

CLOSING ITEM NO.: A-7

TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY

AND

ALBANY PORT DISTRICT COMMISSION

UNIFORM AGENCY PROJECT AGREEMENT

DATED AS OF JULY 1, 2022

RELATING TO FINANCIAL ASSISTANCE GRANTED BY THE AGENCY WITH RESPECT TO A CERTAIN PROJECT LOCATED ON PORT ROAD SOUTH (TAX MAP NO. 98.01-2-1) AND EAST OF RIVER ROAD (NYS RT. 144) SOUTH OF NORMANS KILL AND NORTH OF PSEG PROPERTY (TAX MAP NO. 98.00-2-10.23) IN THE TOWN OF BETHLEHEM, ALBANY COUNTY, NEW YORK.

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UNIFORM AGENCY PROJECT AGREEMENT

THIS UNIFORM AGENCY PROJECT AGREEMENT dated as of July 1, 2022 (the “Uniform Agency Project Agreement”) by and among TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 445 Delaware Avenue, Delmar, New York (the “Agency”) and the ALBANY PORT DISTRICT COMMISSION, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 106 Smith Boulevard, Albany, New York (the “APDC”);

WITNESSETH:

WHEREAS, Title 1 of Article 18 A of the General Municipal Law of the State of New York (the “Enabling Act”) was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the “State”) and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 582 of the Laws of 1973 of the State (collectively, with the Enabling Act, the “Act”) and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in September, 2021, the APDC presented an application (such application, as amended, being referred to as the “Application”) to the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the APDC, said Project to include the following: (A) (1) the acquisition of an interest in two (2) parcels of land containing in the aggregate approximately 81 acres located on Port Road South (tax map number 98.01-2-1) and East of River Road (NYS Rt. 144) south of Normans Kill and north of PSEG property (tax map number 98.00-2-10.23) in the Town of Bethlehem, Albany County, New York (collectively, the “Land”), (2) the construction on the Land of four (4) buildings containing in the aggregate approximately 560,000 square feet of space, a bridge, related parking and various infrastructure improvements (collectively, 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, and the Equipment being collectively hereinafter referred to as the “Project Facility”), all of the foregoing to constitute an industrial/manufacturing facility to be owned by the APDC and operated by a joint venture third party operator as a wind tower manufacturing and shipping facility and any other directly and indirectly related

activities; (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 (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the APDC or such other person as may be designated by the APDC and agreed upon by the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on September 24, 2021 (the “Public Hearing Resolution”), the Executive 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 September 30, 2021 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be posted on September 28, 2021 at the Town Hall Auditorium located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York, (C) caused notice of the Public Hearing to be published on October 1, 2021 in the Albany Times Union, a newspaper of general circulation available to the residents of Town of Bethlehem, New York, (D) conducted the Public Hearing on October 13, 2021 at 4:30 p.m., local time at the Town Hall Auditorium located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York 12054, and (E) prepared a report of the Public Hearing (the “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on December 17, 2021 (the “Preliminary Term Sheet Resolution”), the Agency approved an IDA Term Sheet (the “IDA Term Sheet”) outlining the Financial Assistance the Agency would provide, which assistance was contingent upon (A) the completion of the SEQRA (as hereinafter defined) review by the Town of Bethlehem Planning Board (the “Planning Board”), (B) the preparation, review and finalization of the documents providing for an IDA straight lease transaction (the “APDC Documents”) outlined below, such documents to be subject to review and approval by the Agency Counsel, and (C) adoption by the Agency of an “approving resolution” which approves the APDC Documents; 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”), (A) the Executive Director of the Agency has reported to the members of the Agency, as follows: (1) the Executive Director, on behalf of the Agency, and all other state and local governmental agencies which constitute “involved agencies” with respect to the Project have agreed that the Town of Bethlehem Planning Board should act as lead agency (the “Lead Agency”) pursuant to SEQRA with respect to the Project; (2) the Lead Agency on May 5, 2020, accepted a final generic environmental impact statement (the “FGEIS”) prepared with respect to the Project, which analyzed and evaluated potential environmental impacts equally with social and economic factors associated with the conceptual development of the Project; (3) on June 2, 2020, the Lead Agency adopted the FGEIS Findings Statement, which established thresholds pursuant to SEQRA to be followed during the design, construction and operations phase of a future specific Project; (4) a supplemental draft environmental impact statement (the “SDEIS”) was submitted to the Lead Agency on November 16, 2021; (5) the Lead Agency accepted the supplemental final environmental impact statement (the “SFEIS”) on March 1, 2022; (6) the staff of the Agency received a copy of the FGEIS, the SDEIS and the SFEIS; (7) the staff of the Agency reviewed the FGEIS, the SDEIS and the SFEIS; (8) the staff of the Agency also received a copy of a Planning Board’s Findings Statement relative to the FGEIS, the SDEIS and the SFEIS (the “Findings Statement”), which Findings Statement was adopted by the Lead Agency on March 15, 2022; and (9) the staff of the Agency reviewed the Findings Statement, (B) at a meeting of the Agency held on March 25, 2022, (1) the staff of

the Agency discussed with the members of the Agency the results of their review of the FGEIS, the SDEIS and the SFEIS conducted by the staff of the Agency, (2) a copy of the Findings Statement was presented to the members of the Agency, (3) the staff of the Agency discussed the Findings Statement with the members of the Agency, and (4) the members of the Agency reviewed and considered the Findings Statement, and (C) by resolution adopted by the members of the Agency at said meeting (the "SEQR Resolution"), the members of the Agency (1) adopted the Findings Statement as the Agency's written findings statement relative to the Project, as required by Section 617.11(c) of the Regulations and (2) determined to proceed with the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on March 25, 2022 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of July 1, 2022 (the "Lease Agreement") between the Agency and the APDC and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"). Pursuant to the terms of the Lease Agreement, (A) the APDC will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the APDC. The Lease Agreement grants to the APDC certain options to acquire the Project Facility from the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the APDC will execute and deliver to the Agency (1) a certain lease to agency dated as of July 1, 2022 (the "Lease to Agency") by and between the APDC, as landlord, and the Agency, as tenant, pursuant to which the APDC will lease to the Agency the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises"); and (2) a certain bill of sale dated as of July 1, 2022 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the APDC in the Equipment; (B) the APDC and the Agency will execute and deliver a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the APDC and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (C) the Agency and the APDC will execute and deliver the uniform agency project agreement dated as of July 1, 2022 (the "Uniform Agency Project Agreement") by and between the Agency and the APDC relating to the terms of the granting by the Agency of the Financial Assistance to the APDC; (D) the Agency will execute and deliver to the APDC a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (E) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, (A) the Agency has established certain policies allowing denial of Financial Assistance to any project which does not deliver the public benefits estimated at the time said project was approved by the Agency (the "Public Benefits"), (B) the Agency is unwilling to grant Financial Assistance to a project unless the beneficiary of such project agrees that the amount of Financial Assistance to be received by such beneficiary with respect to such project shall be contingent upon, and shall bear a direct relationship to, the success or lack of success of such project in delivering the promised Public Benefits, and (C) the Agency has created this Uniform Agency Project Agreement in order to establish the conditions under which the Agency will be entitled to recapture some or all of the Financial Assistance that has been granted to the APDC under the Basic Documents if the Project is unsuccessful in whole or in part in delivering the promised Public Benefits; and

WHEREAS, the APDC desires to receive certain Financial Assistance from the Agency with respect to the Project, and accordingly is willing to enter into this Uniform Agency Project Agreement in order to secure such Financial Assistance from the Agency; and

WHEREAS, all things necessary to constitute this Uniform Agency Project Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Uniform Agency Project Agreement have in all respects been duly authorized by the Agency and the APDC;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS TO WIT:

ARTICLE I
DEFINITIONS

SECTION 1.01. DEFINITIONS. The following words and terms used in this Uniform Agency Project Agreement shall have the respective meanings set forth below, or the definitions set forth in the Lease Agreement, unless the context or use indicates another or different meaning or intent.

“Application” means the application submitted by the APDC to the Agency in September, 2021 with respect to the Project, as amended, in which the APDC (A) described the Project, (B) requested that the Agency grant certain Financial Assistance with respect to the Project, and (C) indicated the Public Benefits that would result from approval of the Project by the Agency.

“Basic Documents” means the Conveyance Documents, the Lease Agreement, the Uniform Agency Project Agreement, the Section 875 Recapture Agreement, the Prevailing Wage Certificate and all other instruments and documents related thereto and executed in connection therewith, and any other instrument or document supplemental thereto, each as amended from time to time.

“Completion Date” means the earlier to occur of (A) June 30, 2025 or (B) such date as shall be certified by the APDC to the Agency as the date of completion of the Project pursuant to Section 4.2 of the Lease Agreement.

“Conveyance Documents” means, collectively, the Lease to Agency and the Bill of Sale to Agency.

“Equipment” shall have the meaning set forth in the Lease Agreement.

“Facility” shall have the meaning set forth in the Lease Agreement.

“Financial Assistance” means exemptions from certain sales and use taxes as more particularly described in the Basic Documents.

“Land” means two (2) parcels of land containing in the aggregate approximately 81 acres located on Port Road South (tax map number 98.01-2-1) and East of River Road (NYS Rt. 144) south of Normans Kill and north of PSEG property (tax map number 98.00-2-10.23) in the Town of Bethlehem, Albany County, New York.

“Lease Agreement” means the lease agreement dated as of July 1, 2022 by and between the Agency, as landlord, and the APDC, as tenant, pursuant to which, among other things, the Agency has leased the Project Facility to the APDC, as said lease agreement may be amended or supplemented from time to time.

“Project” shall have the meaning set forth in the Lease Agreement.

“Uniform Agency Project Agreement” means the uniform agency project agreement dated as of July 1, 2022 by and between the Agency and the APDC, pursuant to which among other things, the Agency and the APDC have agreed to certain conditions relating to the granting of Financial Assistance, as said uniform agency project agreement may be amended or supplemented from time to time.

“Project Facility” means, collectively, the Land, the Facility and the Equipment.

“Recapture Events” shall mean the following:

- (1) failure to complete the acquisition, construction and installation of the Project Facility by the Completion Date;
- (2) liquidation of substantially all of the APDC's operating assets and/or cessation of substantially all of the APDC's operations;
- (3) relocation of all or substantially all of APDC'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;
- (4) failure by the APDC to comply in all material respects with the annual reporting requirements or to provide the Agency with requested information;
- (5) sublease of all or part of the Project Facility in violation of the Basic Documents;
- (6) a change in the use of the Project Facility, other than as a wind tower manufacturing and shipping facility and other directly and indirectly related uses; or
- (7) failure by the APDC to make an actual investment in the Project by the Project's Completion Date equal to or exceeding 80% of the Total Project Costs as set forth in the APDC's application for Financial Assistance.

“Recapture Period” means an approximately three (3) year period commencing on the Closing Date and ending on June 30, 2025.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into this Uniform Agency Project Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Uniform Agency Project Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Uniform Agency Project Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Uniform Agency Project Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 2.02. REPRESENTATIONS OF AND WARRANTIES BY THE APDC. The APDC does hereby represent, warrant and covenant as follows:

(A) Power. The APDC is a public benefit corporation duly organized and validly existing under Chapter 192 of the Unconsolidated 1925 Laws of the State of New York (the "APDC Enabling Legislation"), is duly authorized to do business in the State of New York and has the power under the laws of the State of New York to enter into this Uniform Agency Project Agreement and to perform and carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement, and by proper action of its board of commissioners has been duly authorized to execute, deliver and perform this Uniform Agency Project Agreement.

(B) Authorization. The APDC is authorized and has the power under the APDC Enabling Legislation and Bylaws to enter into this Uniform Agency Project Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement. By proper action of its board of directors, the APDC has duly authorized the execution, delivery and performance of this Uniform Agency Project Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The APDC is not prohibited from entering into this Uniform Agency Project Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement by (and the execution, delivery and performance of this Uniform Agency Project Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Uniform Agency Project Agreement will not

conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its certificate of formation, by-laws or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the APDC is a party or by which it or any of its property is bound, and neither the APDC's entering into this Uniform Agency Project Agreement nor the APDC's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the APDC under the terms of any of the foregoing, and this Uniform Agency Project Agreement is the legal, valid and binding obligation of the APDC enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the APDC is required as a condition to the execution, delivery or performance of this Uniform Agency Project Agreement by the APDC or as a condition to the validity of this Uniform Agency Project Agreement.

ARTICLE III

COVENANTS AND AGREEMENTS

SECTION 3.01. FINANCIAL ASSISTANCE. (A) Financial Assistance. In the Application, the APDC certified to the Agency employment information with respect to the Project Facility and the operations of the APDC. In reliance on the certifications provided by the APDC in the Application, the Agency has agreed to provide the APDC with the following Financial Assistance related to the Project:

- (1) sales and use tax exemptions: \$853,000 (est)
- (2) a mortgage recording tax exemption: N/A
- (3) a real property tax exemption: N/A

(B) Description of Project and Public Purpose of Granting Financial Assistance to the Project. In the Application and in the discussions had between the APDC and the Agency with respect to the APDC's request for Financial Assistance from the Agency with respect to the Project, the APDC has represented to the Agency as follows:

(1) That the Project is described as follows: (1) the acquisition of an interest in two (2) parcels of land containing in the aggregate approximately 81 acres located on Port Road South (tax map number 98.01-2-1) and East of River Road (NYS Rt. 144) south of Normans Kill and north of PSEG property (tax map number 98.00-2-10.23) in the Town of Bethlehem, Albany County, New York (collectively, the "Land"), (2) the construction on the Land of four (4) buildings containing in the aggregate approximately 560,000 square feet of space, a bridge, related parking and various infrastructure improvements (collectively, 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, and the Equipment being collectively hereinafter referred to as the "Project Facility"), all of the foregoing to constitute an industrial/manufacturing facility to be owned by the APDC and operated by a joint venture third party operator as a wind tower manufacturing and shipping facility and any other directly and indirectly related activities.

(2) That the Project will furnish the following benefits to the residents of the Town of Bethlehem, New York (the "Public Benefits"): As described in the Approving Resolution.

(C) Reserved.

SECTION 3.02. APDC AGREEMENTS. The APDC hereby agrees as follows:

(A) Reserved.

(B) Filing – Annual. To file with the Agency, on an annual basis, within sixty (60) days after the end of each calendar year, reports regarding certain matters relating to the Project, including as required under Applicable Law, the initial said annual report (the "Annual Report") to be in substantially the form annexed as Exhibit B to this Uniform Agency Project Agreement.

(C) Employment Listing. To list or to cause to be listed new employment opportunities created as a result of the Project with the following entities (hereinafter, the "JTPA Entities"): (1) the New

York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)).

(D) Employment Consideration. Except as otherwise provided by collective bargaining agreement, to first consider, where practicable, for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(E) Reserved.

(F) Non-Discrimination. (1) To not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The APDC shall use its reasonable efforts to ensure that employees and applicants for employment with the APDC, or any subtenant of the Project Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(2) To state or to cause to be stated in substance, in all solicitations or advertisements for employees placed by or on behalf of the APDC during the term of this Uniform Agency Project Agreement, that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

(G) Information. Whenever requested by the Agency, to provide and certify, or cause to be provided and certified by third party vendors, such information concerning APDC as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to verify and confirm the reports submitted by APDC pursuant to this Uniform Agency Project Agreement.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

SECTION 4.01. EVENTS OF DEFAULT DEFINED. (A) The following shall be “Events of Default” under this Uniform Agency Project Agreement, and the terms “Event of Default” or “default” shall mean, whenever they are used in this Uniform Agency Project Agreement, any one or more of the following events:

- (1) A material default in the performance or observance of any of the covenants, conditions or agreements on the part of the APDC in this Uniform Agency Project Agreement and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the APDC, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the APDC to commence to cure within such thirty (30) day period and to prosecute the same with due diligence.
- (2) The occurrence of an “Event of Default” under any other Basic Document.
- (3) Any representation or warranty made by the APDC herein or in any other Basic Document proves to have been false in a material way at the time it was made.

SECTION 4.02. REMEDIES ON DEFAULT. (A) Whenever any Event of Default hereunder shall have occurred, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps as its sole and exclusive remedy or remedies:

- (1) declare, by written notice to the APDC, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 of the Lease Agreement up to the date of the occurrence of the Event of Default, and (b) all other payments due under this Uniform Agency Project Agreement or any of the other Basic Documents up to the date of the occurrence of the Event of Default;
- (2) terminate the Lease to Agency, the Lease Agreement and convey to the APDC all the Agency’s right, title and interest in and to the Project Facility (The conveyance of the Agency’s right, title and interest in and to the Project Facility shall be effected by the delivery by the Agency of the Termination of Lease to Agency and the Bill of Sale to APDC. The APDC hereby agrees to pay all expenses (including, without limitation, reasonable attorneys’ fees and expenses) and taxes, if any, applicable to or arising from any such transfer of title; or
- (3) take any other action at law or in equity which may appear necessary or desirable to collect any monetary obligations or amounts then due or thereafter to become due hereunder

(B) No action taken pursuant to this Section 4.02 shall relieve the APDC from its obligations to make any payments required by this Uniform Agency Project Agreement and the other Basic Documents.

SECTION 4.03. RECAPTURE OF FINANCIAL ASSISTANCE. (A) General. Upon the occurrence of a Recapture Event that occurs during the Recapture Period, the Agency may require the APDC to provide for the recapture of the project financial assistance (the “Project Financial Assistance”), all in accordance with the terms of this Section 4.03. The APDC hereby agrees if requested by the Agency, to pay to the Agency the recapture of the Project Financial Assistance, as provided in this Section 4.03.

(B) Project Financial Assistance. The Project Financial Assistance to be recaptured, as adjusted by the provisions of Section 4.03(C) below, by the Agency from the APDC upon the occurrence of a Recapture Event during a Recapture Period shall be an amount equal to a percentage (as provided in subsection (C) below) multiplied by the sum of the following:

(1) the portion of the amount of New York State sales and use taxes allocable to Albany County that the APDC would have paid in connection with the undertaking of the Project if the Project Facility was privately owned by the APDC and not deemed owned or under the jurisdiction and control of the Agency;

(C) Amount of Project Financial Assistance to be Recaptured. Upon the occurrence of a Recapture Event, the APDC shall pay or cause to be paid to the Agency the following amounts as recapture:

(1) With respect to the portion of the Project Financial Assistance described in Section 4.03(B)(1) above, the amount of such Project Financial Assistance to be recaptured shall be adjusted as follows:

Year	Amount of Recapture
2022	100% of the Project Financial Assistance
2023	80% of the Project Financial Assistance
2024	60% of the Project Financial Assistance
2025	30% of the Project Financial Assistance

(D) Redistribution of Project Financial Assistance to be Recaptured. Upon the receipt by the Agency of any amount of Project Financial Assistance pursuant to this Section 4.03, the Agency shall redistribute such amount within thirty (30) days of such receipt to the Taxing Entity that would have received such amount but for the granting by the Agency of the Project Financial Assistance.

(E) Survival of Obligations. The APDC acknowledges that the obligations of the APDC in this Section 4.03 shall survive the conveyance of the Project Facility to the APDC and the termination of the Lease Agreement.

(F) Agency Review of Recapture Determination. The Agency’s determination to recapture all or a portion of the Project Financial Assistance shall be made by the Agency after an evaluation of the criteria for recapture set forth in the Agency’s “Recapture Benefits Policy” as in effect as of the Closing Date (a copy of which policy is attached hereto as Schedule A). If the Agency determines that a Recapture Event has occurred, it shall give notice of such determination to the APDC. The APDC shall have fourteen (14) days from the date the notice is deemed given to submit a written response to the Agency's determination and to request a written and/or oral presentation to the Agency why the proposed recapture amount should not be paid to the Agency. The APDC may make its presentation at a meeting of the Agency. The Agency shall then vote on a resolution recommending (i) a termination of Financial Assistance, (ii) a recapture of Financial Assistance, (iii) both a termination and a recapture of Finance Assistance, (iv) a modification of Financial Assistance or (iv) no action.

SECTION 4.04. LATE PAYMENTS. (A) One Month. If the APDC shall fail to make any payment required by this Uniform Agency Project Agreement within thirty days of the date that written notice of such payment is sent from the Agency to the APDC at the address provided in Section 5.05 of this Uniform Agency Project Agreement, the APDC shall pay the amount specified in such notice together with a late payment penalty equal to three percent (3%) of the amount due.

(B) Thereafter. If the APDC shall fail to make any payment required by this Uniform Agency Project Agreement when due and such delinquency shall continue beyond the thirty days after such notice, the APDC's obligation to make the payment so in default shall continue as an obligation of the APDC to the Agency until such payment in default shall have been made in full, and the APDC shall pay the same to the Agency together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

SECTION 4.05. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. If the APDC should default in performing any of its obligations, covenants or agreements under this Uniform Agency Project Agreement and the Agency should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the APDC herein contained, the APDC agrees that it will, on demand therefor, pay to the Agency not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.06. REMEDIES; WAIVER AND NOTICE. (A) No Specified Remedy Exclusive. No remedy set forth in Section 4.02 hereof conferred upon or reserved to the Agency is intended to be exclusive of any other remedy or remedies available under such Section, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under such Section.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of a Recapture Event or an Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency to exercise any remedy reserved to it is this Uniform Agency Project Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Uniform Agency Project Agreement.

(D) No Waiver. In the event any provision contained in this Uniform Agency Project Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Uniform Agency Project Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V

MISCELLANEOUS

SECTION 5.01. TERM. This Uniform Agency Project Agreement shall become effective and the obligations of the APDC shall arise absolutely and unconditionally upon the execution and delivery of this Uniform Agency Project Agreement by the APDC and the Agency. Unless otherwise provided by amendment hereof, this Uniform Agency Project Agreement shall continue to remain in effect until June 30, 2025.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Uniform Agency Project Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. APDC ACTS. Where the APDC is required to do or accomplish any act or thing hereunder, the APDC may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the APDC.

SECTION 5.04. AMENDMENTS. This Uniform Agency Project Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, property addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE APDC:

Albany Port District Commission
106 Smith Boulevard
Albany, New York 12202
Attention: Christine Stuto, Chief Financial Officer

WITH A COPY TO:

Albany Port District Commission
106 Smith Boulevard
Albany, New York 12202
Attention: Patrick K. Jordan, Esq.

and

Hodgson Russ LLP
677 Broadway, Suite 401
Albany, New York 12207
Attention: A. Joseph Scott, III, Esq.

IF TO THE AGENCY:

Town of Bethlehem Industrial Development Agency
445 Delaware Avenue
Delmar, New York 12054
Attention: Chair

WITH A COPY TO:

Town of Bethlehem Industrial Development Agency
Town Hall, 445 Delaware Avenue
Delmar, New York 12054
Attention: Catherine Hedgeman, Esq.

and

Whiteman Osterman & Hanna
One Commerce Plaza
Albany, New York 12260
Attention: Robert J. McLaughlin, Esq.

(C) Change of Address. The Agency, the APDC may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Uniform Agency Project Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the APDC and their respective successors and assigns. The provisions of this Uniform Agency Project Agreement are intended to be for the benefit of the Agency.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Uniform Agency Project Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Uniform Agency Project Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Uniform Agency Project Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Uniform Agency Project Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency and the APDC have caused this Uniform Agency Project Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

TOWN OF BETHLEHEM INDUSTRIAL
DEVELOPMENT AGENCY

BY: Victoria Storrs
Victoria Storrs
Chair

ALBANY PORT DISTRICT COMMISSION

BY: Richard J. Hendrick
Richard J. Hendrick
Chief Executive Officer

SPECIAL PROJECT CERTIFICATION

As required under Section 859-a (6) of the Act, the APDC hereby certifies, under penalty of perjury, that the APDC is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

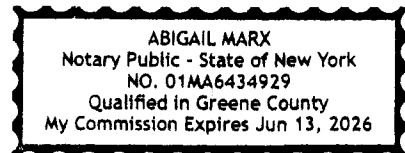
ALBANY PORT DISTRICT COMMISSION

BY: Richard J. Hendrick
Richard J. Hendrick
Chief Executive Officer

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

On the 29th day of July, in the year 2022, before me, the undersigned, personally appeared VICTORIA STORRS, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public



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

On the 29th day of July, in the year 2022, before me, the undersigned, personally appeared RICHARD J. HENDRICK, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

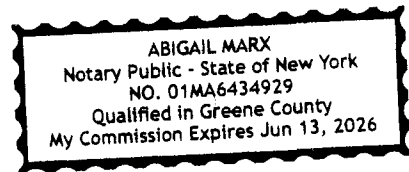


EXHIBIT A
RESERVED

EXHIBIT B
ANNUAL STATUS REPORT

January __, 20__

Re: New Project Verification

Dear:

The Town of Bethlehem Industrial Development Agency (the "Agency") is currently providing assistance in connection with your project in the Town of Bethlehem, Albany County, New York.

The Agency is required to file an annual report with the New York State Comptroller providing information on its activities, and the activities of projects that are assisted by the Agency. In order for the Agency to compile that report, it is necessary that we obtain information relating to assistance provided and benefits derived from all entities that receive such assistance. Failure by the Agency to file the report information required by New York State could result in the Agency losing its ability to provide future assistance or the entity suffering claw-back provisions and forfeiting benefits previously received. Therefore, it is important that this information be provided in an accurate and timely manner.

Attached please find a questionnaire to be completed and returned to the Agency by _____ . If you have any questions regarding the required information, please do not hesitate to call our office.

We appreciate your assistance in this matter. A self-addressed stamped envelope is enclosed for your convenience.

Very truly yours,

Company name and address:

Project Name:

Company contact:

Contact phone number:

(Please-correct any information above)

Financing Information

Has the Agency provided project financing assistance through issuance of a bond or note?

Yes No

If financing assistance was provided, please provide:

- Original principal balance of bond or note issued _____
- Outstanding principal balance of such bond or note at December 31, 20__ _____
- Principal paid during 20__ _____
- Outstanding principal balance of such bond or note at December 31, 20__ _____

Interest rate on mortgage as of December 31, 20__ _____

Final maturity date of the bond or note _____

Is the Company a not-for-profit? _____

Sales Tax Abatement Information

Did your company receive Sales Tax Abatement on your Project during 20__?

Yes No

If so, please provide the amount of sales tax savings received for each year _____

(A copy of the ST-340 sales tax report submitted to New York State for the reporting period is required to be attached with this report)

Mortgage Recording Tax Information

Did your company receive Mortgage Tax Abatement on your Project during 20__?

Yes No

The amount of the mortgage recording tax that was abated during 20__ : _____

Capital Investment Information

20__ Capital Investment	_____
Real Estate	_____
Construction	_____
Machinery and Equipment	_____
Other Taxable Expenses	_____
Other Non-Taxable Expenses	_____
Total Capital Investment	_____

Officer's Certification

I certify that to the best of my knowledge and belief all of the information on this form is correct. I also understand that failure to report completely and accurately may result in enforcement of provisions of the Uniform Agency Project Agreement dated as of July 1, 2022 by and between the APDC and Town of Bethlehem Industrial Development Agency (the "Project Agreement"), including but not limited to the suspension, discontinuance, and potential claw back of financial assistance provided for the project.

Signed: _____
(Authorized Company Representative)

Date: _____

SCHEDULE A

RECAPTURE BENEFITS POLICY

POLICY RESPECTING RECAPTURE OF PROJECT BENEFITS

Uniform Tax Exemption Policy Section 1707(C)(5) Recapture of Tax Exemptions. If the Agency's approval of a project is predicated upon achievement by the project of certain minimum goals such as minimum employment levels, the documents will provide that the tax exemptions granted to the project will be reduced, eliminated or re-captured if, in the sole judgment of the Agency, the project fails to achieve such minimum goals. The events which will trigger a recapture of the tax exemptions are as follows:

(i) failure to complete the acquisition, construction and installation of the Project Facility; (ii) failure by the Company to meet at least eighty percent (80%) of the Employment Level requirements required by the documents; (iii) liquidation of substantially all of the Company's operating assets and/or cessation of substantially all of the Company's operations; (iv) relocation of all or substantially all of Company'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; (v) transfer of jobs equal to at least fifteen percent (15%) of the Company's Employment Level out of the Town of Bethlehem, New York; (vi) failure by the Company to comply with the annual reporting requirements or to provide the Agency with requested information; (vii) sublease of all or part of the Project Facility in violation of the Basic Documents; (viii) a change in the use of the Project Facility, other than the use proposed in the application for financial assistance and other directly and indirectly related uses; (ix) failure by the Company to make an actual investment in the Project by the Project's construction completion date equal to or exceeding 80% of the Total Project Costs as set forth in the Company's application for Financial Assistance.

If a recapture event occurs during construction of the Project or in the first year of the real property tax abatement, the amount of tax exemptions to be recaptured shall be 100% of the actual tax exemptions received by the Company. If the recapture event occurs after the first year of the real property tax abatement, the amount of the tax exemptions to be recaptured shall decline by 10% each year.

If the Agency determines that a Recapture Event has occurred, it shall give notice of such determination to the Company. The Company shall have fourteen (14) days from the date the notice is deemed given to submit a written response to the Agency's determination and to request a written and/or oral presentation to the Agency why the proposed recapture amount should not be paid to the Agency. The Company may make its presentation at a meeting of the Agency. The Agency shall then vote on a resolution recommending (i) a termination of Financial Assistance, (ii) a recapture of Financial Assistance, (iii) both a termination and a recapture of Finance Assistance, (iv) a modification of Financial Assistance or (v) no action.