

## PROJECT AND AGENT AGREEMENT

THIS PROJECT AND AGENT AGREEMENT (hereinafter, the "Agent Agreement"), made as of the 4 day of OCTOBER, 2023, by and between the TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, with offices at One Town Place, Clarence, New York 14031 (the "Agency"), and 4280 Research Parkway, LLC, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 9580 Main Street, Clarence, New Yor 14031 (the "Company").

### WITNESSETH:

WHEREAS, the Agency was created by Chapter 364 of the Laws of 1973 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") with respect to the acquisition, construction and equipping of a 55,000 square foot manufacturing building located at 4280 Research Parkway, in the Town of Clarence, New York as agent for the Agency for lease to the Agency and subsequent leaseback to the Lessee;

WHEREAS, by Resolution adopted on July 20, 2023 and amended on September 21, 2023 (the "Resolution") the Agency authorized the Company to act as its agent for the purposes of undertaking the Project subject to the Company entering into this Agent Agreement, and pursuant to the Resolution and this Agent Agreement, the Company has the power to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses including but not limited to the individuals and entities described on **SCHEDULE A** attached hereto (collectively, the "Subagent"). The Company shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency; and

WHEREAS, by its Resolution, the Agency has conferred on the Company in connection with the Project. certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from all New York State and local sales and use tax exemption benefits for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility, (b) an exemption benefit from mortgage recording tax, and (c) a partial abatement from real property taxes benefit through a 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 execution of a Project and Agent Agreement and pre-payment of the sales tax agency Fee.

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 Clarence and to specifically promote the activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation thereof in and around the Facility. The right of the Company to act as agent of the Agency shall expire on September 20, 2024, unless extended as contemplated by the Resolution. The aggregate amount of work performed as agent for the Agency shall not exceed the amounts identified in the Resolution and Section 2(h)(i) of this Agreement. All contracts entered into as agent for the Agency shall include the following language set forth as **APPENDIX A**.

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

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, has the authority to enter into this Agent Agreement, and has duly authorized the execution and delivery of this Agent Agreement.

(b) Neither the execution and delivery of this Agent Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agent Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

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

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public Board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agent Agreement.

(e) The Company covenants that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) that the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (except the Company), representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Company agrees to pay the expenses of same to the Agency upon demand.

(f) Any personal property acquired by the Company in the name of the Agency shall be located in the Town of Clarence, 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 materially 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 Investment Commitment, the Employment Commitment and the Local Labor Commitment two (2) years following the construction completion date (the "Project Completion Date" and then for the duration of the PILOT 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 12/31/2024, but may be subject to modifications as long as the Facility as constructed meets the needs of the Companies and that the Company will build a 55,000 square foot manufacturing facility and maintain such employment for the duration of the PILOT (the period following the achieving of the Employment Commitment threshold and the PILOT 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 (\$6,410,757.00) 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- the Employment Commitment will be made by the Tenant at the Property Dimar Manufacturing.

(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 manufacturing facility (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 January 29, 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 the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$ 2,115,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 2(g) of this Agent Agreement, cannot exceed \$ 185,063.00, (ii) confirms that the mortgage recording tax exemption amount shall be approximately \$36,000.00 and (iii) and confirms that real property tax abatement benefits to be provided to the Company over the ten year benefit period of the payment in lieu of tax agreement (the "PILOT Agreement"), said-PILOT Agreement attached hereto as **EXHIBIT D** immediately upon its execution, are estimated to be approximately \$589,512.00.

(i) The Agency following the adoption of the Resolution and the execution and delivery of this Agreement will complete and within thirty (30) days of appointment forward to the State Department of Taxation and Finance the "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (NYS Form ST-60) in the form attached hereto as **EXHIBIT E** for the Project. The Company shall immediately notify the Agency of its appointment of any agents or subagents in connection with the Project and shall, on request of the Agency, complete and submit to the Agency a NYS Form ST-60 for each such agent or subagent.

(j) The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123, a copy of which is attached hereto as **EXHIBITS F-1 AND F-2**), and it shall be the responsibility of the Company (and not the Agency) to complete NYS Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill or invoice should state, "I, [NAME OF COMPANY OR SUBAGENT], certify that I am a duly appointed agent of the TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY and that I am purchasing the tangible personal property or services for use in the {COMPANY} Project located at (Project Address), IDA Project Number " **1402-23-03A**". For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgment as described in the prior sentence, an "Invoice Rider" (a copy of which is attached hereto as **EXHIBIT F-3**) can be utilized for record keeping purposes.

(k) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340, a copy of which is attached hereto as **EXHIBIT G**) regarding the value of sales and use tax exemptions the Company and its Subagents, if any, have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with General Municipal Law Section 874(8). The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of same to the Agency; provided, however, in no event later than February 15th of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of the Company's authority to act as agent for the Agency.

(l) The Company acknowledges and agrees that, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.

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

(n) The Company agrees that it will, throughout the term of, this Agent Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments,

officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof. Notwithstanding the foregoing, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to this Section 2(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: Chairman  
Town of Clarence, Erie County, Industrial Development Agency  
One Town Place

Clarence, New York 14031

To the Company: 4280 Research Parkway, LLC  
9580 Main Street, Clarence, New Yor 14031

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

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

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

10. The parties are contemplating that, after any applicable public hearing(s), if required, the Agency will negotiate and enter into a lease agreement (the "Lease Agreement"), a leaseback agreement (the "Leaseback Agreement"), and a PILOT Agreement with the Company. The Company agrees not to take title to any real property as agent for the Agency. The Agency will provide the Company with a bill of sale (a form of which is attached hereto as **EXHIBIT H**) which sells, transfers and delivers unto the Company and its successors and assigns, all Equipment which were acquired and installed and/or are to be acquired and installed by the Company as agent for the Agency pursuant to this Agent Agreement which Equipment is located or intended to be located at 4280 Research Parkway, Clarence, New York.

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

[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 CLARENCE, ERIE COUNTY,  
INDUSTRIAL DEVELOPMENT AGENCY

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name:  
Title:

State of New York)

County of Erie ) ss.:

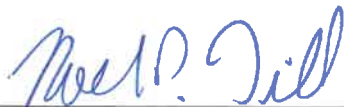
On the day of \_\_\_\_\_ in the year 2023, before me, the undersigned, personally appeared, \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they 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

[Signature Page to Project and Agent Agreement]

4280 RESEARCH PARKWAY, LLC

Dated: 10/4/2023



\_\_\_\_\_  
Name: Noel P. Dill, Vice President

State of New York)

County of Erie ) ss.:

On the day of 10/4/2023 in the year 2023 , before me, the undersigned, personally appeared, Noel P. Dill, 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

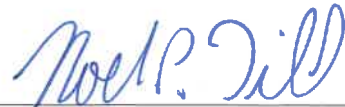
**JAMES R. CRONIN**  
Notary Public, State of New York  
Qualified in Erie County  
Commission Expires August 18, 2025

STATE OF NEW YORK)  
COUNTY OF *Baird* ) ss.:

Noel P. Dill, being first duly sworn, deposes and says:

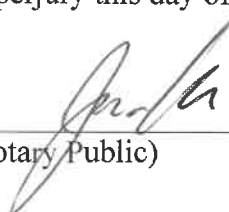
1. That I am the Vice President of 4280 Research Parkway, LLC and that I am duly authorized on behalf of the Company to bind the Applicant.

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



\_\_\_\_\_  
Noel P. Dill

Subscribed and affirmed to me under penalties  
of perjury this day of *10/4* 2023.

  
\_\_\_\_\_  
(Notary Public)

**JAMES R. CRONIN**  
Notary Public, State of New York  
Qualified in Erie County  
Commission Expires August 18, *2025*

## SCHEDULE A

### LIST OF APPOINTED AGENTS

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

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

## APPENDIX A

### LANGUAGE TO BE INCLUDED IN ALL CONTRACTS

"This contract is being entered into by [NAME OF COMPANY OR NAME OF SUBAGENT (the "Agent"), as agent for and on behalf of the TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY (the "Agency"), in connection with a certain project of the Agency for the benefit of {COMPANY}, consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at {Project Address} (the "Premises"). The acquisition of the machinery, equipment and building materials to be incorporated and installed in the Premises and all services and rentals of equipment related to the acquisition, construction and equipping of the Project shall be exempt from all New York State and local sales and use taxes if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption information letter of the Agency attached hereto as **EXHIBIT A-A**; and the Agent hereby represents that this contract is in compliance with the terms of the Agent and Financial Assistance Agreement by and between {COMPANY} and the Agency dated as of {Insurance Approval Date}. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph.

**EXHIBIT A-A**

FORM OF SALES TAX LETTER

**SALES TAX LETTER**

[NAME OF COMPANY]  
[ADDRESS OF COMPANY]

***Re: Town of Clarence, Erie County, Industrial Development Agency and [Name of Company]***

Ladies and Gentlemen:

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

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

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



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

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

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

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

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

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

As further set forth in the Agent Agreement, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency is not liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase

order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company is the sole party liable thereunder.

Very truly yours,

TOWN OF CLARENCE, ERIE COUNTY,  
INDUSTRIAL DEVELOPMENT AGENCY

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**LABOR POLICY**

INTENTIONALLY OMMITTED

**EXHIBIT B**

**Town of Clarence, Erie County Industrial Development Agency  
Annual Reporting Questionnaire for 2020**

Project address:

SBL#:

Project name:

Company contact:

Contact phone number:

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

| Number of Full-Time Employees (as of 12/31/20) | Number of Part-Time Employees (as of 12/31/20) |
|------------------------------------------------|------------------------------------------------|
|                                                |                                                |

Estimated number of construction jobs created in 2020 \_\_\_\_\_  
(For projects in construction phase only):

**For multi-tenant clients only:**

| Tenant Name | Number/Estimate of Full-Time Employees | Number/Estimate of Part-Time Employees |
|-------------|----------------------------------------|----------------------------------------|
|             |                                        |                                        |
|             |                                        |                                        |
|             |                                        |                                        |
|             |                                        |                                        |

**Section #2: Sales Tax Exemptions (complete only if you purchased goods with a CIDA sales tax letter in 2020):**

Total sales tax exemptions from 1/1/20 through 12/31/20  
(actual tax savings, NOT total purchases): \_\_\_\_\_

***Please attach your 2020 NYS ST-340 Form(s) for the sales tax exemptions referenced above.***

**Section #3: Bond Information (complete only if you have an IDA issued bond):**

Date of Bond Issue: \_\_\_\_\_ Bond amount at date of issue: \_\_\_\_\_

Principal amount paid in 2020: \_\_\_\_\_ Principal balance as of 12/31/20: \_\_\_\_\_

Company contact for bond information: \_\_\_\_\_

Bank trustee (trustee name, bank, address, city, state, zip): \_\_\_\_\_

(For outstanding bonds, please provide a copy of your 12/31/20 bond statement.) \_\_\_\_\_

**Section #4: Mortgage Tax Exemptions in 2020 (if applicable):**

Mortgage tax exemption amount (1% of mortgage amount): \_\_\_\_\_

**Section #5: Certification:**

The information furnished on this form is correct to the best of my knowledge according to our records as of December 31, 2020.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

*If any contact information is incorrect, please provide the updated information below:*

\_\_\_\_\_  
\_\_\_\_\_

Please email your completed survey and the requested documents to Jared Pickard at [jpickard@dm-llp.com](mailto:jpickard@dm-llp.com) or return via mail to 3083 William Street, Suite 5, Buffalo, NY 14227. **Your survey is due on or before January 29, 2021.**

## **EXHIBIT C**

### **Town of Clarence, Erie County, Industrial Development Agency (CIDA) Policy for Recapture and/or Termination and/or Modification of Financial Assistance Adopted: June 16, 2016**

#### **Purpose:**

To establish and provide a fair procedure compliant with Sections 874 and 875 of the New York State General Municipal Law and Town of Clarence, Erie County, Industrial Development Agency (CIDA) policies establishing a policy for recapture and/or termination and/or modification of all or a portion of Agency Financial Assistance.

#### **Annual Review:**

The Chairman 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 the Chairman 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. The Chairman will notify the entire Board of Directors of his determination.

#### **Non-Compliance Process:**

1. The CIDA 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, Chairman will review with the Executive Committee and notify the entire Board of Directors. 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 CIDA 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 CIDA Board of Directors, acting through its Chairman, 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 CIDA as detailed in transaction documents, failure to maintain insurance requirements, or other uncured breaches of CIDA 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<br/>REQUIRED<br/>CRITERIA</b>                                                                                                                                                                                                                                                                                                                                                                    | <b>MATERIAL<br/>TERMS</b>                                                                                                                                                                      | <b>SIGNIFICANT FACTORS</b><br>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>1</sup></li> <li>2. Private Sector Investment<sup>2</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>1</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>2</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**

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

(Attached Next Page)

**EXHIBIT F-1**

NYS FORM ST-123

FOR

COMPANY

(Attached Next Page)

**EXHIBIT F-2**

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

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

**INVOICE RIDER**

(Complete and Attach to Invoice)

I, \_\_\_\_\_ the \_\_\_\_\_ of certify that I am a duly appointed agent of the Town of Clarence, Erie County, Industrial Development Agency ("Agency") and that I am purchasing the tangible personal property or services for use in the following Agency Project and that such purchases qualify as exempt from sales and use taxes under the Agent and Financial Assistance Agreement, dated as of {Insurance Approval Date}, by and between the Agency and {Company},

Name of the Project: {Company} Project

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

IDA OSC project number: 140

**EXHIBIT G**

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

(Attached Next Page)

**EXHIBIT H**

**BILL OF SALE**

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

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

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

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

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

TOWN OF CLARENCE, ERIE COUNTY,  
INDUSTRIAL DEVELOPMENT AGENCY

Form Only - Do Not Sign

By:  
Name:  
Title: