

Resolution A - 6/25/2010

PROJECT INDUCEMENT RESOLUTION

(Midland Asphalt Materials Inc. Project)

A regular meeting of Wayne County Industrial Development Agency was convened on June 25, 2010 at 9:30 a.m.

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

Resolution No. 2010 - _____

RESOLUTION OF THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) ACCEPTING THE APPLICATION OF MIDLAND ASPHALT MATERIALS INC. (THE "COMPANY") IN CONNECTION WITH A CERTAIN PROJECT (AS MORE FULLY DESCRIBED BELOW); (ii) AUTHORIZING THE SCHEDULING AND CONDUCT OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) AUTHORIZING THE COMPANY TO UNDERTAKE THE PROJECT AND APPOINTING THE COMPANY AS AGENT OF THE AGENCY IN FURTHERANCE OF SAME; (iv) AUTHORIZING THE NEGOTIATION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT AND RELATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT; (v) AUTHORIZING THE PROVISION OF FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES 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; (vi) ADOPTING FINDINGS PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT ("SEQRA"); AND (viii) AUTHORIZING THE EXECUTION OF 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, as amended (hereinafter collectively called the "Act"), the **WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **MIDLAND ASPHALT MATERIALS INC.**, for itself or on behalf of an entity to be formed (collectively, the "Company") has requested the Agency's assistance with a certain project (the "Project") consisting of (i) the acquisition by the Agency of fee title to, or a leasehold interest in, an approximately 29.24 acres of land located on Cole Road, Village and Town of Lyons, Wayne County, New York (the "Land", being comprised of 14.15 acres at 200 Cole Road, TMID 7111-15-542313, 300 Cole Road TMID No. 71111-15-575260, and Cole Road, TMID No. 71111-19-604230) and the existing improvements thereon consisting of buildings, equipment and tanks (collectively, the "Existing Improvements") utilized by the

Company for the manufacture of modified polymer asphalt cement ("PMAC"), (ii) the construction on the Land and around the Existing Improvements of certain PMAC processing improvements, including certain buildings, tanks and PMAC mixing and storage improvements, including an estimated 6,500 sf storage warehouse and PMAC storage and mixing tanks 62, 64, and 66-71 (collectively, the "Improvements"), and (iii) the acquisition of and installation in and around the Existing Improvements and Improvements of certain machinery and related equipment and other items of tangible personal property (the "Equipment" and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, pursuant to Article 18-A of the Act, 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, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of acquiring, constructing and equipping the Facility pursuant to an agent agreement (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement") and leaseback agreement (the "Leaseback Agreement") with the Company, (iii) take title to or a leasehold interest in the Land, the Improvements, the Equipment and personal property constituting the Project (once the Lease Agreement, Leaseback Agreement and PILOT Agreement have been negotiated and authorized), 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 (collectively, the "Financial Assistance"); and

WHEREAS, pursuant to and in accordance with Section 859-a of the Act, the Agency desires to schedule and conduct a public hearing relating to the project and the proposed Financial Assistance contemplated by the Agency; and

WHEREAS, the Agency desires to authorize the undertaking of the Project by the Company as agent of the Agency, and in furtherance of same the Agency shall comply with applicable provisions of the State Environmental Quality Review Act ("SEQRA"); 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 "EAF") with respect to the Project, a copy of which is attached hereto as Exhibit A; and

WHEREAS, the Agent Agreement has been negotiated and is presented to this meeting for approval and execution, along with a form of sales tax exemption letter to be provided to the Company in connection with the undertaking of the Project; and

WHEREAS, the Agency further desires to authorize the negotiation of a Lease Agreement, Leaseback Agreement, PILOT Agreement, Environmental Compliance Agreement and related documents in furtherance of the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF 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 any other correspondence submitted 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) 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) The Agency has the authority to take the actions contemplated herein under the Act; and

(D) 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

(E) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing 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 plant or facility 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

(F) The Project involves an "Unlisted Action" as said term is defined pursuant to SEQRA. The Agency's review of the Project is uncoordinated. Based upon the review by the Agency of the Full Environmental Assessment Form (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 terms are defined in SEQRA; and (iii) no "environmental impact statement" as such quoted term is defined in SEQRA, need be prepared for this action. This determination constitutes a negative declaration for purposes of SEQRA. The Agency's findings are incorporated in Part II of the EAF.

Section 2. 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, as agent of the Agency, to undertake 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 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, 2010** (unless extended for good cause by the Executive Director of the Agency) if the Lease Agreement, Leaseback Agreement and PILOT Agreement contemplated have not been executed and delivered.

Section 3. The Chairman, Vice Chairman and/or the 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, and (C) the PILOT Agreement; 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.

Section 4. The Chairman, Vice Chairman, and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to schedule, notice and conduct a public hearing in compliance with the Act. In addition, once the terms of the proposed PILOT Agreement have been negotiated with the Company, and to the extent the proposed PILOT Agreement deviates from the Agency's Uniform Tax Exemption Policy ("UTEP"), the Chairman, Vice Chairman, and/or Executive Director of the Agency are hereby authorized to undertake procedures for deviation from the UTEP in accordance with the Act, including the distribution of Notices to the affected tax jurisdictions at least 30-days prior to the Agency's consideration of authorization of the PILOT Agreement.

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 the Agent Agreement and Sales Tax Exemption Letter in substantially the form attached hereto as **Exhibit B**, along with 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 resolutions was duly put to 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			

The resolutions were thereupon duly adopted.

STATE OF NEW YORK)
COUNTY OF WAYNE) ss:

I, the undersigned Secretary of the WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY, DO HEREBY CERTIFY:

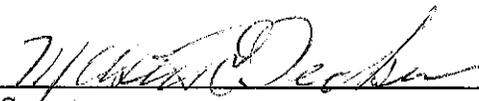
That I have compared the foregoing extract of the minutes of the meeting of the Wayne County Industrial Development Agency (the "Agency") including the resolution contained therein, held on the 25th day of June, 2010, with the original thereof on file in my office, and that the same is a true and correct 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 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 25th day of June, 2010.



Secretary

[SEAL]