

PROJECT INDUCEMENT RESOLUTION
(K.M. Davies Co., Inc. Project – 2011 Facility)

A special meeting of the Wayne County Industrial Development Agency was convened on June 3, 2011 at 1:00 P.m.

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

Resolution No. 06/2011 - __

RESOLUTION AUTHORIZING THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) ACCEPTING THE APPLICATION OF K.M. DAVIES CO., INC. (THE "COMPANY") IN CONNECTION WITH A CERTAIN PROJECT (AS MORE PARTICULARLY DESCRIBED HEREIN); (ii) APPOINTING THE COMPANY AS ITS AGENT TO UNDERTAKE THE PROJECT; (iii) AUTHORIZING THE NEGOTIATION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT AND RELATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT; (iv) PROVIDING FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF A SALES TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, RENOVATION, CONSTRUCTION AND EQUIPPING OF THE PROJECT; *PROVIDED HOWEVER*, THAT FINANCIAL ASSISTANCE PROVIDED BY THE AGENCY SHALL NOT EXCEED \$100,000 IN THE AGGREGATE UNTIL A PUBLIC HEARING IS HELD AND A SUBSEQUENT RESOLUTION IS ADOPTED; (v) ADOPTING A NEGATIVE DECLARATION RELATING TO THE PROJECT PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; AND (vi) AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT AGREEMENT AND RELATED DOCUMENTS.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 916 of the Laws of 1969 of the State of New York, (hereinafter collectively called the "Act"), the WAYNE 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, and/or enter into straight lease transactions and provide other forms of financial assistance; and

WHEREAS, the Agency previously undertook a certain project for the benefit of K.M. DAVIES CO., INC. (the "Company") involving the acquisition, construction and equipping of an approximately 64,000 square foot cold storage facility located at 6509 Lake Avenue in the Town of Williamson, Wayne County, New York (the "2008 Facility"), the Agency's interest in such 2008 Facility being set forth within and governed by a certain Lease Agreement (the "2008 Lease Agreement") and Payment-in-lieu-of-Taxes Agreement (the "2008 PILOT Agreement"), each dated as of February 1, 2008, along with related documents (collectively, the 2008 Lease Agreement and 2008 PILOT Agreement, along with related documents collectively referred to herein as the "2008 Facility Documents"); and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (i) the retention by the Agency of a leasehold interest in certain realty located at 6509 Lake Avenue in the Town of Williamson, Wayne County (the "Land", including TMID Nos. 651117-00-801991, 651117-00-801991.1 and 651117-00-860966) and the existing facilities located thereon which, in the aggregate, consist of approximately 186,096 square-feet of processing space being used by the Company as cold storage space (the "Existing Improvements"); (ii) the partial demolition and renovation of an approximately 6,000 square-foot building ("Building 4 Improvements"), including construction of a wall separator and installation of condenser equipment and improvements; (iii) the demolition of an replacement of an approximately 24,568 square-foot building ("Building 7 Improvements") for use as a controlled atmosphere storage building; (iv) the construction on the Land of an approximately 6,800 square foot addition to an existing building known as Building ("Building 9 Improvements", and collectively with the Building 4 Improvements and the Building 7 Improvements, the "Improvements"); (v) the acquisition of and installation in and around the Existing Improvements and the Improvements by the Company of machinery, equipment, furniture, fixtures and other items of tangible personal property (the "Equipment" and, collectively with, the Land, Existing Improvements, and the Improvements, the "2011 Facility"); and (v) through a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain title to the 2008 Facility and 2011 Facility for a period of time and sell or sublease such interest in the Facility back to the Company (the "Straight Lease Transaction"), such Straight Lease Transaction to be effectuated, in part, through the amendment and restatement of certain of the 2008 Facility Documents; and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project pursuant to an agent agreement (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement") and payment-in-lieu-of-tax agreement (the "PILOT Agreement") with the Company in connection with the Project; (iii) take title to or retain its interest in the Land, the Existing Improvements, the Improvements, the Equipment and personal property constituting the Project (once the Lease Agreement, Leaseback Agreement and PILOT Agreement have been negotiated), and (iv) provide financial assistance to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project and (b) a partial real property tax abatement through the PILOT Agreement; and

WHEREAS, pursuant to Article 18-A of the Act, the Agency desires to adopt a resolution describing the Project and all of the financial assistance that the Agency is contemplating with respect to the Project (the "Financial Assistance"), such financial assistance to include (a) the aforementioned sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project and (b) a partial real property tax abatement through the PILOT Agreement; and

WHEREAS, the Financial Assistance to be provided to the Company by the Agency shall not exceed \$100,000 until the Public Hearing is held and a subsequent authorizing resolution is adopted by the Agency; and

WHEREAS, the Building Department of the Town of Williamson previously reviewed the proposed Project 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 related Short Environmental Assessment Form ("EAF") and issued a negative declaration (the "Negative Declaration", dated May 31, 2011) a copy of which along with the EAF are attached hereto as Exhibit A; and

WHEREAS, the agency desires to approve the undertaking of the Project, appoint the Company agent of the Agency to undertake same.

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

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application and a review of the Plans and Specifications for the Project by the members at this meeting, 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 appoint the Company as its agent for purposes of acquiring, constructing and equipping the Project; and

(C) It is desirable and in the public interest for the Agency to (i) retain title to the Land, the Existing Improvements, the Improvements and the Equipment constituting the 2008 Facility and 2011 Facility, (ii) lease or sell the Agency's interest in the 2008 Facility and 2011 Facility to the Company through the amendment and restatement of certain of the 2008 Facility Documents; and

(D) The Agency has the authority to take the actions contemplated herein under the Act; and

(E) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Wayne County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(F) 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

(G) Based upon a review of the Application, the EAF and the Negative Declaration issued by the Building Department of the Town of Williamson and submitted to the Agency, the Agency hereby:

(i) consents to and affirms the status of Town of Williamson as Lead Agency for the Facility, within the meaning of, and for all purposes of complying with SEQRA;

(ii) ratifies the proceedings undertaken by the Town of Williamson as Lead Agency under SEQRA with respect to the acquisition, construction and equipping of the Facility pursuant to SEQRA; and

(iii) finds that the Project involves an "unlisted action" (as such quoted term is defined under SEQRA). The review is "uncoordinated" (as such quoted term is defined under SEQRA). Based upon the review by the Agency of the EAF and related documents delivered by the Company to the Agency and other representations made by the Company to the Agency in connection with the Project, the Agency hereby finds that (i) the Project will result in no major impacts and, therefore, is one which may not cause significant damage to the environment; (ii) the Project will not have a "significant effect on the environment" (as such quoted term is defined under SEQRA); and (iii) no "environmental impact statement" (as such quoted term is defined under SEQRA) need be prepared for this action. This determination constitutes a "negative declaration" (as such quoted terms are defined under SEQRA) for purposes of SEQRA.

Section 2. This resolution shall authorize the Agency to hold a public hearing as required by Article 18-A of the New York State General Municipal Law.

Section 3. Subject to the Company executing the Agent Agreement attached hereto as **Exhibit B** and 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, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, renovate, 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 December 31, 2011 (unless extended for good cause by the Executive Director of the Agency). The Agency hereby authorizes the Chairman, Vice Chairman, the Executive Director and/or the Deputy Executive Director of the Agency, on behalf of the Agency, to execute and deliver the Agent Agreement and related sales and use tax exemption materials. The Financial Assistance to be provided to the Company by the Agency shall not exceed \$100,000 until the Public Hearing is held and a subsequent authorizing resolution is adopted by the Agency.

Section 4. The Chairman, Vice Chairman, the Executive Director and/or the Deputy Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate, but not execute: (A) the Lease Agreement whereby the Company leases the Project to the Agency, (B) the related Leaseback Agreement conveying the Project back to the Company, (C)

the PILOT Agreement, and (D) related documents associated with the Straight Lease Transaction (and collectively, the “Straight Lease Documents”); provided (i) 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; and (ii) the terms of the PILOT Agreement are consistent with the Agency’s Uniform Tax Exemption Policy or the procedures for deviation have been complied with. The final form of the proposed Straight Lease Documents shall be subject to approval by the Agency in a subsequent resolution to be held following the Public Hearing (the “Project Authorizing Resolution”).

Section 5. The Chairman, Vice Chairman the Executive Director and/or the Deputy Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate, but not execute or deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents by any lender identified by the Company (the “Lender”) to undertake the Project and/or finance equipment and other personal property and related transactional costs (hereinafter, with the Straight Lease Documents and Termination Documents, collectively the “Agency Documents”), provided in all events recourse against the Agency is limited to the Agency’s interest in the Project.

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.

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

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
David Spickerman, Sr.	XX			
James Hoffman	XX			
Willard Milliman	XX			
Marvin E. Decker	XX			
Robert Havrilla			XX	

STATE OF NEW YORK)
COUNTY OF WAYNE) ss:

I, the undersigned Assistant Secretary of the Wayne County Industrial Development Agency, DO HEREBY CERTIFY:

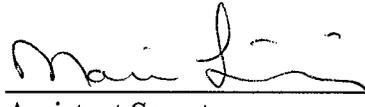
That I have compared the foregoing extract of the minutes of the meeting of the Wayne County Industrial Development Agency (the "Agency") including the resolution contained therein, held on the 3rd day of June, 2011, with the original thereof on file in my office, and that the same is a true and correct 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 relates 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 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 seal of said Agency this 3rd day of June, 2011.



Assistant Secretary

[SEAL]