

Final Resolution

RESOLUTION

(Duncan's Heating and Cooling Corp. Project – Phase 2)

A regular meeting of Niagara County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York on the 8th day of January, 2025 at 9:00 a.m., local time.

The meeting was called to order by the Chairperson and, upon roll being called, the following members of the Agency were:

PRESENT:

Mark A. Onesi	Chairperson
Jason Krempa	First Vice Chairman
Clifford Scott	Second Vice Chairman
William L. Ross	Secretary
Mark D. Berube	Assistant Secretary
Ryan Mahoney	Member
David J. Masse	Member

ABSENT:

Anne E. McCaffrey	Member
William Fekete	Member

THE FOLLOWING PERSONS WERE ALSO PRESENT:

Andrea Klyczek	Executive Director
Michael Dudley	Director of Finance and Real Estate
Susan Barone	Grants, Loans & Compliance Manager
Jeremy Geartz	Director of Business Development and Retention
Julie Lamoreaux	Office & HR Administrator
Mark Gabriele, Esq.	Agency Counsel

The following resolution was offered by Mr. Krempa, seconded by Mr. Mahoney, to wit:

Resolution No. 8.4.1

RESOLUTION OF THE NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) ACCEPTING THE APPLICATION OF DUNCAN'S HEATING AND COOLING CORP. WITH RESPECT TO A CERTAIN PROJECT (AS MORE FULLY DEFINED BELOW) TO BE UNDERTAKEN BY THE AGENCY FOR THE BENEFIT OF DUNCAN'S HEATING AND COOLING CORP. OR AN ENTITY FORMED OR TO BE FORMED; (ii) PROVIDE SALES TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE CONSTRUCTION AND EQUIPPING OF THE PROJECT; AND DESCRIBING THE FORMS OF FINANCIAL ASSISTANCE BEING CONTEMPLATED BY THE AGENCY.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 569 of the Laws of 1972 of the State of New York (the "Act"), **NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") was created with the authority and power to own, lease and sell property and to issue its bonds as authorized by the Act; and

WHEREAS, **DUNCAN'S HEATING & COOLING CORP.** and/or an individual(s) or affiliate, subsidiary, or entity or entities formed or to be formed on its behalf (the "Company"), has submitted an application to the Agency, 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) the retention by the Agency of a leasehold interest in a parcel of land located at 3507 Hyde Park Blvd. in the Town of Niagara, Niagara County, New York (the "Land"); together with the approximately 9400 square foot existing building located on the Land (the "Existing Improvements"); and (B) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and collectively with the Land, Existing Improvements and the Equipment, the "Facility").

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the financial assistance that the Agency is contemplating with respect to the Project; and

WHEREAS, it is contemplated that the Agency will (i) negotiate an agent and project agreement (the "Agent Agreement") whereby the Agency will designate the Company as its agent for the purpose of constructing and equipping the Project, and (ii) provide financial assistance to the Company in the form of sales and use tax exemptions consistent with the policies of the Agency; and

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's 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; and

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

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

(D) 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 Company's 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 representations and warranties made by the Company in its application for financial assistance, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to \$1,200,000.00, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$96,000.00. The Agency agrees to consider any requests by the Company for increase to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services.

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Pursuant to Section 875(3) of the New York General Municipal Law, 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; or (iv) 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. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 3. The Chairman, Vice Chairman and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate the terms of an Agent Agreement, whereby the Agency appoints the Company as its agent to undertake the Project and to immediately provide sales tax exemption benefits for purchases and rentals related to the renovation, construction and equipping of the project.

Section 4. 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 5. These Resolutions shall take effect immediately upon adoption.

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

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Mark Onesi	[x]	[]	[]	[]
Jason Krempa	[x]	[]	[]	[]
Clifford Scott	[x]	[]	[]	[]
William Ross	[x]	[]	[]	[]
William Fekete	[]	[]	[]	[x]
Mark Berube	[x]	[]	[]	[]
Ryan Mahoney	[x]	[]	[]	[]
Anne E, McCaffrey	[]	[]	[]	[x]
David J. Masse	[x]	[]	[]	[]

The Resolutions were thereupon duly adopted.

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

I, the undersigned Secretary of Niagara County Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on January 8, 2025 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) 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 rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 8th day of January, 2025.

[SEAL]


William L. Ross, Secretary

Project Agreement

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

DUNCAN'S HEATING AND COOLING CORP.

**Relating to certain property located at
3507 Hyde Park Boulevard, Town of Niagara,
Niagara County, New York**

Benefits:
Sales Tax Exemption

January 1, 2025

Prepared by:
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DUNCAN'S HEATING AND COOLING CORP. PROJECT

Niagara County Industrial Development Agency - "Agency"
Duncan's Heating and Cooling Corp. - "Company"

Closing Index

Document
Number

Document Title

1. Agent and Financial Assistance and Project Agreement dated as of January 1, 2025
2. Sales Tax Exemption Letter dated January 1, 2025 and expiring December 31, 2025
3. NYS Form ST-60 with Proof of Filing
4. Acknowledgement and Certification, dated as of January 1, 2025
5. General Certificate of the Agency with:
 - Exhibit A - Chapter 569 of the Laws of 1972;
 - Exhibit B - Certificate of Establishment and Certificates of Appointment of New Members;
 - Exhibit C - By-laws;
 - Exhibit D - Resolutions; and
 - Exhibit E - Conflicts of Interest
6. General Certificate of the Company with:
 - Exhibit A - Certificate of Incorporation;
 - Exhibit B - Bylaws;
 - Exhibit C - Resolution of the Directors;
 - Exhibit D - Good Standing Certificate from NYS; and
 - Exhibit E - Material Pending Litigation.

Document
Number

Document Title

7. Opinion of Gabriele & Berrigan P.C., Transaction Counsel
8. Evidence of Insurance