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Of Counsel

Matthew E. Hamlin, Esq.*

*also admitted in Pennsylvania

September 26, 2023

Herkimer County Industrial Development Agency
Attn: John J. Piseck, Jr., Chief Executive Officer
420 E. German Street, Suite 101A
Herkimer, New York 13350

Via email

RE: Colucci Trucking LLC and Diamond Drive, LLC
Diamond Drive (Drive In Road), Schuyler Business Park

Dear Mr. Piseck:

Please find enclosed amended Application to Herkimer County Industrial Development Agency for Financial Assistance in regard to the above matter. Please advise what additional requirements need to be done to process this. We are in the process of transferring the property from Colucci Trucking LLC to Diamond Drive, LLC. Thank you for your courtesies.

Very truly yours,

William M. Borrill

William M. Borrill

WMB/pr

enc.

cc: Anthony G. Hallak, Esq. via email
Thomas Colucci via email



**APPLICATION TO
HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY
FOR FINANCIAL ASSISTANCE**

I. APPLICANT INFORMATION:

Company Name: COLUCCI TRUCKING LLC AND DIAMOND DRIVE LLC
Address: PO BOX 359 NEW HARTFORD NY 13413
Product/Services: TRUCKING
Phone No.: 3155422926 **Fax No.:**
Email Address: COLUCCITRUCKING@YAHOO.COM
Fed ID No.: 82-0734262 **NAICS Code:** 337211
Contact Person/Title: THOMAS COLUCCI

Principal Owners/Officers/Directors:

(list owners with 15% or more in equity holdings with percentage ownership)

THOMAS COLUCCI 100

Corporate Structure (attach schematic if Applicant is a subsidiary or otherwise affiliated with another entity)

Form of Entity:

- ☐ Corporation
- ☐ Partnership (General ☐ or Limited ☐; number of general partners _____ and, if applicable, number of limited partners).
- ☒ Limited Liability Company/Partnership (number of members¹ _____).
- ☐ Sole Proprietorship

If a corporation, partnership, limited liability company/partnership:

Date of establishment COLUCCI TRUCKING 3/17 DIAMOND DR 5/23

Place of organization NY

If a foreign organization, is the Applicant authorized to do business in the State of New York? _____.

APPLICANTS' COUNSEL

Name: BILL BORRILL
Address: 23 OXFORD RD
 NEW HARTFORD NY 13413
Phone No.: 315-223-3085
Telefax No.: _____
Email: _____

II. PROJECT INFORMATION**A) Describe the proposed project, acquisition, construction or reconstruction in as much detail as possible.**

BUILDING OF A TRUCK TERMINAL, OFFICES AND MAINTENANCE GARGAE

THE LAND HAS BEEN AQUIRED BY DIAMOND DRIVE LLC, THE SOLE MEMBER OF DIAMOND DR LLC IS THOMAS COLUCCI ,
 DIAMOND DRIVE LLC IS A REAL ESTATE HOLDING COMPANY TAHT WILL LEASE THE FACILITY
 TO COLUCCI TRUCKING LLC

B) Project Description (check all applicable)

- ☐ Manufacturing
☐ Warehousing/Distribution
☐ Tourism Destination Facility
☐ Retail*
☒ Other – Specify TRUCKING TERMINAL

*If the Project has a retail component, please complete part VI of this application – the Retail Questionnaire.

C) Name of all sub-lessees or other occupants of the facility:

REAL ESTATE OWNED BY DIAMOND DRIVE LLC
 ALL EQUIPMENT AND OPERATIONS BY COLUCCI TRUCKING

D) Principals of any sub-lessee or occupant.

SAME

III. COST BENEFIT ANALYSIS:

A) Estimate Project Costs (where applicable)

1. Land	\$75000
2. Building	\$1,500,000
3. Renovation Costs	\$
4. Machinery and Equipment	\$
5. Soft Costs	\$25,000
6. Legal Costs	\$5,000
7. Other (specify)	\$
Total Estimated Project Amount	\$1,605,000

Of the above amount, total dollar value of labor and materials to be sourced within the Mohawk Valley Regional Economic Development Council Region (Herkimer, Oneida, Fulton, Montgomery, Schoharie, and Otsego Counties) \$ 1,605,000

B) Financing (Source of funds where applicable)

Bank	\$1,300,000
Private Funds Invested	\$305,000
Industrial Revenue Bond	\$
Other	\$
Total (should equal III. A)	\$1,605,000

C) Financial Assistance Requested (Proposed Benefit Estimates) (Please note n/a in any line where you are not seeking assistance)

Type of Financing: ☒ Tax-Exempt ☐ Taxable ☒ Straight Lease

Amount of Bonds Requested: \$

Amount of New Mortgage (s) required for project: \$1,300,000

Project-Related Costs Subject to Sales Tax: \$750,000

Estimated Value of Tax Exemptions:

- | | |
|---|----------|
| 1. NYS Sales and Compensating Use Tax
(State 4% + Local 4.25% = Total 8.25%) | \$61,875 |
| 2. Mortgage Recording Taxes
(1% of total proposed mortgage amount) | \$13,000 |

3. **Real Property Tax Exemptions**
(See "Property Tax Exemption" table below,
Column C minus Column B. The Agency can
assist with this estimation at your request.)

36,765.39

\$ _____

4. **Estimated interest savings on Issuance by the
Agency of Industrial Revenue Bonds**

0

\$ _____

Total Estimated Value of Tax Exemptions

111,640.39

\$ _____

D) Real Property Tax Exemption

Please use the table below to list estimated real property exemption by year. In 'Column A' enter the tax revenue generated by all applicable parcels absent a project. Typically, this value is calculated for the current year and then escalated at 2% per year for the duration of the would-be PILOT term. In 'Column B' enter the estimated value of the PILOT payments for each year through the duration of the PILOT term. In 'Column C' enter the property taxes that the Project would otherwise pay, but-for the PILOT abatement, on the full assessed value. Typically, this value is calculated for the current year and then escalated at 2% a year for the PILOT term. Each column should have an equal number of entries for the entire length of the of PILOT.

Year	<u>Column A</u> Property Tax Without the Project	<u>Column B</u> Estimated PILOT Payments	<u>Column C</u> Estimated Property Taxes on Full Assessment
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

Attach more sheets as necessary.

Column A: The amount of tax due in each year if the Project that is the subject of this application does not occur.

Column B: The estimated PILOT amounts for each year.

Column C: The hypothetical value of property tax payments as if the Project moves forward and the property is fully taxable.

E) Employment Information/Job Creation

*The Agency uses the following standard when reporting **FTE – Full Time Equivalent** jobs: Full-time equivalent is a ratio that compares the number of hours worked during a pay period by an employee to the number of work hours during the pay period that equates to full time employment. For example, an employee who works hours equal to full time is 1.0 FTE. An employee who works half the hours of full-time employment is 0.5 FTE, while an employee that works one-third the hours of full-time employment would be considered .3 FTE. Please contact the Agency for assistance if needed.*

Please estimate the number of jobs (both retained and created) associated with the operations of the Project subject to this application:

Previous Year	Current Year	Year 1	Year 2	Year 3
30	30	32	34	35

35

For year 3, total number of jobs retained: FTE _____

5

For year 3, total number of jobs created: FTE _____

For the jobs that will be created and retained as a result of this project, please provide more information below.

The tables below capture the number of jobs created and retained in the first three years of operations as the Project reaches employment stability. Do not include construction phase employment below. Also note, the following tables should be **cumulative**. In other words, jobs that are created in Year 1 and expected to be retained through Year 3, should be included in each of the three tables below. Therefore, in most cases, job counts in Year 3 should be greater than, or equal to, jobs in Year 1.

In the 'Description' tab please enter the job title for each position. In the 'NAICS Code' column enter the NAICS code associated with each position. If NAICS Code is unknown, please use the keyword search function in the following link to find the most appropriate code: <https://www.census.gov/naics/>. Enter the **cumulative** job count and the average salary for each position in the 'Count' and 'Average Salary' columns respectively. Attached additional sheets as needed.

Year 1

Description	NAICS Code	Job Count	Average Salary
TRUCK DRIVER	484000	1	70000
MECHANIC	811100	1	55000

Year 2

Description	NAICS Code	Job Count	Average Salary
TRUCK DRIVER	484000	1	70000
MECHANIC	811100	1	55000

Year 3 (Stabilization and thereafter)

Description	NAICS Code	Job Count	Average Salary
TRUCK DRIVER	484000	1	70000

Note: Enter the entire created/retained job count for the Project in Year 3, even if full employment won't occur until a later year.

Please note any proposed fringe benefits for jobs to be created by job title.

HEALTH INSURANCE, PTO, HOLIDAY PAY, 401 K

Estimate number of construction jobs to be used for this project: FTE ³⁰ _____

F) Other Benefits

In this section, please list any other public and/or private benefits associated with the Project. Wherever possible, please quantify those benefits. (If necessary, please use an attachment to describe and quantify those amounts for each year of the PILOT.) Examples of such quantifiable benefits would include hotel occupancy tax, retail sales tax, host community benefit payments, etc. Please also describe any non-quantifiable benefits if applicable.

Other Public Benefits: _____

As with public benefits, please list any quantifiable or non-quantifiable benefits that accrue to private individuals (royalty payments, solar lease payments, etc.)

Other Private Benefits: _____

IV. PROJECT LOCATION/UTILITIES/IMPACT

- A) **Project Address:** DIAMOND DR
SCHYLER BUSINESS PARK
- B) **Are Utilities on Site**
 Water ☒ Electric ☒
 Gas ☒ Sanitary/Storm Sewer ☐
- C) **Present legal owner of the site** DIAMOND DR LLC.
- D) **Zoning of Project Site: Current:** DEVELOPMENT **Proposed:** _____.
- E) **Are any variances needed:** NO.
- F) **Principal use of Project upon completion:** TRUCKING TERMINAL, OFFICE.
- G) **Will the Project result in the removal of a plant or facility of the Applicant from one area of the State of New York to another?** NO.
- H) **Will the Project result in the removal of a plant or facility of another proposed occupant of the Project from one area of the State of New York to another area of the State of New York?** NO.
- I) **Will the Project result in the abandonment of one or more plants or facilities located in the State of New York?** NO.

If you answered yes to G-H or I please indicate whether the project is reasonably necessary for the company to maintain its competitive position in the industry. Please explain in detail. Attach supporting documentation.

V. REPRESENTATIONS BY THE APPLICANT:

The Applicant understands and agrees with the Agency as follows:

- A.) **Job Listings.** In accordance with Section 858-b(2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the “DOL”) and with the administrative entity (collectively with the DOL, the “JTPA Entities”) of the service delivery area created by the federal job training partnership act (Public Law 97-300) (“JTPA”) in which the Project is located. The IDA encourages to the fullest extent possible, the hiring of local labor for all construction projects.

- B.) **Annual Sales Tax Filings.** In accordance with Section 874(8) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any sales tax exemptions as part of the Financial Assistance from the Agency. In accordance with Section 874(8) of the General Municipal Law, the Applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the Applicant and all consultants or subcontractors retained by the Applicant. A copy of such form should be provided to the Agency annually upon submission to the State.

- C.) **Sales Tax Tracking.** The Applicant understands and agrees that, if the Project receives any sales tax exemptions as part of the Financial Assistance that they will submit to the Agency, a quarterly tracking form (form will be provided) listing all sales tax savings incurred to allow for the Agency to monitor and report to the State as required.

- D.) **Recapture of Benefits.** The Applicant understands and agrees that the benefits received from tax abatements/exemptions shall be subject to recapture in accordance with the Agency’s tax exemption policy. The Agency reserves the right to include in the transaction documents the recapturing of the total value of real property/sales tax exemptions approved for a Project if any of the following conditions arise:
 - a. The Project Facility as defined in the PILOT/Lease Agreement is sold or closed and the Applicant leaves or departs Herkimer County.
 - b. There is a significant change in the use of the Project Facility and/or business activities of the Applicant.
 - c. There is a significant reduction in the number of full/part-time jobs at the Project Facility in comparison to what was estimated in the Applicant’s Project Application that are not reflective of the Applicant’s normal business cycle or national economic conditions.
 - d. The Applicant fails to fully comply with all periodic and/or annual reporting requirements of the Agency, State or Federal government.
 - e. The Applicant failed to achieve any minimal new job creation figures specified by and within the time frames specified by the Agency

- E.) **Annual Employment Reports.** The Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, the Applicant agrees to file, or cause to be filed, with the Agency, on an annual basis, reports regarding the number of people employed at the project site in addition to any additional project information as may be required. The Chief Executive Office shall submit to the Agency prior to February 1st of each year, a written certification setting forth:
- a. Number of full-time equivalent employees at the Project location as of the last date of the prior year
 - b. Number of construction jobs during the fiscal year as a result of the Project
- F.) **Absence of Conflicts of Interest.** The Applicant has received from the Agency a list (see pages 23-24) of the members, officers and employees of the Agency. No member, officers or employee of the Agency has an interest, whether direct or indirect, in any transaction contemplated by this Application, except as hereinafter described:
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VI. **RETAIL QUESTIONNAIRE (if applicable):**

(To be completed by Applicant indicated retail component of the Project in Part II, Question B of this application).

- A.) Will any portion of the Project (including that portion of the cost to be financed from equity or sources other than Agency financing) consist of facilities or property that are or will be primarily used in making retail sales to customers who personally visit the Project?

YES ☐

NO ☐

For purposes of Question A, the term "retail sales" means (i) sales by a registered vendor under Article 28 of Tax Law of the State of New York (the "Tax Law") primarily engaged in the retail sale of tangible personal property (as defined in Section 1101(b)(4)(i) of the Tax Law), or (ii) sales of a service to customers who personally visit the Project.

- B.) If the answer to Question A is YES, what percentage of the cost of the Project (including that portion of the cost to be financed from equity or sources other than Agency financing) will be expended on such facilities or property primarily used in making retail sales of goods or services to customers who personally visit the Project?

_____ %

- C.) If the answer to Question A is YES, and the amount entered for Question B is greater than 33.33%, indicate whether any of the following apply to the Project:

1. Is the Project likely to attract a significant number of visitors from outside the economic development region (i.e., Onondaga and Albany Counties) in which the Project is or will be located?

YES ☐

NO ☐

2. Is the predominant purpose of the Project to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of the city, town or village within which the Project will be located, because of a lack of reasonably accessible retail trade facilities offering such goods or services?

YES ☐ NO ☐

3. Will the Project be located in one of the following: (a) an area designated as an empire zone pursuant to Article 18-B of the General Municipal Law; or (b) a census tract or block numbering area (or census tract or block numbering area contiguous thereto) which, according to the most recent census data, has (i) a poverty rate of at least 20% for the year in which the data relates, or at least 20% of the households receiving public assistance, and (ii) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates?

YES ☐ NO ☐

If the answer to any of the subdivisions 1 through 3 of Question C is YES, attach details.

D.) If the answer to any of the subdivisions 2 through 3 of Question C is YES, will the Project preserve permanent, private sector jobs or increase the overall number of permanent, private sector jobs in the State of New York? If YES, attach details.

YES ☐ NO ☐

E.) State percentage of the Applicant's annual gross revenues comprised of each of the following:

Retail Sales: _____% Services: _____%

F.) State percentage of Project premises utilized for same:

Retail Sales: _____% Services: _____%

VII. FINANCIAL INFORMATION (attach the following):

1. Financial Statements for the last three fiscal years.
2. Proforma balance sheet as at start of operations at project site.
3. Projected profit and loss statements for first two years of operation at project site.
4. Projected "cash flow" statement, by quarters, for first year of operation at project site.
5. Detailed site plans
6. Construction budgets or contractor estimates
7. Evidence of current employment, such as NYS-45 Quarterly Report

The Applicant and the individual executing this Application on behalf of the applicant acknowledge that the Agency will rely on the representations made herein when acting on this application and hereby represent that the statements made herein do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein not misleading.

Applicant: Colucci Trucking LLC and Diamond Dr. LLC

Date: 9-18-23

By: [Signature]

Name: Thomas Colucci

Title: Owner and member

Submit this application with a general application fee of \$500.00. If this application is for Market Rate Housing Benefits, please submit \$1,500.00 which includes a non-refundable application fee of \$500.00 and a commitment fee of \$1,000.00 that will be applied at closing; if the project does not close the \$1,000.00 is not refundable. Make check payable to: Herkimer County Industrial Development Agency, 420 E. German Street, Suite 101A, Herkimer, New York 13350, to the attention of John J. Piseck, Jr., Chief Executive Officer. The Agency will collect ½ (one-half) of its Project Fee at the time of the signing of an inducement agreement. The final half of the Agency fee will be payable at which time the HCIDA takes title to the Facility, or upon issuance of bonds. The applicant will also be responsible for all HCIDA legal fees related to this project. Should your company for any reason decide to withdraw this application for financial assistance after submission but prior to completion, you will be responsible for any legal fees involved to that point. In addition, the Agency will assess a fee for services rendered and costs incurred.

Agency fees will be assessed at 1% of the total project cost.

The Agency will assess your company an annual administration fee in the form of rent under the Lease Agreement in the amount of \$750.00 for general projects; \$1,500 for solar projects in years 1-5, then increased by \$500 every 5 years throughout the duration of the project; \$1,500 for housing projects in years 1-5, then increased by \$500 every five years throughout the duration of the project.

Please call 315-866-3000 with any questions

"This institution is an equal opportunity provider, employer and lender"

HOLD HARMLESS AGREEMENT

Applicant hereby releases the Herkimer County Industrial Development Agency and the members, officers, servants, agents and employees thereof (the "Agency") from, agrees that the Agency shall not be liable for and agrees to indemnify, defend and hold the Agency harmless from and against any and all liability arising from expense incurred by (A) the Agency's examination and processing of, and action pursuant to or upon, the attached Application, regardless of whether or not the Application or the Project described therein or the tax exemptions and other Assistance requested therein are favorably acted upon by the Agency, (B) the Agency's acquisition, construction and/or installation of the Project described therein and (C) any further action taken by the Agency with respect to the Project; including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing.

Colucci Trucking LLC and Diamond Dr. LLC
 (Applicant)
9-18-23
 (Date)
[Signature]
 (By)
Thomas Colucci
 (Name)
owner and member
 (Title)

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

On the 19th day of September, in the year 2023, before me, the undersigned a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individuals, or the person or behalf of which the individuals acted, executed this instrument.

[Signature]
 Notary Public

WILLIAM MARK BORRILL
 Notary Public in the State of New York
 Qualified in Oneida County 01B04824267
 My Commission Expires Dec. 31, 2026

PILOT ESTIMATIONS Colucci Trucking 5 acre parcel 9600 sq ft trucking terminal

Estimated assessment \$388,000

Estimated Assessment	388,000.00	1,000.00
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Calculations based on these rates

Year		2023	2023	2022-2023
		Herkimer County	Town of Schuyler	FS School
		6.059202	3.514881	24.882701
1	0.50	1,175.49	681.89	4,827.24
2	0.55	1,293.03	750.08	5,309.97
3	0.60	1,410.58	818.26	5,792.69
4	0.65	1,528.13	886.45	6,275.42
5	0.70	1,645.68	954.64	6,758.14
6	0.75	1,763.23	1,022.83	7,240.87
7	0.80	1,880.78	1,091.02	7,723.59
8	0.85	1,998.32	1,159.21	8,206.31
9	0.90	2,115.87	1,227.40	8,689.04
10	0.95	2,233.42	1,295.59	9,171.76
Totals		17,044.54	9,887.36	69,995.04

If no PILOT

1	100%	2,350.97	1,363.77	9,654.49
2	100%	2,350.97	1,363.77	9,654.49
3	100%	2,350.97	1,363.77	9,654.49
4	100%	2,350.97	1,363.77	9,654.49
5	100%	2,350.97	1,363.77	9,654.49
6	100%	2,350.97	1,363.77	9,654.49
7	100%	2,350.97	1,363.77	9,654.49
8	100%	2,350.97	1,363.77	9,654.49
9	100%	2,350.97	1,363.77	9,654.49
10	100%	2,350.97	1,363.77	9,654.49
Totals		23,509.70	13,637.74	96,544.88

ESTIMATED PILOT SAVINGS	\$ 36,765.39
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Estimated by IDA 7/06/2023