BOND SCHOENECK & KING

501 Main Street | Utica, NY 13501-1245 | **bsk.com**

LAURA S. RUBERTO
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P: 315.738.1223
F: 315.724.2074

May 4, 2021

FILED
MAY 06 2021
Department of Assessment & Taxation Utica, NY

VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Christopher Tuttle, Assessor
City of Utica
One Kennedy Plaza
Utica NY 13502

Re: Oneida County Industrial Development Agency 2021 Real Estate Lease (63 Wurz Ave., LLC/Trucks 63, LLC Facility)

Dear Chris:

Enclosed you will please find Form RP-412-a (Application for Real Property Tax Exemption) in connection with the above-referenced transaction. Attached to the Application is a copy of the Payment in Lieu of Tax Agreement, which is effective August 1, 2021.

Please note all PILOT bills should be delivered directly to the Company.

Please return to us a scanned copy of the Application for our files, once you have processed the same. Should you have any questions on the enclosed, please do not hesitate to contact our offices.

Very truly yours,

Laura S. Ruberto
Paralegal

Enclosures

c: Attached Distribution List (w/enclosures)

Distribution List

County:

Anthony J. Picente, Jr.
Oneida County Executive
800 Park Avenue
Utica, New York 13501

Anthony R. Carvelli
Commissioner of Finance
Oneida County Finance Department
800 Park Avenue
Utica NY 13501

Kathy Pilbeam, Director
Real Property Tax Services
Oneida County
800 Park Avenue
Utica, New York 13501

County of Oneida
Receiver of Taxes
800 Park Avenue
Utica, New York 13501

City:

Robert Palmieri, Mayor
City of Utica
One Kennedy Plaza
Utica, New York 13502

Receiver of Taxes
City of Utica
Attn: Brian McClusky, Accountant
One Kennedy Plaza
Utica, New York 13502

William Morehouse, Comptroller
City of Utica
One Kennedy Plaza
Utica, New York 13502

School District:

Louis D. LaPolla, President
Board of Education
Utica City School District
929 York Street
Utica, New York 13502

Bruce J. Karam, Superintendent
Utica City School District
929 York Street
Utica, New York 13502

Receiver of Taxes
Utica City School District
Attn.: Francesca Zumpano, Treasurer
929 York Street
Utica, New York 13502

NYS DEPARTMENT OF TAXATION & FINANCE
OFFICE OF REAL PROPERTY TAX SERVICES

RP-412-a (1/95)

FILED
MAY 06 2021
Department of Assessment & Taxation
Utica, NY

INDUSTRIAL DEVELOPMENT AGENCIES
APPLICATION FOR REAL PROPERTY TAX EXEMPTION
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)

Name Oneida County Industrial Development Agency
Street 584 Phoenix Drive
City Rome, New York 13441
Telephone no. Day (315)338-0393
Evening ( )
Contact Shawna Papale
Title Executive Director

2. OCCUPANT (IF OTHER THAN IDA)
(If more than one occupant attach separate listing)

Name 63 Wurz Ave., LLC
Street P.O. Box 514
City Utica, New York 13503
Telephone no. Day ( )
Evening ( )
Contact Edward Kowalsky
Title Vice President

3. DESCRIPTION OF PARCEL

a. Assessment roll description (tax map no.,/roll year) 319.5-1-26./1 and 319.5-1-26./2
b. Street address 55 – 63 Wurz Avenue
c. City, Town or Village City of Utica
d. School District Utica City School District
e. County Oneida
f. Current assessment
g. Deed to IDA (date recorded; liber and page) Memo of Lease 4/30/21 #R2021-000608

4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)

a. Brief description (include property use) construction of a 9,600± square foot, six-bay, state-of-the-art fleet maintenance facility together with all infrastructure to service the same
b. Type of construction
c. Square footage 9,600±
d. Total cost See attached
e. Date construction commenced
f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) June 30, 2032

5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION
(Attach copy of the agreement or extract of the terms relating to the project).

a. Formula for payment The Company will make fixed PILOT Payments for ten years, to be allocated among the Taxing Jurisdictions in the same proportion taxes would have been allocated but not for the Agency's involvement. PILOT Agreement is attached hereto.

b. Projected expiration date of agreement June 30, 2032 (last day of PILOT Payment to school district)

c. Municipal corporations to which payments will be made

	Yes	No
County	☑	☐
Town/City	☑	☐
Village	☐	☑
School District	☑	☐

d. Person or entity responsible for payment

Name 63 Wurz Ave., LLC
Title Edward Kowalsky, VP

Address P.O. Box 514
Utica, New York 13503

e. Is the IDA the owner of the property? ☐ Yes ☑ No (check one)
If "No" identify owner and explain IDA rights or interest in an attached statement. IDA owns a leasehold interest

Telephone _____

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one) ☐ Yes ☑ No

If yes, list the statutory exemption reference and assessment roll year on which granted:
exemption _____ assessment roll year _____

7. A copy of this application, including all attachments, has been mailed or delivered on 5/4/2021 (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, David C. Grow (Name), Chairman (Title) of Oneida County Industrial Development Agency (Organization) hereby certify that the information on this application and accompanying papers constitutes a true statement of facts.

April 28, 2021
Date

David C. Grow
Signature

FOR USE BY ASSESSOR

1. Date application filed _____
2. Applicable taxable status date _____
3a. Agreement (or extract) date _____
3b. Projected exemption expiration (year) _____
4. Assessed valuation of parcel in first year of exemption $ _____
5. Special assessments and special as valorem levies for which the parcel is liable:

_____

_____

Date

Assessor's signature

Exhibit A

Application for Real Property Tax Exemption
(Form RP-412-a)
Oneida County Industrial Development Agency
(63 Wurz Ave., LLC Facility)

4(d). Total Cost of Facility:

New Construction of building	$ 1,280,000
Machinery and Equipment	50,000
Legal fees	15,000
Total:	**$1,345,000.00**

Transcript Document No. 4

63 WURZ AVE., LLC

and

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

Oneida County Industrial Development Agency
2021 Real Estate Lease
(63 Wurz Ave., LLC Facility)

Oneida County, City of Utica, Utica City School District

Tax Account Nos.: 319.5-1-26./1
319.5-1-26./2

3573527.2 4/20/2021

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of April 1, 2021, is by and between **63 WURZ AVE., LLC,** a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with an address of P.O. Box 514, Utica, New York 13503 (the "Company") and **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY,** an industrial development agency and a public benefit corporation of the State of New York having its principal office at 584 Phoenix Drive, Rome, New York 13441 (the "Agency").

W I T N E S S E T H:

WHEREAS, the Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law, Chapter 99 of the Consolidated Laws of New York, as amended, (the "Enabling Act"), and Chapter 372 of the Laws of 1970 of the State of New York, as amended, constituting Section 901 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of, among others, industrial facilities for the purpose of promoting, attracting and developing economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Company desires that the Agency assist in construction of a 9,600± square foot, six-bay, state-of-the-art fleet maintenance facility together with all infrastructure to service the same (collectively, the "Improvements") situated on parcels of land measuring 4.50± acres in the aggregate located at 55 – 63 Wurz Avenue, City of Utica, Oneida County New York (the "Land") and the acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of providing specialized service and repair of equipment used in the related recycling and containerized shipping businesses operated by Empire Recycling Corporation ("Empire Recycling Corporation") and ERL Intermodal ("ERL Intermodal") (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"); and

WHEREAS, the Company subleases the Facility to Trucks 63, LLC (the "Sublessee") for its operation pursuant to a sublease agreement (the "Sublease Agreement"); and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to accept a leasehold interest in the Facility, pursuant to a Lease Agreement dated of even date herewith and lease the Facility back to the Company pursuant to the terms and conditions contained in a Leaseback Agreement dated of even date herewith; and

WHEREAS, the Agency has agreed to acquire a leasehold interest in the Facility in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Facility will be exempt from real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company (the "Exempt Taxes") effective August 1, 2021, because the Agency is acquiring an interest in the Facility and the Facility is used for a purpose within the meaning of the applicable Constitutional and statutory provisions, including the Enabling Act, provided, however, such exemption does not extend to special assessments or ad valorem levies; and

WHEREAS, the Company understands that it, as lessee of the Facility leased by the Agency, will, in fact, have Exempt Taxes to pay under the provisions of this Agreement in the form of PILOT Payments (defined below) from the first date of the Exemption Term (as that date is determined by the parties and described herein) through the term of the Leaseback Agreement (the "Exemption Term"); and

WHEREAS, each year of the Exemption Term is more particularly set forth on Schedule B attached hereto (each year being referred to as an "Exemption Year"); and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provision for payments-in-lieu-of-taxes and such assessments by the Company to the City of Utica or any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be, wholly or partially located, Oneida County, the Utica City School District and appropriate special districts more specifically set forth on Schedule A attached hereto and made a part hereof (hereinafter each a "Taxing Authority" and collectively the "Taxing Authorities") in which any part of the Facility is or is to be located; and

WHEREAS, all defined terms herein as indicated by the capitalization of the first letter thereof and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Leaseback Agreement.

NOW, THEREFORE, to provide for certain payments to the Taxing Authorities, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Company shall pay to each Taxing Authority:

(a) all taxes and payments-in-lieu-of-taxes that are due with respect to the Facility prior to the Exemption Term, no later than the last day during which such payments may be made without penalty; and

(b) all special assessments and ad valorem taxes coming due and payable during the term of the Lease Agreement and the Leaseback Agreement for which the Facility is not exempt, no later than the last day during which such payments may be made without penalty.

2. (a) The Company shall pay a fixed amount in lieu of the Exempt Taxes (the "PILOT Payments") during each Exemption Year as follows:

Exemption Year 1	$16,160
Exemption Year 2	$16,483
Exemption Year 3	$16,813
Exemption Year 4	$17,149
Exemption Year 5	$17,492
Exemption Year 6	$22,302
Exemption Year 7	$22,749
Exemption Year 8	$23,203
Exemption Year 9	$23,668
Exemption Year 10	$24,141
Exemption Year 11 and thereafter	100% of Exempt Taxes

Such PILOT Payments shall be billed by each Taxing Authority in the same proportion as taxes would have been billed but for the Agency's involvement, unless the Taxing Authorities have consented in writing to a specific allocation (For the purposes of calculating the allocation, each Taxing Authority shall use the tax rate for the prior Exemption Year).

Anything herein to the contrary, notwithstanding, this Agreement shall terminate on the date on which the Leaseback Agreement shall terminate and the Agency shall terminate its leasehold interest in the Facility pursuant to the Leaseback Agreement. The benefits under this Agreement are subject to the terms and conditions of a certain Job Creation and Recapture Agreement dated as of April 1, 2021 (the "Recapture Agreement") by and among the Agency, the Company and the Sublessee.

(b) Anything herein to the contrary, notwithstanding, upon the failure of the Company in making any payment when due hereunder and upon failure to cure such default within thirty (30) days of receipt of notice as herein provided, shall constitute an Event of Default under Section 7.1(a)(vi) of the Leaseback Agreement, and the Agency may take any one or all remedial steps afforded it in Section 7.2 of the Leaseback Agreement; provided, however, nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document.

3. The Company will make PILOT Payments to each Taxing Authority hereunder for each Exemption Year by making the required payment to such Taxing Authority no later than the last day during which such Exempt Taxes could otherwise be made without penalty as if the Agency did not have a leasehold or other interest in the Facility. PILOT Payments that are delinquent under this Agreement shall be subject to a late penalty of five percent (5%) of the amount due which shall be paid by the Company to the affected Taxing Authority at the time the PILOT Payment is paid. For each month, or part thereof, that the PILOT Payment is delinquent beyond the first month, interest shall accrue to and be paid to the affected Taxing Authority on the total amount due plus a late payment penalty in the amount of one percent (1%) per month until the payment is made. Anything herein to the contrary, notwithstanding, upon the failure of the Company in making any payment (or causing any payment to be made) when due hereunder and upon failure to cure such default within thirty (30) days of receipt of notice as herein provided, the Agency shall have the right to terminate the Leaseback Agreement and this PILOT Agreement, and the Company shall henceforth pay one hundred (100%) percent of the Exempt Taxes, together with all costs of collection, including but not limited to attorneys' fees. Nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document.

4. The PILOT Payments to be made by the Company pursuant to this Agreement are intended to be in lieu of all Exempt Taxes that would have to be paid on the Facility leased to the Company by the Leaseback Agreement if the Agency did not have a leasehold or other interest in the Facility.

5. If by reason of a change in the Constitution or laws of the State of New York, or an interpretation of the Constitution or the laws of the State of New York by the Court of Appeals (or such lower court from which the time to appeal has expired) of the State of New York, or for any other reason, the Company is required to pay any tax which the payments specified herein are intended to be in lieu of, the Company may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of such taxes and need only pay the difference. Furthermore, inasmuch as the PILOT Payments herein agreed to be made by the Company are intended to be in lieu of all

Exempt Taxes, it is agreed that said payments shall not, as to any Exemption Year, be in an amount greater than would be payable for such year for such Exempt Taxes, in the aggregate, by a private corporation on account of its ownership of the Facility.

6. This Agreement shall be binding upon the successors and assigns of the parties.

7. It is the intent of the parties that the Company will have all the rights and remedies of a taxpayer with respect to any real property or other tax, service charge, special benefit, ad valorem levy, assessment or special assessment or service charge because of which, or in lieu of which, the Company is obligated to make a payment hereunder, as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility. It is the further intent of the parties that the Company will have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility with respect to any proposed assessment or change in assessment concerning the property, or any portion thereof, whether through an assessor, board of assessment review, court of law, or otherwise and likewise will be entitled to protest before and be heard by such assessor, board of assessment review, court of law or otherwise and will be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any taxes that would have been payable but for the provisions hereof. In the event, however, that a court of competent jurisdiction shall enter an order or judgment determining or declaring that, by reason of the Agency's interest in the Facility, the Company does not have the right to bring a proceeding to review such assessment under the Real Property Tax Law or any other law, then the Company shall have the right to contest such assessment in the name and as the agent of the Agency, and the Agency agrees to cooperate with the Company in all respects in any such proceeding at the sole cost and expense of the Company. Notwithstanding anything herein to the contrary, for so long as this Agreement is in effect, the Company hereby unconditionally and irrevocably waives its right, if any, to apply for and/or receive the benefit of any other real property tax exemption with respect to the Facility, including, without limitation, any real property tax exemption that may be available under Sections 485-a, 485-b and 485-e of the Real Property Tax Law.

8. All amounts payable by the Company hereunder will be paid to the respective Taxing Authority and will be payable in such lawful money of the United States of America as at the time of payment is legal tender for the payment of public and private debts, including a check payable in such money.

9. (a) If any term or provision hereof should be for any reason held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such term or provision will be deemed separate and independent and

the remainder hereof will remain in full force and effect and will not be invalidated, impaired or otherwise affected by such holding or adjudication.

(b) This Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

(c) All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (i) mailed by United States registered or certified mail, postage prepaid, return receipt requested or (ii) when delivered by a commercial overnight courier that guarantees next day delivery and provides a receipt, to the Agency or the Company, as the case may be, addressed as follows:

To the Agency: Oneida County Industrial Development Agency
584 Phoenix Drive
Rome, New York 13441-4105
Attn.: Chairman

With a Copy To: Bond, Schoeneck & King, PLLC
501 Main Street
Utica, New York 13501
Attn.: Linda E. Romano, Esq.

To the Company: 63 Wurz Ave., LLC
P.O. Box 514
Utica, New York 13503
Attn.: Michael Way, Controller

With a Copy To: Cohen & Cohen, LLP
258 Genesee Street, Suite 503
Utica, New York 13502
Attn.: Richard Cohen, Esq.

provided, that the Agency or the Company may, by notice given hereunder to the other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this **PILOT Agreement** as of the date first above written.

63 WURZ AVE., LLC, by its sole member
TRUCKS 63, LLC

By: _____
Edward Kowalsky
Vice President

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

On the 29th day of April 2021 before me, the undersigned a notary public in and for said state, personally appeared **Edward Kowalsky**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

RICHARD A. COHEN
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Commission Expires [illegible], 19 2023

3573527.2 4/20/2021

SECOND SIGNATURE PAGE TO PILOT AGREEMENT
(63 WURZ AVE., LLC FACILITY)

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
David C. Grow
Chairman

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

On the 22nd day of April 2021 before me, the undersigned a notary public in and for said state, personally appeared **David C. Grow,** personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

LAURA S. RUBERTO
COMMISSION EXPIRES
Oneida County
NOTARY
PUBLIC
01RU8031396
AUG. 1, 2022
STATE OF NEW YORK

3573527.2 4/20/2021

SCHEDULE A

COUNTY OF ONEIDA
Receiver of Taxes
800 Park Avenue
Utica, New York 13501

CITY OF UTICA
Receiver of Taxes
Utica City Hall
One Kennedy Plaza
Utica, New York 13502
Attn.: City Treasurer

UTICA CITY SCHOOL DISTRICT
Receiver of Taxes
929 York Avenue
Utica, New York 13502
Attn.: Francesca Zumpano, District Treasurer

SCHEDULE B

EXEMPTION YEARS

Exemption Year	County Taxes	City Taxes	School Taxes
Year One	01/01/2022 – 12/31/2022	05/01/2022 – 04/30/2023	07/01/2022 – 06/30/2023
Year Two	01/01/2023 – 12/31/2023	05/01/2023 – 04/30/2024	07/01/2023 – 06/30/2024
Year Three	01/01/2024 – 12/31/2024	05/01/2024 – 04/30/2025	07/01/2024 – 06/30/2025
Year Four	01/01/2025 – 12/31/2025	05/01/2025 – 04/30/2026	07/01/2025 – 06/30/2026
Year Five	01/01/2026 – 12/31/2026	05/01/2026 – 04/30/2027	07/01/2026 – 06/30/2027
Year Six	01/01/2027 – 12/31/2027	05/01/2027 – 04/30/2028	07/01/2027 – 06/30/2028
Year Seven	01/01/2028 – 12/31/2028	05/01/2028 – 04/30/2029	07/01/2028 – 06/30/2029
Year Eight	01/01/2029 – 12/31/2029	05/01/2029 – 04/30/2030	07/01/2029 – 06/30/2030
Year Nine	01/01/2030 – 12/31/2030	05/01/2030 – 04/30/2031	07/01/2030 – 06/30/2031
Year Ten	01/01/2031 – 12/31/2031	05/01/2031 – 04/30/2032	07/01/2031 – 06/30/2032