



**RESOLUTIONS:**

- 1. AMENDED RESOLUTION OF THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING O'CONNELL ELECTRIC COMPANY, INC. (THE "LESSEE") TO CONSTRUCT A NEW 15,000 SQUARE FOOT ELECTRICAL FACILITY LOCATED AT LANCASTER PARKWAY IN THE TOWN OF LANCASTER, TO BE USED FOR MANUFACTURING PURPOSES, COMMERCIAL OFFICE SPACE, WAREHOUSE SPACE AND PREFAB, THE ACQUISITION OF EQUIPMENT AND FIXTURES IN CONNECTION THEREWITH, AND THE GRANT TO THE LESSEE OF ASSISTANCE INCLUDING MORTGAGE TAX ABATEMENT, REAL PROPERTY TAX ABATEMENT AND SALES TAX ABATEMENT THROUGH A PAYMENT IN LIEU OF TAX AGREEMENT.**

WHEREAS, O'Connell Electric Company, Inc. (the "Lessee") entered into negotiations with officials of the Town of Lancaster Industrial Development Agency (the "Agency") with respect to the construction of an approximately 15,000 square foot electrical facility located at Lancaster Parkway in the Town of Lancaster, New York, to be used for manufacturing purposes, commercial office space, warehouse space and prefab, and the purchase of fixtures and equipment in connection therewith, which facility is to be acquired and/or leased by the Agency and leased back by the Agency to the Lessee and the which fixtures equipment are to be acquired by the Agency through an Installment Sale Agreement (the "Project"); 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 Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: the Lessee desires Agency assistance to construct the Project with resultant continued employment in the Town of Lancaster; the Lessee currently employs 9 full time employees and it is anticipated that the Lessee will increase its employment to employ 12 full time employees after the Project is completed together with construction jobs during the construction period; the availability of financing and/or other assistance by the Agency will facilitate the Lessee's ability to expand Lessee's business within the Town of Lancaster; there will be no substantial adverse disruption of existing employment at facilities of a similar nature in the Town of Lancaster; the Project will provide employment and substantial capital investment; and Agency financing or other assistance is necessary to allow the Lessee to proceed with the Project in the Town of Lancaster; and

WHEREAS, on May 10, 2016, the Agency held a public hearing on the Project pursuant to Section 859-A of the General Municipal Law; and

WHEREAS, the Agency desires to further encourage the Lessee with respect to the acquisition and construction of the Project, if by so doing it is able to induce the Lessee to proceed with the Project in the Town of Lancaster;

WHEREAS, on May 10, 2016 the Agency adopted a resolution, which approved the Project and the Agency's assistance in connection therewith and designated the Lessee as the agent for the Agency to undertake the Project, and that the initial cost of the Project was not to exceed \$1,747,100.00; and

WHEREAS, the Lessee has advised the Agency that the initial cost of the Project has exceeded \$1,747,100.00 and has requested further financial assistance for the cost not to exceed \$3,500,100.00; and

WHEREAS, pursuant to Section 859-a of the General Municipal Law, any further assistance exceeding \$100,000.00, a public hearing will need to be held authorizing the additional assistance; and

WHEREAS, the Lessee further advised the Agency that the Lessee's general contractor, Manning-Squires-Hennig Co., Inc. are doing most of the purchasing of goods and services for both permanent and temporary for the Project and has requested the general contractor be added as a secondary agent; and

WHEREAS, the Lessee and the Agency wish to amend the May 10, 2016 Resolution to provide for further assistance with respect to the construction of the 15,000 square foot electrical facility, and Manning-Squires-Hennig Co., Inc. be added as a secondary agent to the Project, as more particularly set forth herein.

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

Section 1. The Agency hereby determines that the acquisition and construction 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 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 and the services it offers; (b) that but for the availability of Agency financing or other assistance for the Project in such area, the Project would not be economically feasible; (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 provide substantial employment and substantial capital investment; and (e) the Project is necessary for the Lessee to maintain employment in the Town of Lancaster. 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 Agency entering into a lease and leaseback only or lease with mortgage transaction; and (g) the Agency's assistance with the Project is an integral part of the Lessee's plans to proceed in the Town of Lancaster.

Section 2. The Agency hereby authorizes the Lessee to proceed with the Project as herein authorized with the estimated maximum cost to the Lessee of the Project not to exceed \$3,500,100.00, of which \$1,753,000.00 represents new and increased financing for the electrical facility which Project is ultimately anticipated to be financed through a mortgage transaction with a lease and leaseback transaction or in the alternative through a lease and leaseback only transaction.

Section 3. The Agency hereby authorizes the Lessee's general contractor, Manning-Squires-Hennig Co., Inc. to be added as a secondary agent to the Project.

Section 4. The Agency will undertake, as soon as particular terms and conditions of a Lease Agreement are determined to enter into a lease and leaseback with the Lessee.

Section 5. The Chairman, Vice Chairman, 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 and construction of the Project.

Section 6. The Lessee is authorized to initiate site preparation work and the construction of the electrical facility with a cost not to exceed \$3,500,100.00 without further approval by the Agency. The Agency is hereby authorized to enter into Agent Agreements and such other agreements with the Lessee

as the Chairman, Vice Chairman or other authorized officer may deem necessary in order to accomplish the above.

Section 7. Any such action heretofore taken by the Lessee in initiating the acquisition and construction of the Project are hereby ratified, confirmed and approved.

Section 8. 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 with respect to the Project 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, if applicable.

Section 9. The Agency hereby authorizes the Lessee to proceed with the Project with the estimated maximum cost to the Lessee of the Project not to exceed \$3,500,100.00, as herein authorized. The assistance by the Agency shall be financed through a lease with mortgage or lease and leaseback, between the Agency and the Lessee, sales tax abatement, mortgage tax abatement and real property tax abatement. No other financial assistance shall be provided unless and until it is authorized following a duly held public hearing.

Section 10. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 7 hereof) unless prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution, or (b) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 11. This resolution is also subject to (a) construction of space suitable for the purpose authorized herein, (b) provision for use of the Project only for those purposes specified above or otherwise permitted by the New York State Industrial Development Agency Act and approved by the Agency.

Section 12. The execution and delivery of an Agent Agreement and lease/leaseback between the Agency and the Lessee, substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman or Secretary, are 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 13. The Agency hereby determines, based upon information furnished to the Agency by the Lessee and such other information as the Agency has deemed necessary to make this determination, that the Project constitutes a Type II action under the State Environmental Quality Review Act and 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, as the contemplated actions will not have a significant effect on the environment.

Section 14. 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 or the extent to which proceeds derived from the sale of any bonds will be sufficient to pay the cost of the acquisition, construction, renovation and installation of the Project. 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 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 agrees to indemnify and holds the Agency harmless from any such loss, damage or expense.

Section 15. Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Lessee and shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any 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 and void and of no further force and effect, and the Agency shall have no liability to the Lessee hereunder or otherwise.

Section 16. This resolution is subject to compliance with all local building and zoning requirements.

Section 17. This resolution 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:

MEMBER FIALKIEWICZ	VOTED
MEMBER HOFFMAN	VOTED
MEMBER KURTZMAN	VOTED
MEMBER NIKONOWICZ	VOTED
MEMBER O'BRIEN	EXCUSED
MEMBER VISIONE	VOTED
CHAIR COLEMAN	VOTED

April 11, 2017

**2. RESOLUTION OF THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY TO AUTHORIZE PLEDGE, ASSIGNMENT AND CUSTODIAL AGREEMENT WITH JPMORGAN CHASE BANK, N.A.**

WHEREAS, the Town of Lancaster Industrial Development Agency (the "Agency") has a banking relationship with JPMorgan Chase Bank, N.A. (the "Bank"); and

WHEREAS, the Bank requests that the Agency enter into a Pledge, Assignment and Custodial Agreement in order to securitize certain transactions; and

WHEREAS, it is in the best interests of the Agency to enter into the Pledge, Assignment and Custodial Agreement with JPMorgan Chase Bank, N.A.

NOW, THEREFORE, BE IT

RESOLVED, that following review and approval of the Pledge, Assignment and Custodial Agreement by Magavern Magavern Grimm LLP, as general counsel to the LIDA, that the Chair of the Lancaster Industrial Development Agency be and is hereby authorized to enter into the Pledge, Assignment and Custodial Agreement with JPMorgan Chase Bank, N.A.

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

MEMBER FIALKIEWICZ	VOTED
MEMBER HOFFMAN	VOTED
MEMBER KURTZMAN	VOTED
MEMBER NIKONOWICZ	VOTED
MEMBER O'BRIEN	VOTED
MEMBER VISIONE	VOTED
CHAIR COLEMAN	VOTED

April 11, 2017

**CURRENT BUSINESS:** Acknowledgement of Fiduciary Duty – Authorities Budget Office Policy Guidance. LIDA Board Members have been provided a copy. Please read over and sign.

**OTHER BUSINESS:**

**NEXT LIDA MEETING – MAY 9, 2017 AT 8:30 AM – Public Hearing - NONE**

**MOTION TO ADJOURN:** \_\_\_\_\_

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## Authorities Budget Office Policy Guidance



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No. 10-01

Date Issued: March 1, 2010  
Supersedes: New

**Subject:** Acknowledgement of Fiduciary Duty

**Statutory Citation:** Public Authorities Law Section 2824(1)(h)

**Provisions:** Section 6(i) of Public Authorities Law, as amended by Chapter 506 of the Laws of 2009 ("The 2009 Public Authorities Reform Act" or "PARA"), requires the Authorities Budget Office (ABO) to "develop and issue" a written acknowledgement that all board members must execute as part of their duties and responsibilities under Section 2824 of Public Authorities Law. By signing this acknowledgement a board member is stating "that he or she understands his or her role and fiduciary responsibilities" as well as his or her "duty of loyalty and care to the organization and commitment to the authority's mission and the public interest."

Pursuant to PARA, every board member of a Public Authority is required to sign an acknowledgement of fiduciary duty at the time he or she takes the oath of office. The effectiveness of the acknowledgement will be deemed applicable throughout the duration of such board member's term and/or for as long as such director continues to serve in such capacity. Board members appointed to their positions prior to the effectiveness of PARA and the implementation of this new requirement are required to execute an acknowledgement by May 1, 2010.

**Authorities Budget Office Policy Guidance:** The primary responsibility of a board member is to understand the mission and public purpose of the Authority and to act in the best interests of the Authority, its mission, and the public. The intent of this written acknowledgement is to re-affirm the importance of this duty to board members.

The ABO is directing all state and local public authorities to use the attached acknowledgement form to satisfy this statutory requirement. Public authorities are to maintain signed copies of the acknowledgement throughout the official term of each active board member. State and local authorities will also be expected to certify as part of the Annual Report submission that these statements were executed in accordance with Section 2824 of Public Authorities Law. The failure to execute this acknowledgment will be considered a failure to comply with the requirements of Public Authorities Law. The failure to act in accordance with the principles stated in this acknowledgment can be considered a breach of fiduciary duty and could result in a recommendation that the board member be sanctioned.

A board member is to sign a new acknowledgement document at the start of each new term to which the board member is appointed.





## *Acknowledgement of Fiduciary Duties and Responsibilities*

As a member of the Authority's board of directors, I understand that I have a fiduciary obligation to perform my duties and responsibilities to the best of my abilities, in good faith and with proper diligence and care, consistent with the enabling statute, mission, and by-laws of the Authority and the laws of New York State. The requirements set forth in this acknowledgement are based on the provisions of New York State law, including but not limited to the Public Authorities Reform Act of 2009, Public Officers Law, and General Municipal Law. As a member of the board of directors:

### I. Mission Statement

I have read and understand the mission of the Authority; and the mission is designed to achieve a public purpose on behalf of the State of New York. I further understand that my fiduciary duty to this Authority is derived from and governed by its mission.

I agree that I have an obligation to become knowledgeable about the mission, purpose, functions, responsibilities, and statutory duties of the Authority and, when I believe it necessary, to make reasonable inquiry of management and others with knowledge and expertise so as to inform my decisions.

### II. Deliberation

I understand that my obligation is to act in the best interests of the Authority and the People of the State of New York whom the Authority serves.

I agree that I will exercise independent judgment on all matters before the board.

I understand that any interested party may comment on any matter or proposed resolution that comes before the board of directors consistent with the laws governing procurement policy and practice, be it the general public, an affected party, a party potentially impacted by such matter or an elected or appointed public official. However, I understand that the ultimate decision is mine and will be consistent with the mission of the Authority and my fiduciary duties as a member of the Authority's board of directors.

I will participate in training sessions, attend board and committee meetings, and engage fully in the board's and committee's decision-making process.

### III. Confidentiality

I agree that I will not divulge confidential discussions and confidential matters that come before the board for consideration or action.

### IV. Conflict of Interest

I agree to disclose to the board any conflicts, or the appearance of a conflict, of a personal, financial, ethical, or professional nature that could inhibit me from performing my duties in good faith and with due diligence and care.

I do not have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of my duties in the public interest.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Authority Name: \_\_\_\_\_

Date: \_\_\_\_\_