

## PROJECT AND AGENT AGREEMENT

THIS PROJECT AND AGENT AGREEMENT, made as of the 14 day of April, 2021, is by and between the TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its offices at 6122 South Park Avenue, Hamburg, New York 14075 (the "Agency") and BAYVIEW ROAD ASSOCIATES, LLC, a limited liability company duly formed, validly existing and in good standing under the laws of the State of New York with offices at 2721 Transit Road, Suite 114, Elma, New York 14059 (the "Lessee") and AMAZON.COM SERVICES LLC, a limited liability company duly formed and validly existing under the laws of the State of Delaware with offices at 410 Terry Avenue North, Seattle, Washington 98109 (the "Sublessee").

### WITNESSETH:

WHEREAS, the Agency was created by Chapter 784 of the Laws of 1986 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Lessee as Applicant and Sublessee as Co-Applicant submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project consisting of the acquisition and equipping by the Agency through a lease with mortgage or lease only transaction of a commercial facility consisting of an already owned parcel of land consisting of approximately 57.914 acres of vacant land located at Lakeshore and Bayview Roads, Hamburg, New York and the construction of an approximately 181,500 square foot building therein, by the Lessee, as Agent for the Agency, for lease by the Lessee to the Agency for lease-back to the Lessee for sub-sublease to Sublessee, who will be the sole occupant of the facility, all for the provision of a warehousing and distribution Facility (the "Project"); and

WHEREAS, by Resolution adopted on February 16, 2021 (the "Resolution"), the Agency conferred on the Lessee and Sublessee, as applicable, in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (a) an exemption from all New York State and local sale and use taxes for purchases incorporated into the Facility or used in the acquisition, construction and equipping of the Facility, and (b) a 75% exemption in the mortgage recording taxes with respect to any mortgage recorded to secure financing for the Project and (c) a partial abatement from real property taxes benefit through a ten year "payment in lieu of taxes agreement" with the Lessee for the benefit of each municipality and school district having jurisdiction over the Project, (collectively, the sales and use tax exemption benefit, the mortgage recording tax benefit, and the partial abatement from real property taxes benefit, are hereafter collectively referred to as the "Financial Assistance"); and

WHEREAS, it has been estimated and confirmed by the Lessee and Sublessee as included within the Application for Financial Assistance (i) that the purchase of goods and services related to the Project and subject to New York State and local sales and use taxes are estimated in a combined amount up to \$15,200,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$1,330,000.00, (ii) that

the mortgage recording exemption authorized and approved by the Agency cannot exceed \$253,200.00, and (iii) that the real property tax abatement benefits to be provided to the Lessee and Sublessee over the ten year benefit period of the anticipated payment in lieu of tax agreement are estimated to be approximately \$2,256,107.00; and

WHEREAS, the Lessee proposes to lease the Facility to the Agency, and the Agency desires to rent the Facility from the Lessee pursuant to the terms of a certain Lease to Agency Agreement dated as of February 1, 2021 with such date subject to extension (the "Lease Agreement"), by and between the Lessee and the Agency; and

WHEREAS, the Agency proposes to lease back the Facility to the Lessee and the Lessee desires to lease back the Facility from the Agency, upon the terms and conditions set forth in a certain Leaseback Agreement dated as of February 1, 2021 with such date subject to extension (the "Leaseback Agreement"); and

WHEREAS, in order to define the obligations of the Lessee regarding payments-in-lieu-of-taxes for the Facility, the Agency and the Lessee will enter into a Payment-in-Lieu-of Tax Agreement, dated as of February 1, 2021 with such date subject to extension (the "PILOT Agreement"), by and between the Agency and the Lessee; and

WHEREAS, the obligations of the Lessee and Sublessee regarding the ability to utilize the Agency's sales and use tax exemption benefit as agent of the Agency to acquire, construct, renovate and equip the Facility and to undertake the Project are hereafter set for in the Project Agreement; and

WHEREAS, the Agency requires as a condition and as an inducement for it to enter into the transactions contemplated by the Resolution, that the Lessee and Sublessee provide assurances with respect to the terms and conditions herein set forth: and

WHEREAS, this Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Lessee and Sublessee; and

WHEREAS, no Financial Assistance shall be provided to the Project prior to the effective date of the earlier date of the Agency sales tax exemption letter is issued or the date of this Agreement.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Purpose of the Project. It is understood and agreed by the parties hereto that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to, and that the Agency is entering into the Lease Agreement, the Leaseback Agreement and the PILOT Agreement in order to promote, develop, encourage and assist in the acquiring, construction, reconstructing, improving, maintaining, equipping and furnishing of the Project facility to advance

job opportunities, health, general prosperity and economic welfare of the people of the Town of Hamburg and to otherwise accomplish the public purpose of the Act.

2. PILOT Agreement. The parties hereto understand and agree that Exhibit A to this Agreement contains a copy of the PILOT Agreement to be entered into, or entered into, by and between the Lessee and the Agency.

3. Termination, Modification and/or Recapture of Agency Financial Assistance. It is understood and agreed by the Parties hereto that the Agency is entering into the Lease Agreement, the Leaseback Agreement and the PILOT Agreement in order to provide Financial Assistance to the Lessee and Sublessee for the Facility and to accomplish the public purposes of the Act.

(a) The Lessee hereby makes the following representations and covenants in order to induce the Agency to proceed with the Project/Facility which are deemed to be material factors (the "Material Factors"):

(i) the Lessee agrees to construct an approximately 181,500 square foot building (the "Construction Commitment").

(ii) the Lessee agrees to expend the approximate sum of \$42,200,000.00 and (the "Investment Commitment").

(iii) the Lessee agrees to follow the Agency Local Labor Policy during construction of the Facility (the "Local Labor Commitment").

(vi) the Lessee and Sublessee agree that they will comply with the requirements of the Agency to provide annually to the Agency certain information (described in Section 4) to confirm that the Project is achieving the investment, job retention, job creation and other objectives of the Project (the "Project Reporting Commitment").

(vii) the Lessee agrees to make the payment-in-lieu-of taxes to the municipalities within the time frame required (the "Payment-in-Lieu-of-Taxes Commitment").

(viii) the Lessee agrees to maintain or cause Sublessee to maintain the insurance requirements as required in connection with this Agreement and the Leaseback Agreement and to provide copies to the Agency as required herein (the "Insurance Commitment").

(b) The Sublessee hereby makes the following representations and covenants in order to induce the Agency to proceed with the Project/Facility, which are deemed to be Material Factors:

(i) the Sublessee expects to expend the approximate amount of \$5,000,000 towards the installation of equipment associated the Project.

(ii) the Sublessee anticipates hiring 50 FTE employees and 50 PT employees (the "Employment Commitment").

(iii) the Sublessee expects to occupy the Facility for use as a warehousing and distribution facility (the "Project Use Commitment").

(iv) the Sublessee agrees that it will comply with the Project Reporting Commitment.

(iv) the Sublessee agrees to maintain insurance as evidenced on Sublessee's memorandum of insurance, which is set forth at <https://www.amazon.com/moi>.

Said insurance shall be maintained in substantially the same form and coverages as the same appears on the above-referenced website as of April 1, 2021.

(c) In accordance with Section 875(3) of the New York State General Municipal Law, the policies of the Agency and the Resolution, the Lessee and Sublessee covenant and agree that they may be subject to a Recapture Event Determination (as hereinafter defined) resulting in the potential recapture of Financial Assistance from the Agency, if it is determined by the Agency (each of the following, upon the notice and cure rights described, being a "Recapture Event Determination"), following the procedures set forth in the Agency's Policy for Recapture and/or Termination and/or Modification of Financial Assistance re-adopted as written February 27, 2020, which includes, among other procedures, a thirty (30) day opportunity on the part of Lessee or Sublessee to remedy any violation and provide a written response or seek an extension, as well as a right to a hearing:

(1) the Lessee, the Sublessee or their respective subagents, if any, authorized to make purchases for the benefit of the Project are not entitled to the sales and use tax exemption benefits; or

(2) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Lessee, the Sublessee or their respective Subagents, if any; or

(3) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(4) the Lessee and/or the Sublessee, as applicable, has made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the application or supporting documents false or misleading in any material respect, on its Application for Financial Assistance.

(5) the Lessee and/or the Sublessee, as applicable, fails to meet and maintain the thresholds and requirements representing certain material terms and conditions including the Investment Commitment, the Construction Commitment, the Investment Commitment, the Employment Commitment and the Local Labor Commitment two (2) years following the construction completion date (the "Project Completion Date" and the two year period following the Project Completion Date being defined as the "Material Terms and Conditions Monitoring Period").

(a) Construction Commitment-the Lessee must construct the Building substantially in accordance with the provisions of the Application for financial assistance but may be subject to modifications as long as the Facility as constructed meets the needs of the Sublessee.

(b) Investment Commitment, the total investment actually made with respect to the Project at the Project Completion Date must equal at least 85% of the amount of Investment Commitment set forth above. The Lessee shall have the right to

establish that it did not meet the requirements due to cost savings achieved by the Lessee and that the benefits that the Lessee has received have been reduced proportionately in accordance with the reduction in investment, in which case no recapture shall occur.

(c) **Employment Commitment**-that Sublessee anticipates hiring at least 50 FTE and 50 PT employees to be located at the Facility (the "Baseline FTE") and the Sublessee fails to maintain employment at 85% of the total of the Baseline FTE and PT employees. The Sublessee shall have the right to establish that the failure to comply with the Employment Commitment was due to circumstances beyond its control, in which case no recapture of Financial Assistance shall occur. For the purposes of this Agreement, a "FTE employee" means a job position, or a combination of job positions, in which the employee of Sublessee or Independent Contractors, or combination of such employees or Independent Contractors, has the opportunity to work at the Facility at least 35 hours per week; for the purposes of this Agreement, a PT employee is a job position, or a combination of job positions, in which the employee of Sublessee, or combination of such employees, has the opportunity to work at the Facility for some period of time each week which may be less than or greater to 35 hours per week.

(d) **Local Labor Commitment**-that the Lessee adheres to and undertakes or has undertaken construction activities in compliance with the Agency's Local Labor Workforce Policy.

(e) **Project Reporting Commitment**-that the Lessee and Sublessee must supply the information required by Section 4 of this Agreement to allow the Agency to evaluate whether the Lessee and Sublessee are in compliance with the requirements of this Agreement.

(d) **Termination or Modification of Benefits.** The Agency reserves the right to terminate the Lease Agreement and Leaseback Agreement and end the Payment-in-Lieu-of Tax benefits to the Lessee if the Lessee or Sublessee, as applicable, fails to comply with the Project Use Commitment, the Project Reporting Commitment, the Payment-in-Lieu-of-Taxes Commitment and the Insurance Commitment.

The Company and Sublessee each acknowledges and understands that a Recapture Event Determination made with respect to Section 3(a)(4) of this Agreement, will, in addition to requiring the repayment of benefits, in addition immediately result in the loss and forfeiture of the Lessee's and Sublessee's right and ability to obtain any and all future Financial Assistance with respect to the Project. In the event that it is determined that, based upon the number of employees created or retained, the Company and Sublessee would have been eligible for Financial Assistance but for a less generous Payment in Lieu of Tax provision, the Agency reserves the right to modify the benefits to reduce the benefits down to, but not below, that amount of benefits that would have been available based upon the actual employment, investment or construction numbers.

4. Project Reporting Requirements. The Lessee and Sublessee, as applicable, shall comply with the provisions of Section 6 (j) and (k) as set forth hereafter with respect to the filing of NYS Forms ST-340 and ST-123.

The Lessee and Sublessee shall provide annually, to the Agency a certified statement and documentation, to the knowledge of the certifying entity: (i) enumerating the full time and part time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contracts that work at the Project location, and (ii) indicating the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. Exhibit B contains the form of annual certification as so required as discuss above as well as additional Project assessment information that the Agency requires on an annual basis to be submitted to the Agency by the Company and the Sublessee.

The findings made by the Agency with respect to Section 3 (a) (1), (2), (3) and/or (4) and/or the failure to provide written confirmation as required by Section 3(a)(5) with respect to the threshold and requirements as identified in Section 3(a)(5) above, may potentially be determined by the Agency, in accordance with the Town of Hamburg Industrial Development Agency Policy for Recapture, Termination and/or Modification of Financial Assistance or other procedure that provides for the suspension or discontinuance of Financial Assistance or for the modification of any PILOT to require increased payment in accordance with the policies developed by the Town of Hamburg Industrial Development Agency.

5. Scope of Agency. The Lessee hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the following: the Lessee already owns a 57.914 acre parcel of land located at Lakeshore and Bayview Roads in the Town of Hamburg and the construction of an approximately 181,500 sq. ft. building and the acquisition and installation of machinery and equipment required in connection therewith by the Lessee and the Sublessee (as applicable), each as agent for the Agency. The right of the Lessee and the Sublessee to act as agent of the Agency shall expire on March 1, 2022, unless extended as contemplated by the Resolution. The aggregate amount of work performed as Agent for the Agency shall not exceed the amounts described in the Application of the Lessee and Sublessee in this matter. All contracts entered into by the Lessee and/or the Sublessee as agent for the Agency shall include the language set forth in Appendix A.

6. Representations and Covenants. The Lessee and the Sublessee make the following representations and covenants in order to induce the Agency to proceed with the Project:

(a) The Lessee represents and covenants that the Lessee is a limited liability company duly formed and validly existing under the laws of the State of New York and duly qualified and authorized to conduct business in New York State (the "State"), has the authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement. The Sublessee represents and covenants that the Sublessee is a limited liability company duly formed and validly existing under the laws of the State of Delaware and duly qualified and authorized to conduct

business in the State, has the authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement.

(b) The Lessee and the Sublessee each separately represents and covenants as to itself, but not the other, that neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Lessee or the Sublessee, as applicable, is a party or by which it is bound, or will constitute 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 Lessee or the Sublessee as applicable under the terms of any such instrument or agreement, in such a manner as to materially impair the obligations of the Lessee or Sublessee, as applicable, to perform its obligations under this Agreement.

(c) The Lessee represents and warrants that the construction of the Facility will comply with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Lessee to comply with the provisions of this subsection (c). The Sublessee represents and covenants that its operation of the Facility will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Sublessee to comply with the provisions of this subsection (c).

(d) The Lessee and the Sublessee each separately represents and covenants as to itself, but not the other, that there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Lessee or the Sublessee as applicable, threatened against or affecting the Lessee or the Sublessee as applicable, to which the Lessee or the Sublessee as applicable is a party, and in which an adverse result would in any way diminish or adversely impact on the Lessee's or the Sublessee's, as applicable, ability to fulfill their respective obligations under this Agreement.

(e) The Lessee covenants that the Facility will comply in all respects with all environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) the Lessee will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility in materials in compliance with applicable laws, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Lessee upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Lessee hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors,

members, officers, employees, agents (except the Lessee), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Lessee agrees to pay the expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

(f) Any personal property acquired by the Lessee in the name of the Agency shall be located in the Town of Hamburg, New York, except for temporary periods during ordinary use.

(g) In accordance with Section 875(3) of the New York General Municipal Law, the Lessee and the Sublessee each separately represents and covenants as to itself, but not the other, that, if it receives New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") from the Agency, and it is determined that: (i) the Lessee or the Sublessee, as applicable, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Lessee or the Sublessee as applicable; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Lessee or the Sublessee, as applicable, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project, then the Lessee and/or the Sublessee, as applicable, will (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits from the party which purchased such exempt property or breached the material term or condition, and (ii) cause such breaching or purchase party to promptly pay over any such amounts to the Agency that the Agency demands in connection therewith. The Lessee and the Sublessee each, respectively, further understands and agrees that in the event that the Lessee and/or the Sublessee, as applicable, fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine New York State and local sales and use taxes due from the Lessee and/or the Sublessee as applicable, together with any relevant penalties and interest due on such amounts.

(h) The Lessee and the Sublessee each further covenants and agrees that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in the combined amount up to \$15,200,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$1,330,000.00.

(i) The Agency following the adoption of the Inducement Resolution and the entry into by the parties of this Project Agreement will complete and forward to the State Department of Taxation and Finance the "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (NYS Form ST-60) for the Project.

(j) The Lessee and the Sublessee each, as applicable, further covenants and agrees to file an annual statement with the State Department of Taxation and Finance on "Annual Report of



Sales and Use Tax Exemptions" (NYS Form ST-340) regarding the value of sales and use tax exemptions the Lessee and the Sublessee and their respective agents, subagents, consultants or subcontractors have claimed pursuant to the agency conferred on the Lessee with respect to the Project in accordance with General Municipal Law Section 874(8). The Lessee and the Sublessee each, as applicable, further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of same to the Agency; provided, however, in no event later than February 15<sup>th</sup> of each year. The Lessee and the Sublessee each, as applicable, understands and agrees that the failure to file such annual statement will result in the removal of the Lessee's and Sublessee's authority to act as agent for the Agency.

(k) The Lessee and the Sublessee each, as applicable, acknowledges and agrees that, with respect to any purchases made in furtherance of the Project that are intended to be exempt from taxation, such purchases shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123, a copy of which is attached hereto as, and it shall be the responsibility of the Lessee and the Sublessee each, as applicable (and not the Agency) to complete NYS Form ST-123. The Lessee and Sublessee each, as applicable, acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Lessee and Sublessee each, as applicable, is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company and the Sublessee, each as applicable acknowledges and agrees that the purchase invoice should state, "I, certify that I am a duly appointed representative of Bayview Road Associates, LLC [or, if applicable, Amazon.com Services LLC], a duly appointed agent of the Town of Hamburg Industrial Development Agency and that I am purchasing the tangible personal property or services for use in the following IDA project located at Lakeshore and Bayview Roads in the Town of Hamburg, IDA Project Number "1405-21-01A" and that such purchases qualify as exempt from sales and use taxes under a certain agent agreement with the Town of Hamburg Industrial Development Agency." For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgment as described above, an "Invoice Rider" (a copy of which is attached hereto as Appendix B can be utilized for record keeping purposes).

The Lessee and Sublessee each, as applicable, further acknowledges and agrees that the following information shall be used by the Lessee and the Sublessee, as applicable, to identify the Project on each bill and invoice for purchases for which the exemption is intended: "the name of the Project, the street address of the Project site, and IDA project number." Until the Project is completed, the Lessee and the Sublessee each, as applicable, will forward to the Agency on a semi-annual basis commencing six months following the adoption of the Inducement Resolution by the Agency, a listing of all vendors, costs of purchases and estimated sales/use tax for each vendor for which the exemption is intended to be utilized. The Lessee and the Sublessee each, as applicable, will also forward to the Agency all Form ST-123's issued by the Lessee or the Sublessee as the case may be to sellers to the Agency within 30 days following the issuance of the Form ST-123 by the Lessee or the Sublessee as the case may be.

(l) The Company and the Sublessee each acknowledge and agree that the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or

performance obligations), and the Company and/or the Sublessee, as the case may be, shall be the sole party liable thereunder.

7. Hold Harmless Provision. The Lessee and the Sublessee each for itself but not the other hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, officers, members employees, agents (except the Lessee and the Sublessee), representatives, successors and assigns harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation, or the use thereof or the presence on, in or about the Facility or breach by the Lessee or the Sublessee as the case may be of this Agreement or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, rehabilitating, constructing, renovation, equipping, owning and leasing of the Equipment or the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents (except the Lessee and the Sublessee) or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified. Notwithstanding anything to the contrary in this Agreement, neither Lessee nor Sublessee, nor any of their respective subsidiaries or affiliates shall be liable for: (a) any indirect, reliance, exemplary, incidental, speculative, punitive, special, consequential or similar damages that may arise in connection with this Agreement, (b) any lost or foregone tax revenues, or (c) any damages, liabilities, fees, costs, expenses, penalties, diminishment in value, losses or payments (including any lost or foregone tax revenues) that exceed, in the aggregate, the lesser of (i) the net present value of the Financial Assistance provided under this Agreement and (ii) \$7,890,000.

8. Insurance Required. Effective as of the date hereof and until the expiration or termination of the right of the Lessee to act as agent of the Agency hereunder, the Lessee shall maintain, or cause to be maintained by its subagent or subcontractors, certain insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type, and paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) (i) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Lessee or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Lessee may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well. Such insurance shall have a commercially reasonable deductible.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Lessee is required by law to provide, covering

11. Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

12. Notices. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: TOWN OF HAMURG INDUSTRIAL DEVELOPMENT AGENCY  
6122 South Park Avenue  
Hamburg, New York 14075  
Attention: Executive Director

JENNIFER L. STRONG, Esq.  
Neill & Strong Attorneys and Counselors P.C.  
13166 Main Street  
Alden, New York 14004

To the Lessee: BAYVIEW ROADASSOCIATES, LLC  
2721 Transit Road  
Elma New York 14059  
Attention: Andrew DeVincentis

To the Sublessee: AMAZON.COM SERVICES LLC  
c/o Amazon.com, Inc.  
410 Terry Avenue North  
Seattle, Washington 98109-5210  
Telephone: (206) 266-1000

Attention: Real Estate Manager (NA Ops: DBU7)

AMAZON.COM SERVICES LLC  
c/o Amazon.com, Inc.  
410 Terry Avenue North  
Seattle, Washington 98109-5210  
Telephone: (206) 266-1000  
Attention: General Counsel (Real Estate (NA Ops): DBU7)

With copies via email to:  
naops-propingmt@amazon.com; OpsRELegalnotice@amazon.com;  
na-realestate@amazon.com; naops-rent@amazon.com

With Copy To: GUY J. AGOSTINELLI, Esq.  
Zdarsky, Sawicki & Agostinelli LLP  
1600 Main Place Tower  
350 Main Street



Buffalo, New York 14202

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when received or delivery of same is refused by the recipient or personally delivered in the manner provided in this Section.

13. Future Agreements. The parties are contemplating that the Agency will negotiate and enter into Lease to Agency (the "Lease to Agency") and a Leaseback Agreement (the "Leaseback Agreement") with the Lessee, which Leaseback Agreement and will provide for Payment-in-Lieu-of-Taxes as attached as Schedule A. in connection with the original construction and equipping of a manufacturing distribution facility and a Mortgage (the "Mortgage") in connection with the acquisition and installation of the Project. At any time prior to the execution of the Lease to Agency and the Leaseback Agreement, the Agency can transfer title to the Lessee of all assets acquired by the Lessee as agent for the Agency. Additionally, at any time prior to execution of the Lease to Agency and the Leaseback Agreement, the Lessee can demand that the Agency transfer title to the Lessee with respect to all assets acquired by the Lessee as agent for the Agency, provided all amounts owed the Agency have been paid current and the Agency shall transfer title to such assets to the Lessee by a bill of sale.

14. Agreement to Pay Agency Fees and Expenses. By executing this Project Agreement, the Lessee covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (i) legal services in connection with the Project, including but not limited to those provided by the Agency's Counsel, and (ii) other consultants retained by the Agency in connection with the Project; with all such charges to be paid by the Lessee at the closing or, if the closing does not occur, within ten (10) business days of receipt of the Agency's invoices therefore. The Lessee is entitled to receive a written estimate of fees and costs of the Agency's Counsel in accordance with the fee schedule of the Agency.

The Lessee further covenants and agrees that the Lessee is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (i) the Lessee's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Agency or the Lessee to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Lessee failure, for whatever reason, to undertake and/or successfully complete the Project, subject to the limitations set forth in Section 7 above.

15. Confidentiality. Sublessee acknowledges that this Agreement and the materials, communications, data and information related to this Project constitute public records subject to disclosure under the State's public records laws and agrees that Agency will disclose this Agreement and the materials, communications, data and information related to this Project as required by law, provided that Agency provides Sublessee five (5) business days prior written notice sufficient.

16. Amendments. No amendment, change, modification, alteration or termination of this Agreement shall be made except in writing upon the written consent of the Company, the Sublessee and the Agency.

17. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in the Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.

18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Erie County, New York.

19. Section Headings. The headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Agreement.



loss resulting from injury, sickness, disability or death of employees of the Lessee who are located at or assigned to the Facility.

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$5,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$5,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Lessee by any applicable workers' compensation law.

9. Additional Provisions Respecting Insurance. (a) All insurance required by Section 8(c) hereof shall name the Agency as an additional insured, as its interest may appear. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Lessee and authorized to write such insurance in the State. Such insurance may be written with commercially reasonable deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Lessee is engaged. All policies evidencing such insurance shall provide for at least thirty (30) days prior written notice of the cancellation thereof to the Lessee and the Agency, except in the event of non-payment, in which at least ten (10) days prior written notice of the cancellation shall be delivered to the Lessee and the Agency. All insurance requirements in Section 8 may be satisfied by blanket policies subject to the reasonable approval by the Agency; provided, however, that approval or acceptance by a commercial lender (if any) in connection with the financing of the Project shall not require approval by the Agency. All or some of Section 8 insurance requirements may be satisfied by an Owner Controlled Insurance Program ("OCIP") subject to approval by the Agency; provided, however, that approval or acceptance by a commercial lender in connection with the financing of the Project shall not require approval by the Agency. Sublessee's memorandum of insurance may be found on <https://www.amazon.com/moi> and, notwithstanding any other provision hereof shall satisfy the Insurance Commitment and all obligations contained in this Agreement to provide certificates of insurance. Said insurance shall be maintained in substantially the same form and coverages as the same appears on the above-referenced website as of April 1, 2021.

(b) All such policies of insurance, or a certificate or certificates of insurance that such insurance is in force and effect, shall be deposited with the Agency on the date hereof. Prior to expiration of any such policy, the Lessee shall furnish evidence to the Agency that the policy has been renewed or replaced or is no longer required by this Agreement.

10. Survival and Termination. All of the respective warranties, representations and covenants made by the Lessee and the Sublessee herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Agreement to the Agency regardless of any investigation made by the Agency. Lessee or Sublessee has the right to terminate this Agreement for any reason or no reason by delivering notice to [Agency] at least 5 business days prior to the desired termination date, provided that, prior to or simultaneous with, such termination, the Lessee has terminated the Lease Agreement and Leaseback Agreement.

[Signature Page to Agent Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Dated: April 14, 2021

TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY

By: [Signature]  
Sean Doyle,  
Executive Director  
Its Authorized Representative

Dated: April 14, 2021

BAYVIEW ROAD ASSOCIATES, LLC

By: [Signature]  
Andrew J. DeVincentis  
Member and Assistant Manager  
Its Authorized Representative

Dated: May 5, 2021, 2021

AMAZON.COM SERVICES LLC

DocuSigned by:  
By: [Signature]  
Name: Holly Sullivan  
Title: VP Economic Development, Public Policy  
Its Authorized Representative



**CERTIFICATION**

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

Andrew J. DeVincentis, being first duly sworn, deposes and says:

1. That I am a Member and an Assistant Manager of Bayview Road Associates, LLC, the Company and that I am duly authorized on behalf of the Company to bind the Company and to execute this Agreement on behalf of the Company.

2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal law, worker protection and environmental laws, rules and regulations.



\_\_\_\_\_  
Andrew J. DeVincentis,  
Member and Assistant Manager

Subscribed and affirmed to me under the penalties of perjury  
this 4 day of April, 2021.

Chelsea Rath  
(Notary Public)

CHELSEA RATH  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01RA6383908  
Qualified in Erie County  
My Commission Expires November 26, 2022





CERTIFICATION

STATE OF WA )  
COUNTY OF King )ss.:

Holly Sullivan, being first duly sworn, deposes and says:

1. That I am a Authorized Signatory of Amazon.com Services LLC, the Sublessee and that I am duly authorized on behalf of the Sublessee to bind the Sublessee and to execute this Agreement on behalf of the Sublessee.

2. That the Sublessee confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal law, worker protection and environmental laws, rules and regulations.

*Holly Sullivan*

Holly Sullivan  
Title: Vice President

Subscribed and affirmed to me under the penalties of perjury  
this 13th day of May, 2021.

*John Vogan*

(Notary Public)

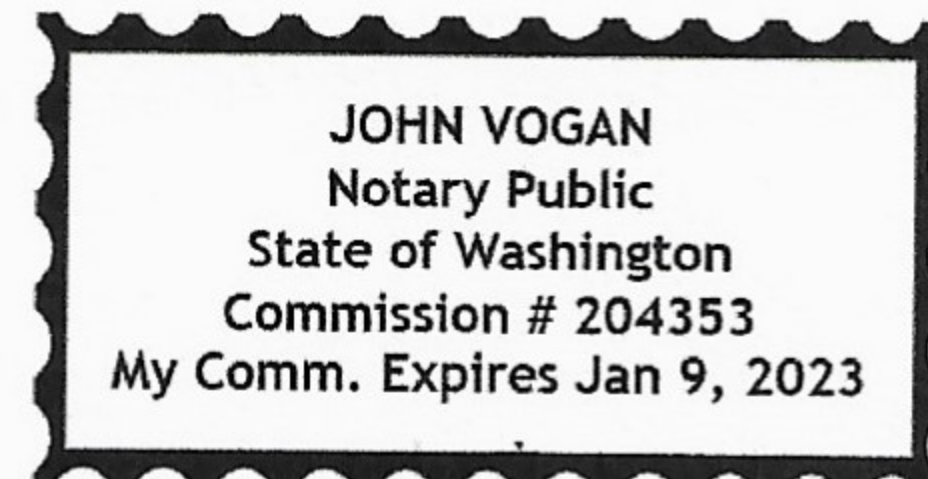


EXHIBIT A

## APPENDIX C

## 2021 BAYVIEW ROAD ASSOCIATES, LLC PROJECT

## PAYMENTS IN LIEU OF TAXES

It is recognized that under the provisions of the Act, the Agency is required to pay no real estate taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. Except as otherwise provided herein and in Section 4.4, while the Facility is being used in accordance with the Act and this Agreement, the provisions of this paragraph with respect to payments in lieu of real estate taxes shall be applicable. Until the commencement of the tax fiscal year of the appropriate taxing authority subsequent to the first tax status date on which the Agency is the owner of record of the Facility, Bayview Road Associates, LLC (the "Lessee") shall continue to pay all appropriate taxing authorities all taxes due. Thereafter, the Lessee shall pay to the Town of Hamburg (Town), County of Erie (County) and the Frontier Central School District (School District) in lieu of exempted taxes the following amounts:

A. To the Town of Hamburg shall be mailed to the Hamburg Finance Department, S-6122 South Park Avenue, Hamburg, New York 14075, no later than February 15th of each year,

1. Commencing in [2021], an amount equal to the Town taxes which would be due, were there no such exemption, based upon the assessed value of the Facility Realty; and

2. Commencing in [2022], an amount equal to the Town taxes which would be due, were there no such exemption, based upon the assessed value of the non-depreciable portion of the Facility Realty, as legally described on Schedule 1 (assessed as land); and

3. Commencing in [2022], an amount equal to the Town taxes which would be due, were there no such exemption, based upon the assessed value of the depreciable portion of the Facility Realty (assessed as buildings and other improvements) in accordance with the following schedule:

<u>Fiscal Year</u>	<u>Percentage</u>
2022	10%
2023	10%
2024	10%
2025	20%
2026	20%
2027	20%
2028	30%
2029	30%
2030	30%
2031	30%

4. Commencing in 2032, an amount equal to the Town taxes would be due, were there no such exemption upon the then assessed value of the Facility Realty.

B. To the County, c/o Erie County Department of Taxation and Finance, 95 Franklin Street, Buffalo, New York 14202, no later than February 15th of each year,

1. Commencing in 2022, an amount equal to the County taxes which would be due, were there no such exemption, based upon the assessed value of the Facility Realty; and

2. Commencing in 2023, an amount equal to the County taxes which would be due, were there no such exemption, based upon the assessed value of the non-depreciable portion of the Facility Realty (assessed as land); and

3. Commencing in 2023, an amount equal to the County taxes which would be due, were there no such exemption, based upon the assessed value of the depreciable portion of the Facility Realty (assessed as buildings and other improvements) in accordance with the following schedule:

<u>Fiscal Year</u>	<u>Percentage</u>
2023	10%
2024	10%
2025	10%
2026	20%
2027	20%
2028	20%
2029	30%
2030	30%
2031	30%
2032	30%

4. Commencing in 2033, an amount equal to the County taxes would be due, were there no such exemption upon the then assessed value of the Facility Realty.

C. To the School District, c/o Business Office, Frontier Central School District, 5120 Orchard Avenue, Hamburg, New York 14075, no later than October 15th of each year,

1. Commencing with the School District's fiscal year 2021-2022, an amount equal to the School District taxes which would be due, were there no such exemption, based upon the assessed value of the Facility Realty; and

2. Commencing with School District's fiscal year 2022-2023, an amount equal to the School District taxes which would be due, were there no such exemption, based upon the value of the non-depreciable portion of the Facility Realty (assessed as land); and

3. Commencing with the School District's fiscal year 2022-2023, an amount equal to the School District taxes which would be due, were there no such exemption, based upon the assessed value of the depreciable portion of the Facility Realty (assessed as buildings and other improvements) in accordance with the following schedule:

<u>Fiscal Year</u>	<u>Percentage</u>
2022-2023	10%
2023-2024	10%
2024-2025	10%
2025-2026	20%
2026-2027	20%
2027-2028	20%
2029-2030	30%
2030-2031	30%
2031-2032	30%
2032-2033	30%

4. Commencing with the School District's fiscal year 2033-2034 an amount equal to the School District taxes which would be due, were there no such exemption upon the then assessed value of the Facility Realty.

Lessee assumes the full value of the completed Project will first appear on the tax roll as of tax status date on March 1, 2022. If this assumption is incorrect, the dates in paragraphs A, B and C shall be adjusted accordingly.

The foregoing is subject, in each case, to the Lessee's rights to obtain reductions in the assessed valuation of the Facility, to maintain existing exemptions, and to obtain other exemptions, abatements or discounts therefrom, if any, and to seek to obtain a refund of any such payments made, all of which are hereby expressly reserved by the Lessee.

If the Lessee shall fail to make any such installments of payments in lieu of real estate taxes, the amount or amounts so in default shall continue as an obligation of the Lessee until fully paid. Except to the extent that this Agreement or applicable law require otherwise, in the event of a default by Lessee under this Agreement, the Agency, after following the procedures set forth in the Agency's Policy for Recapture and/or Termination and/or Modification of Financial Assistance re-adopted as written February 27, 2020, which includes, among other procedures, a thirty (30) day opportunity on the part of Lessee or Sublessee to remedy any violation and provide a written response or seek an extension, as well as a right to a hearing, shall have the right, as its sole and exclusive remedy, to recapture benefits as described in Section 3(d) of that certain Project and Agent Agreement between the Agency, Lessee and Sublessee (as defined therein) dated \_\_\_\_\_, 2021.

In addition, if payment is not received by an affected tax jurisdiction by the due date, Lessee shall be responsible for any and all late payment penalties required by New York law to such tax jurisdiction. Once having paid the amount required to be paid by it in lieu of real estate taxes, the

Lessee shall not be required to pay any such taxes for which a payment in lieu thereof has been made to the appropriate officer of the Town, County, or School District, as the case may be.

The Agency shall cause such officers to apportion, within fifteen days prior to the date on which the Agency is no longer to be the owner of the Facility, that installment or payment in lieu of tax paid by the Lessee to the Town, County and the School District, as the case may be, immediately preceding the date on which the Agency no longer owns the Facility, as of such date, and apply that portion attributable to the period from such date to the end of the period of such installment as a credit against the amount of real estate tax that would have been due for the period of such installment had the Facility been privately owned on the final assessment date of the tax year immediately preceding the date of such installment, and bill the Lessee for the balance of such installment, which amount shall be paid by the Lessee to such officer immediately upon the receipt thereof. The Agency shall cause such officers to return the Facility to the tax rolls as of the date of transfer of the title out of the Agency to the new owner of the Facility, who shall pay the remaining installments due for such tax fiscal year.

If the Project is not being used in accordance with the Act and this Agreement, the Lessee shall, after the notice, hearing and cure procedures described above, be required to make full payments in lieu of real estate taxes on the land, building and improvements constituting the Facility in such amount as would result from taxes levied on the Facility if the Facility were owned by the Lessee. Such amounts shall commence to be paid for the period subsequent to the date it is reasonably determined by the Agency that use of the Project under the Act or this Agreement is not in compliance. In such event, the tax rate and valuation shall be those then in effect in the records of the proper County, Town and School District departments, respectively. The Agency in its discretion may waive the increased payments set forth in this paragraph and agree to the continuation of the payments as otherwise set forth in [Sections not numbered]. The obligations of the Lessee under this paragraph shall survive the termination or expiration of this Agreement for any reason whatsoever. The Agency, in its discretion and in furtherance of the purposes of the Act, may waive, in whole or in part, payments in lieu of taxes, set forth in this paragraph, for good cause shown.

Unless terminated earlier pursuant to its terms, this Agreement shall be effective as of [January 1, 2022] and remain in effect until [December 31, 2033], after which this Agreement and the obligations of all parties hereto shall terminate. Lessee has the right to terminate this Agreement for any reason or no reason by delivering notice to [Agency] at least 5 business days prior to the desired termination date.

Payments for the Town of Hamburg shall be mailed to the Town of Hamburg, Hamburg Finance Department, S-6122 South Park Avenue, Hamburg, New York 14075 and are due no later than February 15th of each year.

Payments to the County of Erie shall be mailed to the County of Erie c/o Erie County Department of Taxation and Finance, 95 Franklin Street, Buffalo, New York 14202 and are due no later than February 15th of each year.

Payments for the School District shall be mailed to the Frontier Central School District

c/o Business Office, 5120 Orchard Avenue, Hamburg, New York 14047 and are due no later than October 15th of each year.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, the  
\_\_ day of \_\_\_\_\_, 2021

TOWN OF HAMBURG INDUSTRIAL  
DEVELOPMENT AGENCY

BAYVIEW ROAD ASSOCIATES,  
LLC

By: \_\_\_\_\_  
Sean Doyle,  
Executive Director

By: \_\_\_\_\_  
Andrew J. DeVincentis,  
Member and Assistant  
Manager



**SCHEDULE A**

**LIST OF APPOINTED AGENTS<sup>1</sup>**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_

\_\_\_\_\_



**EXHIBIT A****FORM OF SALES TAX LETTER****SALES TAX LETTER**

[ON OR AFTER JUNE 1, 2014]

[NAME OF COMPANY]

[ADDRESS OF COMPANY]

***Re: Town of Hamburg Industrial Development Agency and [Name of Company]***

Ladies and Gentlemen:

Pursuant to a resolution duly adopted on \_\_\_\_\_ (the "Resolution"), the Town of Hamburg Industrial Development Agency (the "Agency") appointed [NAME OF COMPANY] (the "Company") the true and lawful agent of the Agency to undertake a certain project (the "Project") consisting of: [PROJECT DESCRIPTION].

This appointment includes authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Facility and the following activities as they relate to any construction, erection and completion of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction and equipping, (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with construction and equipping and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in upon or under such building or facility, including all repairs and replacements of such property.

This agency appointment includes the power to delegate such agency, in whole or in part to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses, as is set forth in the Agent Agreement, dated as of \_\_\_\_\_, by and between the Agency and the Company (the "Agent Agreement"); As further set forth in the Agent Agreement, the Agency will complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (NYS Form ST-60) for the Company and the Agency will execute said form forward said form to the New York State ("State") Department of Taxation and Finance within thirty (30) days of appointment.

As further set forth in the Agent Agreement, in order to be entitled to use the exemption from New York State Sales and Use Taxes ("Sales Tax"), the Company, its agents, subagents, contractors and subcontractors should present to the supplier or vendor of materials for the Project,



**TOWN OF HAMBURG INDUSTRIAL  
DEVELOPMENT AGENCY**

**By:** \_\_\_\_\_  
**Name:** Sean Doyle  
**Title:** Executive Director



a completed "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123), to show that the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency in making the purchases of tangible personal property or services for use in the Project, thereby relieving such vendor or seller from the obligation to collect Sales Tax with respect to the construction and installation and equipping of the Facility. In connection therewith, it is necessary for the Company to identify the Project on each bill or invoice and indicate thereon which of the Company, its agents, subagents, contractors and subcontractors acted as agent for the Agency in making the purchases. Copies of each NYS Form ST-123 issued by the Company to a seller shall be forwarded to the Agency within thirty (30) days following the issuance by the Company.

As further set forth in the Agent Agreement, the Company is required to file an annual statement with the State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340) regarding the value of sales and use tax exemptions the Company, its agents, consultants or subcontractors have claimed pursuant to the agency conferred on the Company by the Agency with respect to this Project, and the Company is required to provide a copy of same to the Agency within thirty (30) days of each filing; provided, however, in no event later than February 15<sup>th</sup> of each year.

The agency conferred on the Company by the Agency is limited to the Project, and will expire on [DATE OF EXPIRATION OF AGENT STATUS]. The Company may apply to extend this agency authority by showing good cause; *provided, however, the exemption for leases executed prior to said date shall continue through the term or extended term of said lease and any acquisition of said leased property.* Should the agency authority be extended beyond such date, the agency created will continue for as long as the period of the Agency resolution approving such extension.

This letter is provided for the sole purpose of describing the exemption from Sales Tax for this Project only. No other principal/agent relationship is intended or may be implied or inferred by this letter.

With respect to registered vehicles acquired by the Company in the name of the Agency, the Agency shall transfer title to such vehicles immediately back to the Company, or as soon thereafter as reasonably practicable; and any personal property acquired by the Company in the name of the Agency shall be located in the Town of Hamburg, New York, except for temporary periods during ordinary use.

This letter is being issued pursuant to the Agent Agreement. All agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project should be aware of the Agent Agreement and obtain a copy thereof.

As further set forth in the Agent Agreement, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency is not liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company is the sole party liable thereunder.

Very truly yours,



**EXHIBIT B**

**(This is a calendar year report to be provided by the Agency each January and returned to the Agency by the end of each February)**

**FORM OF ANNUAL EMPLOYMENT AND SALARY AND FRINGE BENEFITS  
CERTIFICATION LETTER**

Company name and address: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Job Information: \_\_\_\_\_

Current number of full time equivalent employees ("FTE") retained at the project location, including FTE contractors or employees of independent contractors that work at the project location, by job category:

Category	FTE	Average Salary and Fringe Benefits or Ranges
Management _____	_____	_____
Professional _____	_____	_____
Administrative _____	_____	_____
Production _____	_____	_____
Other _____	_____	_____
Other _____	_____	_____

Current number of full time equivalent employees ("FTE") created at the project location, including FTE contractors or employees of independent contractors that work at the project location, by job category:

Category	FTE	Average Salary and Fringe Benefits or Ranges
Management _____	_____	_____
Professional _____	_____	_____
Administrative _____	_____	_____
Production _____	_____	_____
Other _____	_____	_____
Other _____	_____	_____



A copy of the NYS 45 form for the project location is required to be submitted with this report. If the NYS 45 form is not available for the specific project location or the form does not accurately reflect the full time jobs created, an internal payroll report verifying the total jobs by employment category as outlined above at the location is required with this submission.

**Financing Information**

Has the Agency provided project financing assistance (generally 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\_\_, \_\_\_\_\_

Outstanding principal balance of such bond or note at December 31, 20\_\_, \_\_\_\_\_

Final maturity date of the bond or note: \_\_\_\_\_

Is the company a not-for-profit:    Yes      No

**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 (A copy of the ST-340 sales tax report that was 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

(note this would only be applicable to the year that a mortgage was placed upon the Project, so if you did not lose in 20\_\_, the answer should be No)

The amount of the mortgage recording tax that was abated during 20\_\_.

**PILOT INFORMATION:**

County Real Property Tax without PILOT \_\_\_\_\_

City/Town Property Tax without PILOT \_\_\_\_\_

School Property Tax without PILOT \_\_\_\_\_

TOTAL PROPERTY TAXES WITHOUT PILOT \_\_\_\_\_

County PILOT \_\_\_\_\_

City/Town PILOT \_\_\_\_\_

School PILOT \_\_\_\_\_

TOTAL PILOTS \_\_\_\_\_

Net Exemptions \_\_\_\_\_

(subtract Total PILOTS from TOTAL property taxes without PILOT)

I certify that to the best of my knowledge and belief all of the information on this form is correct. I further certify that the salary and fringe benefit averages or ranges for the categories of jobs retained and the jobs created that was provided in the Application for Financial Assistance is still accurate and if not, I hereby attach a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. I also understand that failure to report completely



and accurately may result in enforcement of provisions of my agreement, including but not limited to avoidance of the agreement and potential claw back of benefits.

Signed: \_\_\_\_\_  
(authorized company representative)

Date: \_\_\_\_\_



**EXHIBIT C**

**NYS FORM ST-123**



**APPENDIX A**

**LANGUAGE TO BE INCLUDED IN ALL CONTRACTS**

"This contract is being entered into by \_\_\_\_\_ (the "Agent"), as agent for and on behalf of the Town of Hamburg Industrial Development Agency (the "Agency"), in connection with a certain project of the Agency for the benefit of the Agent consisting of \_\_\_\_\_

\_\_\_\_\_.

The machinery, equipment, furnishings, fixtures and building materials to be incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the acquisition thereof is effected in accordance with the terms and conditions set forth in the form of sales tax exemption letter of the Agency attached hereto as Exhibit A; and the Agent hereby represents that they will comply with the terms of the sales tax exemption letter to be issued by the Agency to the Company. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

## Instructions

### To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

**Industrial development agencies and authorities (IDAs)** are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

*Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.*

*Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.*

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)

- get information and manage your taxes online
- check for new online services and features



Sales Tax Information Center:

(518) 485-2888

To order forms and publications:

(518) 457-5431



Text Telephone (TTY) Hotline

(for persons with hearing and speech disabilities using a TTY):

(518) 485-5082





New York State Department of Taxation and Finance  
New York State Sales and Use Tax

**ST-123**  
(7/14)

**IDA Agent or Project Operator  
Exempt Purchase Certificate**

Effective for projects beginning on or after June 1, 2014

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, IDA Agent or Project Operator Exempt Purchase Certificate for Fuel.

Name of seller			Name of agent or project operator		
Street address			Street address		
City, town, or village	State	ZIP code	City, town, or village	State	ZIP code
Agent or project operator sales tax ID number (see instructions)					

Mark an X in one:  Single-purchase certificate  Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

**Project information**

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA		
Name of project	IDA project number (use OSC number)	
Street address of project site		
City, town, or village	State	ZIP code
Enter the date that you were appointed agent or project operator (mm/dd/yy) .....	/	/
Enter the date that agent or project operator status ends (mm/dd/yy) .....	/	/

**Exempt purchases**

(Mark an X in boxes that apply)

- A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	



APPENDIX B

INVOICE RIDER

(To be completed and attached to each invoice)

I, \_\_\_\_\_, the  
\_\_\_\_\_ of \_\_\_\_\_,  
certify that I am a duly appointed agent of the Town of Hamburg Industrial Development  
Agency (the "Agency") and that I am purchasing the tangible personal property or services for  
use in the following Agency Project and that such purchases qualify as exempt from sales and  
use taxes under the Project and Agent Agreement, dated as of \_\_\_\_\_, by and between  
the Agency and \_\_\_\_\_.

Name of Project: \_\_\_\_\_ Project

Street address of Project Site:

\_\_\_\_\_  
Town of Hamburg  
Erie County, New York

IDA OSC project number: 1405-21-01A



**APPENDIX D**

**NYS FORM ST-340 COMPLETED BY THE COMPANY AND FILED  
ANNUALLY WITH THE NYS TAX DEPARTMENT IDA UNIT NO LATER THAN  
FEBRUARY 15<sup>TH</sup> OF EACH YEAR**

(Attached Next Page)





Department of Taxation and Finance

# Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

**ST-340**  
(1/18)

For period ending December 31, \_\_\_\_\_ (enter year)

### Project information

Name of IDA agent/project operator		Employer identification number (EIN)	
Street address		Telephone number ( )	
City		State	ZIP code
Name of IDA	Name of project		IDA project number
Street address of project site			
City		State	ZIP code
Date project began		Completion date of project Actual <input type="checkbox"/> Expected <input type="checkbox"/>	
Total sales and use tax exemptions (actual tax savings; not total purchases) .....			\$

### Representative information (not required)

Authorized representative, if any		Title	
Street address		Telephone number ( )	
City		State	ZIP code

### Certification

I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer, employee, or authorized representative		Title of person signing	
Signature		Date	

If you do not annually file a complete report, we may remove your authority to act as an IDA agent/project operator.

Mail completed report to:  
**NYS TAX DEPARTMENT**  
**IDA UNIT**  
**W A HARRIMAN CAMPUS**  
**ALBANY NY 12227-0866**

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.



## Instructions

### General information

#### Who must file

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as the *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the Tax Department. The agent/project operator required to file this report is the person directly appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operators directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operators should not themselves file Form ST-340. However, the agent/project operators must include on Form ST-340 information obtained from such contractors, subcontractors, consultants, and agents, as described below.

#### What you must report

The report must show the total value of all state and local sales and use taxes exempted during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions the agent/project operator (you) obtained; and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

Include only the total combined exemptions obtained by the above people. A breakdown of the total is not required. However, since the report must include the value of the exemptions they obtained, you must keep records of the amounts others report to you.

You must make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available, so that you can comply with the annual reporting requirements.

Do not include on this report the amount of any sales and use tax exemptions from other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

#### When the report is due

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

#### Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

**Name of IDA agent/project operator:** Enter your name, address, employer identification number (EIN), and telephone number.

**Name of IDA and IDA project number:** Enter the name and address of the IDA. If more than one IDA is involved in a particular project, you must file a separate report for the tax exemptions attributable to each IDA. Also enter the ID project number.

**Name of project:** Enter the name of the project and the address of the project site. If you are involved in more than one project, you

must file a separate report for each project, even if authorized by the same IDA.

**Date project began:** Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

**Completion date of project:** Enter the date installation, lease, or rental of property (for example, machinery or computers) on the project ended, or the date the project is expected to be completed. Mark an X in the appropriate box to indicate if the date entered is actual or expected.

**Total sales and use tax exemptions:** Enter the total amount of New York State and local sales and use taxes exempted during the reporting period as a result of the project's receipt of IDA financial assistance (if none, enter 0). This includes exemptions obtained at the time of purchase, as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do not enter total purchases.

#### Representative information

If applicable, enter the name, address, title (for example, attorney or accountant), and telephone number of the individual you authorize to submit this report. This section is not required.

#### Certification

Enter the name and title of the person signing on your behalf (for example, the IDA agent/project operator's officer, employee, or other authorized representative). Your officer, employee, or authorized representative must sign and date the report.

Mail completed report to:

NYS TAX DEPARTMENT  
IDA UNIT  
WA HARRIMAN CAMPUS  
ALBANY NY 12227-0866

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

#### Need help?



Visit our website at [www.tax.ny.gov](http://www.tax.ny.gov)

- get information and manage your taxes online
- check for new online services and features

#### Telephone assistance

Sales Tax Information Center:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service

#### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.