

## PROJECT AND AGENT AGREEMENT

THIS PROJECT AND AGENT AGREEMENT (hereinafter, the "Agent Agreement"), made as of the \_\_\_\_ day of September, 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"), Lionel Perera and Nirmala P. Perera, Trustees of the Perera Family Trust, a California Trust authorized in and by the State of New York, with offices at 2250 South Central Avenue, Compton, California 90274 (the "Lessee") and CARBON ACTIVATED CARBON CORPORATION, a California Corporation duly organized, validly existing and in good standing under the laws of the State of California and authorized to conduct business in and by the State of New York, with offices at 2250 South Central Compton, California 90274 (the "Sublessee") (collectively 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: acquisition and renovation by the Lessee as agent for the Agency with a lease leaseback transaction with respect to an approximately 74,000 square foot existing building located at 3830 Jeffrey Boulevard, Hamburg, New York, by the Perera Family Trust, as Agent for the Agency, for lease to the Agency and Leaseback to the Perera Family Trust for further sublease to Carbon Activated Corporation, who will be the sole occupant of the back office and warehouse facility which will produce, warehouse and distribute activated carbon; and

WHEREAS, by Resolution adopted on June 16, 2021 and August 18, 2021 Agency authorized the Company to receive mortgage tax abatement and real property tax abatements. The Company has elected not to apply for any sales and use tax exemptions; and

WHEREAS, by its Resolutions, 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 mortgage recording tax, and (b) a partial abatement from real property taxes benefit through a **ten 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

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 authorized in the Resolutions. The right of the Company to act as agent of the Agency shall expire on **August 18, 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.

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 Lessee is a Trust duly organized in California and, validly existing and in good standing under the laws of the State of California and 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. The Sublessee a Corporation duly organized in California and, validly existing and in good standing under the laws of the State of California and in and by the State of New York.

(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 Town of Hamburg, 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 Projects 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 August 18, 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 renovate a 74,000 square foot building and maintain such employment for a one calendar 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 (\$5,050,000.00) 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 retain 10 FT and 5 PT and hire 12 FT and 7 PT 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. The Company shall have the right to establish that the failure to comply with the Employment Commitment was dues 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 back office and warehouse facility for activated carbon (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 retained and the full time equivalent jobs created as a result of the financial assistance, 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 or retained, 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 no sales and use tax exemptions will be used (ii) confirms that the mortgage recording tax exemption amount shall be approximately **\$29,250.00** and (iii) and confirms that real property tax abatement benefits to be provided to the Company over the **ten** 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 **\$604,314.50**.

(i) Intentionally Omitted.

(j) Intentionally Omitted.

(k) Intentionally Omitted.

(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 Trust and Corporation, respectively, 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(p). 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, 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.

#### 5. Additional Provisions Respecting Insurance.

(a) All insurance required by Section 8 (c) hereof shall name the Agency as an additional insured, as its interest may appear. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the 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 8 may be satisfied by blanket policies subject to the reasonable approval by the Agency; provided, however, that approval or acceptance by a commercial lender (if any) in connection with the financing of the Project shall not require approval by the Agency. All or some of Section 8 insurance requirements may be satisfied by an Owner Controlled Insurance Program ("OCIP") subject to approval by the Agency; provided, however, that approval or acceptance by a commercial lender in connection with the financing of the Project shall not require approval by the Agency.

(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

To the Lessee: Lionel Perera and Nirmala P. Perera, Trustees of the Perera Family Trust  
2250 South Central Avenue  
Compton, CA 90274

To the Sublessee: Carbon Activated Corporation  
2250 South Central Avenue  
Compton, CA 90274

With a copy to: Phillips Lytle, LLP  
28 East Main Street, Suite 1400  
Rochester, NY 14614  
Attn" Anthony J. Iacchetta, 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.

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.

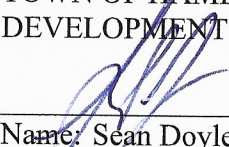
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[Signature Page to Project and Agent Agreement]

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

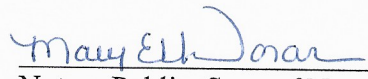
Dated: 9/30/2021

  
Name: Sean Doyle  
Title: Executive Director

State of New York)

County of Erie ) ss.:

On the day of 20, September, in the year 2021, 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 11-06-2021

[Signature Page to Project and Agent Agreement]

Dated: 9/24/2021  
[Signature]

Lionel Perera, as Trustee of the Perera Family Trust

[Signature]  
Nirmala P. Perera, as Trustee of the Perera Family Trust

Dated: 9.24.21

CARBON ACTIVATED CORPORATION  
as Sublessee

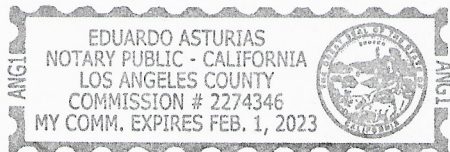
By [Signature]  
Lionel Perera, President

STATE OF CALIFORNIA )  
Los Angeles ) SS..  
COUNTY OF \_\_\_\_\_ )

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On the 24<sup>th</sup> day of September, in the year 2021, before me, the undersigned, personally appeared Lionel Perera and Nirmala P. Perera, 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 signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]  
Notary Public

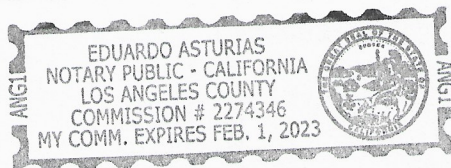


A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
                                  )SS..  
COUNTY OF Los Angeles)

On the 24 day of September, in the year 2021, before me, the undersigned, personally appeared Lionel Perera, 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 signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public 

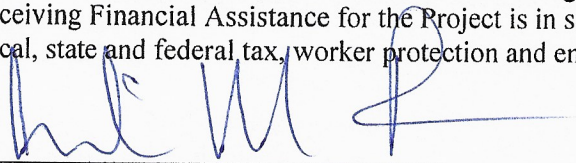


STATE OF CALIFORNIA)  
COUNTY OF \_\_\_\_\_ ) ss.:

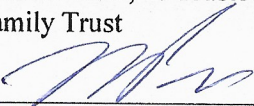
Lionel Perera and Nirmala P. Perera, being first duly sworn, deposes and says:

1. That We are the Trustees of Perera Family Trust (Lessee ) and that we are duly authorized on behalf of the Company to bind the Applicant.

2. That the Lessee 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.



Lionel Perera, as Trustee of the Perera Family Trust

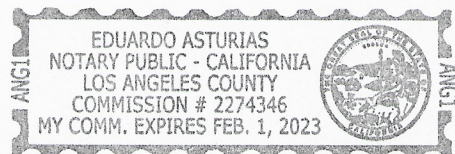
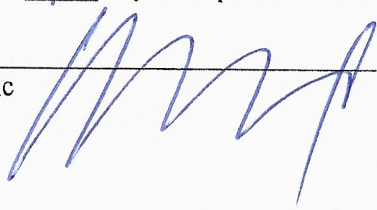


Nirmala P. Perera, as Trustee of the Perera Family Trust

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Subscribed and affirmed to me under penalties of perjury this 24<sup>th</sup> day of September 2021.

Notary Public



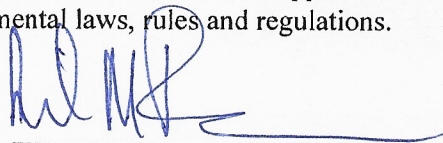
STATE OF CALIFORNIA)

COUNTY OF ~~Los Angeles~~ ss.:

Lionel Perera, being first duly sworn, deposes and says:

1. That I am the President of Carbon Activated Corporation (Sublessee ) and that I am duly authorized on behalf of the Company to bind the Applicant.

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



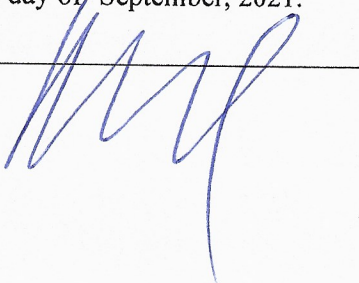
Lionel Perera, President

Subscribed and affirmed to me under penalties

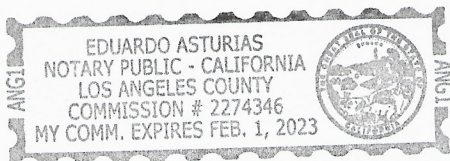
of perjury this day of, September, 2021.

SEP 24 2021

Notary Public



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.



**SCHEDULE A**  
**Intentionally Omitted**



**APPENDIX A**  
**Intentionally Omitted.**

**EXHIBIT A-A**

FORM OF SALES TAX LETTER  
Intentionally Omitted.

## EXHIBIT A

### TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY LOCAL LABOR POLICY

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

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#### **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:  
Company Contact:  
E-Mail  
Phone Number:

Address:

*(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 \_\_\_\_\_  
2019 \_\_\_\_\_

FTE construction jobs created during

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

Tenant Name	Number/Estimate of FT Employees	Number Estimate of PT 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 \_\_\_\_\_  
\_\_\_\_\_.

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**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 avoidance 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

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#### **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.

<b>STATE REQUIRED CRITERIA</b>	<b>MATERIAL TERMS</b>	<b>SIGNIFICANT FACTORS</b> List may vary based on project
<ul style="list-style-type: none"> <li>- Extent to which a project will create or retain permanent jobs</li> <li>- Estimated value of tax exemptions</li> <li>- Amount of private sector investment</li> <li>- Likelihood of project being accomplished in a timely fashion</li> <li>- Extent of new revenue provided to local taxing jurisdictions</li> <li>- Any other misc. public benefits</li> </ul>	<ol style="list-style-type: none"> <li>1. Create or Retain Jobs (If applicable) <sup>i</sup></li> <li>2. Private Sector Investment<sup>ii</sup></li> <li>3. Local Labor Construction</li> </ol>	<ol style="list-style-type: none"> <li>1. Exceeding Sales Tax Exemption</li> <li>2. Failure to maintain Insurance requirements</li> <li>3. Failure to make PILOT payments</li> <li>4. Failure to submit reports – Annual Reporting, State Reporting, Etc.</li> </ol>

<sup>i</sup> 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.

<sup>ii</sup> 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**

Intentionally Omitted.

**EXHIBIT F-1**

Intentionally Omitted.

**EXHIBIT F-2**

Intentionally Omitted.

**EXHIBIT F-3**

Intentionally Omitted.



**INVOICE RIDER**  
**Intentionally Omitted.**

**EXHIBIT G**

Intentionally Omitted.

**EXHIBIT H**  
**Intentionally Omitted.**