

**APPROVING RESOLUTION
DFT LOCAL SERVICE CORPORATION PROJECT**

A regular meeting of County of Chautauqua Industrial Development Agency (the "Agency") was convened in public session at the SUNY Fredonia Technology Incubator, in the Large Conference Room, located at 214 Central Avenue in the City of Dunkirk, Chautauqua County, New York on February 26, 2019 at 10:00 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:

Michael Metzger	Chairman
Dennis J. Rak	Vice Chairman
Hans Auer	Treasurer
Gary Henry	Secretary
Kelly Farrell DuBois	Member
Mark Odell	Member
Steven Thorpe	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Mark Geise	Administrative Director/Chief Executive Officer
Richard E. Dixon	Chief Financial Officer
Linda Burns	Business Development Manager
Carol Rasmussen	Business Development Manager/Assistant Secretary
Kristine Morabito	Business Development Manager
Gregory L. Peterson, Esq.	Agency Counsel
Matthew R. Mazgaj, Esq.	Agency Counsel
George W. Cregg, Jr., Esq.	Special Agency Counsel
Robert J. McLaughlin, Esq.	Special Agency Counsel

The following resolution was offered by Gary Henry, seconded by Brad Walters, to wit:

Resolution No. 02-26-19-03

RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION WITH A LEASE/LEASEBACK TRANSACTION FOR A PROJECT FOR DFT LOCAL SERVICE CORPORATION (THE "COMPANY").

WHEREAS, County of Chautauqua 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 71 of the 1972 Laws of New York, as amended, constituting Section 895-h 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, on October 19, 2017, DFT Local Service Corporation, a State of Delaware corporation (the "Company"), 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 several parcels of land scattered amongst the City of Dunkirk, the Town of Arkwright, the Town of Charlotte, the Town of Chautauqua, the Town of Sheridan, the Village of Cassadaga, the Town of Stockton and the Town of Pomfret, Chautauqua County, New York (collectively, the "Land"), together with approximately 2,400 existing utility poles located thereon (collectively, the "Existing Utility Poles"), (2) the installation on the Land of approximately 600 new utility poles (collectively, the "New Utility Poles" and with the Existing Utility Poles, sometimes referred to as the "Utility Poles"), (3) the installation on the Utility Poles of approximately 145 miles of fiber optic cables (collectively, the "Cables"), (4) the connection of the Cables to individual residences and businesses (collectively, the "Connection") and (5) the acquisition and installation thereon and therein of certain related machinery and equipment (the "Equipment") (the Land, the Utility Poles, the Cables, the Connection and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a broadband/fiber optic route; (B) the granting of certain other "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain real property 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 October 26, 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 Administrative 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 January 24, 2019 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 January 24, 2019 on a public bulletin board located at the Fredonia Technology Incubator located at 214 Central Avenue in the City of Dunkirk, Chautauqua County, New York, as well as on the Agency's website, (C) caused notice of the Public Hearing to be published on January 26, 2019 in The Observer, a newspaper of general circulation available to the residents of Chautauqua County, New York, (D) conducted the Public Hearing on February 7, 2019 at 2:00 o'clock p.m., local time at the SUNY Fredonia

Technology Incubator, in the Large Conference Room located at 214 Central Avenue in the City of Dunkirk, Chautauqua 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 October 26, 2017 (the "Preliminary SEQR Resolution"), the Agency (A) determined (1) that the Project involves more than one "involved agency", and (2) that the Agency wished to investigate the advisability of undertaking a coordinated review with respect to the Project and (B) authorized the Administrative Director/Chief Executive Officer of the Agency to contact all other "involved agencies" for the purpose of ascertaining whether such "involved agencies" were interested in undertaking a coordinated review of the Project and, if so, designating a "lead agency" with respect to the Project (as such quoted terms are defined in SEQRA); and

WHEREAS, further pursuant to SEQRA, by resolution adopted by the members of the Agency on February 26, 2019 (the "Final SEQR Resolution"), members of the Agency determined that the Project constituted a "Type II action" (as such quoted term is defined under SEQRA), and therefor that no further action with respect to the Project was required under SEQRA 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 Chautauqua County, 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 Chautauqua County, New York by undertaking the Project in Chautauqua County, 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 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 balance of 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 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 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 uniform project benefits agreement (the "Uniform Project Benefits 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) if the Company intends to finance the Project with borrowed money, a mortgage and any other security documents and related documents (collectively, the "Mortgage") from the Agency and the Company to the Company's lender with respect to the Project ("the "Lender"), which Mortgage will grant a lien on and security interest in the Project Facility to secure a loan from the Lender to the Company with respect to the Project (the "Loan"); and (H) various certificates relating to the Project (the "Closing Documents");

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

Section 1. All action taken by the Administrative Director/Chief Executive Officer of the Agency 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 Agency Counsel to the Agency with respect to all matters in connection with the Project. Special Agency 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 Agency 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 Chautauqua County, New York;

(D) It is estimated at the present time that the costs of the planning, development, acquisition, construction, reconstruction and installation of the Project Facility (collectively, the "Project Costs") will be approximately \$5,343,170;

(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 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 Chautauqua County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;

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

(I) The Project should receive the Financial Assistance based on the description of expected public benefits to occur as a result of this Project, as described on Exhibit A attached hereto and failure by the Company to meet the expected public benefits will result in a recapture event, as described on Exhibit B attached hereto; 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, installed and constructed; (D) enter into the Payment in Lieu of Tax Agreement; (E) enter into the Uniform Project Benefits Agreement; (F) enter into the Section 875 GML Recapture Agreement; (G) secure the Loan by entering into the Mortgage; 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) or Chief Executive Officer 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) or Chief Executive Officer 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) or Chief Executive Officer shall approve, the execution thereof by the Chairman (or Vice Chairman) or Chief Executive Officer to constitute conclusive evidence of such approval.

(B) The Chairman (or Vice Chairman) or Chief Executive Officer 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 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:

Michael Metzger	VOTING	<u>Agree</u>
Dennis J. Rak	VOTING	<u>Agree</u>
Hans Auer	VOTING	<u>Agree</u>
Gary Henry	VOTING	<u>Agree</u>
Kelly Farrell DuBois	VOTING	<u>Agree</u>
Mark Odell	VOTING	<u>Agree</u>
Steven Thorpe	VOTING	<u>Agree</u>

The foregoing Resolution was thereupon declared duly adopted.


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

I, the undersigned (Assistant) Secretary of County of Chautauqua 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 February 26, 2019 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 26th day of February, 2019.



(Assistant) Secretary

(SEAL)

EXHIBIT A

DESCRIPTION OF THE EXPECTED PUBLIC BENEFITS

In the discussions had between the Project Beneficiary and the Agency with respect to the Project Beneficiary's request for Financial Assistance from the Agency with respect to the Project, the Project Beneficiary has represented to the Agency that the Project is expected to provide the following benefits to the Agency and/or to the residents of Chautauqua County, New York (the "Public Benefits"):

Description of Benefit		Applicable to Project (indicate Yes or NO)		Expected Benefit
1.	Creation of construction employment for local labor (i.e., labor resident in the area comprised of Chautauqua, Cattaraugus and Erie Counties)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Average of 6-10 full time equivalent construction jobs at or in connection with the Project Facility for local labor during an estimated construction period of 8 months, commencing within 6 months of the date hereof.
2.	Private sector investment	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	At least \$1,068,634 in private equity and approximately \$4,000,000 in NYS grant funds at the Project Facility within 1 year of the date hereof.
3.	Other Benefit	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	The Project will bring high speed internet service to underserved areas of Chautauqua County.

EXHIBIT B

DESCRIPTION OF THE RECAPTURE EVENTS

In connection with the Project and the granting of the Financial Assistance, the Agency and the Project Beneficiary agree that the following shall constitute recapture events with respect to the Project and the granting of the Financial Assistance:

1.	Failure of the Project Beneficiary to document to the satisfaction of the Agency the commencement of the acquisition, construction, reconstruction, renovation, and/or installation of the Project Facility within 6 months of the date hereof.
2.	Failure of the Project Beneficiary to document to the satisfaction of the Agency the completion of the acquisition, construction, reconstruction, renovation, and/or installation of the Project Facility within 2 ½ years of the date hereof.
3.	Failure by the Project Beneficiary to document to the satisfaction of the Agency the creation of at least [80%] of the average full time equivalent local labor construction jobs at the Project Facility during the construction period described on <u>Exhibit A</u> attached hereto.
4.	Failure by the Project Beneficiary to document to the satisfaction of the Agency that at least [80%] of the private sector investment described on <u>Exhibit A</u> attached hereto occurred with respect to the Project Facility within 1 year of the date hereof.
5.	Failure by the Project Beneficiary to document to the satisfaction of the Agency that the Project provided the other Public Benefits described on <u>Exhibit A</u> attached hereto within the time frames assigned to such benefits.
6.	Liquidation of substantially all of the Project Beneficiary's operating assets at the Project Facility and/or cessation of substantially all of the Project Beneficiary's operations at the Project Facility.
7.	Relocation of all or substantially all of Project Beneficiary's operations at the Project Facility to another site, or the sale, lease or other disposition of all or substantially all of the Project Facility.
8.	Failure by the Project Beneficiary to comply with the annual reporting requirements or to provide the Agency with requested information.
9.	Sublease or assignment of all or part of the Project Facility in violation of any Project Facility Agreement.
10.	A change in the use of the Project Facility, other than as described on Exhibit A and other directly and indirectly related uses, in violation of any Project Facility Agreement.

