

TROY INDUSTRIAL DEVELOPMENT AUTHORITY

AND

TROY LOCAL DEVELOPMENT CORPORATION

PAYMENT IN LIEU OF TAX AGREEMENT

Dated as of [August 1, 2011]

Affected Tax Jurisdictions:

**Rensselaer County
City of Troy
Enlarged City School District of Troy**

Street Address: 77 Water Street, Troy, New York 12180
TMID No. 111.76-1-1.12

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "Agreement"), dated as of the 1st day of August 2011, by and between the **TROY INDUSTRIAL DEVELOPMENT AUTHORITY**, a public benefit corporation of the State of New York, having its offices at 1776 Sixth Avenue, Troy, New York 12180 (the "Authority") and the **TROY LOCAL DEVELOPMENT CORPORATION**, a domestic not-for-profit corporation having an address of City Hall, 1776 Sixth Avenue, Troy, New York 12180 (the "Company").

WITNESSETH:

WHEREAS, by Title 11 of Article 8 of the Public Authorities Law of the State of New York (the "State"), as amended, and Chapter 759 of the Laws of 1967 of the State of New York, as amended (hereinafter collectively called the "Act"), the Authority was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, the Company has submitted an application (the "Application") to the Authority requesting the Authority's assistance with respect to a certain project (the "Project") consisting of: (i) the acquisition by the Authority of a leasehold interest in one or more parcels of real property located at 77 Water Street, Troy, New York 12180 (the "Land", being comprised of approximately 16.02 acres and more particularly described as TMID No. 111.76-1-1.12), along with the existing building improvements, infrastructure, roadway and other improvements located thereon (the "Existing Improvements", and together with the Land, the "Facility") and (ii) the lease by the Authority of the Facility back to the Company for continued operation by Company tenants as a waste transfer station; and

WHEREAS, in order to induce the Company to continue to operate and maintain the Facility, the Authority is willing to take a leasehold interest in the land and improvements constituting the Facility pursuant to a certain Lease Agreement (the "Lease Agreement") and lease said land, improvements and personal property back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement to be dated on or about the date hereof (the "Leaseback Agreement"); and

WHEREAS, pursuant to Section 1963 of the Act, the Authority is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, including special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, the Authority and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes during the term hereof by the Company to the Authority for the benefit of the County of Rensselaer (the "County"), the City of Troy (the "City"), and the Enlarged City School District of Troy (hereinafter the "School

District" or "School" and, collectively with the County and the City, the "Affected Tax Jurisdictions").

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

Section I - Payment in lieu of Ad Valorem Taxes:

1.1 A. Upon acquisition by the Authority of a leasehold interest in the Facility pursuant to the Lease Agreement as of the date hereof, the Land and Existing Improvements shall be exempt from Real Estate Taxes commencing as of the date hereof, such exemption to include (i) the remainder of the 2011/2012 School Tax year; and (ii) the remainder of the 2011 City and County tax years, and prospectively, the 2012/2013 School Tax year and 2012 City and County tax years, all through the termination date, as defined herein. For purposes of the foregoing, "Real Estate Taxes" means all general levy real estate taxes and special district taxes levied against the Facility by the County, City and School. For information purposes only, and on or before the taxable status date of March 1, 2012 (the "Taxable Status Date"), the Authority will file New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") with the local assessor stating and confirming that the Facility is exempt from Real Estate Taxes under RPTL Section 412 and Section 1963 of the Act **as of the date hereof**. The Company shall provide to the Authority the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Lease Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Authority, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest therein has been declared in default under any document for which the Facility could be sold, forfeited or lost; and (iv) neither the Company nor the Authority, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Authority, and releases the Authority from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes.

B. Payee. As long as the Facility is leased by the Company to the Authority, or under the Authority's jurisdiction, control or supervision, the Company agrees to pay bi-annually to the Affected Tax Jurisdictions as a payment in lieu of taxes, on or before **March 1** (for City and County Tax years) and **September 1** (for School tax years) of each PILOT year (the "Payment Date"), commencing on **March 1, 2012**, amounts equal to the Total PILOT payment, as more specifically set forth in Schedule A, hereto. **The Company shall cause to be timely paid all tax bills issued prior to the date hereof with direct remittance to each of the Affected Tax Jurisdictions, as applicable.**

The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

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

1.3 Tax Rates. As necessary, and for purposes of determining the allocation of the Total PILOT Payment among the Affected Tax Jurisdictions, the Authority shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County and City purposes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT payment due date. For School District purposes, the tax rates used to determine the PILOT payment shall be the rate relating to the school year which includes the PILOT payment due date. For applicable Special District Taxes, the tax rates used to determine the allocation of the Total PILOT Payment shall be the tax rates relating to the calendar year which includes the PILOT payment due date.

1.4 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility constructed or added in any manner after the date of this Agreement (excluding the Improvements, as defined herein), the Company shall notify the Authority of such future addition ("Future Addition"). The notice to the Authority shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Authority may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total PILOT Payment. The Authority shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Authority, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Authority, the Company shall pay the increased PILOT payment until a different Total PILOT Payment shall be established. If a lesser Total Annual Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Authority's sole discretion, such excess payment shall be applied as a credit against the next succeeding PILOT payment(s).

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the 2012 County and City tax year through the 2031 County and City tax year, and (ii) the 2012-2013 School tax year through the 2031-2032 School tax year. This PILOT Agreement shall expire on June 30, 2032; *provided, however,* the Company shall pay the 2032 County and City tax bills and the 2032-2033 School tax bill on the dates and in the amounts as if the Authority were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the

periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b and 485-e of the New York Real Property Tax Law ("RPTL"). It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section II – RESERVED

Section III - Transfer of Facility.

3.1 In the event that the Facility is transferred from the Authority to the Company (the Lease Agreement is terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I herein, or this Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility (taking into account any Total PILOT Payment previously made by the Company for the applicable PILOT year) if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

Section IV - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility with respect to any proposed special district charge, special assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions relating to any and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any proposed special district charge, special assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions. However, the Company shall in all events make timely payments of all Total PILOT Payments due hereunder and no assessment challenge by the Company shall affect or cause to invalidate the amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this Agreement, as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section V - Changes in Law.

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

Section VI - Events of Default.

6.1 The following shall constitute “Events of Default” hereunder. The failure by the Company (or any authorized assignee hereunder) to: (i) make the payments described in Section I within thirty (30) days of the Payment Date (the “Delinquency Date”); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Leaseback Agreement after the expiration of any applicable notice or cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Authority and/or the Affected Tax Jurisdictions may have at law or in equity, the Authority and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Authority with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Authority and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to applicable provisions of the Act and the Company shall immediately notify the Authority of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section I herein are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I herein, if said payment is not received by the Delinquency Date as defined in Section 6.1 herein, the Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

Section VII - Assignment.

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

Section VIII - Miscellaneous.

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

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

To the Authority:

Troy Industrial Development Authority
1776 Sixth Avenue
Troy, New York 12180
Attn: Chairman

To the Company:

Troy Local Development Corporation
1776 Sixth Avenue
Troy, New York 12180
Attn: Chairman

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.

8.3 This 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 courts located in the City of Albany, New York and/or state courts located in the City of Troy, New York.

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Authority hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Authority by the Company. Neither member of the Authority nor any person executing this Agreement on its behalf shall be

liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Authority, or of any successor or political subdivision, either directly or through the Authority or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

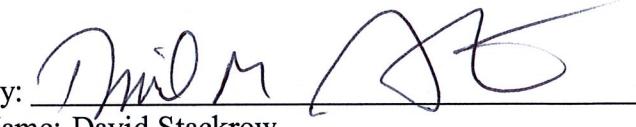
8.5 Notwithstanding anything contained herein to the contrary, the Authority, at its sole discretion and on a case-by-case basis, may determine, (but shall not be required to do so) with respect to a particular project, that a project has failed to meet its intended goals and to require the project applicant to agree to the recapture by the Authority of the value of any or all exemptions from taxation granted with respect to the project by virtue of the Authority's involvement. Events that the Authority may determine will trigger recapture may include, but not limited to (i) sale or closure of facility; (ii) significant employment reduction; (iii) significant change in use of facility; (iv) significant change in business activities of project applicant or operator; or (v) material noncompliance with or breach of terms of Authority transaction documents or of zoning or land use laws or regulations or federal, state or local environmental laws or regulations. If the Authority determines to provide for the recapture with respect to a particular project, the Authority also shall, in its sole discretion and on a case-by-case basis, determine the timing and percentage of recapture. The Authority shall notify the Company in writing within thirty (30) days of any such Event of Default of its intent to recapture PILOT Benefits (or any portion thereof).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[Signature Page to PILOT Agreement]

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

TROY INDUSTRIAL
DEVELOPMENT AUTHORITY

By: 
Name: David Stackrow
Title: Vice Chairman

TROY LOCAL DEVELOPMENT
CORPORATION

By: 
Name: William Roehr
Title: Vice Chairman

SCHEDULE A
TO
PILOT AGREEMENT DATED AS OF AUGUST 1, 2011,
TROY INDUSTRIAL DEVELOPMENT AUTHORITY
TROY LOCAL DEVELOPMENT CORPORATION
77 Water Street, Troy, New York 12180
TMID No. 111.76-1-1.12

<u>PILOT Year</u>	<u>County/City Tax Year</u>	<u>School Tax Year</u>	<u>County/City PILOT Payment Due March 1</u>	<u>School PILOT Payment Due September 1</u>	<u>Total Annual PILOT Payment</u>
Interim	2011	2011-12	\$19,659.60 Full Taxes	\$21,172.93 Full Taxes	Full Taxes Paid by Company
Year 1	2012	2012-13	20249.39	21808.12	42057.51
Year 2	2013	2013-14	20856.87	22462.36	43319.23
Year 3	2014	2014-15	21482.58	23136.23	44618.81
Year 4	2015	2015-16	22127.05	23830.32	45957.37
Year 5	2016	2016-17	22790.86	24545.23	47336.09
Year 6	2017	2017-18	23474.59	25281.59	48756.18
Year 7	2018	2018-19	24178.83	26040.03	50218.86
Year 8	2019	2019-20	24904.19	26821.23	51725.42
Year 9	2020	2020-21	25651.32	27625.87	53277.19
Year 10	2021	2021-22	26420.86	28454.65	54875.51
Year 11	2022	2022-23	27213.48	29308.29	56521.77
Year 12	2023	2023-24	28029.89	30187.54	58217.43
Year 13	2024	2024-25	28870.79	31093.16	59963.95
Year 14	2025	2025-26	29736.91	32025.96	61762.87
Year 15	2026	2026-27	30629.02	32986.74	63615.76
Year 16	2027	2027-28	31547.89	33976.34	65524.23
Year 17	2028	2028-29	32494.32	34995.63	67489.95
Year 18	2029	2029-30	33469.15	36045.5	69514.65
Year 19	2030	2030-31	34473.23	37126.86	71600.09
Year 20	2031	2031-32	35507.42	38240.67	73748.09

For the term of this PILOT Agreement, the Company shall pay the fixed amounts shown above, which reflect annual increases at a rate of three percent (3%) per year throughout.

The Company shall pay the applicable Total PILOT Payment as set forth within the above schedule on or before March 1 and September 1 of each year.