

OEDA Board Meeting Minutes

October 18th, 2023

**121 N Main Street 2nd Floor Albion NY
Board Room
9:00 a.m.**

Members Present:

John Misiti, Chairman
Craig Tuohey, Assistant Secretary
John Fitzak, Treasurer
Jeff Martin, Member

Members Absent:

Carol D'Agostino, Assistant Treasurer
Ed Urbanik, Secretary
Skip Draper, Vice Chairman

Also Present:

Michael Dobell, CEO/CFO OEDA
Gabrielle Barone, Vice President Development
Kevin Zanner, Hurwitz Fine P.C., Legal Counsel (via Zoom)
Matt Holland- Manager- Small Business Liaison
Scott Henning, CEO Lake Ridge Fruit, LLC.
Tonia Young, Controller, Lake Ridge Fruit, LLC.

Roll Call---- The meeting was called to order by Chairman John Misiti at 9:00 a.m. Matt called the roll of Board members. John Misiti, Craig Tuohey, John Fitzak, and Jeff Martin were present, constituting a quorum of the Board.

- I. Approval of Board Meeting Minutes**- None.
- II. Financial Reports**- None.
- III. Report of Committees/Departments/Sites**- None.
- IV. Executive Session**- None.
- V. Unfinished Business** – None.
- VI. New Business**

Lake Ridge Fruit Project

Michael Dobell introduced Scott Henning and Tonia Young of Lake Ridge Fruit, who provided an overview of the company's project. Michael then reviewed with the Board the project application and supporting documentation, including the cost-benefit analysis, SEQRA documents and public hearing materials. Michael and Kevin then reviewed with the Board the following resolution:

RESOLUTION OF THE COUNTY OF ORLEANS INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE CONSTRUCTION OF A 28,070 +/- SQUARE FOOT CONTROLLED ATMOSPHERE STORAGE BUILDING BY LAKE RIDGE FRUIT COMPANY, LLC, TO BE LOCATED AT 14234 RIDGE ROAD IN THE TOWN OF GAINES, NEW YORK FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASE TO LAKE ONTARIO FRUIT, INC., THE EXECUTION OF LEASE AGREEMENTS AND THE TAKING OF OTHER ACTIONS

A motion was made by Jeff Martin to approve the resolution. The motion was seconded by John Fitzak and unanimously carried by roll call vote (4-0-0). See attached resolution and roll call vote.

Adjournment

Motion to adjourn subject to Chairman's recall made by Craig Tuohey, seconded by Jeff Martin and unanimously carried at 9:24 a.m..

Respectfully submitted,

Matt Holland

RESOLUTION OF THE COUNTY OF ORLEANS INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE CONSTRUCTION OF A 28,070+/- SQUARE FOOT CONTROLLED ATMOSPHERE STORAGE BUILDING BY LAKE RIDGE FRUIT COMPANY, LLC, TO BE LOCATED AT 14234 RIDGE ROAD IN THE TOWN OF GAINES, NEW YORK FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASE TO LAKE ONTARIO FRUIT, INC., THE EXECUTION OF LEASE AGREEMENTS AND THE TAKING OF OTHER ACTIONS.

WHEREAS, the County of Orleans Industrial Development Agency (the "Agency") is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Section 901 -b of the General Municipal Law, as amended (collectively, the ' to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, Lake Ridge Fruit Company, LLC, for itself or for affiliated individuals or entities (the "Lessee"), has entered into negotiations with officials of the Agency with respect to the development, renovation and equipping by the Agency without the proceeds of a bond issue of a project (the "Project") consisting of: (i) the construction of an approximately 28,070 square foot controlled atmosphere storage building and related amenities and improvements (the "Improvements"); (ii) the acquisition and installation therein and repairs to, thereon or thereabout of certain machinery, equipment and related personal property (the "Equipment"); and (iii) the conveyance of the Project pursuant to a lease of the Project to the Lessee , such Project to be located at 14234 Ridge Road in the Town of Gaines, New York (the "Premises"), and said Project to be subleased to Lake Ontario Fruit, Inc. (the "Company"), who will serve as operator of the Project; and

WHEREAS, the Lessee has submitted an application and other materials and information (collectively, the "Application") to the Agency to initiate the accomplishment of the Project; and

WHEREAS, the Application sets forth certain information with respect to the Company and Lessee and the Project, including the following: that the Company and Lessee desire Agency financing for the construction of an approximately 28,070 square foot controlled atmosphere storage building in connection with its apple packing and storage business, all at a cost of approximately \$5,535,903.00; that the Company and Lessee anticipate that ten (10) full-time equivalent jobs will be created as a result of the Project at the end of three (3) years of operation thereof; and that if Agency financing is disapproved, the Company and Lessee would likely not proceed with the Project; and

WHEREAS, the Agency has reviewed the Application and prepared a cost-benefit analysis with respect to the Project, and has considered the extent to which the Project will create permanent, private-sector jobs, the amount of private sector investment generated or likely to be generated by the Project, the

likelihood of accomplishing the proposed Project in a timely fashion, and the extent to which the proposed Project will provide additional sources of revenue for the municipalities and school district and other public benefits that might occur as a result of the Project; and

WHEREAS, after the giving of all required notices (including published notice), the Agency held a public hearing on the Project on October 17, 2023, and has considered all oral and written presentations made at or in connection with said public hearing; and

WHEREAS, the Agency desires to encourage the Company and Lessee with respect to the consummation of the Project, if by doing so it may induce the Company and Lessee to proceed with the Project; and

WHEREAS, pursuant to State Environmental Quality Review Act, as amended, and the regulations adopted pursuant thereto by the New York State Department of Environmental Conservation, as amended (collectively, "SEQRA"), the Agency must determine the potential environmental significance of the Project and wishes to make such findings herein; and

WHEREAS, the Company and Lessee have completed and submitted to the Agency Part 1 of an Environmental Assessment Form ("EAF") in accordance with the provisions of SEQRA; and

WHEREAS, the Agency has completed Part 2 of the EAF and has considered the proposed Project and reviewed the EAF and the criteria set forth in SEQRA in order to determine whether the Project will have a significant effect on the environment and wishes to make the findings required of an agency under SEQRA.

NOW, THEREFORE, THE COUNTY OF ORLEANS INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby resolves that the proposed Project will not have a significant impact on the environment for the reasons more particularly set forth in the negative declaration prepared by the Agency and, in accordance with SEQRA, hereby adopts such negative declaration with respect to the Project. A copy of the EAF and the negative declaration are attached to this Resolution as Exhibit A.

Section 2. The Project is described in the recitals to this Resolution. The financial assistance (the "Financial Assistance") to be provided by the Agency in connection with the Project includes (i) an exemption from sales and use taxes for building materials and machinery, equipment, fixtures and furnishings purchased for incorporation into or use at the Project location having a total cost not to exceed \$4,950,000.00; and (ii) a ten (10) year abatement from real property taxes in accordance with the Agency's Uniform Tax Exemption Policy. The payment in lieu of tax arrangement shall be set forth in a Payment in Lieu of Real Estate Taxes Agreement to be entered into between the Agency and the Lessee (the "PILOT Agreement").

Section 3. The Agency hereby determines that the Project and the financing 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.

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Section 4. Reserved.

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Section 5. The Agency hereby authorizes the Company and Lessee, as agents for the Agency, to proceed with the Project as herein authorized. The Agency is hereby authorized to acquire an interest in the Project site and the buildings thereon, if any, and to make renovations or additions thereto. The Company is authorized to proceed with the acquisition and construction of the Project as set forth in the Project Agreement, the Agency Lease Agreement or Installment Sale Contract (as hereinafter defined).

Section 6. The Chairman, Vice Chairman, Secretary, Treasurer, and any Assistant Secretary of the Agency, the CEO/CFO and other appropriate officials of the Agency and its agents and employees, are hereby authorized and directed to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and to complete the Project in cooperation with the Company and the Lessee.

Section 7. The Company and Lessee are authorized, as agents of the Agency, to initiate the renovation and maintenance of a building constituting the Project, and the acquisition of machinery and equipment which will be a part thereof or will be used in connection therewith, and to advance such funds as may be necessary to accomplish such purposes. The designation of the Company as agent hereunder is limited to purchases of sales-taxable tangible personal property and services in connection with the Project which do not exceed a total cost of \$4,950,000.00 and shall not apply to any other purchase by the Company or Lessee or any operating expenses of the Company or Lessee. The Company and Lessee shall report to the Agency, at such times as the Agency shall require, or as may otherwise be prescribed by the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner"), the value of all sales and use tax exemptions claimed by the Company or Lessee or agents of the Company or Lessee or any operators of the Project, including, but not limited to, consultants or subcontractors of such agents or Project operators under the authority granted pursuant to this Resolution. A failure to report may result in the revocation of the designation of the Company as agent and repayment of any sales and use tax exemptions claimed.

Section 8. The Agency is hereby authorized to enter into a Project Assistance Agreement with respect to the provision of the Financial Assistance authorized herein (the "Project Assistance Agreement"), to acquire an interest in the Project site and construct a facility thereon, and execute and deliver a lease by the Company to the Agency (the "Company Lease"), an Agency Lease Agreement (the "Agency Lease Agreement") or Installment Sale Contract (the "Installment Sale Contract") between the Agency and the Company and/or Lessee, the PILOT Agreement, and such other documents as may be necessary to fulfill the intent of the parties to the transaction (collectively, the "Project Documents"), in a form satisfactory to Agency counsel. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, or any Assistant Secretary are each authorized to execute such documents and to make or approve such amendments or modifications to the Project Assistance Agreement, Company Lease, the Agency Lease Agreement, Installment Sale Contract, the PILOT Agreement and such other documents executed and delivered in connection therewith as they deem necessary under the circumstances provided, however, that such modifications do not materially alter the risk to the Agency,

Section 9. Reserved.

Section 10. Any such action heretofore taken by the Company or Lessee initiating the acquisition, installation and construction of the Project is hereby ratified, confirmed and approved,

Section 11. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Company and Lessee. By acceptance hereof, the Company and Lessee each agree to pay such expenses and further agrees to indemnify% the Agency, its members, 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 with respect to the Project and the financing thereof.

Section 12. In the event the Project Documents are not executed between the Company, Lessee and the Agency by the expiration date of this Resolution (as such date may be extended as provided herein) or the termination of this Resolution, the Company and Lessee shall then be required to pay all sales taxes which would have been levied in connection with the acquisition, construction and installation of all improvements of the real property and the machinery and equipment which constitute the Project, as if the Agency did not have an interest in the Project from the date the Company 01' Lessee commenced its acquisition, construction and installation. In addition, in the event, because of the involvement of the Agency, the Company or Lessee claims an exemption from state sales or use tax in connection with the Project, and such exemption is claimed with respect to property or services not authorized hereunder, or which exemption is in excess of the amounts authorized hereunder, or is otherwise not permitted under this Resolution, or if the Company or Lessee shall fail to comply with a material term or condition regarding the use of property or services acquired by the Company or Lessee as agents for the Agency as set forth in this Resolution or in any document authorized hereunder, then the Company and Lessee shall each be required to remit to the Agency an amount equal to the amount of state sales and use taxes for which such exemption was improperly claimed. A failure to remit such amounts may result in an assessment against the Company and Lessee by the Commissioner of state sales and use taxes, together with any relevant penalties and interest.

In addition to the foregoing, in the event the Agency determines that Company or Lessee is in violation of a material term, or in the event that the Company (and the Lessee as applicable) closes the Project or relocates its operations to a location outside of the Town of Gaines within the time period during which the Company and Lessee is receiving Financial Assistance from the Agency or in the event the Agency determines, in its judgment, that the Company or Lessee knowingly and intentionally submitted false or intentionally misleading information in its application to the Agency or in any report or certification submitted to the Agency for the purpose of obtaining or maintaining any Financial Assistance from the Agency (each referred to herein as a "Recapture Event"), the Agency may, in accordance with its policies and procedures then in effect, (i) revoke the designation of the Company and Lessee and any agents of the Company and Lessee (including, but not limited to, consultants, sub-contractors or equipment lessors of the Company or Lessee) as agents for the Agency in connection with the Project and terminate the exemption from New York State and local sales and use taxes conferred with respect to the Project and/or (ii) require that the Company or Lessee, commencing with the tax fiscal year next following such Recapture Event make payments in lieu of taxes on the Project with respect to all applicable taxing authorities in such amounts as would be payable as real estate taxes levied on the Project if the Agency did not have an interest in the Project or otherwise modify the amount or terms of any Financial Assistance being provided by the Agency in connection with the Project and/or (iii) require that the Company and Lessee pay to the Agency an amount equal to all or a portion (as determined by the Agency in its discretion) of the total value of (x) all sales tax exemptions claimed by the Company and Lessee and any agents of the Company and Lessee, including, but not limited to, consultants, sub-

contractors, or any equipment lessors of the Company under the authority granted under this Resolution and the Project Assistance Agreement and/or (y) any exemption from real estate taxes received by reason of the Agency's leasehold interest in the Project. If the Agency makes any of the foregoing determinations and requires a repayment of all or a portion of the Financial Assistance received by the Company and Lessee, the Company and Lessee shall (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and Lessee and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s) unless otherwise agreed to by any affected tax jurisdiction.

Section 13. 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 Company's or Lessee's purposes or needs. The Company and Lessee each are satisfied that the Project is suitable and fit for its 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 properly 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 Company and Lessee hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 14. Should the appropriate officers of the Agency determine, in their absolute discretion, that there is reason to believe that the activities of any past or present owner or operator of the Premises have resulted in the generation of any "hazardous substance" (as the term has been defined from time to time in any applicable federal or state law, rule or regulation), or that any party has stored, disposed or released any such substance on the Premises or within a one (1) mile radius thereof, the Agency shall be under no obligation to enter into a lease as contemplated by this Resolution.

Section 15. No covenant, stipulation, obligation or agreement herein contained or contained in the Project Documents or other documents, nor the breach thereof, shall constitute or give rise to or impose upon the Agency a pecuniary liability or a charge upon its general credit, nor shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity.

Section 16. Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Company and Lessee shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all claims, liabilities, damages or losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency's counsel. The Company and Lessee shall promptly reimburse the Agency for all such costs and expenses within thirty days of the Agency's submission of an invoice to the Company and Lessee. 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, void and of no further force and effect (except for the obligations in this Section 16), and the Agency shall have no liability to the Company and Lessee hereunder or otherwise.

Section 17. This Resolution shall take effect immediately and shall continue in full force and effect for one (1) year from the date hereof and on or after such one (1) year anniversary, the Agency may, at its option (a) terminate the effectiveness of this Resolution (except with respect to the obligations of the Company pursuant to Sections 11, 12 and 16 of this Resolution which shall survive any expiration or termination) or (b) allow the Company additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions taken by the Company to complete such transactions.

Section 18. This Resolution is subject to compliance with all local building and zoning requirements.

The above resolution was moved for adoption by Jeff Martin
and seconded by John Fitzak.

ROLL CALL VOTE:

	<u>Yes</u>	<u>No</u>	<u>Absent</u>	<u>Abstain</u>
Carol D'Agostino	[]	[]	[✓]	[]
Merle Draper	[]	[]	[✓]	[]
John Fitzak	[✓]	[]	[]	[]
Craig Tuohey	[✓]	[]	[]	[]
John Misiti	[✓]	[]	[]	[]
Ed Urbanik	[]	[]	[✓]	[]
Jeffrey Martin	[✓]	[]	[]	[]

Adopted: October 18, 2023