Niskayuna Road, Latham, New York; and

WHEREAS, as required by Section 2824(8) of the Public Authorities Law, the Agency’s Finance Committee, on the date hereof, reviewed the proposal for the issuance of debt by the Agency

related to the Project, recommended that the Agency undertake the Project and proceed with the issuance thereof, and determined that it is in the best interest of economic development in the Town for the Agency to issue the Bond (as hereinafter defined); and

WHEREAS, pursuant to this resolution, the Agency will issue its Tax-Exempt Revenue Refunding Bond (One Mustang Drive II, LLC Project), Series 2017 (the “Bond”); and

WHEREAS, the Bond will be purchased by Wells Fargo Bank, National Association (the “Bank”) pursuant to a Bond Purchase Agreement dated as of October 1, 2017 (the “Bond Purchase Agreement”) by and among the Agency, the Company and the Bank; and

WHEREAS, simultaneously with the issuance of the Bond, the Company will execute and deliver: (1) a certain underlying lease dated as of October 1, 2017 (the “Underlying Lease”) by and between the Company and the Agency pursuant to which the Company will lease the Project Facility to the Agency, (2) a bill of sale dated as of October 1, 2017 (the “Bill of Sale to Agency”) from the Company to the Agency, pursuant to which the Company will sell to the Agency its interest in the portion of the Project Facility constituting fixtures and other personal property, (3) a certain installment sale agreement by and between the Agency and the Company dated as of October 1, 2017 (the “Sale Agreement”) whereby the Agency will sell its interest in the Project Facility to the Company, and (4) certain other documents related to the Project and the Bond; and

WHEREAS, as security for the full payment and performance of the obligations of the Company under the Bond, the Company will execute and deliver a guaranty dated as of October 1, 2017 (the “Guaranty”) in favor of the Agency and the Bank; and

WHEREAS, as security for the Bond, the Agency will execute and deliver to the Bank a pledge and assignment dated as of October 1, 2017 (the “Pledge and Assignment”) from the Agency to the Bank, which Pledge and Assignment will assign to the Bank certain of the Agency’s rights under the Sale Agreement; and

WHEREAS, as further security for the Bond, the Agency and the Company will execute a Fee and Leasehold Mortgage, Assignment of Rents and Leases and Fixture Filing (the “Mortgage”) from the Agency and the Company to the Bank, granting to the Bank a first mortgage lien on and security interest in the Project Facility; and

WHEREAS, to demonstrate compliance with the provisions of the Internal Revenue Code of 1986, as amended (the “Code”) relating to the issuance of tax-exempt obligations, (A) the Agency and the Company will execute a tax compliance agreement dated the date of delivery of the Bond (the “Tax Compliance Agreement”) relating to certain requirements set forth in Sections 144 and 148 of the Code; and (B) the Agency will (1) execute a completed Internal Revenue Service (“IRS”) Form 8038 (Information Return for Private Activity Bonds) relating to the Bond (an “Information Return”) pursuant to Section 149(e) of the Code, and (B) file the Information Return with the IRS; and

WHEREAS, the Company and Precision Valve & Automation, Inc. will execute and deliver a certain environmental compliance and indemnification agreement dated as of October 1, 2017 (the “Environmental Compliance and Indemnification Agreement”) in favor of the Agency; and

WHEREAS, the Agency has determined that a payment in lieu of tax agreement in connection with the Project will not be executed and the Agency will NOT file a New York State Board of Real Property Services Form RP-412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) with the assessor for the Town of Colonie; and

WHEREAS, the Agency will execute and deliver all necessary termination documents related to the Series 2010A Bonds; and

WHEREAS, in the application submitted by the Company to the Agency in connection with the issuance of the Series 2010A Bonds, the Company indicated that it would retain 72 full-time-equivalent jobs and create 36 full-time-equivalent jobs at the Project Facility; and

WHEREAS, in the application submitted by the Company to the Agency in connection with the issuance of the Series 2017 Bond, the Company indicated that it currently has 200 full-time equivalent jobs at the Project Facility; and

WHEREAS, the Company also has informed the Agency that it has donated various robotics to the North Colonie Central School District and other school districts with a value of hundreds of thousands of dollars;

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

Section 1. The Agency, based upon the representations made by the Company to the Agency in the Application and at this meeting, 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;

(B) The undertaking of the Project is for a proper purpose, to wit, to preserve and/or create permanent private sector jobs and to advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the Town of Colonie and the State of New York;

(C) The Project is the re-financing of the outstanding Series 2010A Bonds and, accordingly, the Project will not result in the removal of a plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of a plant or facility of the Company or of any proposed occupant of the Project Facility located in the State; and

(D) The Project Facility does not constitute a project where the facilities or property comprising the Project Facility will be primarily used in making retail sales of goods or services to customers who personally visit such facilities and constitute more than one-third (1/3) of the total Project cost.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (A) issue the Bond in a maximum principal amount not to exceed \$5,210,000 on the terms and conditions set forth herein and in the Bond Purchase Agreement, (B) sell the Bond to the Bank at a price of 100% of the principal amount thereof, (C) use the proceeds of the Bond to refund the outstanding principal amount of the Series 2010A Bond, (D) secure the Bond with the Pledge and Assignment, (E) join with the Company in executing and delivering the Mortgage, and (F) grant to the Company a mortgage recording tax exemption (except as limited by Section 874 of the Act) with respect to the recording of any mortgage with the County Clerk of the County of Albany.

Section 3. The Agency is hereby authorized to acquire a leasehold interest in the Project Facility pursuant to the Underlying Lease and the Bill of Sale to Agency, to sell its interest in the Project Facility to the Company pursuant to the Sale Agreement and to do all things necessary or appropriate for the accomplishment of the Project, and all acts heretofore taken by the Agency with respect to the Project are hereby ratified, confirmed and approved.

Section 4. The form and substance of the Bond, the Bond Purchase Agreement, the Underlying Lease, the Sale Agreement, the Pledge and Assignment and the Mortgage (collectively, the "Agency Documents") (in substantially the forms presented to this meeting, subject to change as described in Section 5, and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 5. (A) The Chairman (or Vice Chairman) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same. The Agency Documents shall be in substantially the forms thereof presented to this meeting with such changes, variation, omissions and insertions as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

(B) The Chairman of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Sale Agreement).

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 or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional 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 resolution and to cause

compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 7. In light of the number of employees employed by the Company at the Project Facility and the Company's significant donations to the North Colonie Central School District and other school districts in the State of New York, the Agency hereby determines to reduce its administrative fee for the Project from 0.5% to 0.25%.

Section 8. This resolution shall take effect immediately upon adoption.

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>
Carm Basile	X		
David DeLuca			X
Peter Gannon	X		
John Kearney	X		
Eric Phillips	X		
Gary Rinaldi	X		
Benjamin Syden	X		

The Resolution was thereupon declared duly adopted.

