

PROJECT AND AGENT AGREEMENT

THIS PROJECT AND AGENT AGREEMENT (hereinafter, the "Agent Agreement"), made as of the ___ day of November, 2021, by and between the TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, with offices at 6122 South Park Avenue, Hamburg, New York 14075 (the "Agency") and KCE NY 6, LLC, a Delaware State Limited Liability Company duly organized, validly existing and in good standing under the laws of the State of Delaware and authorized to transact business in and by the State of New York, with offices at 25 Monroe Street, Suite 300 Albany, New York 12210 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 784 of the Laws of 1986 of the State of New York pursuant to Title 1 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 Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of the construction and installation of a 20 MW utility servicing battery energy storage facility and related infrastructure for wholesale electric markets at 2026 Electric Avenue in the Village of Blasdell for lease to the Agency and subsequent Leaseback to the Lessee; and

WHEREAS, by Resolution adopted on September 10, 2021 the Agency authorized the Company to act as its agent for the purposes of undertaking the Project subject to the Company entering into this Agent Agreement, and pursuant to the Resolution and this Agent Agreement, the Company has 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 including but not limited to the individuals and entities described on **SCHEDULE A** attached hereto (collectively, the "Subagent"). The Company shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency; and

WHEREAS, by its Resolution, the Agency has conferred on the Company, in connection with the Project, certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from all New York State and local sales and use tax exemption benefits for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility, (b) an exemption benefit from mortgage recording tax, and (c) a partial abatement from real property taxes benefit through a twenty year "payment in lieu of tax- agreement" (the "PILOT Agreement") with the Company for the benefit of each municipality and school district having taxing 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 hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, pursuant to and in accordance with Sections 859-a and 874 of the Act, the Agency requires, as a condition and as an inducement for it to provide any Financial Assistance, that the Company enter into this Agent Agreement for the purposes of, among other things, to govern administration of and provide assurances with respect to the provision and recapture of said Financial Assistance upon the terms herein set forth; and

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

WHEREAS, no agent status in favor of the Company or any subagent thereof, nor any amount of Financial Assistance shall be provided to the Company by the Agency prior to the adoption of the Resolution;

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 Project and Scope of Agency. The purpose of the Agency's provision of Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, constructing, 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 specifically promote the activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation thereof in and around the Facility. The right of the Company to act as agent of the Agency shall expire on September 10, 2022, unless extended as contemplated by the Resolution. The aggregate amount of work performed as agent for the Agency shall not exceed the amounts identified in the Resolution and Section 2(h)(i) of this Agreement. All contracts entered into as agent for the Agency shall include the following language set forth as **APPENDIX A**.

2. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to proceed with the Project/Facility:

(a) The Company is a Delaware Limited Liability Company duly organized, validly existing and in good standing under the laws of the State of Delaware and authorized to transact business in and by the State of New York, has the authority to enter into this Agent Agreement, and has duly authorized the execution and delivery of this Agent Agreement.

(b) Neither the execution and delivery of this Agent Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agent 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 Company 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 Company under the terms of any such instrument or agreement.

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

(d) 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 Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agent Agreement.

(e) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, 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) that the Company 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, (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 Company 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 Company 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 Company), 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 Company agrees to pay the expenses of same to the Agency upon demand.

(f) Any personal property acquired by the Company in the name of the Agency shall be located in the Village of Blasdell, except for temporary period during ordinary use.

(g) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolution, the Company covenants and agrees that it may be subject to a Recapture Event Determination (as hereinafter defined) resulting in the potential recapture and/or termination of any and all Financial Assistance, as described below, if the Company receives, or its Subagents receives any Financial Assistance from the Agency, and it is determined by the Agency that:

- (1) the Company or its Subagents, if any, authorized to make purchases for the benefit of the Project 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 Company or its 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 Company 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 documentation false or misleading in any material respect) on its application for Financial Assistance; or
- (5) the Company fails to meet and maintain the thresholds and requirements representing certain material terms and conditions including the Investment Commitment, the Construction 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 Company must complete the Building substantially in accordance with the provisions of the Company's application for financial assistance no later than September 10, 2022, but may be subject to modifications as long as the Facility as constructed meets the needs of the Company and that the Company will build a 20 MW utility servicing battery energy storage facility and maintain such employment, if there is an employment commitment, for a one calendar year following the calendar year when the Employment Commitment threshold is met (the period following the achieving of the Employment Commitment threshold and the one year period following being defined as the "Material Terms and Conditions Monitoring Period").

(b) Investment Commitment, the total investment actually made with respect to the Project at the Project Completion Date must equal 85% of the project cost (\$19,613,354.00) as set forth in the application for Financial Assistance. The Company shall have the right to establish that it did not meet the requirements due to cost savings achieved by the Company and that the benefits that the Company has received have been reduced proportionately in accordance with the reduction in investment.

(c) Employment Commitment-that they will hire .5 FTE as stated in the Company's application for Financial Assistance (the "Baseline FTE") and the Company fails to maintain employment at 85% of the total of the Baseline new FTE for projects within New York State. The Company shall have the right to establish that the failure to comply with the Employment Commitment was due to circumstances beyond their control.

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

(e) Project Reporting Commitment-that the Company must supply the information required by this Agreement to allow the Agency to evaluate whether the Company is in compliance with the requirements of this Agreement. The reporting requirements are set forth in paragraph below.

(f) the Company agrees that it will occupy the Facility and utilize the Facility as a 20 MW utility servicing battery energy storage facility for wholesale electric markets (the "Project Use Commitment").

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

(h) the Company agrees 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").

In order to accomplish the foregoing, the Company shall provide annually, to the Agency, a certified statement and documentation: i) enumerating the full time equivalent jobs created as a result of the financial assistance, if any, by category, including full time equivalent independent contractors or employees of independent contractors that work at the project location, and (ii) indicating that 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, and (iii) such other information, as so requested from time to time, to enable the Agency to assess the progress of the Project toward achieving the investment, job retention, job creation, or other objectives of the Project indicated in the Application for Financial Assistance. The Company shall annually complete and submit to the Agency the Annual Certification Report in the form attached hereto as **EXHIBIT B**. Failure by the Company to complete and submit said form to the Agency by February 15 of each year during the Material Terms and Conditions Monitoring Period shall constitute an Event of Default hereunder, whereby the Agency, in its sole and absolute discretion, may terminate this Agreement and/or the PILOT Agreement and undertake a Recapture Event Determination.

The findings made by the Agency with respect to Section 2(g)(1), (2), (3) and/or (4) and/or failure to provide the written confirmation as required by Section 2(g)(5) with respect to the thresholds and requirements as identified in Section 2(g)(5), above, and/or failure to meet the thresholds and requirements as identified in Section 2(g)(5) above, may potentially be determined by the Agency, in accordance with the Agency's "Recapture of Benefits Policy", attached hereto as **EXHIBIT C**, to constitute a failure to comply with Section 875(3) of the New York General Municipal Law, and/or a failure to comply with a material term or condition to use

property or services or Agency Financial Assistance in the manner approved by the Agency in connection with the Project, and/or a failure to comply with the Agency's policies and Resolution (collectively, findings and determinations made as described herein with respect to Section 2(g)(1), (2), (3) and/or (4) and/or the failure under Section 2(g)(5) to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in Section 2(g)(5) are hereby defined as a "Recapture Event Determination" . If the Agency makes a Recapture Event Determination, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s). The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner and/or County Comptroller may assess and determine the Financial Assistance due from the Company, together with any relevant penalties and interest due on such amounts.

Termination or Modification of Benefits. In addition to the recapture provisions as set forth in Exhibit C above, the Agency reserves the right to terminate the Lease Agreement and Leaseback Agreement and end the Payment-in-Lieu-of Tax benefits to the Company if the Company fails to comply with the Project Use Commitment, the Project Reporting Commitment, the Payment-in-Lieu-of-Taxes Commitment and the Insurance Commitment. In the event that it is determined that based upon the number of employees created the Company 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 to the benefits that would have been available based upon the actual employment numbers.

In Company 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 Company's right and ability to obtain any and all future Financial Assistance with respect to the Project.

(h) In accordance with the Resolution the Company further: (i) covenants 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 an amount up to **\$18,323,354.00**, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 2(g) of this Agent Agreement, cannot exceed **\$1,603,293.00**, (ii) confirms that the mortgage recording tax exemption amount shall be approximately **\$102,126.00** and (iii) and confirms that real property tax abatement benefits to be provided to the Company over the **20 year** benefit period of the payment in lieu of tax agreement (the "PILOT Agreement"), said-PILOT Agreement attached hereto as **EXHIBIT D** immediately upon its execution, are estimated to be approximately **\$180,723.00**.

(i) The Agency following the adoption of the Resolution and the execution and delivery of this Agreement will complete and within thirty (30) days of appointment 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) in the form attached hereto as **EXHIBIT E** for the

Project. The Company shall immediately notify the Agency of its appointment of any agents or subagents in connection with the Project and shall, on request of the Agency, complete and submit to the Agency a NYS Form ST-60 for each such agent or subagent.

(j) The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123, a copy of which is attached hereto as **EXHIBITS F-1 AND F-2**), and it shall be the responsibility of the Company (and not the Agency) to complete NYS Form ST-123. The Company 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 Company 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 acknowledges and agrees that the bill or invoice should state, "I, [NAME OF COMPANY OR SUBAGENT], certify that I am 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 KCE NY 6, LLC Project located at 2026 Electric Avenue, Blasdell, New York, IDA Project Number " 140 ". For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgment as described in the prior sentence, an "Invoice Rider" (a copy of which is attached hereto as **EXHIBIT F-3**) can be utilized for record keeping purposes.

(k) The Company 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, a copy of which is attached hereto as **EXHIBIT G**) regarding the value of sales and use tax exemptions the Company and its Subagents, if any, have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with General Municipal Law Section 874(8). The Company 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 15th of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of the Company's authority to act as agent for the Agency.

(l) The Company acknowledges and agrees that, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), 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 shall be the sole party liable thereunder.

(m) The Company covenants and agrees that at all times during the Material Terms and Conditions Monitoring Period, it will (i) maintain its existence and not dissolve, (ii) continue to be a limited liability company subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise sell, assign, or dispose of all or substantially all of its property, business or assets. This Agreement may not be assigned in whole or part without the prior written consent of the Agency.

(n) The Company agrees that it will, throughout the term of, this Agent Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof. Notwithstanding the foregoing, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to this Section 2(n). In such event, the Company, with the prior written consent of the Agency (which shall not be unreasonably conditioned, delayed or withheld) may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency shall notify the Company that it must comply with such requirement or requirements.

3. Hold Harmless Provision. The Company 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, members, officers, employees, agents (except the Company), 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 Company of this Agent Agreement or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, constructing, rehabilitating, renovating, equipping, owning and leasing of the Equipment or of 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 executive director, directors, members, officers, agents 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.

4. Insurance Required.

Effective as of the date hereof and until the expiration or termination of the right of the Company to act as agent of the Agency hereunder, the Company 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, subject to commercially reasonable availability, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer

selected by the Company or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Company 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 Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company 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 Company by any applicable workers' compensation law. Limits may be satisfied through primary and excess policies.

5. Additional Provisions Respecting Insurance.

(a) All insurance required by Section 4 (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 Company 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 Company is engaged. All policies evidencing such insurance shall provide for at least thirty (30) days prior written notice of the cancellation thereof to the Company 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 Company and the Agency. All insurance requirements in Section 4 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.

(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 Company shall furnish evidence to the Agency that the policy has been renewed or replaced or is no longer required by this Agreement.

6. This Agent 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.

7. 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, or by a nationally recognized overnight courier, addressed as follows:

To the Agency:

TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY
6122 South Park Avenue
Hamburg, New York 14075
Attention: Executive Director

With a copy to:

To the Company:

KCE NY 6, LLC
25 Monroe Street, Suite 300
Albany, New York 12210

With a copy to:

Hodgson Russ LLP
140 Pearl Street, Suite 100
Buffalo, New York 14202
Attention: Daniel A. Spitzer, Esq.

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 mailed or personally delivered in the manner provided in this Section.

8. This Agent Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Erie County, New York.

9. The warranties, representations, obligations and covenants of the Company under this Agent Agreement shall be absolute and unconditional and shall remain in full force and effect during the term of this Agent Agreement, shall be deemed to have been relied upon by the Agency, and shall survive the delivery and termination of this Agent, regardless of any investigation made by the Agency. This Agent Agreement shall survive any termination or expiration of the Leaseback Agreement or the PILOT Agreement, as described below.

10. The parties are contemplating that, after any applicable public hearing(s), if required, the Agency will negotiate and enter into a lease agreement (the "Lease Agreement"), a leaseback

agreement (the "Leaseback Agreement"), and a PILOT Agreement with the Company. The Company agrees not to take title to any real property as agent for the Agency. The Agency will provide the Company with a bill of sale (a form of which is attached hereto as **EXHIBIT H**) which sells, transfers and delivers unto the Company and its successors and assigns, all Equipment which were acquired and installed and/or are to be acquired and installed by the Company as agent for the Agency pursuant to this Agent Agreement which Equipment is located or intended to be located at 2026 Electric Avenue in the Village of Blasdell, Town of Hamburg, Erie County, New York.

11. By executing this Agent Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (a) legal services, including but not limited to those provided by the Agency's general counsel or bond/transaction counsel, (b) other consultants retained by the Agency, if any, in connection with the Project; in accordance with the terms of the Administrative Fee Agreement between the Company and the Agency, and (c) with respect to enforcing this Agent Agreement (including reasonable attorney fees). The Company agrees that the Company is liable for payment to the Agency of all charges Agency in undertaking the Project notwithstanding the occurrence of any of (i) the Company's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Agency or the Company to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.


(Remainder of page intentionally left blank)

[Signature Page to Project and Agent Agreement]

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

TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY

Dated: Mar 10, 2022



Name: Sean P. Doyle
Title: Executive Director

State of New York)

County of Erie) ss.:

On the day of March 10 in the year 2022, before me, the undersigned, personally appeared, Sean Doyle, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public, State of New York

MARY ELLEN DORAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DO6366619
Qualified in Erie County
My Commission Expires 11-06-2025

[Signature Page to Project and Agent Agreement]

KCE NY 6, LLC

Dated: 12/9/2021



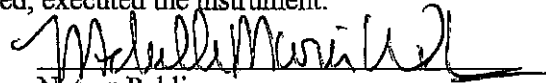
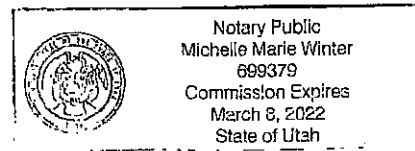
Name: Daniel Fitzgerald
Title: Member

State of ~~New York~~ ^{Utah})

County of ~~Albany~~) ss.:

^{Salt Lake}

On the day of ^{9th} ~~December~~ in the year 2021, before me, the undersigned, personally appeared, DANIEL FITZGERALD, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.


Notary Public

Utah
STATE OF ~~NEW YORK~~)
COUNTY OF ~~ALBANY~~) ss.:
Cattale

DANIEL FITZGERALD, being first duly sworn, deposes and says:

1. That I am the *Member* (Corporate Office) of KCE NY 6, LLC (Company) and that I am duly authorized on behalf of the Company to bind the Applicant.

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 tax, worker protection and environmental laws, rules and regulations.

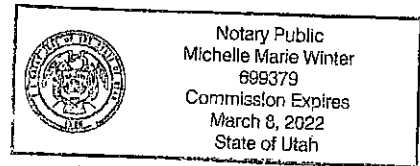
[Handwritten Signature]

(Signature of Officer)

Subscribed and affirmed to me under penalties of perjury this day of *December* ^{*9th*} 2021.

[Handwritten Signature]

(Notary Public)



SCHEDULE A

LIST OF APPOINTED AGENTS

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

Note: For each agent or subagent appointed by the Company, the Company must immediately notify the Agency and the Company shall, on request of the Agency, complete and submit to the Agency a NYS Form ST-60 for each agent or subagent.

APPENDIX A

LANGUAGE TO BE INCLUDED IN ALL CONTRACTS

"This contract is being entered into by [NAME OF COMPANY OR NAME OF SUBAGENT (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 {COMPANY}, consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at {Project Address} (the "Premises"). The acquisition of the machinery, equipment and building materials to be incorporated and installed in the Premises and all services and rentals of equipment related to the acquisition, construction and equipping of the Project shall be exempt from all New York State and local sales and use taxes if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption information letter of the Agency attached hereto as **EXHIBIT A-A**; and the Agent hereby represents that this contract is in compliance with the terms of the Agent and Financial Assistance Agreement by and between {COMPANY} and the Agency dated as of {Insurance Approval Date}. 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.

EXHIBIT A-A

FORM OF SALES TAX LETTER

SALES TAX LETTER

[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, 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 15th 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 reasonable 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,

TOWN OF HAMBURG INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Name:
Title:

EXHIBIT A

TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY LOCAL LABOR POLICY

Adopted: August 7, 2015, re-adopted as written January 26, 2021

Local Labor Workforce Certification

Project applicants (the "Company"), as a condition to receiving Financial Assistance (including a sales tax exemption, mortgage recording tax exemption, real property tax abatement, and/or bond proceeds) from the Town of Hamburg Industrial Development Agency (the "Agency"), will be required to utilize Local Labor, as defined below, for all projects involving the construction, expansion, equipping, demolition and/or remediation of new, existing, expanded or renovated facilities (collectively, the "Project").

Local Labor Defined

Local Labor is defined as individuals residing in Erie County, Niagara County, Chautauqua County, Cattaraugus County, Allegany County, Wyoming County, Genesee County, and Orleans County (collectively, the "Local Labor Area").

Local Labor Requirement

At least 90% of all Project employees of the general contractor, subcontractor, or subcontractor to a subcontractor (collectively, the "Workers") working on the Project must reside within the Local Labor Area. Companies do not have to be local companies as defined herein, but must employ local Workers residing within the Local Labor Area to qualify under the 90% local labor criteria.

It is understood that at certain times, Workers residing within the Local Labor Area may not be available with respect to a Project. Under this condition, the Company is required to contact the Agency to request a waiver of the Local Labor Requirement (the "Local Labor Waiver Request") based on the following circumstances and contingent on board approval:

- (i) Warranty issues related to installation of specialized equipment whereby the manufacturer requires installation by only approved installers;
- (ii) Specialized construction for which Local Labor Area Workers are not available;

- (iii) Documented lack of Workers meeting the Local Labor Area requirement. The Agency shall evaluate the Local Labor Waiver Request and make its determination related thereto based upon the supporting documentation received with such waiver request

Local Labor Reporting Requirement

Companies authorized to receive Financial Assistance from the Agency will be required to file or cause to be filed a Local Labor Utilization Report (the "Report") on such form as made available by the Agency, and as directed by the Agency, which will identify, for each Worker, the city, town, or village and associated zip code that each such Worker is domiciled in. The Report shall be submitted to the Agency as follows: (i) immediately prior to commencement of construction activities; and (ii) on or by the next following quarterly dates of January 1, April 1, July 1, and October 1 and each quarterly date thereafter through the construction completion date.

In addition, the Agency, or its designated agents, shall have the right, during normal business hours, to examine and copy the applicable books and records of the Company and to perform spot checks of all Workers at the Project site to verify compliance with the Local Labor Requirement throughout the construction period.

Enforcement

If Agency staff determines that: (i) the Local Labor Requirement is not being met; or (ii) Agency staff, upon use of its reasonable discretion, discovers or becomes aware of a compliance issue related to the Local Labor Requirement, then written notice of said Local Labor Requirement violation (the "Notice of Violation") shall be provided to the Company. The Company shall have 10 business days thereafter to either: (i) provide written confirmation to the Agency indicating that it has cured the violation and is now in compliance with the Local Labor Requirement; (ii) submit the Local Labor Waiver Request as described above; or (iii) confirm in writing its inability to meet the Local Labor Requirement. If the Company does not respond to the Agency's Notice of Violation, or if the Company confirms its inability to meet the Local Labor Requirement then the Agency shall immediately terminate any and all Financial Assistance being provided to the Project in accordance with the terms of the underlying agreements between the Agency and the Company with respect to the Project. If a Local Labor Waiver Request is submitted and the Agency declines to issue the requested waiver, then the Company shall have 10 business days after receipt of the notice of the waiver request denial to provide written confirmation to the Agency indicating that it has cured the violation and is now in compliance with the Local Labor Requirement. If the Agency does not receive such confirmation, the Agency shall then immediately terminate any and all Financial Assistance being provided to the Project in accordance with the terms of the underlying agreements between the Agency and the Company with respect to the Project.

The foregoing terms have been read, reviewed and understood by the Company and all appropriate personnel. The undersigned agrees and understands that the information contained herein must be transmitted and conveyed in a timely fashion to all applicable subcontractors, suppliers and materialmen. Furthermore, the undersigned realizes and understands that failure to abide by the terms herein could result in the Agency revoking all or any portion of Financial Assistance, whether already received or to be received by the Company, as it deems reasonable in its sole discretion for any violation hereof.

NAME OF COMPANY

By: _____

Name: _____

Title: _____

Sworn to before me this _____ day
of _____, 20 .

Notary Public

EXHIBIT B

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

Annual Reporting Questionnaire

★ Please Return Last Day February Each Calendar Year ★

Project Name: _____ Address: _____
Company Contact: _____
E-Mail _____
Phone Number: _____

(If contact information is incorrect please make the necessary changes to update our records)

The Hamburg Industrial Development Agency (the "Agency") is currently providing assistance in connection with the above named project. 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. Please answer the questions below and returned in the enclosed envelope. Call our office at 716-648-4145, _____ with _____ any _____ questions.

Section #1: Employment Information (only for location receiving IDA benefits):

Please list the total number of full time equivalent (FTE) employees for calendar year 2019 at the project location listed above, including full time equivalent contractors or employees of independent contractors that work at the project location, and special full time equivalent jobs created during calendar year 2019.

FTE jobs as of 12/31/19 _____ FTE construction jobs as of 12/31/19 ____

FTE jobs created during calendar year 2019 _____ FTE construction jobs created during
2019 _____

Complete only if the project is a multi-tenant facility:

Tenant Name	Number/Estimate of FTE Employees	Number/Estimate of PI Employees

- ✓ Please provide a copy of your Form NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance return for the fourth quarter of 2019.

(OVER)

Please provide the salary and fringe benefits averages or ranges for jobs created and retained by category.

Category of Jobs Retained & Created	Average Salary or Range	Average Fringe Benefits or Range
Management		
Professional		
Administrative		
Production		
Independent Contractor		
Other		

Section #2: Financing Information (complete only if you have an IDA issued bond):

Date of Bond Issue: _____ Bond Amount at Issue: _____
 Current Interest Rate: _____ Principal Balance at 12/31/2019: _____

Section #3: Tax Exemptions (complete only if you purchased goods with a HIDA sales tax letter in 2019):

Did your company receive Sales Tax Abatement on your project during 2019? Yes
 No

If yes, the value of sales tax saving received in 2019 _____
 (Applicable on exemptions taken using the HIDA sales tax exemption letter, actual tax savings NOT total purchases)

- ✓ Please provide a copy of the 2019 NYS ST-340 for the sales tax exemptions referenced above.

Did your company receive Mortgage Tax Abatement on the project during 2019? Yes
 No

(Only applicable the year a mortgage was placed on the project.)

If yes, the amount of the mortgage recording tax that was abated during 2019 _____

Section #4 *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 my agreement, including but not limited to voidance of the agreement and potential claw back of benefits.

Signed: _____ Date: _____

EXHIBIT C

HAMBURG INDUSTRIAL DEVELOPMENT AGENCY (HIDA) POLICY FOR RECAPTURE AND/OR TERMINATION AND/OR MODIFICATION OF FINANCIAL ASSISTANCE

Adopted: June 14, 2016, re-adopted as written February 27, 2020

Purpose:

To establish and provide a fair procedure compliant with Sections 874 and 875 of the New York State General Municipal Law and Hamburg IDA (HIDA) policies establishing a policy for recapture and/or termination and/or modification of all or a portion of Agency Financial Assistance.

Annual Review:

The HIDA staff will review annual reports it receives from companies to determine compliance with the Material Factors or other Significant Factors set forth in the Inducement Resolution. If HIDA staff determines that a company appears to be in violation of a Material or Significant Factor, the project will be considered non-compliant and enter full review by the Executive Committee.

Non-Compliance Process:

1. The HIDA shall notify the company in writing that in the Agency's determination they are or have violated a Material or Significant Factor. The notification will include the Factor(s) violated and seek an explanation from the company that may include economic or natural factors that led to the default. These factors should be discussed and predetermined to the extent possible by the Board and may include items such as, natural disaster, industry dynamics, unfair competition or economic events that were outside the control of the company.
2. The company shall be given an opportunity to remedy the violation and will have thirty (30) days to provide a written response or seek an extension of such response.
3. Upon receipt of the company's response, HIDA staff will review with the Executive Committee. The company shall be provided the opportunity to present before the Executive Committee, any information in the written response outlined above regarding why the Factor was not achieved. The Executive Committee will have the option of entering into Executive Session should material evidence be deemed proprietary.
4. Upon hearing the company's position, the Executive Committee will make a recommendation for proposed action and forward the matter to the full HIDA Board of

Directors. A written record will occur clearly stating the reason to, or not to, recapture and/or modify and/or reduce financial assistance.

5. Notwithstanding the foregoing, the HIDA Board of Directors, acting through its staff, retains the right to terminate Agency benefits for other significant factors. Cause for such termination of Agency benefits include, but are not limited to, failure to make PILOT payments, failure to make reports to the HIDA as detailed in transaction documents, failure to maintain insurance requirements, or other uncured breaches of HIDA transaction documents.

Compliance Period:

Unless otherwise noted in the Project's Inducement Resolution, Private Sector Investment and Local Labor during construction must be met by the Project Completion Date. Job creation and/or job retention targets must be met within 2 years of Project Completion Date and such job creation and/or job retention numbers must be maintained for one calendar year following the calendar year that the applicant met the job creation and/or job retention numbers.

Projects that do not involve a PILOT would be subject to maintaining its material terms one calendar year after a certificate of occupancy is issued or the expiration of a sales tax exemption.

Distribution of Recaptured Financial Assistance:

Any and all such returned/recaptured amounts of Agency Financial Assistance shall be redistributed to the appropriate tax jurisdiction unless agreed to otherwise by a local taxing jurisdiction.

STATE REQUIRED CRITERIA	MATERIAL TERMS	SIGNIFICANT FACTORS (This may vary based on project)
<p>Extent to which a project will create or retain permanent jobs</p> <p>Estimated value of tax exemptions</p> <p>Amount of private sector investment</p> <p>Likelihood of project being accomplished in a timely fashion</p> <p>Extent of new revenue provided to local taxing jurisdictions</p> <p>Any other misc. public benefits</p>	<p>1. Create or Retain Jobs (if applicable)</p> <p>2. Private Sector Investment</p> <p>3. Local Labor Construction</p>	<p>Exceeding sales tax exemption</p> <p>Failure to maintain insurance requirements</p> <p>Failure to make PILOT payment</p> <p>Failure to submit reports</p> <p>Annual Reporting State Reporting Etc.</p>

i Employment Commitment – that there were to be at least a certain stated number of FTE employees located at, or to be located at the Facility as stated in the Company’s application for Financial Assistance (the “Baseline FTE”) with an additional stated number of FTE to be created by the Company and the Company fails to maintain employment at 85% of the total of the Baseline FTE and new FTE. The Company shall have the right to establish that the failure to comply with the Employment Commitment was due to circumstances beyond their control.

ii Investment Commitment, the total investment actually made with respect to the Project at the Project Completion Date must equal 85% of the project cost as set forth in the application for Financial Assistance. The Company shall have the right to establish that it did not meet the requirements due to cost savings achieved by the Company and that the benefits that the Company has received have been reduced proportionately in accordance with the reduction in investment.

EXHIBIT D
PILOT AGREEMENT

EXHIBIT E

FORM OF NYS FORM ST-60 TO BE COMPLETED BY IDA AND FILED WITH THE NYS
TAX DEPARTMENT IDA UNIT WITHIN THIRTY (30) DAYS OF APPOINTMENT

(Attached Next Page)

PAYMENT IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT IN-LIEU-OF TAX AGREEMENT, dated as of November 1, 2020 (the "PILOT Agreement"), is by and between the **TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly organized and validly existing under the laws of the State of New York with offices at 6122 South Park Avenue, Hamburg, New York 14075 (the "Agency"), and **Key Capture Energy, LLC**, a Delaware Limited Liability Company duly organized, validly existing and in good standing under the laws of the State of Delaware and authorized to transact business in and by the State of New York, with offices at 25 Monroe Street, Suite 300 Albany, New York 12210 (the "Company").

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 Company submitted an application to the Agency (the "Application") requesting the Agency's assistance with a certain project (the "Project") with respect to the construction and installation of a 20 MW utility servicing battery energy storage facility for wholesale electric markets at 2026 Electric Avenue in the Village of Blasdell for lease to the Agency and subsequent Leaseback to the Lessee (the "Equipment", and collectively with the Parcels, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, commensurate with the Company's submission of the Application to the Agency, the Company has requested the Agency's consideration of a deviation from the Agency's Uniform Tax Exemption Policy ("UTEF") to allow for a payment-in-lieu-of-tax agreement ("PILOT Agreement") to utilize a per-MW payment structure and provide twenty (20) years of real property tax abatement for the Improvements (the "PILOT Deviation"), the terms of such PILOT Deviation having been negotiated by the Agency and Company; and

WHEREAS, in order to induce the Company to acquire, renovate, construct and equip the Facility, the Agency is willing to take a leasehold interest in the Improvements comprising the Facility pursuant to that certain Lease Agreement, dated as of _____, 2021 (the "Lease Agreement") and thereafter lease said Improvements and personal property back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement, dated as of _____, 2021 (the "Leaseback Agreement"); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special *ad valorem* levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into this PILOT Agreement making provisions for payments in lieu of taxes by the Company to the Agency for the benefit of Erie County (the "County"), the Town of Hamburg (the "Town"), and the Frontier Central School District (hereinafter the "School District" or "School" and, collectively with the County and the Town, the "Affected Tax Jurisdictions"); and

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:

Section I - Payment in lieu of Ad Valorem Taxes:

Section 1.1 A. Subject to the completion and filing by the taxable status date (**March 1, 2022**) (the "Taxable Status Date") of New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law ("RPTL") and Section 874 of the Act, the Facility shall be exempt from Real Estate Taxes commencing with the **2023** Town and County tax year, and the **2022/2023** School tax year. For purposes of the foregoing, "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County, Town and School. The Company shall provide to the Agency the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors to process the Exemption Application. Notwithstanding anything contained herein or in the Lease Agreement and/or Leaseback Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any valid, legal reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may, in good faith, contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired by such contest and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost as a result of such contest; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to timely file the Exemption Application with the appropriate assessors by the Taxable Status Date. The Company shall timely pay all Real Estate Taxes accruing against the Facility for tax years prior to those set forth above. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically covenants that it has withdrawn, or it will withdraw, from the RPTL Section 487 exemption, as same may apply to the Facility, prior to the March 1, 2022 Taxable Status Date and agrees that the exemptions provided for herein, supersede and are in substitution of the exemptions provided by Section 485-b or 487 of the RPTL. It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

B. Payee. As long as the Facility is owned by the Agency or under its jurisdiction, control or supervision, the Company agrees to pay annually to the Town of Hamburg Industrial Development Agency at 6122 South Park Avenue, Hamburg, New York 14075, or at

such other address as shall be designated from time to time by the Agency, for the benefit of the Affected Tax Jurisdictions, as a payment in-lieu-of-taxes, on or before December 15 of each year (each a "Payment Date"), commencing on December 15, 2021, an amount equal to the Total PILOT Payment as described in Schedule A attached hereto and as further described therein. Each annual PILOT Payment shall cover a "PILOT Year", which shall be July 1 through and including the succeeding June 30 fiscal tax year of the School, August 1 through and including the succeeding July 31 fiscal year of the Town, and the following January 1 through and including December 31 fiscal year of the County as shown on said Schedule A. The Agency shall send a bill (or cause a bill to be sent) to the Company for each Total PILOT Payment, on or before December 1 of each PILOT Year. The failure of the Agency to invoice or bill for any amounts due shall in no way relieve the Company from its obligations hereunder. The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

Section 1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder, if any, within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as *ad valorem* taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

Section 1.3 Tax Rates. For purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County, Town, School and special district purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT Payment due date. For school district purposes, the tax rates used to determine the PILOT Payment shall be the rate relating to the school year which includes the PILOT Payment due date.

Section 1.4 Valuation of Future Additions to the Facility.

A. The PILOT Payments provided for in this PILOT Agreement shall not increase or decrease based on (i) the construction cost of the Facility, (ii) any modifications, repairs, additions or deletions thereto, (iii) any modification of the real property interests comprising the Facility, or (iv) for any other reason, so long as there is no additional MW nameplate capacity added to the Facility above 10 MWs (any such improvement which increase the nameplate capacity of the Project above 10 MWs, together with any associated real property interests, roadways, equipment, transmission facilities, substations, or other improvements shall be collectively referred to as, the "Additional MW Facilities").

B. If there shall be a future addition to the Facility constructed or added in any manner after the date of this PILOT Agreement which constitutes Additional MW Facilities, the Company shall notify the Agency of such addition. The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter request. Beginning with the PILOT Years after the Town's Taxable Status Date after the commercial operation date of any such Additional MW Facilities, the Company shall become liable for payment of an increase in the Total PILOT

Payment. The Agency shall notify the Company of any proposed increase in the Total PILOT Payment related to such Additional MW Facilities based on the Town's assessed value of such Additional MW Facilities. If the Company shall disagree with the determination of assessed value for any Additional MW Facilities made by the Town, then, and in that event, said valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased PILOT Payment related to the Additional MW Facilities until a different PILOT Payment related to the Additional MW Facilities shall be established. If a lesser PILOT Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be recalculated and any excess payment (plus interest thereon as though such excess constituted a refund of Real Estate Taxes under RPTL Section 726), if any, shall be applied as a credit against the next succeeding Total PILOT Payment.

C. In the event any Turbine is Decommissioned (as defined below), the Company's obligation to make PILOT Payments hereunder shall terminate only with respect to any such Decommissioned Turbines and the Company's obligation to make PILOT Payments hereunder shall continue with respect to any remaining Turbine. A Turbine shall be deemed "Decommissioned" upon permanent removal of such Turbine and the repair by the Company of the land to substantially the condition prior to installation. The Company shall notify the Agency in writing of any Decommissioned Turbines in the manner required by Section 10.2 hereof.

Section 1.5 Period of Benefits.

A. The tax benefits provided for herein should be deemed to include (i) the **2022/2023** School tax year through the **2042/2043** School tax year and (ii) the **2023** Town and County tax year through the **2043** Town and County tax year. This PILOT Agreement shall expire on **December 31, 2043**; *provided, however*, the Company shall pay the **2043/2044** School tax bills and **2044** Town and County tax bill on the dates and in the amounts as if the Agency did not hold an interest in the Facility on the tax status date with respect to such tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this PILOT Agreement executed by both parties after any applicable public hearings.

- Special District Charges, Special Assessments and other charges.

Section 2.1 All lawfully levied and/or assessed special improvement district charges, special district charges, special assessments, and special *ad valorem* levies (specifically including but not limited to fire district charges), and pure water or water sewer charges are to be paid in full in accordance with normal billing practices.

- Transfer of Facility.

Section 3.1 In the event that the Agency's interests in the Facility are transferred from the Agency to the Company (the Lease Agreement and Leaseback Agreement are terminated) (the "Transfer") and the Company is ineligible for a continued tax exemption under some other tax incentive or exemption program, or if the exemption available under such other incentive program results in an amount due to the Affected Tax Jurisdictions in excess of the payment described in Section I hereof, the Company agrees to pay to each of the Affected Tax Jurisdictions within thirty

(30) days (plus any applicable grace period) after receipt of a valid invoice or bill, an amount equal to the difference between the amount due under Section 1 hereof and the taxes and assessments due in accordance with RPTL Sections 302 and 520 or other applicable law. If the Company is eligible for a continued tax exemption under another tax incentive or exemption program, the amount of the Company's payment shall be reduced by the amount of exemption under such program.

- Assessment Challenges.

Section 4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company had not entered into the Lease Agreement and the Leaseback Agreement, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before, and be heard by, the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

Section 4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special *ad valorem* levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this PILOT Agreement, as if, and to the same extent as if, the Company had not entered into the Lease Agreement and the Leaseback Agreement.

Section 4.3 In the event that any real estate tax assessment office or tax levy officer fails to assess the Facility or apply tax rates to such assessments, the Company shall provide notice following discovery of such failure to the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply special district tax rates to the respective assessments and request that such offices properly assess Facility or applicable portions thereof.

- Changes in Law.

Section 5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

- Effect of Fulfillment of the Requirement and Clawback.

Section 6.1 Once having paid the amounts required by this PILOT Agreement, the Company shall not be required to pay any real estate taxes for which payments in lieu of taxes have been made. Notwithstanding the foregoing, in the event that the Agency shall reasonably determine (i) that the Company has submitted an application, or documentation in support of an application, which contained a false or intentionally misleading statement as to any fact which is material to the Company's application for benefits or which omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, and (ii) that such false or misleading statement or omission was made knowingly and intentionally for the purpose of obtaining financial assistance,

then the Company shall forfeit any future tax exemptions or abatements and shall be required to pay to the appropriate taxing authority the amount of any real property exemptions received. The amount of benefits recaptured shall be the difference between the amount of payment in lieu of taxes paid and the amount that would have been paid in real estate taxes if the Agency did not have an interest in the Project.

Section 6.2 Notwithstanding anything contained herein to the contrary, the Agency and the Company have entered into that certain Agent and Financial Assistance Project Agreement, dated as of _____, 2021 (the "Agent Agreement"), pursuant to which the Agency has the right to terminate, recapture, and/or modify the Company's real property tax exemption benefits, as identified herein, upon the terms and conditions set forth in the Agent Agreement. The Company recognizes and agrees that, if at any time, it fails to maintain its covenants and/or the terms and conditions as set forth in the Agent Agreement so as to effect a Recapture Event Determination as described within the Agent Agreement, then the Company may be subject to immediate termination or modification of this PILOT Agreement and/or be required to pay to the Agency an amount equal to any or all of real property tax exemption benefits as prescribed by the terms and conditions of the Agent Agreement.

I- Events of Default.

Section 7.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I hereof within thirty (30) days after the Payment Date (the "Delinquency Date") and failure to pay same within ten (10) days after receipt of notice of said delinquency; (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; and failure to pay same within the (10) days after receipt of notice of said delinquency; (iii) cure any occurrence and/or continuance of any events of default under the Lease Agreement after any applicable cure periods; and/or (iv) cure any occurrence and/or continuance of any events of default under the Host Community Agreement, dated as of the date hereof and entered into by the Company and the Town. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

Section 7.2 If payments pursuant to Section I herein are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows: (A) with respect to payments to be made pursuant to Section I hereof, if said payment is not received by the Delinquency Date defined in Section 6.1 above, the Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5.00%) of the amount due, and (ii) for each month, or any part thereof, that any such payment is

delinquent beyond the first month, interest shall accrue and be paid on the total amount due plus a late payment penalty in an amount equal to one percent (1%) per month until the payment is made; and (B) with respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, the Company shall pay, in addition to said payment, the applicable penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

- Survival of the Company's Obligations.

Section 8.1 The obligations of the Company to make payments or otherwise perform prior to the date of termination of this Tax Agreement shall survive the termination or expiration of the Leaseback Agreement, for whatever reason terminated or expired.

- Assignment

Section 9.1 No portion of any interest in this Tax Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed.

- Miscellaneous.

Section 10.1 Counterparts. This PILOT Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which together shall constitute a single instrument.

Section 10.2 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 Hamburg Industrial Development
Agency
6122 South Park Avenue
Hamburg, New York 14075
Attn: Executive Director

With Copy To: Jennifer L. Strong, Esq.
Neill & Strong Attorneys
13166 Main Street
Alden, New York 14004

To the Company: Key Capture Energy, LLC,
25 Monroe Street, Suite 300 Albany, New York
12210

With Copy To:

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 mailed or personally delivered in the manner provided in this Section.

Section 10.3 Applicable Law. This PILOT Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Erie County, New York.

Section 10.4 Nonrecourse. Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency or the Affected Taxing Jurisdictions, as the case may be, by the Company. No member of the Agency nor any person executing this PILOT Agreement on the Agency's behalf shall be liable personally under this PILOT Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officers, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this PILOT Agreement.

Section 10.5 Severability. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this PILOT 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 PILOT 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 10.6 Section Headings Not Controlling. The headings of the several Sections in this PILOT Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this PILOT Agreement.

Section 10.7 No Waiver. In the event any agreement herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.8 Amendment. This PILOT Agreement may not be amended, changed, modified or altered except in writing executed by the parties hereto.

Section 10.9 Complete Agreement. Unless supplemented or otherwise amended in writing by the Company and the Agency in accordance with the laws of the State of New York, this PILOT Agreement constitutes the parties' entire agreement with respect to the subject set forth

herein, and no other agreements or policies, written or unwritten, implied or express, will be deemed effective.

Section 10.10 Change in Tax Parcel or Tax Account Identification Numbers. Any change, amendment, increase, or decrease of the tax identification or parcel numbers currently used by a Town to identify or classify all or any part of the Facility shall not modify this PILOT Agreement.

Section 10.11 Termination. In the event the Leaseback Agreement and the Lease Agreement are terminated for any reason, this PILOT Agreement shall be terminated as of the effective date of the termination of such agreements.

[Remainder of Page Intentionally Left Blank]

[Signature Page to PILOT Agreement]

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

**TOWN OF HAMBURG INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Sean Doyle
Title: Executive Director

KEY CAPTURE ENERGY, LLC,

By: _____
Name:
Title:

SCHEDULE A

KEY CAPTURE ENERGY PILOT PAYMENT WORKSHEET

Description	2021 Rate / \$1000 AV	Percent of Total Levy
County Sewer	9.474242	14%
County Water	5.178768	8%
Local Millage	21.48	33%
State Millage	29.621483	45%
Subtotal	\$59,832.00	100%

Year	Unit Payment	MW	Total Payment	County	Town	Village	School	Total Annual	Payment Based on Full Value	Savings
1	\$1,000.00	20	\$20,000.00	\$2,800.00	\$1,600.00	\$6,600.00	\$9,000.00	\$20,000.00	\$0.00	\$0.00
2	\$1,010.00	20	\$20,200.00	\$2,828.00	\$1,616.00	\$6,666.00	\$9,090.00	\$20,200.00	\$0.00	\$0.00
3	\$1,020.10	20	\$20,402.00	\$2,856.28	\$1,632.16	\$6,732.66	\$9,180.90	\$20,402.00	\$0.00	\$0.00
4	\$1,030.30	20	\$20,606.00	\$2,884.84	\$1,648.48	\$6,799.99	\$9,272.71	\$20,606.00	\$0.00	\$0.00
5	\$1,040.60	20	\$20,812.00	\$2,913.69	\$1,664.97	\$6,867.99	\$9,365.44	\$20,812.00	\$0.00	\$0.00
6	\$1,051.01	20	\$21,020.20	\$2,942.83	\$1,681.62	\$6,936.57	\$9,459.09	\$21,020.20	\$0.00	\$0.00
7	\$1,061.52	20	\$21,230.40	\$2,972.26	\$1,698.43	\$7,006.03	\$9,553.68	\$21,230.40	\$0.00	\$0.00
8	\$1,072.14	20	\$21,442.71	\$3,001.98	\$1,715.42	\$7,076.09	\$9,649.22	\$21,442.71	\$0.00	\$0.00
9	\$1,082.86	20	\$21,657.13	\$3,032.00	\$1,732.57	\$7,146.85	\$9,745.71	\$21,657.13	\$0.00	\$0.00
10	\$1,093.69	20	\$21,873.71	\$3,062.32	\$1,749.90	\$7,218.32	\$9,843.17	\$21,873.71	\$0.00	\$0.00
11	\$1,104.62	20	\$22,092.44	\$3,092.94	\$1,767.40	\$7,290.51	\$9,941.60	\$22,092.44	\$0.00	\$0.00
12	\$1,115.67	20	\$22,313.37	\$3,123.87	\$1,785.07	\$7,363.41	\$10,041.02	\$22,313.37	\$0.00	\$0.00
13	\$1,126.83	20	\$22,536.50	\$3,155.11	\$1,802.92	\$7,437.05	\$10,141.43	\$22,536.50	\$0.00	\$0.00
14	\$1,138.09	20	\$22,761.87	\$3,186.66	\$1,820.95	\$7,511.42	\$10,242.84	\$22,761.87	\$0.00	\$0.00
15	\$1,149.47	20	\$22,988.48	\$3,218.53	\$1,839.16	\$7,586.53	\$10,345.27	\$22,988.48	\$0.00	\$0.00
16	\$1,160.97	20	\$23,219.38	\$3,250.71	\$1,857.55	\$7,662.40	\$10,448.72	\$23,219.38	\$59,833.00	\$36,613.62
17	\$1,172.58	20	\$23,451.57	\$3,283.22	\$1,876.13	\$7,739.02	\$10,553.21	\$23,451.57	\$59,833.00	\$36,381.43
18	\$1,184.30	20	\$23,686.09	\$3,316.05	\$1,894.89	\$7,816.41	\$10,658.74	\$23,686.09	\$59,833.00	\$36,146.91
19	\$1,196.15	20	\$23,922.95	\$3,349.21	\$1,913.84	\$7,894.57	\$10,765.33	\$23,922.95	\$59,833.00	\$35,910.05
20	\$1,208.11	20	\$24,162.18	\$3,382.71	\$1,932.97	\$7,973.52	\$10,872.98	\$24,162.18	\$59,833.00	\$35,670.82
Total PILOT										
				\$61,653.21	\$35,230.41	\$145,325.43	\$188,171.04	\$440,380.08	\$299,165.00	\$180,722.83

Full value of the site improvements is assessed at \$910,000 after equalization

Fees	Amount
IDA Fee	\$183,234
IDA Counsel Fee	\$20,000.00
TOTAL FEES	\$203,233.54

Savings	Amount
Property Tax	\$180,722.83
Mortgage Recording	\$102,126.00
Sales Tax	\$1,603,293.00
NET Savings (Estimated)	\$1,682,508.29

Percentage savings / Costs 0.096166205

Based on 1% Hard Construction Costs
 Based on 1% Hard Construction Costs
 Mortgage \$13,618,012
 Based on \$18,323,354 in purchases
 Based on \$1,886,141.83

EXHIBIT F-1

NYS FORM ST-123

FOR

COMPANY

(Attached Next Page)

EXHIBIT F-2

NYS FORM ST-123
FOR
SUBAGENTS OF COMPANY
(Attached Next Page)

EXHIBIT F-3
INVOICE RIDER FORM
(Attached Next Page)

INVOICE RIDER

(Complete and Attach to Invoice)

I, _____ the _____ of certify that I am a duly appointed agent of the Town of Hamburg Industrial Development Agency ("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 Agent and Financial Assistance Agreement, dated as of {Insurance Approval Date}, by and between the Agency and {Company},

Name of the Project: {Company} Project

Street address of the Project Site: {Project Address} City/Town of
County, New York

IDA OSC project number: 140

EXHIBIT G

NYS FORM ST-340 TO BE COMPLETED BY THE COMPANY AND FILED ANNUALLY
WITH THE NYS TAX DEPARTMENT IDA UNIT NO LATER THAN FEBRUARY 15TH OF
EACH YEAR

(Attached Next Page)

EXHIBIT H

BILL OF SALE

The TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York with offices at {New York} (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from {COMPANY}, a {Entity Type} duly organized, validly existing and in good standing under the laws of the State of with offices at {Company Address} (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee and its successors and assigns, the Equipment [as defined in the Agent and Financial Assistance Agreement dated {Insurance Approval Date} (the "Agent Agreement"), as may be amended from time to time], which were acquired and installed and/or are to be acquired and installed by the Grantee as agent for the Grantor pursuant to the Agent Agreement, which Equipment is located or intended to be located at the Grantee's Facility located at {Project Address}.

TO HAVE AND TO HOLD the same unto the Grantee and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE EQUIPMENT OR ANY PART THEREOF FOR THE GRANTEE'S PURPOSES OR NEEDS. THE GRANTEE SHALL ACCEPT TITLE TO THE EQUIPMENT "AS IS," WITHOUT RECOURSE OF ANY NATURE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS

FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. THE EVENT OF ANY DEFECT OF DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be-executed in its name by the officer described below on the date indicated beneath signature of such officer and dated as of the day of _____, 20

TOWN OF HAMBURG INDUSTRIAL
DEVELOPMENT AGENCY

Form Only - Do Not Sign

By:
Name:
Title: