

**AUTHORIZING RESOLUTION**  
*(TTA Systems, LLC Project)*

A regular meeting of the City of Hornell Industrial Development Agency was convened on Thursday, December 20, 2018.

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

Resolution No. 12/2018-\_\_\_

RESOLUTION OF THE CITY OF HORNELL INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) ACCEPTING THE APPLICATION OF TTA SYSTEMS, LLC (THE "COMPANY") WITH RESPECT TO A CERTAIN PROJECT (AS DESCRIBED BELOW, THE "PROJECT"); (ii) APPOINTING THE COMPANY AS AGENT OF THE AGENCY TO UNDERTAKE THE PROJECT; (iii) MAKING A DETERMINATION UNDER ARTICLE 8 OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW IN CONNECTION WITH THE PROJECT; (iv) AUTHORIZING FINANCIAL ASSISTANCE TO THE COMPANY WITH RESPECT TO THE PROJECT IN THE FORM OF (a) A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT, (b) A REAL PROPERTY TAX ABATEMENT STRUCTURED THROUGH A TAX AGREEMENT AND (c) AN EXEMPTION FROM MORTGAGE RECORDING TAXES AS AUTHORIZED BY THE LAWS OF THE STATE OF NEW YORK; (v) AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF (a) AN AGENT, FINANCIAL ASSISTANCE AND PROJECT AGREEMENT, (b) A LEASE AGREEMENT, (c) A LEASEBACK AGREEMENT, (d) A TAX AGREEMENT AND (e) RELATED DOCUMENTS WITH RESPECT TO THE PROJECT; AND (vi) AUTHORIZING THE EXECUTION AND DELIVERY OF A MORTGAGE AND RELATED DOCUMENTS WITH RESPECT TO THE FINANCING RELATED 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 670 of the Laws of 1974 of the State of New York, as amended (hereinafter collectively referred to as the "Act"), the **CITY OF HORNELL 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, **TTA SYSTEMS, LLC**, for itself or on behalf of an entity to be formed by it or on its behalf (the "Company"), has submitted an application (the "Application") to the Agency, a copy of which is on file with the Agency, requesting the Agency's assistance with a certain project (the "Project") consisting of: (i) the acquisition of a leasehold or other interest in

certain real property located at One William K. Jackson Lane, City of Hornell, Steuben County, New York (being more particularly identified as tax map identification number 151.10-01-066.000) (the "Land") and the existing improvements located thereon, consisting principally of the Company's existing manufacturing complex (the "Existing Improvements"), (ii) the reconstruction and renovation of the Existing Improvements, (iii) the construction of a 6,629 square foot addition to the Existing Improvements (collectively, (ii) and (iii) shall be referred to as the "Improvements"), and (iv) the acquisition by the Company in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment"; and collectively with the Land, the Existing Improvements and the Improvements, the "Facility"), to be used for manufacturing and overhauling of railcar products, including, but not limited to, trucks, HVAC units and electrical components, for mass transit and railcar builders; and

WHEREAS, pursuant to Article 18-A of the Act, the Agency desires to adopt a resolution describing the Project and the Financial Assistance (as such term is hereinafter defined) that the Agency is contemplating with respect to the Project; and

WHEREAS, it is contemplated that the Agency will (i) negotiate, execute and deliver an Agent, Financial Assistance and Project Agreement, by and between the Agency and the Company (the "Agent Agreement"), pursuant to which the Agency will appoint the Company as its agent for the purpose of undertaking the Project; (ii) negotiate, execute and deliver (a) a Lease Agreement, by and between the Company and the Agency (the "Lease Agreement"), pursuant to which the Agency acquires a leasehold interest in the Facility and (b) a related Leaseback Agreement, by and between the Agency and the Company (the "Leaseback Agreement"), pursuant to which the Agency will lease its interest in the Facility back to the Company; (iii) negotiate, execute and deliver a certain payment-in-lieu-of-taxes agreement, by and between the Agency and the Company (the "Tax Agreement"); (iv) negotiate, execute and deliver a mortgage and related documents in connection with the financing related to the Project; and (v) 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, reconstruction, renovation and equipping of the Project; (b) a partial real property tax abatement structured through the Tax Agreement; and (c) an exemption from the mortgage recording tax as authorized by the laws of the State of New York for financing related to the Project (collectively, the "Financial Assistance"); and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project; and

WHEREAS, the Financial Assistance provided by the Agency to the Company shall not exceed One Hundred Thousand and No/100 Dollars (\$100,000.00) and, therefore, a public hearing is not required to be held by the Agency; and

WHEREAS, the Agent Agreement, the Lease Agreement, the Leaseback Agreement, the Tax Agreement, the mortgage and related documents in connection with the Project are being negotiated and will be presented to the Chair, Vice Chair or Executive Director of the Agency for execution upon approval of this Resolution.

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

Section 1. The Company has presented the Application in a form acceptable to the Agency and based upon the representations made by the Company to the Agency in the 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;

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

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

(D) 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

(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 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.

Section 2. Based upon the information regarding the Facility supplied by the Company, the Agency determined that the actions relating to the acquisition, construction and equipping of the Facility is an "Unlisted Action" under SEQRA and issued a negative declaration for purposes of SEQRA with respect to the Facility.

Section 3. The Agency is hereby authorized to provide to the Company the Financial Assistance in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction, reconstruction, renovation and equipping of the Project; (b) a partial real property tax abatement structured through the Tax Agreement; and (c) an exemption

from the mortgage recording tax as authorized by the laws of the State of New York for financing related to the Project.

Section 4. Based upon representations and warranties made by the Company in the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$560,000.00**, which result in New York State and local sales and use tax exemption benefits (the "Sales and Use Tax Exemption Benefits") not to exceed **\$44,800.00**. The Agency agrees to consider any requests by the Company for increases to the amount of the Sales and Use Tax Exemption Benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services.

Section 5. Pursuant to Section 875(3) of the Act, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; (iv) the Company has made a material false statement on the Application; (v) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project; and/or (vi) the Company obtains mortgage recording tax benefits and/or real property tax abatements and fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project (collectively, items (i) through (vi) hereby defined as a "Recapture Event").

As a condition precedent of receiving sales and use tax exemption benefits, real property tax abatement benefits and mortgage recording tax benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, mortgage recording tax benefits and/or real property tax abatement benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

Section 6. Subject to the Company executing the Agent Agreement 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 undertaking of the Project and hereby appoints the Company as the true and lawful agent of

the Agency: (i) to undertake 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, 2019** (unless extended for good cause by the Chairman, the Vice Chairman and/or the Executive Director of the Agency) if the Lease Agreement, the Leaseback Agreement and the Tax Agreement contemplated have not been executed and delivered.

Section 7. The Chairman, the Vice Chairman and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate the terms of and execute and deliver (i) the Agent Agreement, pursuant to which the Agency appoints the Company as its agent to undertake the Project; (ii) the Lease Agreement, pursuant to which the Company leases the Project to the Agency; (iii) the Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company; (iv) the Tax Agreement; and (v) related documents; provided, that (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 Tax Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 8. The Chairman, Vice Chairman and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any lender/financial institution identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or re-finance equipment and other personal property and related transactional costs (hereinafter, with the Agent Agreement, the Lease Agreement, the Leaseback Agreement and the Tax Agreement, collectively called the "Agency Documents"); and, where appropriate, the Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman and/or Executive Director of the Agency shall approve, with the execution thereof by the Chairman, Vice Chairman and/or Executive Director of the Agency to constitute conclusive evidence of such approval; provided that in all events recourse against the Agency is limited to the Agency's interest in the Project.

Section 9. The Financial Assistance provided by the Agency to the Company shall not exceed One Hundred Thousand and No/100 Dollars (\$100,000.00) and, therefore, a public hearing is not required to be held by the Agency.

Section 10. 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 11. 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>
Samuel Nasca	[ X ]	[ ]	[ ]	[ ]
George Prete	[ X ]	[ ]	[ ]	[ ]
David Parmley	[ X ]	[ ]	[ ]	[ ]
John Buckley	[ X ]	[ ]	[ ]	[ ]
John Carbone	[ X ]	[ ]	[ ]	[ ]

The Resolutions were thereupon duly adopted.

**CERTIFICATION**  
*(TTA Systems, LLC Project)*

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

---

I, the undersigned, Secretary of the City of Hornell Industrial Development Agency, DO HEREBY CERTIFY:

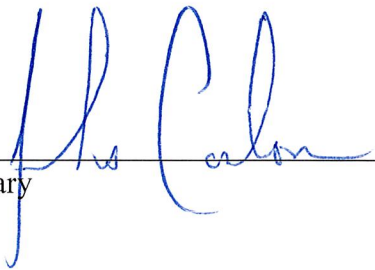
That I have compared the annexed extract of minutes of the meeting of the City of Hornell Industrial Development Agency (the "Agency"), including the resolution contained therein, held on December 20, 2018, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same 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 20 day of December, 2018.

  
\_\_\_\_\_  
Secretary