

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (hereinafter, the "Agreement"), effective as of February 26, 2018 by and between the **COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency"), a public benefit corporation of the State of New York having an address of 5 Warren Street, Glens Falls, New York 12801 and **RAY TERMINALS LLC** (the "Company"), a limited liability company organized and existing under the laws of the State of New York, with an address of 2794 7th Avenue, Troy, New York 12180.

WITNESSETH:

WHEREAS, the Agency was created by Chapter 862 of the Laws of 1971 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, Ray Terminals, LLC, a limited liability company established pursuant to the laws of the State of New York, having an address of 2794 7th Avenue, Troy, New York 12180 (the "Company") has requested that the Agency provide financial assistance in the form of a payment of lieu of taxes, mortgage tax exemption and sales tax abatements regarding a project (the "Project") to consist of: (i) the acquisition by the Agency of a leasehold interest in certain real property located at 39 Golf Course Road in the Town of Hampton, New York (the "Land", being more particularly described as tax parcel number 45.00-1-33); (ii) the planning, design, construction, operation and maintenance by the Company of a wholesale propane gas storage and distribution facility, including an approximately 2,400 square foot office and storage building, 4 60,000 gallon liquid propane storage tanks (with room for 2 additional 60,000 gallon tanks) and related piping, pumps, compressors and coupling improvements, along with related site, roadway, parking, access, curbage, rail siding and onsite and offsite utility improvements that will include approximately 7,500 feet of above and below-ground 3 phase electric service line and poles, along with related electrical transformer (collectively, the "Improvements"); (iii) the acquisition of and installation in and around the Land and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the "Equipment" and, collectively with, the Land and the Improvements, the "Facility"); and (iv) and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the "Straight Lease Transaction"), all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the "Act"), as amended; and

WHEREAS, on June 16, 2017, the Agency conducted a public hearing pursuant to the Act being taking official action relating to the Project; and

WHEREAS, on June 19, 2017, by Resolution No. 17-06, the Agency adopted a resolution approving the undertaking of the Project, appointing Ray Terminals, LLC, agent of the Agency for the purpose of constructing and equipping the Project Facility and on February 26, 2018,

Resolution No. 18-04, the Agency adopted a resolution authorizing the execution and delivery of closing documents by and between the parties (collectively referred to as the "Inducement and Closing Resolutions"); and

WHEREAS, by the Inducement Resolution and Closing Resolutions, the Agency has conferred on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from all New York State and local sales and use taxes 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 (10) year "payment in lieu of tax 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, it has been estimated and confirmed by the Company as included within its Application for Financial Assistance 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 \$2,800,000.00 and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$196,000.00, unless otherwise approved by the Agency, (ii) that the mortgage recording tax exemption amount shall be approximately \$42,000.00 and (iii) that real property tax abatement benefits to be provided to the Company over the 10-year benefit period of the anticipated payment-in-lieu-of tax agreement are estimated to be approximately \$323,206.00; and

WHEREAS, the Company proposes to lease the Facility to the Agency, and the Agency desires to rent the Facility from the Company pursuant to the terms of a certain Company Underlying Lease Agreement dated as of February 26, 2018 (the "Underlying Lease Agreement"), by and between the Company and the Agency; and

WHEREAS, the Agency proposes to sublease the Facility to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions set forth in a certain Lease Agreement dated as of February 26, 2018 (the "Lease Agreement"); and

WHEREAS, in order to define the obligations of the Company regarding payments-in-lieu-of taxes for the Facility, the Agency and the Company will enter into a Payment-in-Lieu-of-Tax Agreement, dated as of February 26, 2018 (the "PILOT Agreement"), by and between the Agency and the Company; and

WHEREAS, in order to define the obligations of the Company regarding its ability to utilize the Agency's sales and use tax exemption benefit as agent of the Agency to acquire, construct, renovate and equip the Facility and to undertake the Project, the Agency and the Company entered into an Agent Agreement, dated as of June 26, 2017 (the "Agent Agreement"), by and between the Agency and the Company; and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Inducement and Closing Resolutions and as more particularly described in the PILOT Agreement, and the Agent Agreement, that the Company provide assurances with respect to the terms and conditions herein set forth; and

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

WHEREAS, no Financial Assistance shall be provided to the Company prior to the effective date of this Agreement.

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. It is understood and agreed by the parties hereto that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to, and that the Agency is entering into the Underlying Lease Agreement, Lease Agreement, PILOT Agreement and Agent Agreement in order 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 Counties of Warren and Washington and to otherwise accomplish the public purpose of the Act.

2. PILOT Agreement. The parties hereto understand and agree that Exhibit A to this Agreement contains a copy of the PILOT Agreement, to be entered into, or entered into, by and between the Company and the Agency.

3. Termination, Modification and/or Recapture of Agency Financial Assistance. It is understood and agreed by the Parties hereto that the Agency is entering into the Underlying Lease Agreement, the Lease Agreement, the PILOT Agreement, and the Agent Agreement in order to provide Financial Assistance to the Company for the Facility and to accomplish the public purposes of the Act. The Company hereby makes the following representations and covenants in order to induce the Agency to proceed with the Project Facility:

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

i. Closure of the facility and departure of the company from the Counties of Warren or Washington (Notwithstanding any of the terms set forth herein, this occurrence shall result in the immediate termination of Financial Assistance) or sale of the facility without the prior approval of the Agency; or

ii. Significant change in the use of the facility and/or the business activities of the company; or

iii. Significant employment reductions not reflective of the company's (normal) business cycle and/or local and national economic conditions; or

iv. Failure to comply with any periodic and/or annual reporting requirements of the Agency, State or Federal governmental agency; or

v. For a project that failed to comply with a significant term or condition to use property or services in the manner required by any and all provisions of the agreements that the company has entered into with the Agency; or

vi. Failure to meet or comply with the Material Terms, as determined by the Agency at the time of the acceptance of the project for Financial Assistance and as set forth in the authorizing resolutions; all as further defined below, being additional purposes to be achieved by the Agency with respect to its determination to provide Financial Assistance to the Project and required by the Agency to be complied with and adhered to, as evidenced by submission, as so required by the Agency, of written confirmation certifying and confirming on an annual basis beginning in the first year in which Financial Assistance confirming:

(1) Investment Commitment - that the total investment actually made with respect to the Project at the Project's construction completion date equals or exceeds \$3,084,000.00 (which represents the product of 80% multiplied by \$3,855,000.00 being the total project cost as stated in the Company's application for Financial Assistance); and

(2) Employment Commitment - that there are at least four and one-half (4.5) full time equivalent ("FTE") employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE"); and

- the number of current FTE employees in the then current year at the Facility; and

- that the Company has maintained and created FTE employment at the Facility equal to 3.6 FTE employees (which represents approximately the product of 80% multiplied by the Baseline FTE as stated in the Company's application for Financial Assistance); and

(b) Project Assessment Reporting Commitment – that the Company shall provide, annually, to the Agency, certain information to confirm that the Project is achieving the investment, job retention, job creation, and other objectives of the Project.

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. Exhibit B contains the form of annual certification as so required as discussed above as well as additional Project assessment information that the Agency requires, on an annual basis, to be submitted to the Agency by the Company.

The findings made by the Agency with respect to Section 3 and/or failure to provide the written confirmation as required by Section 3 with respect to the thresholds and requirements as identified in this Section 3, and/or failure to meet the thresholds and requirements as identified in this Section 3, may potentially be determined by the Agency, in accordance with the Agency's "Recapture Policy", 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 Amended Inducement Resolution (collectively, findings and determinations made as described herein with respect to this Section 3 and/or the failure under this Section 3 to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in this Section 3 are hereby defined as a "Recapture Event"). 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 may assess and determine the New York State and local sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

(b) In accordance with the Inducement and Closing 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 \$2,800,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 3 of this Project Agreement, cannot exceed \$196,000.00, unless otherwise increased by the approval of the Agency.

(c) The Company acknowledges and understands that a Recapture Event determination made with respect to Section 3 of this Project Agreement will, 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.

4. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Agreement to the Agency regardless of any investigation made by the Agency.

5. Notices. All notices, certificates and other communications under this Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by Federal Express, addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Counties of Warren and Washington
Industrial Development Agency
5 Warren Street
Glens Falls, New York 12801
Attention: Chairman

With Copy to:

FitzGerald Morris Baker Firth P.C.
P.O. Box 2017
16 Pearl Street
Glens Falls, NY 12801-2017
Attention: Robert C. Morris, Esq.
Kara I. Lais, Esq.

To the Company:

Ray Terminals, LLC
2794 7th Avenue
Troy, New York 12180
Attention: Kenneth Ray

With Copy to:

Harris Beach PLLC
677 Broadway
Suite 1101
Albany, New York 12207
Attention: Justin S. Miller, Esq.

6. Amendments. No amendment, change, modification, alteration or termination of this Agreement shall be made except in writing upon the written consent of the Company and the Agency.

7. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.

8. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State, without regard or reference to its conflict of laws principles.

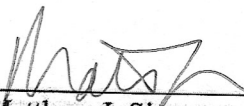
9. Section Headings. The headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Agreement.

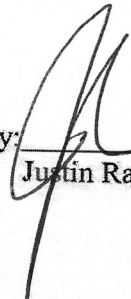
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IN WITNESS WHEREOF, the parties hereto have executed this Project Agreement as of the day and year first above written.

COUNTIES OF WARREN AND
WASHINGTON INDUSTRIAL
DEVELOPMENT AGENCY

RAY TERMINALS, LLC

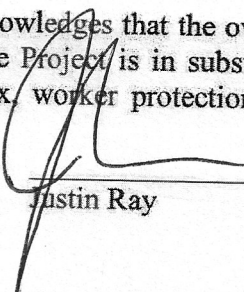
By: 
Matthew J. Simpson, Chairman

By: 
Justin Ray, Authorized Representative

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

Justin Ray, being first duly sworn, deposes and says:

1. That I am an authorized representative of Ray Terminals, LLC and that I am duly authorized on behalf of the Company to bind the Company and to execute this Agreement.
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.


Justin Ray

Subscribed and affirmed to me under penalties of perjury
this 26th day of February, 2018.


(Notary Public)

JUSTIN S. MILLER
Notary Public, State of New York
No. 02M16020242
Qualified in Albany County
Commission Expires June 8, 2019