

**INITIAL RESOLUTION**  
*(B&H Rail Corp Project)*

A regular meeting of the Steuben County Industrial Development Agency was convened on May 28, 2020.

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

Resolution No. 05/2020 - 04

RESOLUTION OF THE STEUBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) ACCEPTING THE APPLICATION OF B&H RAIL CORP WITH RESPECT TO A CERTAIN PROJECT (AS MORE FULLY DESCRIBED BELOW), (ii) AUTHORIZING A PUBLIC HEARING WITH RESPECT TO THE PROJECT, (iii) DESCRIBING THE FORMS OF FINANCIAL ASSISTANCE BEING CONTEMPLATED WITH RESPECT TO THE PROJECT, AND (iv) AUTHORIZING THE NEGOTIATION OF CERTAIN AGREEMENTS RELATING TO THE PROJECT.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 178 of the Laws of 1972 of the State of New York, as amended (hereinafter collectively called the "Act"), the **STEUBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called "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 industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, the **B&H RAIL CORP.** (the "Company"), previously requested the Agency assist the Company with a certain project (the "Original Project") consisting of the (i) acquisition by the Agency of an interest in certain parcels of land located in Stebuen County, New York (the "Land") and the existing improvements located thereon consisting principally of approximately seventeen (17) miles of rail line running between Bath and Painted Post, New York (the "Original Improvements"; and, together with the Land, the "Existing Facility") and (ii) the lease back of the Agency's interest in the Existing Facility to the Company, all for the purpose of providing the Company with a real property tax abatement with respect to the Existing Facility; and

WHEREAS, in connection with the Original Project, the Agency and the Company entered into (i) a certain Lease Agreement, by and between the Company, as lessor, and the Agency, as lessee, dated as of December 1, 2001 (the "Original Lease Agreement"), (ii) a certain leaseback agreement, by and between the Agency, as sublessor, and the Company, as sublessee, dated as of December 1, 2001 (the "Original Leaseback Agreement"), and (iii) a certain Payment-in-Lieu-of-Tax Agreement, by and between the Agency and the Company, dated as of December 1, 2001 (the "Original PILOT Agreement") with respect to the Existing Facility; and

WHEREAS, in 2013, the Company further requested the Agency's assistance with a certain project (the "2013 Project") consisting of a partial real property tax abatement under the terms of the Original PILOT Agreement for the following improvements located at or near or around, the Existing Facility: (i) a certain 100' x 400' steel building used as a transload facility for dry and bulk storage or large quantities of fracking sand; and (ii) a certain 30' x 225' steel building used as an engine barn with full-length locomotive storage track capable of storing two locomotives (collectively, the "Improvements"; and, together with the Existing Facility, the "Facility"); and

WHEREAS, in connection with the 2013 Project, the Agency and the Company entered into (i) a first amendment to lease agreement (the "First Amendment to Lease Agreement"; and, together with the Original Lease Agreement, the "Lease Agreement"), (ii) a first amendment to leaseback agreement (the "First Amendment to Leaseback Agreement"; and, together with the Original Leaseback Agreement, the "Leaseback Agreement"), (iii) a first amendment to payment-in-lieu-of-tax agreement (the "First Amendment to PILOT Agreement"; and, together with the Original PILOT Agreement, the "PILOT Agreement") and (iv) related documents; and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of: (i) an eight (8) year extension of the PILOT Agreement and (ii) the retention by the Agency of a leasehold or other interest in the Facility, all for the purpose of providing the Company with a real property tax abatement with respect to the Facility; and

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the Financial Assistance (as defined below) that the Agency is contemplating with respect to the Project; and

WHEREAS, it is contemplated that the Agency will hold a public hearing and (i) negotiate and enter into a second amendment to lease agreement (the "Second Amendment to Lease Agreement"), a second amendment to leaseback agreement (the "Second Amendment to Leaseback Agreement"), and a second amendment to payment-in-lieu-of-tax agreement (the "Second Amendment to PILOT Agreement"), (iii) retain a leasehold interest (or other interest) in the Land and the Improvements and personal property constituting the Facility (once the Second Amendment to Lease Agreement, the Second Amendment to Leaseback Agreement and the Second Amendment to PILOT Agreement have been negotiated), and (iv) provide Financial Assistance to the Company in the form of a partial real property tax abatement structured within the Second Amendment to PILOT Agreement (the "Financial Assistance").

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

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

(D) 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

Section 2. The Chairman, Vice Chairman and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to (A) hold a public hearing in compliance with the Act, and (B) negotiate (1) the Second Amendment to Lease Agreement, pursuant to which the Company leases the Project to the Agency, (3) the related Second Amendment to Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company, (4) the Second Amendment to PILOT Agreement, pursuant to which the Company agrees to make certain payments in lieu of real property taxes for the benefit of affected tax jurisdictions, and (5) related documents; provided (i) the rental payments under the Second Amendment to 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 Second Amendment to PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation therefrom have been complied with.

Section 3. The Agency is hereby authorized to conduct a public hearing in compliance with the Act.

Section 4. 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 5. These Resolutions shall take effect immediately.

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

	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>
Michael Nisbet	[ ✓ ]	[ ]	[ ]	[ ]
Scott VanEtten	[ ✓ ]	[ ]	[ ]	[ ]
Anthony Russo	[ ]	[ ]	[ ]	[ ✓ ]
Mark Alger	[ ✓ ]	[ ]	[ ]	[ ]
Christine Sharkey	[ ✓ ]	[ ]	[ ]	[ ]
Michael Doyle	[ ✓ ]	[ ]	[ ]	[ ]
Dean Strobel	[ ✓ ]	[ ]	[ ]	[ ]

The Resolutions were thereupon duly adopted.

**SECRETARY'S CERTIFICATION**  
*(B&H Rail Corp Project)*

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

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

That I have compared the annexed extract of minutes of the meeting of the Steuben County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on May 28, 2020, with the original thereof on file in the office of the Agency, 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 related 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 such 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 affixed the seal of said Agency this 5<sup>th</sup> day of June, 2020.

  
Secretary