

**RESOLUTION APPROVING THE SALE AND ASSIGNMENT OF THE RIGHT,
TITLE AND INTEREST IN A CERTAIN PROJECT FACILITY BY
CRYOMECH, INC. TO BLUEFORS CRYOCOOLER TECHNOLOGIES INC.**

(3101-22-08A)

A regular meeting of the Onondaga County Industrial Development Agency (the “Agency”) was convened in public session on March 23, 2023, at 8:30 a.m. at 335 Montgomery Street, 2nd Floor, Syracuse, New York.

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: Patrick Hogan, Chairperson
Janice Herzog, Vice Chairperson
Susan Stanczyk
Kevin Ryan

ABSENT: Fanny Villarreal

ALSO PRESENT: Robert M. Petrovich, Executive Director
Jeffrey W. Davis, Esq., Agency Counsel
Amanda M. Fitzgerald, Esq., Agency Counsel

The following resolution was offered by Janice Herzog, seconded by Kevin Ryan, to wit:

**RESOLUTION APPROVING THE SALE OF A CERTAIN PROJECT
FACILITY BY CRYOMECH, INC. TO BLUEFORS CRYOCOOLER
TECHNOLOGIES INC. AND AUTHORIZING THE EXECUTION AND
DELIVERY OF AN ASSIGNMENT AND ASSUMPTION AGREEMENT
AND RELATED DOCUMENTS IN CONNECTION THEREWITH.**

WHEREAS, Onondaga County 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 435 of the Laws of 1970 of the State of New York and Chapter 676 of the Laws of 1975 of the State of New York, as amended, constituting Section 895 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 manufacturing, warehousing, research, commercial 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, reconstruct and install one or more “projects” (as defined in

the Act), or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, pursuant to a resolution adopted by the members of the Agency on June 19, 2019, the Agency undertook a project (the “2019 Project”) on behalf of Quantum Cool, LLC (the “Initial Real Estate Holding Company”) and Cryomech, Inc. (the “Original Company”) consisting of the following: (A) (1) the acquisition of an interest in an approximately 14-acre portion of land located at 6682 Moore Road (formerly part of tax map no. 022.-05-03.1, now tax map no. 022.-05-19.0) in the Town of DeWitt, Onondaga County, New York (the “2019 Land”); (2) the construction on the 2019 Land of an approximately 76,000 square foot building (the “2019 Facility”); (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the “2019 Facility Equipment”) (the 2019 Land, the 2019 Facility and the 2019 Facility Equipment being collectively referred to as the “2019 Company Project Facility”); and (4) the acquisition and installation of certain equipment and personal property (the “2019 Equipment”, and together with the 2019 Company Project Facility, the “2019 Project Facility”) by the Initial Real Estate Holding Company, such 2019 Project Facility to be used by the Original Company as a manufacturing plant for high-performance cryogenic equipment and related office space; (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 and transfer and mortgage recording taxes (subject to certain statutory limitations) (collectively, the “2019 Financial Assistance”); and (C) (1) the lease (with an obligation to purchase) or sale of the 2019 Company Project Facility to the Initial Real Estate Holding Company or such other person as may be designated by the Initial Real Estate Holding Company and agreed upon by the Agency; and (2) and the lease (with an obligation to purchase) or sale of the 2019 Equipment to the Original Company or such other person as may be designated by the Original Company and agreed upon by the Agency; and

WHEREAS, in connection with the 2019 Project, the Agency and the Initial Real Estate Holding Company entered into (A) an underlying lease (and a memorandum thereof) dated as of September 1, 2019 by and between the Agency and the Initial Real Estate Holding Company (the “2019 Underlying Lease”); (B) a lease agreement (and a memorandum thereof) dated as of September 1, 2019 by and between the Agency and the Initial Real Estate Holding Company (the “2019 Lease Agreement”); (C) a payment in lieu of tax agreement dated as of September 1, 2019 by and between the Agency and the Initial Real Estate Holding Company (the “2019 PILOT Agreement”); (D) a company project agreement dated as of September 1, 2019 by and between the Agency and the Initial Real Estate Holding Company, as amended by an Amendment to the Company Project Agreement dated as of August 1, 2020 by and between the Agency and the Initial Real Estate Holding Company (collectively, the “2019 Project Agreement”); and (E) various certificates relating to the 2019 Project (the “2019 Certificates” and collectively with the 2019 Underlying Lease, the 2019 Lease Agreement, the 2019 PILOT Agreement, and the 2019 Project Agreement, the “2019 Documents”); and

WHEREAS, on or about March 24, 2022, the Initial Real Estate Holding Company sold all of its right, title and interest in and to the 2019 Company Project Facility to the Original Company and in connection therewith the Initial Real Estate Holding Company assigned to the Original Company and the Original Company assumed from the Initial Real Estate Holding

Company the obligations of the Initial Real Estate Holding Company under the 2019 Documents pursuant to an Omnibus Assignment and Assumption Agreement made as of March 24, 2022 by and between the Initial Real Estate Holding Company and the Original Company, as consented to by the Agency; and

WHEREAS, the Original Company submitted an application to the Agency (the “Application”) on behalf of itself and entities formed or to be formed on its behalf, a copy of which Application is on file at the office of the Agency, which Application requested that the Agency consider undertaking a new project (the “Project”) for the benefit of the Original Company and/or entities formed or to be formed on its behalf, said Project consisting of the following: (A)(1) the retention of the Agency’s interest in the 2019 Land and the acquisition of an interest in approximately 12.5 acres of land located at 6655 Old Thompson Road and 6684 Moore Road (parts of tax map nos. 022.-05-03.1 and 022.-05-02.3), all in the Town of Dewitt, Onondaga County, New York (all of the foregoing collectively, the “Land”) and the retention of the Agency’s interest in the 2019 Project Facility; (2) the construction on the Land of approximately 34,000 square feet of additions to the 2019 Facility and related exterior improvements, including but not limited to additional parking and stormwater improvements (the “2023 Improvements” and together with the 2019 Facility, 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, the 2019 Facility Equipment, the 2019 Equipment and the Equipment being collectively referred to as the “Project Facility”), which Project Facility will be used by the Original Company as a manufacturing plant for high-performance cryogenic equipment and related office space; (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 (subject to certain statutory limitations) (the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Original Company or such other person as may be designated by the Original Company and agreed upon by the Agency; 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”), by resolution adopted by the members of the Agency on December 20, 2022, the Agency (a) affirmed that the Planning Board of the Town of Dewitt, acting as lead agency for the coordinated environmental review of the 2019 Project, classified the 2019 Project is a “Type I” action and determined that it will not have a significant adverse effect on the environment and issued a negative declaration for the 2019 Project, (b) affirmed that the Planning Board of the Town of Dewitt reviewed the Site Plan for the 2019 Project, as modified to include the Project, and determined that the modification did not substantially impact its prior SEQRA findings and issued a negative declaration for the Project, and (c) reaffirmed, accepted, and adopted the negative declaration that was issued by the Planning Board of the Town of Dewitt for the Project; and

WHEREAS, the Agency adopted an approving resolution authorizing the Project at its December 20, 2022 meeting (the “Approving Resolution”); and

WHEREAS, the Agency and the Original Company have not closed on the straight-lease transaction associated with the Project and approved by the Agency in the Approving Resolution; and

WHEREAS, pursuant to the Approving Resolution, the Agency conferred on the Original Company in connection with the Project certain financial assistance including an exemption from New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Project Facility or used in the acquisition, construction or equipping of the Project Facility (the “Sales Tax Exemption”); and

WHEREAS, in connection with the Project Facility and the Sales Tax Exemption, the Agency and the Original Company entered into a Project and Preliminary Sales Tax Exemption Agreement dated as of February 2, 2023 (the “Preliminary Project Agreement”); and

WHEREAS, the Original Company has notified the Agency that it intends to sell and assign all of its right, title and interest in and to the Project Facility to Bluefors Cryocooler Technologies Inc. (the “Assignee”) and enter into an Omnibus Assignment and Assumption Agreement by and between the Original Company and the Company, as consented to by the Agency; and

WHEREAS, the Original Company has requested that the Agency consent to the sale by the Original Company of the Project Facility to the Assignee and the assignment by the Original Company and the assumption by the Assignee of the Project and the Preliminary Project Agreement and all covenants therein agreed to by the Original Company in connection with the Project (collectively, the “Assignment Transaction”); and

WHEREAS, the Assignee has submitted and the Agency has reviewed the organizational documents of the Assignee and the Assignee has answered the Agency’s questions regarding the Assignee and the impact of the change in ownership on the Project and the Financial Assistance previously approved by the Agency in the Approving Resolution; and

WHEREAS, in light of the change in the ownership of the Project Facility, the Agency desires to ratify and reaffirm the Approving Resolution, including its approval of the Project and the grant of the Financial Assistance to the Assignee; and

WHEREAS, the change in the ownership of the Project Facility is not material, will not result in any additional environmental impacts that were not addressed as part of the original SEQRA determination, and does not require that the Agency alter or amend its prior negative declaration for the Project, which is hereby ratified and reaffirmed; 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”), the Agency must determine the potential environmental significance of the Assignment Transaction.

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

Section 1. Pursuant to SEQRA, the Agency hereby finds and determines that:

(A) Pursuant to Section 617.5(c)(26) of the Regulations, the Assignment Transaction is a “Type II action” (as said quoted term is defined in the Regulations);

(B) Therefore, the Agency hereby determines that no environmental impact statement or any other determination or procedure is required under the Regulations with respect to the Assignment Transaction;

(C) The change in ownership of the Project Facility does not constitute a significant change from the original Project that was reviewed under the SEQRA Resolution and therefore no further or additional review under SEQRA is required; and

(D) The change in ownership of the Project Facility does not require a change in the Financial Assistance previously approved by the Agency.

Section 2. The Agency hereby finds and determines that by virtue of the Act, that:

(A) 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) It is desirable and in the public interest for the Agency to consent to the Assignment Transaction.

Section 3. The Agency hereby consents to the Assignment Transaction and the change in ownership of the Project Facility, ratifies the Approving Resolution and reaffirms the approval of the grant of the Financial Assistance with respect to the Project and the Assignee.

Section 4. The Chairman (or Vice Chairman) and the Executive Director and/or (Vice) Chairperson of the Agency, upon advice of counsel, are each hereby authorized and directed to negotiate, execute and deliver, on behalf of the Agency, upon the advice of counsel, the necessary documents to effectuate the Assignment Transaction, including but not limited to an assignment or assumption agreement or any necessary amendments to the Preliminary Project Agreement, the execution thereof by the Chairman, Vice Chairman and/or the Executive Director to constitute conclusive evidence of such approval, and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution; provided however, that as a condition precedent to the Assignment Transaction, the Original Company and the Assignee shall execute and deliver any and all necessary documents required by the Agency to effectuate the Assignment Transaction and the Original Company or the Assignee shall pay the Agency’s related fees and costs associated with the Assignment Transaction, including but not limited to its legal fees.

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 or to effectuate the Assignment Transaction, 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 Assignment Transaction binding upon the Agency.

Section 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.

Section 7. The Executive Director of the Agency is hereby authorized to distribute copies of this Resolution to the Original Company and the Assignee and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 8. This Resolution 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>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Patrick Hogan	X		
Janice Herzog	X		
Susan Stanczyk	X		
Kevin Ryan	X		
Fanny Villarreal			X

The Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) ss.:
COUNTY OF ONONDAGA)

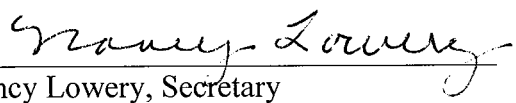
I, the undersigned Secretary of the Onondaga County Industrial Development Agency, DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on March 23, 2023, with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the Agency and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matter 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 this 24 day of March, 2023.

(SEAL)



Nancy Lowery, Secretary