



MAUREEN G. NARDACCI
City Clerk

CITY OF RENSSELAER

OFFICE OF
THE CITY CLERK
CITY HALL, 505 BROADWAY
RENSSELAER, NEW YORK 12144

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AGENDA FOR THE SPECIAL COMMON COUNCIL MEETING MAY 24, 2004

1. A Resolution of the City Council of the City of Rensselaer Adopting A Statement of "Mutual Conditions to Host Community Benefit Agreements" with Besicorp-Empire Development Company (BEDCO).

CITY OF RENSSELAER
IN
COMMON COUNCIL
SPECIAL MEETING
MONDAY, MAY 24, 2004

The Council convened at 7:32 p.m. and was called to order by President Bridgeford.

The Roll being called the following answered to their names:

President Bridgeford

Aldersperson:	Hahn-Absent	Aldersperson:	Stall
	Felts		Rogers
	Jiguere		Girgenti
	Bridenbeck		Jackson
	Tagliento		

Absent: Aldersperson Hahn

The Purpose of the Special Meeting is as follows:

- 1) A Resolution of the City Council of the City of Rensselaer Adopting a Statement of "Mutual Conditions To Host Community Benefit Agreements" with Besicorp-Empire Development Company (BEDCO).

Aldersperson Rogers moved to adjourn at 7:56 p.m. seconded by Aldersperson Girgenti.

Ayes: Jiguere, Bridenbeck, Tagliento, Stall, Rogers, Girgenti, Jackson, and Bridgeford.

Noes: None.

Aldersperson Felts was not present at time of vote.

By Alderperson : Girgenti

Seconded by Alderperson : Jackson

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF RENSSELAER ADOPTING A
STATEMENT OF "MUTUAL CONDITIONS TO
HOST COMMUNITY BENEFIT AGREEMENTS"
WITH BESICORP-EMPIRE DEVELOPMENT
COMPANY (BEDCO)**

WHEREAS, Besicorp-Empire Development Company, LLC ("BEDCO") has proposed to construct a project consisting of a recycled newsprint manufacturing plant ("RNMP") and a 505 MW power generating facility, on property owned by BASF Corporation ("BASF") and located in the City of Rensselaer ("the City"), and

WHEREAS, BEDCO and the City have been in negotiations over a "Host Community Benefit" package to be provided by BEDCO for the City, and

WHEREAS, these discussions have resulted in an agreement in principle between the parties on the terms of a "Host Community Benefit" Agreement, and

WHEREAS, these terms are reflected in a document entitled "Mutual Conditions to Host Community Benefit Agreements" (the "Mutual Conditions"), containing the parties' respective rights and obligations, a copy of which is attached to this Resolution, and

WHEREAS, the Mutual Conditions have been signed by BEDCO, through its President, William T. Seils, and

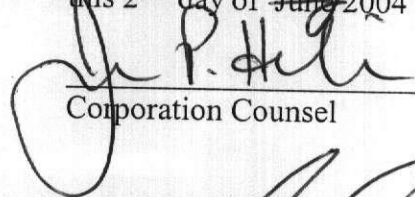
WHEREAS, the City Council has given due deliberation to the terms of the Mutual Conditions, has been advised by its legal counsel in this matter, and understands that formal agreements to memorialize the terms of the Mutual Conditions will now be finalized and approved.

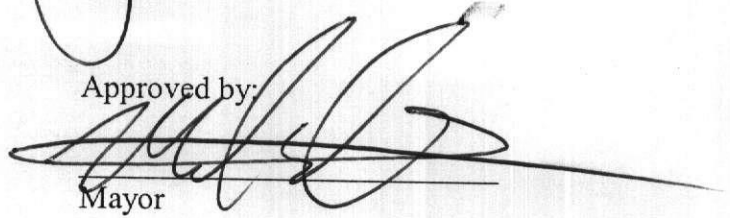
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rensselaer as follows:

1. The President of the City Council and the mayor are authorized to sign the Mutual Conditions on behalf of the City of Rensselaer.

2. The City shall promptly finalize with BEDCO the terms of formal and mutually enforceable agreements to memorialize the Mutual Conditions.

Approved as to form and sufficiency
 this ~~2nd~~^{24th} day of ~~June~~^{May} 2004


 Corporation Counsel

Approved by:

 Mayor

ResolutionBEDCO060204

A motion was made by Alderperson Rogers to amend the Dates from 6/2/04 - to 5/24/04 seconded by Alderperson Nugenti.

	AYES	NOES
BONNIE HAHN		<i>Absent</i>
ALBERTINE FELTS		✓
BRENDA JIGUERE		✓
LEE BRIDENBECK	✓	
DOMINCK TAGLIENTO	✓	
BRIAN STALL	✓	
SCOTT ROGERS	✓	
DEBORAH GIRGENTI	✓	
PATRICIA JACKSON	✓	
MICHAEL BRIDGECFORD	✓	
Total	7	2

	AYES	NOES
BONNIE HAHN		<i>Absent</i>
ALBERTINE FELTS		✓
BRENDA JIGUERE		✓
LEE BRIDENBECK	✓	
DOMINCK TAGLIENTO	✓	
BRIAN STALL	✓	
SCOTT ROGERS	✓	
DEBORAH GIRGENTI	✓	
PATRICIA JACKSON	✓	
MICHAEL BRIDGECFORD	✓	
Total	7	2

MUTUAL CONDITIONS TO HOST COMMUNITY BENEFIT AGREEMENTS

The City of Rensselaer and Besicorp Empire Development Company shall agree as follows:

Besicorp-Empire Development Company (BEDCO) agrees to:

- Pay the City of Rensselaer \$15,000,000 over 20 years. \$7,500,000 to the Power and \$7,500,000 to the Paper as Host Community Payments.
- Enter into two (one for Paper and one for Power) Host Community Benefit Agreements ("Agreements") with the City of Rensselaer.
- Make payments in December of each year commencing in the first full calendar year following commencement of commercial operations of a project.
- Work with the City to cause the County IDA to agree to a 50/50 sharing of the IDA fee. BEDCO shall request a written confirmation from the County IDA.

City of Rensselaer agrees to:

- Grant all necessary easements and issue all necessary City permits required for construction and operation of the projects. Support the issuance of all necessary variances, permits and licenses needed from any City agencies, boards, departments or other bodies for construction and operation of the projects.
- Pass a resolution supporting the projects and the Agreements. Resolve not to object to the IDA PILOT Agreements.
- Pass a resolution not opposing the issuance of any of the necessary permits or certificates including, but not limited to, the Article X/SEQRA proceeding, the Article VII Gas proceeding and the Article VII Electric proceeding. The resolution shall provide that the City shall not challenge, in any administrative or judicial proceeding, any of the permits or certificates for the projects.
- Facilitate the transfer of the BASF property to BEDCO. The City shall work with the DEC concerning off-site remediation issues. The City will not oppose or object to the Record of Decision for OU-1, the Manufacturing Plant Site, or, with respect to the South 40 Site, the approved Remedial Action Work Plan or any agreements with the DEC, for the on-site remediation of the BASF property. The City will not commence litigation under the provisions of the Federal Solid Waste Disposal Act or any other applicable Federal or State statute or common law regarding conditions at the BASF property (comprised of the Manufacturing Plant Site and the "South 40" parcel) in the City.
- Take all necessary action to implement the above conditions so as to allow the projects to meet the anticipated target closing schedule (September 30 - Power, December 30 - Paper).

Agreed to this 24 day of May, 2004

BESICORP EMPIRE DEVELOPMENT COMPANY

By: _____

William Seils

William Seils
President

CITY OF RENSSELAER

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Payments - PAPER

<u>Year</u>	<u>Total Amount</u>
1*	\$ 251,863.13*
2	261,937.66
3	272,415.16
4	283,311.77
5	294,644.24
6	306,430.01
7	318,687.21
8	331,434.70
9	344,692.08
10	358,479.77
11	372,818.96
12	387,731.72
13	403,240.99
14	419,370.63
15	436,145.45
16	453,591.27
17	471,734.92
18	490,604.32
19	510,228.49
20	530,637.55
TOTAL	\$7,500,000.00

* Year 1 shall be the first full calendar year following commencement of commercial operation of the Project Facility.

* Payments escalate at 4% per year.

Payments - POWER

<u>Year</u>	<u>Total Amount</u>
1*	\$ 251,863.13*
2	261,937.66
3	272,415.16
4	283,311.77
5	294,644.24
6	306,430.01
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YOUNG, SOMMER ... LLC

YOUNG, SOMMER, WARD, RITZENBERG, BAKER & MOORE, LLC

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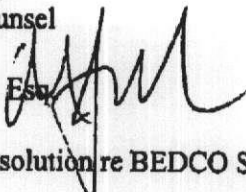
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MEMORANDUM

CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION

VIA FACSIMILE

TO: John Hicks, Esq.
Corporation Counsel

FROM: Michael Moore, Esq. 

RE: City Council Resolution re BEDCO Settlement; Typographical Error.

DATE: May 25, 2004

This is a follow up to my earlier voice message.

As you know, last night the City Council approved a Resolution adopting a statement of "Mutual Conditions" to "Host Community Benefit Agreements" with BEDCO. A copy of these "Mutual Conditions," and a proposed schedule of "host community" payments, were attached to the Resolution.

Councilwoman Felts called me this morning to advise that the "Conditions" attached to the Resolution state that the City was to receive \$15 million in payments for the power plant and \$7.5 million for the paper plant. This is not correct of course. Ms. Felts stated that this error would require a new vote on the "Mutual Conditions."

The "Conditions" and the payment charts we received from BEDCO on May 18, signed by BEDCO President Seils, offered the City \$7.5 million for each plant. The Resolution which I drafted and forwarded to the City Clerk last week had these documents attached.

Unfortunately, I have confirmed with the City Clerk that the signed BEDCO "Conditions" and the payment charts were each retyped, resulting in the error pointed out by Ms. Felts.

I propose that we should be able to correct this clerical error without a revote, for two reasons, but I need your opinion and concurrence.

1. The Resolution approved by the Council states that the "Conditions" have been signed by Mr. Seils. The retyped copy obviously bears no signature. The correct copy of the "Conditions" is signed.
2. The erroneous "Conditions" are also inconsistent with the payment charts attached to the Resolution, which correctly show payments of \$7.5 million for each facility.

I am generally aware of case law that states that public agencies possess the inherent power to correct these sorts of clerical errors. I can find such cases if you think it necessary.

If you concur, I would propose that we simply direct the City Clerk to substitute the correct versions of the "Conditions" (signed by Mr. Seils) and the payment charts, to correct an obvious typographical error. If you believe a revote by the Council on corrected documents is preferable, please advise.

I have attached for your review copies of: the adopted Resolution with the retyped, erroneous "Conditions" and charts; and the correct "Conditions" (signed) and charts that were forwarded to the City Clerk last week.

Att.

cc(w/o att.)(via fax):
Mayor Mark Pratt
Maureen Nardacci

YOUNG, SOMMER ... LLC

YOUNG, SOMMER, WARD, RITZENBERG, BAKER & MOORE, LLC

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MEMORANDUM

VIA FACSIMILE

TO: Maureen Nardacci
City of Rensselaer Clerk

FROM: Michael Moore, Esq.
Special Counsel to City

RE: City Council Resolution of May 24, 2004; "Statement of 'Mutual Conditions to Host Community Benefit Agreements' with Bestcorp-Empire Development Company (BEDCO)."

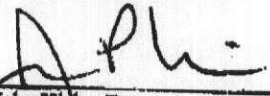
DATE: May 25, 2004

It has come to my attention that there is a typographical error in the "Mutual Conditions" document that was attached to the above City Council Resolution. Specifically, the document states, incorrectly, that BEDCO has offered to pay the City of Rensselaer \$15 million in "host community" payments for the proposed power plant, and \$7.5 million in "host community" payments for the proposed paper plant. However, the payment charts which accompany the "Mutual Conditions" document and which are also attached to the Resolution correctly state the payment amounts: \$7.5 million for each facility, for a total of \$15 million in "host community" payments. Further, prior to last night's vote, the "Mutual Conditions" were discussed with the Council in executive session, and the Council members clearly understood that the "host community" payments being offered were a total of \$15 million- \$7.5 million for each facility.

I have forwarded the correct "Mutual Conditions" document to Corporation Counsel John Hicks for his review. It appears that this document was retyped before being attached to the May 24, 2004 Resolution, and that the above error occurred in the retyping.

It is my opinion that this typographic/clerical error can be corrected without the necessity of another vote by the City Council on the Resolution. This would be accomplished by removing the incorrect "Mutual Conditions" document from the Council's May 24, 2004 Resolution, and substituting the correct "Mutual Conditions" document, which I sent to your office last week.

Approved:
May 25, 2004



John Hicks, Esq.
Corporation Counsel
City of Bensenville