

**APPROVING RESOLUTION
AIR PRODUCTS AND CHEMICALS, INC. PROJECT**

A regular meeting of the Town of Bethlehem Industrial Development Agency (the “Agency”) was convened in public session in the Town Hall auditorium located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York on March 23, 2017 at 8:00 o’clock a.m., local time.

The meeting was called to order by the (Vice) Chairman of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

Frank S. Venezia	Chairman
Joseph P. Richardson	Vice Chairman
Victoria Storrs	Assistant Secretary
David Kidera	Member
Timothy Maniccia	Member
Sandra Shapard	Member

ABSENT:

Tim McCann	Secretary
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AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Thomas P. Connolly, Esq.	Executive Director, Assistant Secretary and Agency Counsel
Allen F. Maikels	Treasurer, Chief Financial Officer and Contracting Officer
Robin Nagengast	Assistant to the Executive Director
Robert Leslie	Director, Department of Economic Development & Planning
A. Joseph Scott, III, Esq.	Special Counsel

The following resolution was offered by Joseph P. Richardson, seconded by David Kidera, to wit:

Resolution No. 317-__

**RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION
WITH A LEASE/LEASEBACK TRANSACTION FOR A PROJECT FOR AIR
PRODUCTS AND CHEMICALS, INC. (THE “COMPANY”).**

WHEREAS, Town of Bethlehem Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 582 of the 1973 Laws of New York, as amended, constituting Section 909-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of commercial, manufacturing and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general

prosperity and economic welfare of the people of the State of New York, to improve their 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 acquire, construct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, Air Products and Chemicals, Inc. (the “Company”), a Delaware foreign business corporation, submitted an application (the “Application”) to the Agency, a copy of which Application is on file at the office of the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in all or a portion of an approximately 26.908 acre parcel of land located at 461 River Road in the Town of Bethlehem, Albany County, New York (the “Land”), together with the existing improvements located thereon containing approximately 7,000 square feet in the aggregate (the “Existing Facility”), (2) the construction on the Land of certain improvements containing in the aggregate approximately 5,000 square feet of space (the “New Facility”) (the Existing Facility and the New Facility hereinafter collectively referred to as the “Facility”), and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the “Equipment”) (the Land, the Facility, and the Equipment being collectively referred to as the “Project Facility”), all of the foregoing to be owned by the Company and operated as an industrial facility for the production and distribution of liquid nitrogen, liquid oxygen and liquid argon and other directly and indirectly related uses; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on February 24, 2017 (the “Public Hearing Resolution”), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on March 10, 2017 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located, (B) caused notice of the Public Hearing to be posted on March 10, 2017 on a bulletin board located outside the Town Clerk’s office located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York and on the Agency’s website, (C) caused notice of the Public Hearing to be published on March 11, 2017 in the Albany Times Union, a newspaper of general circulation available to the residents of the Town of Bethlehem, Albany County, New York, (D) conducted the Public Hearing on March 22, 2017 at 5:00 o’clock p.m., local time in the Auditorium of the Town of Bethlehem Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York, and (E) prepared a report of the Public Hearing (the “Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”)

adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on March 23, 2017 (the "SEQR Resolution"), the Agency determined (A) to conduct an uncoordinated review of the Project, (B) that the Project is an "Unlisted action" which will not have a significant effect on the environment and, therefore, that an environmental impact statement is not required to be prepared with respect to the Project, and (C), as a consequence of the foregoing, to prepare a negative declaration with respect to the Project; and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Company to undertake the Project in the Town of Bethlehem, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

WHEREAS, the Agency desires to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of the Town of Bethlehem, New York by undertaking the Project in the Town of Bethlehem, New York; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the "Agency Documents"): (A) a certain lease to agency (the "Lease to Agency" or the "Underlying Lease") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency all or a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises"); (B) a certain license agreement (the "License to Agency" or the "License Agreement") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (1) a license to enter upon the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (2) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement (as hereinafter defined); (C) a certain lease agreement (and a memorandum thereof) (the "Lease Agreement") by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (D) a certain payment in lieu of tax agreement (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility; (E) a certain uniform agency project agreement (the "Uniform Agency Project Agreement") by and between the Agency and the Company regarding the granting of the Financial Assistance and the potential recapture of such assistance; (F) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (G) a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance; (H) a New York State Department of Taxation and Finance form entitled "IDA Appointment of Project Operator or Agency for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report") and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the "Additional Thirty-Day Project Report"); (I) if the Company intends to finance the Project with borrowed money, one or more mortgages and any other security documents and related documents (collectively, the

“Mortgage”) from the Agency and the Company to the Company’s lenders with respect to the Project (the “Lender”), which Mortgage will grant liens on and security interests in the Project Facility to secure one or more loans from the Lender to the Company with respect to the Project (collectively, the “Loan”); (J) all building loan and other agreements requested by the Lender in connection with the Loan (collectively with the Mortgage, the “Loan Documents”); and (J) various certificates relating to the Project (the “Closing Documents”);

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

Section 1. All action taken by the Executive Director, Agency Counsel and Agency Special Counsel with respect to the Public Hearing with respect to the Project is hereby ratified and confirmed.

Section 2. The law firm of Hodgson Russ LLP is hereby appointed Special Counsel to the Agency with respect to all matters in connection with the Project. Special Counsel for the Agency is hereby authorized, at the expense of the Company, to work with the Company, counsel to the Company, counsel to the Agency and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution. Special Counsel has prepared and submitted an initial draft of the Agency Documents to staff of the Agency.

Section 3. 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 Project constitutes a “project,” as such term is defined in the Act;

(C) The Project site is located entirely within the boundaries of the Town of Bethlehem, New York;

(D) It is estimated at the present time that the costs of the planning, development, acquisition, construction and installation of the Project Facility (collectively, the “Project Costs”) will be approximately \$14,100,000;

(E) The completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York;

(F) The Project Facility does not constitute a project where facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project, and accordingly the Project is not prohibited by the provisions of Section 862(2)(a) of the Act;

(G) The Project should receive financial assistance in the form of (i) an exemption from sales tax, mortgage recording tax and real property tax based on the following factors contained in Section 1703 of the Agency’s Uniform Tax Exemption Policy (“UTEF”):

(1) the nature of the Project Facility is manufacturing (Factor #1);

(2) the nature of the real property before the Project is undertaken is vacant land (Factor #2);

(3) the general economic condition of the area where the Project Facility will be located contains industrial and manufacturing sites, including the current site occupied by the Company and its industrial operations (Factor #3)

(4) the Project will retain approximately 66 permanent private sector jobs that might otherwise move to Massachusetts, Pennsylvania or western New York (Factor #4);

(5) the estimated net value all tax exemptions to be provided over an eleven (11) year period discounted by 2% and less the Agency administrative fee is approximately \$813,977 (Factor #5);

(6) the impact of the Project on affected tax jurisdictions is beneficial in that the total state and regional benefits are approximately \$14,445,503 over an eleven (11) year period discounted at 2% (Factor #6);

(7) the impact of the Project will be beneficial to existing and proposed businesses and for future economic development in the Town of Bethlehem (Factor #7);

(8) the amount of private sector investment is approximately \$14,100,000 (Factor #8);

(9) it is likely that the Project Facility will be completed on time (Factor #9);

(10) the Project Facility will not adversely affect the environment (Factor #10);

(11) the Project will provide additional sources of revenue to the municipalities and school district in which the Project Facility is located (Factor #11);

(12) the Project Facility will provide an economic benefit not otherwise available in the Town of Bethlehem (e.g., increased manufacturing activity, strengthen an important local business) (Factor #12);

(13) the affected tax jurisdictions will be reimbursed if the Project is not completed (Factor #13);

(14) at the public hearing all persons who spoke supported the Project Facility (Factor #14);

(15) the Project Facility will have a minimal impact on additional services, such as education, transportation, emergency medical or fire services (Factor #15); and

(16) the Financial Assistance is a significant component in the Company's determination to undertake the Project (Factor #16), and

(ii) an Enhanced Abatement under UTEP Section 1707(c)(1)(b) pursuant to a separate resolution adopted on this date;

(H) The granting of the Financial Assistance by the Agency with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of the Town of Bethlehem, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;

(I) The Agency has reviewed the Hearing Report and has fully considered all comments contained therein; and

(J) It is desirable and in the public interest for the Agency to enter into the Agency Documents.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (A) accept the License Agreement; (B) lease the Project Facility to the Company pursuant to the Lease Agreement; (C) acquire, construct and install the Project Facility, or cause the Project Facility to be acquired, constructed and installed; (D) enter into the Payment in Lieu of Tax Agreement, (E) enter into the Section 875 GML Recapture Agreement; (F) enter into the Uniform Agency Project Agreement; (G) secure the Loan by entering into the Loan Documents; and (H) grant the Financial Assistance with respect to the Project.

Section 5. The Agency is hereby authorized (A) to acquire a license in the Licensed Premises pursuant to the License Agreement, (B) to acquire a leasehold interest in the Leased Premises pursuant to the Underlying Lease, (C) to acquire title to the Equipment pursuant to a bill of sale (the "Bill of Sale to Agency") from the Company to the Agency, and (D) to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisitions are hereby approved, ratified and confirmed.

Section 6. The Agency is hereby authorized to acquire, construct and install the Project Facility as described in the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and installation are hereby ratified, confirmed and approved.

Section 7. The Chairman (or Vice Chairman) of the Agency, with the assistance of Agency Counsel and/or Special Counsel, is authorized to negotiate and approve the form and substance of the Agency Documents.

Section 8. (A) The Chairman (or Vice Chairman) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in the forms thereof as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

(B) The Chairman (or Vice Chairman) of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 9. 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 or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional 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 Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 10. This resolution shall expire if construction is not started within one year from the date this resolution was adopted and completed within two years of such adoption. Whether or not such construction has started shall be determined by the Agency in its sole and absolute discretion. An extension of the expiration date beyond the dates specified may be granted by the Agency upon written request of the Company and for good cause shown. However, any such extension of time shall not exceed 180 days in the aggregate.

Section 11. This Resolution 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:

Frank S. Venezia	VOTING	<u>Yes</u>
Joseph P. Richardson	VOTING	<u>Yes</u>
Tim McCann	VOTING	<u>Absent</u>
Victoria Storrs	VOTING	<u>Yes</u>
David Kidera	VOTING	<u>Yes</u>
Timothy Maniccia	VOTING	<u>Yes</u>
Sandra Shapard	VOTING	<u>Yes</u>

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned (Assistant) Secretary of Town of Bethlehem Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on March 23, 2017 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 contained 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 ___ day of March, 2017.

(Assistant) Secretary

(SEAL)