

DRAFT FOR DISCUSSION PURPOSES ONLY
DATED: [DRAFTDATE]
CLOSING ITEM NO.: A-__

[AGENCYNAME] INDUSTRIAL DEVELOPMENT AGENCY

AND

[COMPANY]

UNIFORM AGENCY PROJECT AGREEMENT

DATED AS OF [DOCUMENTDATE]

RELATING TO FINANCIAL ASSISTANCE GRANTED BY THE
AGENCY WITH RESPECT TO A CERTAIN PROJECT LOCATED AT
[PROJECTADDRESS].

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UNIFORM AGENCY PROJECT AGREEMENT

THIS UNIFORM AGENCY PROJECT AGREEMENT dated as of [DocumentDate] (the “Uniform Agency Project Agreement”) by and between [AGENCYNAME] INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at [AgencyStreet1], [AgencyCityState] (the “Agency”) and [COMPANY], a [CompanyType] duly organized and validly existing under the laws of the [CompanyJurisdiction] having an office for the transaction of business located at [CompanyStreet1], [CompanyCityState] [CompanyZip] (the “Company”);

WITNESSETH:

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

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

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

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

WHEREAS, in [ApplicationMonthYear], [Company] (the “Company”), a [CompanyType] duly organized and validly existing under the laws of the [CompanyJurisdiction], presented an application (the “Application”) to the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project to include the following: (A) [ProjectDescription]; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

[WHEREAS PARAGRAPHS TO BE INSERTED BASED ON TRANSACTION STRUCTURE]

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

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

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

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

ARTICLE I

DEFINITIONS

SECTION 1.01. DEFINITIONS. All capitalized terms used herein and not otherwise defined herein shall have the same meanings as set forth in the Lease Agreement. The following words and terms used in this Uniform Agency Project Agreement shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent.

“Application” means the application submitted by the Company to the Agency in [ApplicationMonthYear] with respect to the Project, a copy of which is attached as Schedule D, in which the Company (A) described the Project, (B) requested that the Agency grant certain Financial Assistance with respect to the Project, and (C) indicated the Public Benefits that would result from approval of the Project by the Agency.

“Basic Documents” shall have the meaning set forth in the Lease Agreement, and includes this Uniform Agency Project Agreement.

“Completion Date” means the earlier to occur of (A) [CompletionDate] or (B) such date as shall be certified by the Company to the Agency as the date of completion of the Project pursuant to Section 4.2 of the Lease Agreement, or (C) such earlier date as shall be designated by written communication from the Company to the Agency as the date of completion of the Project.

“Contract Employee” means (A) a full-time, private-sector employee (or self-employed individual) that is not on the Company’s payroll but who has worked for the Company at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee, or (B) 2 part-time, private-sector employees (or self-employed individuals) that are not on the Company’s payroll but who have worked for the Company at the Project Facility for a combined minimum of 35 hours per week for not less than 4 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee.

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

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

“Financial Assistance” means exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes as more particularly described in the Basic Documents.

“Full Time Equivalent Employee” means (A) a full-time, permanent, private-sector employee on the Company’s payroll, who has worked at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties; or (B) two part-time, permanent, private-sector employees on Company’s payroll, who have worked at the Project Facility for a combined minimum of 35 hours per week for not less than 4 consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties; or (C) a Contract Employee.

For purposes of this Project Benefits Agreement and satisfaction of the Employment Levels (as defined herein), the total number of Full Time Equivalent Employees will be calculated as follows: (1)

using the definition of Full Time Equivalent Employee immediately above, determine the number of Full Time Equivalent Employees working at the Project Facility, (2) determine the total hours worked by such Full Time Equivalent Employees (including overtime hours), and (3) divide the total amount of hours worked by the Full Time Equivalent Employees by 35.

By way of example, if the Company employees 65 Full Time Equivalent Employees at the Project Facility, each of the Full Time Equivalent Employees works 40 regular hours per week, and total overtime in a given week is equal to 50 hours, the equation referenced in the paragraph above would be calculated as follows:

$$65 \text{ (FTE)} \times 40 \text{ (Regular Hours)} = 2600 + 50 \text{ (Overtime Hours)} = 2650 \text{ (Hours)}$$
$$2650 \text{ (Hours)} / 35 = 74.29 \text{ (FTE)}$$

“Initial Employment Plan” means the initial plan, based on the employment projections contained in the Application, regarding the number of people expected to be employed at the Project Facility and certain other matters, in substantially the form attached as Exhibit G to the Lease Agreement.

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

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

“Payment in Lieu of Tax Agreement” means the payment in lieu of tax agreement dated as of [DocumentDate] by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Project Facility, as such agreement may be amended or supplemented from time to time.

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

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

“Recapture Events” shall mean the following:

- (1) failure to complete the acquisition, construction, and installation of the Project Facility;
- (2) failure by the Company to meet at least eighty percent (80%) of the Employment Level requirements contained in Section 3.02(E) hereof and in the Application or Initial Employment Plan;
- (3) liquidation of substantially all of the Company’s operating assets and/or cessation of substantially all of the Company’s operations;
- (4) relocation of all or substantially all of Company’s operations at the Project Facility to another site, or the sale, lease or other disposition of all or substantially all of the Project Facility;
- (5) transfer of jobs equal to at least fifteen percent (15%) of the Company’s Employment Level out of [ProjectCounty] County, New York;

(6) failure by the Company to comply with the annual reporting requirements or to provide the Agency with requested information;

(7) sublease of all or part of the Project Facility in violation of the Basic Documents;

(8) a change in the use of the Project Facility, other than as [ProjectUse] and other directly and indirectly related uses; or

(9) failure by the Company to make an actual investment in the Project by the Completion Date equal to or exceeding 90% of the Total Project Costs as set forth in the Application.

“Recapture Period” means a period ending on [RecapturePeriod].

SECTION 1.02. INTERPRETATION. In this Uniform Agency Project Agreement, unless the context otherwise requires:

(A) the terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms as used in this Uniform Agency Project Agreement, refer to this Uniform Agency Project Agreement, and the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the date of this Uniform Agency Project Agreement;

(B) words of masculine gender shall mean and include correlative words of feminine and neuter genders;

(C) words importing the singular number shall mean and include the plural number, and vice versa;

(D) any headings preceding the texts of the several Articles and Sections of this Uniform Agency Project Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Uniform Agency Project Agreement nor affect its meaning, construction or effect; and

(E) any certificates, letters or opinions required to be given pursuant to this Uniform Agency Project Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Uniform Agency Project Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

(A) Power. The Company is a [CompanyType] duly organized and validly existing under the laws of the [CompanyJurisdiction], is duly authorized to do business in the State and has the power under the laws of the [CompanyJurisdiction] to enter into this Uniform Agency Project Agreement and to perform and carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement, and by proper action of its [BorrowerGovBody] has been duly authorized to execute, deliver and perform this Uniform Agency Project Agreement.

(B) Authorization. The Company is authorized and has the power under its [CompanyOrganizationDocument], [CompanyOperatingDocument] and the laws of the [CompanyJurisdiction] to enter into this Uniform Agency Project Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement. By proper action of its [BorrowerGovBody], the Company has duly authorized the execution, delivery, and performance of this Uniform Agency Project Agreement and the consummation of the transactions herein contemplated.

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

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

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

ARTICLE III

COVENANTS AND AGREEMENTS

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

- (1) sales and use tax exemptions (estimated): \$ _____
- (2) a mortgage recording tax exemption (estimated): \$ _____
- (3) a real property tax exemption (estimated): \$ _____

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

- (1) That the Project is described as follows: [ProjectDescription].
- (2) That the Project will furnish the following benefits to the residents of [ProjectCounty] County, New York (the "Public Benefits"): which Public Benefits are described in Exhibit A to the Approving Resolution.

(C) Payment in Lieu of Tax Agreement. A copy of the Payment in Lieu of Tax Agreement is attached as Schedule C. The attached Payment in Lieu of Tax Agreement describes the dates the payments in lieu of taxes are to be made and includes a [table or formula] describing the amount of payments in lieu of taxes to be made.

(D) Contingent Nature of the Financial Assistance. Notwithstanding the provisions of Section 3.01(A) of this Uniform Agency Project Agreement, the Agency and the Company agree that the amount of Financial Assistance to be received by the Company with respect to the Project shall be contingent upon, and shall bear a direct relationship to, the success or lack of success of the Project in delivering the promised Public Benefits.

(E) Application. The Company represents and warrants that the information contained in the Application is true and correct.

SECTION 3.02. COMPANY AGREEMENTS. The Company hereby agrees as follows:

(A) Filing – Closing Date. To file with the Agency, prior to the Closing Date, an employment plan, based on the employment projections contained in the Application, regarding the number of people expected to be employed at the Project Facility and certain other matters, in substantially the form attached as Exhibit G to the Lease Agreement.

(B) Filing – Annual. To file with the Agency, on an annual basis, within sixty (60) days after the end of each calendar year, a report regarding the number of people employed at the Project Facility and

certain other matters as required under Applicable Law, an annual status report (the “Annual Status Report,” in substantially the form attached hereto as Schedule E and attached as Exhibit H to the Lease Agreement).

(C) Employment Listing. To list new employment opportunities created as a result of the Project with the following entities (hereinafter, the “JTPA Entities”): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)).

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

(E) Employment Level. (1) Pursuant to the Application, there will be no full-time equivalent employees at the Project Facility.

(2) (a) To verify that the Employment Level is being achieved at the Project Facility and the information contained in the Annual Status Report, the Company is required to submit, or cause to be submitted, within sixty (60) days after the end of each calendar year: a form NYS-45 as of the last payroll date in the month of December (the “Quarterly Report,” a copy of which is attached hereto as Schedule A and, together with the Annual Status Report described in Section 3.02(B) above, being collectively referred to as the “Employment Affidavits”) or some other form that is explicitly approved by the Agency. Full Time Equivalent Employees for each calendar year during the term of this Uniform Agency Project Agreement shall be the number reported in the Employment Affidavits delivered by the Company pursuant to Section 3.02(B) and this Section 3.02(E)(2).

(b) In the event that some or all of the Full Time Equivalent Employees employed at the Project Facility constitute Contract Employees, it shall be the responsibility of the Company to deliver, or cause to be delivered, the Quarterly Reports of the employers relating to such Contract Employees. The Company hereby agrees to provide such Quarterly Reports in accordance with the terms contained in Section 3.02(E)(2)(a) above.

(3) For purposes of determining the number of Full Time Equivalent Employees, (i) no more than ten percent (10%) of such Full Time Equivalent Employees may consist of Contract Employees, and (ii) up to ten percent (10%) of such Full Time Equivalent Employees may be employed off site in other facilities located in Allegany County, New York.

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

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

(G) PILOT Reporting. Within sixty (60) days after the end of each calendar year, the Company shall furnish to the Agency a certificate of an Authorized Representative of the Company stating that all payment in lieu of tax payments for the prior calendar year have been paid on time. In the event that such payments have not been paid on time, the Company shall certify as to the nature and period of non-payment and what action the Company has taken or proposes to take with respect compliance with future payment requirements.

(H) Access to the Project Facility. As provided in Section 8.3 of the Lease Agreement, the Company agrees that the Agency and its duly authorized agents shall have the right at all reasonable times, upon at least twenty-four (24) hours prior written notice, except in the case of an emergency, to enter upon and to examine and inspect the Project Facility for the purpose of confirming the information and certificates provided by the Company pursuant to this Uniform Agency Project Agreement.

(I) Agreement to Provide Information. As provided in Section 8.5 of the Lease Agreement, the Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the Company, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation; provided, however, the Company shall be obligated to provide to the Agency only that financial information necessary for the Agency to make any reports required by law or governmental regulation.

(J) Prevailing Wage Law. (1) The Company hereby acknowledges and agrees that the Agency has notified the Company of the following in connection with Section 224-a of the New York Labor Law:

(a) That the Financial Assistance identified in Section 3.01(A) above constitutes “public funds” as defined in Section 224-a(2) of the New York Labor Law and, to the best of the Agency’s knowledge, are not otherwise excluded from the definition of “public funds” pursuant to Section 224-a(3) of the New York Labor Law. Other than the Financial Assistance estimates identified in Section 3.01(A) above and disclosed to the Company, the Agency makes no representations or covenants with respect to the total sources of “public funds” received by the Company in connection with the Project.

(b) That, if the Project constitutes a “covered project” as defined in Section 224-a(4) of the New York Labor Law, the Company may be subject to certain obligations set forth in the New York Labor Law, including, but not limited to, the Certification (as hereinafter defined) required by Section 224-a(8)(a) of the New York Labor Law.

(2) If the Project constitutes a constitutes a “covered project” as defined in Section 224-a(4) of the New York Labor Law, the Company covenants and agrees that the Company shall certify, under penalty of perjury, within five (5) days of commencement of construction work whether the Project is subject to the provisions of Section 224-a of the New York Labor Law. The Certification shall be made pursuant to the standard form developed by the Public Subsidy Board (as defined in the New York Labor Law) entitled “Certification for Covered Project,” a copy of which is attached hereto as Schedule F. A copy of such Certification shall be filed with the Agency within ten (10) days after any filing required by Section 224-a of the New York Labor Law.

(3) In accordance with Section 224-a of the New York Labor Law, the Company may seek guidance from the Public Subsidy Board as to whether or not the Project is subject to the requirements of Section 224-a of the New York Labor Law. If the Company obtains an opinion of the Public Subsidy Board with respect to the Project, the Company shall deliver to the Agency: (a) a copy of such opinion within ten (10) days after receipt by the Company, and (b) any correspondence between the Company and the Public Subsidy Board or the New York State Commissioner of Labor in connection with such determination.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

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

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

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

- (1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 of the Lease Agreement, and (b) all other payments due under this Uniform Agency Project Agreement or any of the other Basic Documents; or
- (2) terminate the Lease Agreement and the Payment in Lieu of Tax Agreement and convey to the Company all the Agency’s right, title and interest in and to the Project Facility (the conveyance of the Agency’s right, title and interest in and to the Project Facility shall be effected by the delivery by the Agency of the Termination of Lease to Agency. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such transfer of title); or
- (3) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements, or covenants of the Company under this Uniform Agency Project Agreement.

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

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

if requested by the Agency, to pay within thirty (30) days to the Agency the recapture of the Project Financial Assistance, as provided in this Section 4.03.

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

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

(2) the amount of any mortgage recording tax exemption provided by the Agency to the Company in connection with the undertaking of the Project (i.e., excluding the transit authority portion of the mortgage recording tax which the Agency has not provided an exemption); and

(3) the difference between the amount of the payment in lieu of tax payments paid by the Company under the Payment in Lieu of Tax Agreement and the amount of the general real property ad valorem taxes that would have been payable by the Company to the Taxing Entities if the Project Facility was privately owned by the Company and not deemed owned or under the jurisdiction and control of the Agency.

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

Year	Amount of Recapture
	% of the Project Financial Assistance
	% of the Project Financial Assistance
	% of the Project Financial Assistance
	% of the Project Financial Assistance
	% of the Project Financial Assistance
	% of the Project Financial Assistance
	% of the Project Financial Assistance
	% of the Project Financial Assistance
	% of the Project Financial Assistance

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

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

(F) Agency Review of Recapture Determination. The Agency’s determination to recapture all or a portion of the Project Financial Assistance shall be made by the Agency after an evaluation of the criteria for recapture set forth in the Agency’s “Recapture Benefits Policy” as in effect as of the Closing Date (a copy of which policy is attached hereto as Schedule B). If the Agency determines that a Recapture

Event has occurred, it shall give notice of such determination to the Company. The Company shall have thirty (30) days from the date the notice is deemed given to submit a written response to the Agency's determination and to request a written and/or oral presentation to the Agency why the proposed recapture amount should not be paid to the Agency. The Company may make its presentation at a meeting of the Agency. The Agency shall then vote on a resolution recommending (i) a termination of Financial Assistance, (ii) a recapture of Financial Assistance, (iii) both a termination and a recapture of Finance Assistance, (iv) a modification of Financial Assistance or (v) no action.

SECTION 4.04. LATE PAYMENTS. (A) One Month. If the Company shall fail to make any payment required by this Uniform Agency Project Agreement within thirty days of the date that written notice of such payment is sent from the Agency to the Company at the address provided in Section 5.05 of this Uniform Agency Project Agreement, the Company shall pay the amount specified in such notice together with a late payment penalty equal to five percent (5%) of the amount due.

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

SECTION 4.05. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. If the Company should default in performing any of its obligations, covenants or agreements under this Uniform Agency Project Agreement and the Agency should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency within thirty (30) days not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.06. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Uniform Agency Project Agreement or now or hereafter existing at law or in equity or by statute.

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

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

(D) No Waiver. In the event any provision contained in this Uniform Agency Project Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver

of any other breach hereunder. No waiver, amendment, release, or modification of this Uniform Agency Project Agreement shall be established by conduct, custom, or course of dealing.

ARTICLE V

MISCELLANEOUS

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

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

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

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

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

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

IF TO THE COMPANY:

[Company]
[CompanyStreet1]
[CompanyCityState] [CompanyZip]
Attention: [CompanyContact]

WITH A COPY TO:

[CompanyCounselFirm]
[CompanyCounselStreet]
[CompanyCounselCityState] [CompanyCounselZip]
Attention: [CompanyCounsel1]

IF TO THE AGENCY:

[AgencyName] Industrial Development Agency
[AgencyStreet1]
[AgencyCityStateZip]
Attention: Chair[manorperson]

WITH A COPY TO:

[SpecialCounselFirm]
[SpecialCounselStreet]
[SpecialCounselCityStateZip]
Attention: [SpecialCounsel1], Esq.

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

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

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

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

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

SECTION 5.10. SURVIVAL OF OBLIGATIONS. The obligations of the Company to make the filings and listings required by Section 3.02 hereof shall survive the termination of this Uniform Agency Project Agreement, and all such filings and reports after such termination shall be made upon demand of the party to whom such filings and reports are due.

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

ALLEGANY COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

BY: _____
(Vice) Chair[manorperson]

[COMPANY]

BY: _____
Authorized Officer

SPECIAL PROJECT CERTIFICATION

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

[COMPANY]

BY: _____
Authorized Officer

STATE OF _____)
) ss.:
COUNTY OF [MEETINGCOUNTY])

On the ____ day of _____, in the year 2022, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

SCHEDULE A
NYS-45
QUARTERLY REPORT

Withholding
Identification number



Part D - Form NYS-1 corrections/additions

Use Part D **only** for corrections/additions for the quarter being reported in Part B of **this** return. To correct original withholding information reported on Form(s) NYS-1, complete columns a, b, c, and d. To report additional withholding information not previously submitted on Form(s) NYS-1, complete **only** columns c and d. Lines 12 through 15 on the front of this return **must reflect these corrections/additions**.

a Original last payroll date reported on Form NYS-1, line A (mmdd)	b Original total withheld reported on Form NYS-1, line 4	c Correct last payroll date (mmdd)	d Correct total withheld
▶ <input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/>	<input type="text"/> . <input type="text"/>
▶ <input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/>	<input type="text"/> . <input type="text"/>
▶ <input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/>	<input type="text"/> . <input type="text"/>
▶ <input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/>	<input type="text"/> . <input type="text"/>
▶ <input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/>	<input type="text"/> . <input type="text"/>
▶ <input type="text"/>	<input type="text"/> . <input type="text"/>	<input type="text"/>	<input type="text"/> . <input type="text"/>

Part E - Change of business information

22. This line is not in use for this quarter.

23. If you **permanently ceased paying wages**, enter the date (mmddyy) of the final payroll (see Note below)

24. If you **sold or transferred all or part of your business**:

• Mark an **X** to indicate whether in **whole** or in **part**

• Enter the date of transfer (mmddyy)

• Complete the information below about the acquiring entity

Legal name	EIN
Address	

Note: For questions about other changes to your withholding tax account, call the Tax Department at 518-485-6654; for your unemployment insurance account, call the UI Employer Hotline at 1-888-899-8810. If you are using a paid preparer or a payroll service, the section below must be completed.

Paid preparer's use	Preparer's signature	Date	Preparer's NYTPRIN	Preparer's SSN or PTIN	NYTPRIN excl. code
	Preparer's firm name (or yours, if self-employed)	Address		Firm's EIN	Telephone number ()
Payroll service's name				Payroll service's EIN	<input type="text"/>

Checklist for mailing:

- File original return and keep a copy for your records.
- Complete lines 9 and 19 to ensure proper credit of payment.
- Enter your withholding ID number on your remittance.
- Make remittance payable to *NYS Employment Contributions and Taxes*.
- Enter your telephone number in boxes below your signature.
- See *Need help?* on Form NYS-45-I if you need forms or assistance.

Mail to:

**NYS EMPLOYMENT
CONTRIBUTIONS AND TAXES
PO BOX 4119
BINGHAMTON NY 13902-4119**

SCHEDULE B

RECAPTURE BENEFITS POLICY

- SEE ATTACHED -

6. Recapture of Benefits.

a.) The Agency, at its sole discretion and on a case-by-case basis, may determine, (but shall not be required to do so) with respect to a particular project, that a project has failed to meet its intended goals and to require the recapture by the Agency of the value of any or all exemptions from taxation granted with respect to the project by virtue of the Agency's involvement, or to modify the terms of the Project Agreement or "PILOT". Events that the Agency may determine will trigger recapture may include, but are not limited to:

- 1) Significant employment reductions not reflective of the company's (normal) business cycle and/or local and national economic conditions or inconsistent with employment levels presented to the Agency at the time the PILOT was agreed to by the Agency. Prior to determination, the company will be asked to come before the ACIDA Board to be given their due process.
- 2) Sale or closure of facility;
- 3) Submission of a false application by the Company;
- 4) Significant change in use in facility;
- 5) Significant change in business activities or project applicant or operator;
- 6) Material noncompliance with or breach of terms of Agency transaction documents or of zoning or land use laws or regulations or federal, state or local environmental laws or regulations.

b.) If the Agency determines to recapture benefits with respect to a particular project, the Agency also shall, in its sole discretion and on a case-by-case basis, determine the timing and percentage of recapture or termination of benefits.

c) Any recapture pursuant to this Section 6 shall be in addition to any recapture required pursuant to the Act or other statutory provisions, including Section 875 of the General Municipal Law.

7. Additional Recapture Provisions.

In addition to the provisions for recapture set forth in Section 6, the Agency may, in its sole discretion and on a case-by-case basis, require recapture of benefits with respect to any project or project applicant for:

- 1) Failure to respond to Agency inquiries concerning payments of principal and interest;
- 2) Failure to respond to Agency inquiries concerning insurance coverage or failure to provide insurance certificates when, and as required by the Agency transaction documents;

- 3) Failure to respond to Agency inquiries regarding payment of monies in lieu of taxes;
- 4) Failure to respond to Agency inquiries or to provide facts requested by the Agency in connection with any proceedings or determinations pursuant to Section 5 or Section 6 of this Policy;
- 5) Failure to respond to inquiries of the Agency or failure to provide the Agency with any information or documents requested by the Agency in order to provide any federal, state or local agency with information or reports required under any applicable law, rule or regulation;
- 6) Failure to provide any other information concerning the project or the project applicant or any project operator requested by the Agency.

Upon the occurrence of any of the events listed in this Section 7, the Agency will, upon at least 10 calendar days written notice to the project applicant, hold a hearing at which the project applicant will have the opportunity to provide, or explain its failure to provide, the information requested by the Agency. Within 30 calendar days after the hearing, the Agency will issue a determination whether and to what extent it will require recapture of the value of tax exemptions granted with respect to the project by virtue of the Agency's involvement.

8. Effective Date.

This Uniform Tax Exemption Policy shall apply to all projects for which the Agency has adopted or adopts an Inducement Resolution on or after June 1, 2017 and all re-financings of any project induced or closed before June 1, 2017.

9. Amendments.

The Agency, by resolution of its Board, and upon notice to all affected tax jurisdictions as may be required by law, may amend or modify the foregoing policy as it may, from time to time, in its sole discretion determine.

SCHEDULE C

COPY OF PAYMENT IN LIEU OF TAX AGREEMENT

SEE TAB #___ IN THE TRANSCRIPT

SCHEDULE D
COPY OF APPLICATION
[TO BE INSERTED]

SCHEDULE E
ANNUAL STATUS REPORT

January __, 20__

Re: New Project Verification

Dear:

[AgencyName] Industrial Development Agency (the "Agency") is currently providing assistance in connection with your project in the _____ of _____, [MeetingCounty] County, New York.

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

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

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

Very truly yours,

Company name and address:

Project Name: _____

Company contact:

Contact phone number:

(Please-correct any information above)

Financing Information

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

Yes No

If financing assistance was provided, please provide:

Original principal balance of bond or note issued _____

Outstanding principal balance of such bond or note
at December 31, 20__ _____

Principal paid during 20__ _____

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

Interest rate on mortgage as of December 31, 20__

Final maturity date of the bond or note

Is the Company a not-for-profit?

Sales Tax Abatement Information

Did your company receive Sales Tax Abatement on your Project during 20__? Yes No

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

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

Mortgage Recording Tax Information

Did your company receive Mortgage Tax Abatement on your Project during 20? Yes No

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

Job Information

Number of full time equivalent employees (“FTE”) existing jobs by category **before Agency status:**

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					
Independent Contractors					
Employees of Independent Contractors					

Current number of FTE employees for 20__ by category:

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					
Independent Contractors					
Employees of Independent Contractors					

Number of FTE jobs **created** during 20__ as a result of the assistance received through the Agency by category:

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					
Independent Contractors					
Contract Employees of Independent Contractors					

Number of FTE jobs **retained** during 20__ by category:

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					
Independent Contractors					
Contract Employees of Independent Contractors					

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

Number of FTE construction jobs created during 20__ _____

Number of FTE construction jobs during 20__ _____

Salary and Fringe Benefits

Is the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created described in the Application still complete, true, and accurate: Yes No

If not, please provide the revised amounts using the table below:

RELATED EMPLOYMENT INFORMATION				
	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled
Estimated Salary and Fringe Benefit Averages or Ranges				
Estimated Number of Employees Residing in the Western New York Economic Development Region ¹				

Capital Investment Information

20__ Capital Investment _____

Real Estate _____

Construction _____

Machinery and Equipment _____

Other Taxable Expenses _____

Other Non-Taxable Expenses _____

Total Capital Investment _____

¹ The Western New York Economic Development Region consists of the following counties: Allegany, Cattaraugus, Chautauqua, Erie, Niagara and Wyoming.

Officer's Certification

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

Signed: _____
(Authorized Company Representative)

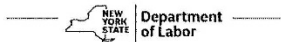
Date: _____

SCHEDULE F
CERTIFICATION FOR COVERED PROJECTS

- SEE ATTACHED -

Bureau of Public Work
State Office Building Campus
Building 12 – Room 130
Albany, New York 12226

WE ARE YOUR DOL



Official Use Only

Date received: _____

PRC No. previously issued: _____

Certification For Covered Project

Request For Wage and Supplement Information

Submit this form to certify if a project is covered by LL 224-a or to request a Public Subsidy Board covered project determination. May be mailed to above address or emailed to: labor.sm.5184851870Fax@labor.ny.gov

Complete Fillable Fields or Form Must be Typewritten

Submitted By: Owner Developer

A. Contract to be let by:

1. Name: _____
Complete Address: _____
Telephone: _____ Fax: _____
Email: _____
2. Send Reply to: _____
Complete Address: _____
Telephone: _____ Fax: _____
Email: _____
3. Contract Date: _____
Construction Start Date: _____
(may be approximate if no specific date)
4. Contract Name or ID Number: _____
Prime Contractor(s): _____
List Known Sub-contractors: _____

B. Project Particulars

5. Project Name: _____
Description of Work: _____

6. Location of Project: _____
Address: _____
7. Nature of the Project (check all that apply):

<input type="checkbox"/> New Construction	<input type="checkbox"/> Heavy/Highway
<input type="checkbox"/> Addition to Existing Structure	<input type="checkbox"/> Sewer/Water Line
<input type="checkbox"/> Demolition, Abatement	<input type="checkbox"/> Renewable Energy
<input type="checkbox"/> Reconstruction, Maintenance, Repair, Alteration	<input type="checkbox"/> Thermal Energy Network
<input type="checkbox"/> Other: _____	
8. List All Subsidies and Source: _____

Total Project Cost: \$ _____ Total Amount of Subsidies: \$ _____

Subsidies Equate to _____ Percent(%) of Total Project Costs

9. Name and Title: _____
Signature: _____

**REQUIREMENTS OF ARTICLE 8 SECTION 224-a
OF THE NEW YORK STATE LABOR LAW**

Each owner and developer subject to the requirements of this section shall comply with the objectives and goals of minority and women-owned business enterprises pursuant to article fifteen-A of the executive law and service-disabled veteran-owned businesses pursuant to article seventeen-B of the executive law.

- 10. Is the Owner a minority, women, and/or service-disabled veteran owned business? _____
- 11. Is the Developer (if different from owner) a minority, women, and/or service-disabled veteran owned business? _____
- 12. List all Contractors and Sub-Contractors who are minority, women, and/or service-disabled veteran owned business:

CERTIFICATION / REQUEST FOR DETERMINATION

As of _____ and for a certain project, entitled _____, _____,
(Date) (Project Title) (Name of Certifier)
_____, certifies under penalty of perjury pursuant to NYS Labor Law 224-a.8.a. that:
(Title of Certifier)

- It is unknown if this project is subject to the provisions of NYS Labor Law 224-a and a binding determination from the Public Subsidy Board is hereby requested.
- This project is subject to the provisions of NYS Labor Law 224-a
- This project is not subject to the provisions of NYS Labor Law 224-a
(if not subject, check all that apply)
 - Total construction project costs are under \$5 million dollars.
 - Total aggregate public funding equates to less than 30% of total construction project Costs.
 - The project is exempted by one of the provisions of Subdivision 4 of NYS Labor Law 224-a.
Please specify: _____
 - The public funding is exempted by one of provisions of Subdivision 3 of NYS Labor Law 224-a.
Please specify: _____

Signature: _____ Address of Certifier: _____

Date: _____
The certification should be signed by members of management who are responsible for and knowledgeable, directly or through others in the organization, about the matters covered by the assertion.

**REQUIREMENTS OF ARTICLE 8
(SECTIONS 220 THRU 224-C)
OF THE NEW YORK STATE LABOR LAW
COVERED PROJECTS SUBJECT TO PREVAILING WAGE:**

A "covered project" means construction work done under contract which is paid for in whole or in part out of public funds where the amount of all such public funds, when aggregated, total at least thirty percent of the total construction project costs and where such project costs are over five million dollars.

"Public funds" shall mean any of the following: (a) The payment of money, by a public entity, or a third-party acting on behalf of and for the benefit of a public entity, directly to or on behalf of the contractor, subcontractor, developer or owner that is not subject to repayment, (b) the savings achieved from fees, rents, interest rates, or other loan costs, or insurance costs that are lower than market rate costs; savings from reduced taxes as a result of tax credits, tax abatements, tax exemptions or tax increment financing; savings from payments in lieu of taxes; and any other savings from reduced, waived, or forgiven costs that would have otherwise been at a higher or market rate but for the involvement of the public entity, (c) money loaned by the public entity that is to be repaid on a contingent basis, and (d) credits that are applied by the public entity against repayment of obligations to the public entity.

"Public funds" shall NOT mean any of the following: (a) benefits under section 421-a of the Real Property Tax Law, (b) funds that are not provided primarily to promote, incentivize, or ensure that construction work is performed, (c) funds used to incentivize or ensure the development of a comprehensive sewage system, provided such work shall be deemed a public work, (d) tax benefits provided for projects the length and value of which are not able to be calculated at the time the work is to be performed, (e) tax benefits related to brownfield remediation or brownfield redevelopment, (f) funds provided pursuant to subdivision 3 of section 2853 of the Education Law, and (g) any other public monies, credits, savings or loans, determined as exempt by the Public Subsidy Board established pursuant to section 224-c of the New York State Labor Law. Such covered projects are subject to the prevailing wage requirements of section 220 and 220-b of the New York State Labor Law.

Exemptions from what constitutes a covert project subject to prevailing wage can be found in section 224-a.4 and include but are not limited to: construction work performed under a contract with certain not-for-profit corporations, construction work performed on certain affordable housing projects, construction work performed under a labor peace agreement, project labor agreement, or pre-hire collective bargaining agreements between an owner or contractor and a bona fide building and construction trade labor organization which has established itself as the collective bargaining representative for all persons who will perform work on such a project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform work on such a project.

The owner or developer of such covered projects shall certify under penalty of perjury within five days of commencement of construction work whether the project at issue is subject to the provisions of this section using the Certification for Covered Project/Request for Wage and Supplement Information form

The owners or developers of a property who are undertaking a project under private contract, may seek guidance from the Public Subsidy Board and the board may render a binding determination as to any particular matter related to an existing or potential covered project. Requests for a Board determination must be made by submitting this form (PW-39a) to the Bureau of Public Work via mail or the email listed at the top of page 1. All correspondence to the Public Subsidy Board may be sent to:

New York State Department of Labor – Bureau of Public Work
Attn: Public Subsidy Board Secretary
State Office Building Campus
Building 12 – Room 130
Albany, NY 12226

Information regarding the Public Subsidy Board, its bylaws and procedures, meeting agendas, recordings of past meetings, and list of determinations issued by the Board can be found at: <https://dol.ny.gov/public-subsidy-board>

PREVAILING RATE SCHEDULE:

The Labor Law requires public work contractors and subcontractors to pay laborers, workers or mechanics employed in the performance of a public work contract not less than the prevailing rate of wages and to provide supplements (fringe benefits) in accordance with the prevailing practices in the locality where the work is performed.

The prevailing rate schedule of wages and supplements listing the hourly rates for the trades and the occupations of the workers to be employed on the project may be obtained from the Bureau of Public Work of the New York State Department of Labor by completing and forwarding the Certification for Covered Project/ Request for Wage and Supplement Information form. A legible statement of all applicable wage rates and supplements MUST be posted by all contractors and subcontractors in a prominent and accessible place on the site where the work is performed. The posting must be capable of withstanding adverse weather conditions and be titled "Prevailing Rate of Wages," in lettering no smaller than 2 inches in height and 2 inches in width.

All contractors and subcontractors shall notify all laborers, workers or mechanics in their employ in writing on all pay-stubs of the prevailing rate of wage for their job classification(s).

All contractors and subcontractors shall keep original payrolls or transcripts thereof, subscribe and sworn to or affirmed by him or her as true under the penalties of perjury, setting forth the names and addresses and showing for each worker, laborer, or mechanic the hours and says worked, the occupations worked, the hourly wage rates paid and the supplements paid or provided.

WITHHOLDING OF PAYMENTS FROM CONTRACTORS:

If the Bureau of Public Work finds that a contractor or subcontractor on a public work project failed to pay or provide the requisite prevailing wages or supplements, the Bureau is authorized by Sections 220-b of the Labor law to so notify the financial officer of the Department of Jurisdiction that awarded the contract. Such officer MUST then withhold or cause to be withheld from any payment due the prime contractor on account of such contract the amount indicated by the Bureau of Public Work as sufficient to satisfy the unpaid wages and supplements, including interest and any civil penalty that may be assessed by the Commissioner of Labor.

The Department of Jurisdiction shall comply with an order of the Commissioner of Labor or of the Court with respect to the release of the funds so withheld.

STOP WORK ORDERS:

If the Bureau of Public Work finds cause to believe that any person, in connection with the performance of a covered project, has substantially and materially failed to comply with or intentionally invaded the provisions of this article, the fiscal officer may notify such a person in writing of the intention to issue a stop-work order and their right to a hearing. If a stop-work order is issued following a hearing it shall remain in effect until the Commissioner of Labor directs that it be removed, upon a final determination on the complaint or where such failure to comply or evade has been deemed corrected.

CHANGE WORK ORDERS AND COST OVERRUNS:

For projects where within five days of commencement of construction the total construction costs were estimated to be below five million dollars or the total aggregate public funds were below 30% of total construction costs exceeding five million dollars, any change-work orders, cost overruns or an increase in public funding that results in total project costs exceeding five million dollars or public funds exceeding 30% of total construction costs were total costs exceed five million dollars, the provisions of section 224-a will become applicable and the project shall be thereafter deemed a covered project.

The Certification for Covered Project/Request for Wage and Supplement Information form must then be completed and submitted within five business days.