

Motion By: Rogulski
Seconded By: Schreibels

RESOLUTION
(International Business Machines Corporation Project)

A regular meeting of the Orange County Industrial Development Agency was held on September 13, 2018 at 2:00 p.m. (local time) at the Orange County Business Accelerator, 4 Crotty Lane, Suite 100, New Windsor, New York 12553.

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to a proposed project for the benefit of International Business Machines Corporation (the "Company").

RESOLUTION OF THE ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) AUTHORIZING ADDITIONAL FINANCIAL ASSISTANCE TO IBM BUSINESS MACHINES CORPORATION (THE "COMPANY") IN AN AMOUNT EXCEEDING THE AMOUNT APPROVED BY THE AGENCY IN ITS FINAL RESOLUTION ADOPTED ON APRIL 9, 2015 AND A RESOLUTION ADOPTED BY THE AGENCY ON DECEMBER 6, 2016, AND (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF A FURTHER AMENDED AGENT AGREEMENT AND RELATED DOCUMENTS WITH RESPECT THERETO.

WHEREAS, by Title I of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 390 of the Laws of 1972 of the State of New York, as amended (hereinafter collectively called the "Act"), the **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called the "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **INTERNATIONAL BUSINESS MACHINES CORPORATION**, (the "Company"), has previously submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of the renovation and upgrading of existing improvements located at 299 Long Meadow Road in the Town of Warwick, Orange County, New York (the "Land"), including, but not limited to, expansion of building systems and raised floor areas, increase in generator plant capacity, HVAC replacement, UPS systems and energy management upgrades (the "Improvements") and the acquisition and installation of other machinery, equipment, computer systems and other personal property (the "Equipment" and, together with the Land and the Improvements, the "Facility"); and

WHEREAS, on April 9, 2015, the Agency adopted a resolution (the "Final Resolution") appointing the Company as its true and lawful agent to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax in an amount up to \$50,000,000, which would result in New York State and local sales and

use tax exemption benefits ("Original Sales and Use Tax Exemption Benefits") not to exceed \$4,062,500; and

WHEREAS, in connection with the Project, the Agency and the Company executed a certain Agent Agreement, dated April 28, 2015, and expiring December 31, 2016 (the "Original Agent Agreement") pursuant to which, among other things, the Agency appointed the Company as its true and lawful agent to undertake the Project and incur the Original Sales and Use Tax Exemption Benefits; and

WHEREAS, on or about November 30, 2016, the Company submitted correspondence to the Agency requesting (i) that the Agency authorize the Company 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 the amount up to a total of \$75,000,000 (\$25,000,000 increase in expenditures), which would result in New York State and local Sales and Use Tax Exemption Benefits not to exceed \$6,093,750 (\$2,031,250 increase; as amended and increased, the "Sales and Use Tax Exemption Benefits") and (ii) extend the Original Agent Agreement to December 31, 2017 (as so amended, the "Agent Agreement"); and

WHEREAS, on or about September 10, 2018 the Company submitted correspondence to the Agency requesting (i) that the Agency authorize the Company 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 the amount up to a total of \$175,000,000 (\$100,000,000 increase in expenditures), which would result in New York State and local Sales and Use Tax Exemption Benefits not to exceed \$14,218,750 (\$8,125,000 increase) as amended and increased, the "Sales and Use Tax Exemption Benefits"; and (ii) extend the Original Agent Agreement through December 31, 2021 (as so amended, the "Agent Agreement"); and

WHEREAS, the Agency desires to adopt a resolution authorizing the Sales and Use Tax Exemption Benefits and the execution and delivery of the Agent Agreement, as extended, and any document necessary and incidental thereto.

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

Section 1. Based upon the representation and warranties made by the Company in its Application, as revised, 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 \$175,000,000, which result in New York State and local Sales and Use Tax Exemption Benefits not to exceed \$14,218,750. 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.

Section 2. The Agent Agreement and Sales and Use Tax Exemption Benefits are hereby extended thru December 31, 2021.

Section 3. 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 4. The Chairman, Vice Chairman and/or Chief Operating Officer and Executive Vice President of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agent Agreement, as extended, and any documents necessary and incidental to provide the Company with the Sales and Use Tax Exemption Benefits with such changes as shall be approved by the Chairman, Vice Chairman and/or Chief Operating Officer and Executive Vice President upon execution.

Section 5. 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 6. These Resolutions shall take effect immediately.

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

	<u>Yea</u>	<u>Nay</u>	<u>Absent</u>	<u>Abstain</u>
Robert T. Armistead			✓	
Mary Ellen Rogulski	✓			
John Steinberg, Jr.	✓			
Stephen Brescia	✓			
Edward A. Diana	✓			
Robert J. Schreibeis, Sr.	✓			
James DiSalvo	✓			

The Resolutions were thereupon duly adopted.

STATE OF NEW YORK)
COUNTY OF ORANGE) ss:

I, the undersigned Secretary of the Orange County Industrial Development Agency, DO
HEREBY CERTIFY:

That I have compared the foregoing extract of the minutes of the meeting of the Orange County Industrial Development Agency (the "Agency") including the resolution contained therein, held on September 13, 2018, 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 such resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

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

I FURTHER CERTIFY that 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 modified.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Agency this 13th day of September, 2018.



Stephen Brescia, Secretary