

## APPROVING RESOLUTION

A regular meeting of the County of Oswego Industrial Development Agency (the “*Agency*”) was convened in public session on November 11, 2015 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: None

Also Present: Kevin C. Caraccioli, David S. Dano and L. Michael Treadwell

The following resolution was duly offered and seconded:

### **RESOLUTION APPROVING AN EXTENSION OF THE COMPANY’S APPOINTMENT AS AGENT OF THE AGENCY UNTIL MARCH 31, 2016 AND THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH**

**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**, Sunoco, Inc., a Pennsylvania corporation (the “*Company*”), submitted an application to the Agency on or about June 1, 2015 (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 or continuation of a leasehold interest in approximately 91-119 acres of improved real property located at 376 Owen Road in the Town of

Volney, New York, Oswego County (the “**Land**”); (ii) construction and equipping of an approximate 1,260 square foot scale house for use in conjunction with the production of ethanol; the renovation, reconstruction, repair, equipping and improvements of approximately: (a) 10,500 square feet on the first floor and 24,000 square feet on the second floor of building 4 on the Land to be used in connection with the production of malt barley; (b) 49,000 square feet of building 5 on the Land to be used in connection with the production of malt barley and other uses; (c) 41,000 square feet in building 14 on the Land to be used for biorefining; (d) 33,500 square feet in building 25 on the Land for expansion of tank additions; and (e) 7,200 square feet in building 28 on the Land for future expansion (collectively the “**Facility**”), (B) the acquisition and installation of machinery and equipment located in the Facility to be used in the production of ethanol (collectively the “**Equipment**”) (the Land, Facility and Equipment are hereinafter collectively referred to as the “**Project Facility**”); (C) the granting of certain financial assistance in the form of exemption from sales and use taxation, mortgage recording tax, if any, and real property tax (collectively, the “**Financial Assistance**”); and (D) the lease of the Project Facility by the Agency pursuant to a lease agreement and the lease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, on June 22, 2015, the Agency adopted resolutions which, among other things, authorized the Agency to undertake the Project and appoint the Company as its agent for purposes of acquiring, constructing, reconstructing, renovating and equipping the Project Facility (collectively, the “**Approving Resolutions**”) subject to the terms thereof and the execution of an agency agreement in substantially the same form attached to the Approving Resolutions (the “**Agency Agreement**”); and

**WHEREAS**, the amount of State and local sales and use tax exemption benefits comprising the approved Financial Assistance shall not exceed **\$2,840,000**; and

**WHEREAS**, in accordance with the Approving Resolutions, but prior to the Company being able to close on the lease transaction with the Agency, the Agency temporarily appointed the Company as its agent for purposes of undertaking certain work with respect to the Project Facility (the “**Temporary Appointment**”);

**WHEREAS**, on June 22, 2015, the Agency and Company entered into a Temporary Sales Tax Appointment Agreement (the “**Temporary Agreement**”) and the Agency issued a Temporary Sales Tax Appointment Letter to the Company on June 22, 2015 (the “**Letter**”) and a Form ST-60 – IDA Appointment of Project Operator or Agency for Sales Tax Purposes was filed with the New York State Department of Taxation and Finance. The Temporary Agreement originally expired on September 30, 2015. Thereafter in or about September, 2015, the Company requested, and on September 17, 2015 the Agency granted, and extension of the Temporary Appointment and Temporary Agreement through December 31, 2015; and

**WHEREAS**, the Company has requested the Agency grant a further extension of the Temporary Appointment and Temporary Agreement from September 30, 2015 to March 31, 2016; and

**WHEREAS**, the Temporary Appointment is in furtherance of the Financial Assistance that was previously approved for the Project, which underwent an environmental review by the Agency pursuant to the State Environmental Quality Review Act (“*SEQRA*”), and the present sales tax appointment extension request is insubstantial and does not require reconsideration or further review by the Agency under SEQRA.

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

(1) Based upon the representations made by the Company to the Agency, the Agency hereby makes the following findings and determinations:

(a) The Agency authorizes an extension of the Temporary Appointment of the Company and the Temporary Agreement through and including March 31, 2016. By operation of this Resolution, subject to the conditions set forth herein, the Temporary Agreement is extended through and including March 31, 2016 but all other terms and conditions of the Temporary Agreement remain unchanged and in full force and effect.

(2) The Agency is authorized to execute all documents necessary to effectuate the extension of the Temporary Agreement and the sales tax appointment agent status of the Company and/or its Additional Agents (as that term is defined in the Agency’s Appointment Resolution) (the “*Extension*”) including but not limited to issuance of a new Sales Tax Appointment Extension Letter and an amendment or extension of the appropriate “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (Form ST-60) for each of the entities; and the Chief Executive Officer of the Agency is each hereby authorized, on behalf of the Agency, to execute and deliver the documents upon the advice of counsel to the Agency. The execution thereof by the Chief Executive Officer constitutes conclusive evidence of such approval.

(3) As a further condition of the Extension, the Company will confirm that the Environmental Compliance and Indemnification Agreement executed and delivered in conjunction with the Temporary Agreement remains in full force and effect and will continue to do so for so long as the Extension is in effect and in accordance with its terms; and submit to the Agency any applicable information, including but not limited to proof of insurance naming the Agency as an additional insured pursuant to the Agency’s requirements, requested by the Agency with respect to the Extension; and shall further submit the appropriate applicable administrative, if any, and legal fees incurred by the Agency in exchange for the Agency’s grant of the sales tax appointment extension.

(4) The Company shall execute and deliver any and all documents required by the Agency in connection with the Extension and to carry out the intent of this Resolution; and

(5) The Company shall provide or cause its Additional Agents, as defined in the Inducement Resolution, to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the Agency and the

State Commissioner of Taxation and Finance (the “*Commissioner*”) upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company or Project’s receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request.

(6) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein 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.

(7) 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.

(8) 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.

(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>	<u>Recuse</u>
Nick Canale, Jr.	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 November 11, 2015, 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 November 11, 2015.

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L. Michael Treadwell  
Chief Executive Officer

(SEAL)