

FINAL APPROVING RESOLUTION

A regular meeting of the County of Oswego Industrial Development Agency was convened in public session on June 18, 2013, at 9:00 a.m., at 44 West Bridge Street, Oswego, New York.

The meeting was called to order by the Chair and, upon the roll being duly called, the following members were:

PRESENT: Nick Canale, Jr., Donald H. Kunzwiler, Carolyn A. Rush,
H. Leonard Schick, Morris Sorbello and Gary T. Toth

ABSENT: Jonathan Daniels

ALSO PRESENT: Kevin C. Caraccioli, David S. Dano and
L. Michael Treadwell

The following resolution was duly offered and seconded:

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A CERTAIN PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY

WHEREAS, the County of Oswego Industrial Development Agency (the “**Agency**”) is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the “**State**”), as amended, together with Chapter 234 of the Laws of 1973 of the State of New York, as amended from time to time (collectively, the “**Act**”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to grant “financial assistance” (as defined in the Act) in connection with the acquisition, construction and equipping of one or more “projects” (as defined in the Act); and

WHEREAS, BioSpherix, Ltd., a New York business corporation, or an entity to be formed (the “**Company**”), submitted an application to the Agency on or about August 23, 2012

(the “**Application**”), a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the “**Project**”) consisting of: (A) (i) the acquisition of a leasehold interest in approximately 22.58 acres of improved real property located at 25 Union Street, in the Village of Parish, New York, Oswego County (the “**Land**”); (ii) the renovation of the existing approximately 39,790 square foot building and adjacent shed all located on the Land, for use as a manufacturing facility of laboratory equipment (the “**Facility**”); and (iii) the acquisition of and installation in the Facility of various machinery, equipment and furnishings (the “**Equipment**”) (the Land, Facility and Equipment are hereinafter collectively referred to as the “**Project Facility**”); (B) granting certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local sales and use taxation (collectively the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement; the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, the Company also requested that the Agency consider payment in lieu of tax (“**PILOT**”) schedule, and such schedule constitutes a deviation from the Agency’s Uniform Tax Exemption Policy (“**UTEP**”) established pursuant to Section 874(4) of the Act; and

WHEREAS, by letters dated May 20, 2013, the Agency gave to the chief executive officers of the affected tax jurisdictions notice pursuant to Section 874 of the Act of this meeting (the “**Notice**”), at which the Agency would consider the Company’s request for a PILOT schedule which deviates from the UTEP; and

WHEREAS, the Agency conducted a public hearing with respect to the Project and the proposed Financial Assistance on May 24, 2013 pursuant to Section 859-a of the Act, notice of which was published on May 12, 2013 in The Post-Standard, a newspaper of general circulation in the County of Oswego, New York and given to the chief executive officers of the affected tax jurisdictions by letter dated May 9, 2013; and

WHEREAS, the Agency adopted a resolution on August 29, 2012 (the “**Initial Resolution**”) entitled:

RESOLUTION DETERMINING THAT THE ACQUISITION, CONSTRUCTION, RENOVATION AND EQUIPPING OF A COMMERCIAL FACILITY AT THE REQUEST OF THE COMPANY FOR USE AS A MANUFACTURING FACILITY CONSTITUTES A PROJECT; DESCRIBING THE FINANCIAL ASSISTANCE REQUESTED IN CONNECTION THEREWITH AND AUTHORIZING A PUBLIC HEARING

which resolution is in full force and effect and has not been amended or modified;

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), the Agency has examined the EAF prepared by the Company in order to classify the Project and has determined that the Project constitutes a “Type II” action as that term is defined under SEQRA, and therefore no further review is required;

WHEREAS, the Agency adopted a resolution on June 18, 2013 (the “**Inducement Resolution**”) entitled:

RESOLUTION UNDERTAKING THE ACQUISITION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF A CERTAIN PROJECT, APPOINTING THE COMPANY AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT, APPROVING FINANCIAL ASSISTANCE IN THE FORM OF REAL PROPERTY TAX, MORTGAGE RECORDING TAX AND STATE AND LOCAL SALES AND USE TAX EXEMPTIONS AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY

which resolution is in full force and effect and has not been amended or modified;

WHEREAS, the Agency adopted a resolution on June 18, 2013 (the “**PILOT Resolution**”) entitled:

RESOLUTION APPROVING A PAYMENT IN LIEU OF TAX SCHEDULE AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS BY THE AGENCY IN CONNECTION WITH A CERTAIN PROJECT UNDERTAKEN AT THE REQUEST OF THE COMPANY

which resolution is in full force and effect and has not been amended or modified.

NOW, THEREFORE, be it resolved by the members of the County of Oswego Industrial Development Agency, as follows:

Section 1. It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and

thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

Section 2. Based upon the representations and projections made by the Company to the Agency and after considering those representations, the Agency hereby makes the following determinations:

- a) Ratifies the findings in its Initial, Inducement and PILOT Resolutions.
- b) The granting of the other Financial Assistance and approval of the requested PILOT schedules will be an inducement to the Company to develop the Project Facility in the Village of Parish, County of Oswego.
- c) The commitment of the Agency to provide Financial Assistance to the Company will enable the Company to acquire, construct, renovate and equip the Project Facility, provide increased employment opportunities and ensure the continued physical and financial viability of the Project.
- d) The acquisition, construction, renovation and equipping of the Project Facility will promote employment opportunities and help prevent economic deterioration in the Village of Parish by the creation of both full and part-time jobs.
- e) The construction, renovation, equipping and operation of the Project Facility and the attendant promotion of the local economy will advance the job opportunities, health, prosperity and economic welfare of the people of the County of Oswego and the granting of the other Financial Assistance is a necessary component to the financing of the Project.
- f) The Project will not result in the removal of any commercial, industrial or manufacturing plant or facility of the Company or of any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act.

Section 3. Subject to the conditions set forth in Section 4.02 of the Agreement (as that term is defined in the Inducement Resolution) and the Inducement Resolution, the Agency will (A) acquire a controlling interest in the Project Facility, (B) lease the Land and Facility from the Company pursuant to a lease agreement between the Agency and the Company (the “***Company Lease***”) and acquire an interest in the Equipment pursuant to a bill of sale from the Company (the “***Bill of Sale***”); and sublease the Project Facility to the Company, pursuant to a sublease agreement which shall be consistent with this resolution and approved by the Chief Executive Officer or (Vice) Chairperson of the Agency upon the advice of counsel to the Agency (the “***Agency Lease***” and together with the Bill of Sale and the Company Lease, the “***Lease Documents***”), (C) secure the Company’s borrowings with respect to the Project Facility, by joining in one or more construction or permanent mortgages on the Project Facility in favor of the Company’s lender(s), in such form

and substance as shall be consistent with this resolution and approved by the Chief Executive Officer or (Vice) Chairperson of the Agency upon the advice of counsel to the Agency and pledging and assigning to such lender(s), if any, certain rights and remedies of the Agency under the sublease agreement by the execution and delivery of a pledge and assignment which shall be consistent with this resolution and approved by the Chief Executive Officer or (Vice) Chairperson of the Agency upon the advice of counsel to the Agency, (D) execute and deliver a payment in lieu of tax agreement ("PILOT Agreement") providing for the payment schedule approved by the Agency pursuant to the PILOT Resolution and which comports with the Agency's UTEP, and (E) execute and deliver any other documents necessary to effectuate the transfers contemplated by and consistent with this resolution upon the advice of counsel to the Agency.

Section 4. The Chief Executive Officer and (Vice) Chairperson are hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the documents and agreements identified herein and any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this resolution.

Section 5. No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

Section 6. A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

Section 7. The Chief Executive Officer of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 8. Counsel to the Agency and special Agency counsel are hereby authorized to work with the Company, and others to prepare, for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and to consummate the transactions contemplated by this Resolution.

Section 9. This Resolution shall take effect immediately.

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

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Nick Canale, Jr.	X			
Jonathan Daniels				X
Donald H. Kunzwiler	X			
Carolyn A. Rush	X			
H. Leonard Schick	X			
Morris Sorbello	X			
Gary T. Toth	X			

The resolution was thereupon declared duly adopted.

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

I, the undersigned Chief Executive Officer of the County of Oswego Industrial Development Agency, Do Hereby Certify that (i) I have compared the annexed extract of the minutes of the meeting of the County of Oswego Industrial Development Agency (the “**Agency**”) held on June 18, 2013, 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 the whole of such original insofar as the same relates to the subject matters referred to therein.

I Further Certify that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Agency on June 18, 2013.

L. Michael Treadwell
Chief Executive Officer

(SEAL)