

RESOLUTION

A regular meeting of the County of Oswego Industrial Development Agency (the “*Agency*”) was convened in public session on November 20, 2012 at 2:30 p.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: Jonathan Daniels, Donald H. Kunzwiler, Carolyn A. Rush, H. Leonard Schick and Morris Sorbello

ABSENT: Arthur W. Ospelt and Gary T. Toth

ALSO PRESENT: Kevin C. Caraccioli and L. Michael Treadwell

The following resolution was duly offered and seconded:

RESOLUTION AUTHORIZING EXECUTION OF A WAIVER OF CONFLICT OF INTEREST AND THE EXECUTION OF SUCH WAIVER

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, reconstruction and equipping of one or more “projects” (as defined in the Act); and

WHEREAS, ONX2, LLC., a Delaware limited liability company, or an entity to be formed (the “*Company*”), submitted an application to the Agency on or about November 16, 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**”) generally consisting of: (A) (i) the acquisition of a leasehold interest in approximately thirty acres of real property, improved by several buildings, formerly known as the “Nestle Campus”, bounded on the east by South Seventh Street, fronts on both sides of Fay Street from South Seventh Street to South Fourth Street, bounded on the west side by South Fourth Street and on the south side by the lands of CSX, all in the City of Fulton, New York, Oswego County (the “**Land**”); and (ii) the performance of certain environmental studies and remediation, if any (the “**Remediation**”) (the Land and Remediation are hereinafter collectively referred to as the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from mortgage recording tax and sales and use taxation, in an aggregate amount not to exceed \$100,000 (collectively the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, testing and remediation of the Project Facility; and (D) the lease of the Land by the Agency pursuant to a lease agreement and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

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 is required to make a determination with respect to the environmental impact of any “action” (as said quoted term is defined in SEQRA) to be taken by the Agency and the approval of the Project and the Financial Assistance constitutes such an action; and

WHEREAS, the Agency has not approved undertaking the Project or the granting of the Financial Assistance; and

WHEREAS, a conflict of interest exists due to Hiscock & Barclay, LLP’s role as special counsel to the Agency as well as its representation of the Company with respect to the above referenced Project; and

NOW, THEREFORE, Be It Resolved by the Members of the County of Oswego Industrial Development Agency as follows:

Section 1. Based upon the representations made by to the Agency by Hiscock & Barclay, LLP, the Agency hereby makes the following findings and determinations:

(a) The Agency has no objection to Hiscock & Barclay, LLP’s representation of the Company and the Agency with respect to the Project and approves of, and consents to, the execution of a waiver of such conflict between the Agency and Hiscock & Barclay, LLP, subject to, and conditioned upon, the Company’s waiving of such conflict of interest as described herein.

Section 2. A copy of this Resolution shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

Section 3. The Chief Executive Officer is hereby authorized on behalf of the Agency to execute a letter evidencing the waiver of the conflict of interest as outlined herein.

Section 4. The Chief Executive Officer of the Agency is hereby authorized and may 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 5. 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>
Jonathan Daniels	X			
Donald H. Kunzwiler	X			
Arthur W. Ospelt				X
Carolyn A. Rush	X			
H. Leonard Schick	X			
Morris Sorbello	X			
Gary T. Toth				X

The resolution was thereupon declared duly adopted.

