

Date: March 10, 2020

At a scheduled meeting of the City of Mount Vernon Industrial Development Agency (the "Agency") duly convened by the Chair of the Agency and held on March 10, 2020, at 10:00 AM in the Mayor's Conference Room, 1 Roosevelt Square, Mount Vernon, NY 10550, the following members of the Agency were:

Present: Hon. Shawyn Patterson-Howard  
Brian G. Johnson, Esq.  
Darren M. Morton, Ed. D.  
Marcus A. Griffith  
Stephanie A. Vanderpool

Absent: None

After the meeting had been duly called to order, the Chair announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to the execution of a Memorandum of Understanding.

The following resolution was duly moved and seconded, discussed and adopted with the following members voting:

<u>Voting Aye</u>	<u>Voting Nay</u>
Hon. Shawyn Patterson-Howard Brian G. Johnson, Esq. Darren M. Morton, Ed. D. Marcus A. Griffith Stephanie A. Vanderpool	None

**RESOLUTION AUTHORIZING ENTERING INTO MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MOUNT VERNON, THE CITY OF MOUNT VERNON INDUSTRIAL DEVELOPMENT AGENCY AND THE COUNTY OF WESTCHESTER INDUSTRIAL DEVELOPMENT AGENCY**

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 786 of the Laws of 1976 of the State of New York, as amended (hereinafter collectively called the “MV Act”), the MVIDA 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 MV Act; and

WHEREAS, by Title 1 of Article 18-A of the general Municipal Law of the State of New York, as amended, and Section 923-a of the General Municipal Law (Chapter 24) of the Consolidated Laws of New York (hereinafter collectively called the “WC Act”), authorizes the WCIDA to (1) promote the economic welfare, recreational opportunities and prosperity of its inhabitants, and (2) to promote, attract, encourage and develop recreation and economically sound commerce and industry through government action for the purpose of preventing unemployment and economic deterioration, as authorized by the WC Act; and

WHEREAS, since 2018, the MVIDA has failed to comply with General Municipal Law § 859, which requires each Industrial Development Agency to file annual audited financial statements with the Office of the New York State Comptroller (the “State Comptroller”); and

WHEREAS, as a result of this deficiency, the MVIDA is presently prohibited from offering “financial assistance” (the “Financial Assistance”), as that term is defined in the General Municipal Law (the “Revoked Status”); and

WHEREAS, the Mayor of the City of Mount Vernon (the “Mayor”) serves as the Chairwoman of the MVIDA, and the current Chairwoman was elected Mayor in 2019 and assumed that office on January 1, 2020; and

WHEREAS, on January 31, 2020, the Board of Directors of the MVIDA (“Board”) was reconstituted, following the dismissal of all previous members of the Board and MVIDA staff by the previous Chairman of the MVIDA on August 1, 2019; and

WHEREAS, the Chairwoman, in consultation with the Board, has conferred with the WCIDA and the WCIDA and the MVIDA have jointly agreed that until such time as the MVIDA has filed its annual audited financial statements with the State Comptroller, the MVIDA will defer all “projects”, as that term is defined in the General Municipal Law, located wholly or partially within the City (the “Project(s)”), to the WCIDA; and

WHEREAS, pursuant to General Municipal Law § 854 (4), the WCIDA may not provide Financial Assistance to Project(s) without obtaining the consent of the City, by and through its City Council; and

WHEREAS, the intent of this Agreement is to foster and facilitate the momentum of Project(s) which will expand economic opportunities for City residents and improve their quality of life; and

WHEREAS, in consideration of the MVIDA's temporary deferral of any Project(s), the WCIDA will share any agency fee, charge, or commission (the "Agency Fee") received by WCIDA in connection with any Project(s); and

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The attached Memorandum of Understanding (Exhibit A) is hereby approved and shall remain in full force and effect until duly revised or amended by the Agency and/or the parties thereto.

Section 2. The Officers and Directors of the Agency are hereby authorized to and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 3. This resolution shall take effect immediately.

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Exhibit A

Memorandum of Understanding

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MOUNT VERNON, THE CITY OF MOUNT VERNON INDUSTRIAL DEVELOPMENT AGENCY AND THE COUNTY OF WESTCHESTER INDUSTRIAL DEVELOPMENT AGENCY**

This Agreement (“Agreement”) is made the \_\_\_ day of March, 2020 between the **CITY OF MOUNT VERNON INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation created under the laws of the State of New York, having its address at City Hall, 1 Roosevelt Square, Mount Vernon, New York 10550 (the “MVIDA”) and the **COUNTY OF WESTCHESTER INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation created under the laws of the State of New York, having its address at the Michaelian County Office Building, 148 Martine Avenue, White Plains, New York 10601 (the “WCIDA”), and the **CITY OF MOUNT VERNON**, a municipal corporation existing under the laws of the State of New York, having its address at City Hall, 1 Roosevelt Square, Mount Vernon, new York 10550.

**W I T N E S S E T H:**

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 786 of the Laws of 1976 of the State of New York, as amended (hereinafter collectively called the “MV Act”), the MVIDA 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 MV Act; and

WHEREAS, by Title 1 of Article 18-A of the general Municipal Law of the State of New York, as amended, and Section 923-a of the General Municipal Law (Chapter 24) of the Consolidated Laws of New York (hereinafter collectively called the “WC Act”), authorizes the WCIDA to (1) promote the economic welfare, recreational opportunities and prosperity of its inhabitants, and (2) to promote, attract, encourage and develop recreation and economically sound commerce and industry through government action for the purpose of preventing unemployment and economic deterioration, as authorized by the WC Act; and

WHEREAS, since 2018, the MVIDA has failed to comply with General Municipal Law § 859, which requires each Industrial Development Agency to file annual audited financial statements with the Office of the New York State Comptroller (the “State Comptroller”); and

WHEREAS, as a result of this deficiency, the MVIDA is presently prohibited from offering “financial assistance” (the “Financial Assistance”), as that term is defined in the General Municipal Law (the “Revoked Status”); and

WHEREAS, the Mayor of the City of Mount Vernon (the “Mayor”) serves as the Chairwoman of the MVIDA, and the current Chairwoman was elected Mayor in 2019 and assumed that office on January 1, 2020; and

WHEREAS, on January 31, 2020, the Board of Directors of the MVIDA (“Board”) was reconstituted, following the dismissal of all previous members of the Board and MVIDA staff by the previous Chairman of the MVIDA on August 1, 2019; and

WHEREAS, the Chairwoman, in consultation with the Board, has conferred with the WCIDA and the WCIDA and the MVIDA have jointly agreed that until such time as the MVIDA has filed its annual audited financial statements with the State Comptroller, the MVIDA will defer all “projects”, as that term is defined in the General Municipal Law, located wholly or partially within the City (the “Project(s)”), to the WCIDA; and

WHEREAS, pursuant to General Municipal Law § 854 (4), the WCIDA may not provide Financial Assistance to Project(s) without obtaining the consent of the City, by and through its City Council; and

WHEREAS, the intent of this Agreement is to foster and facilitate the momentum of Project(s) which will expand economic opportunities for City residents and improve their quality of life; and

WHEREAS, in consideration of the MVIDA’s temporary deferral of any Project(s), the WCIDA will share any agency fee, charge, or commission (the “Agency Fee”) received by WCIDA in connection with any Project(s); and

NOW, THEREFORE, in consideration of the mutual promises herein set forth, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. *Temporary Referral and Deferral of all Projects to the WCIDA.* Until such time as the MVIDA files its annual audited financial statements with the State Comptroller, all Projects shall be referred to the WCIDA to provide Financial Assistance. The WCIDA shall consult and confer with the MVIDA regarding the Project(s) and must receive the MVIDA’s prior written consent to the terms of the Financial Assistance for any Project(s) before it receives final approval. The WCIDA will continue its present custom of deferring the negotiation of any Project(s) payment in lieu of taxes agreement (the “PILOT Agreement”) to the local municipality, in this case the City by and through the MVIDA.

2. *Agency Fee Share.* In consideration of the MVIDA’s deferral of all Project(s), the WCIDA and MVIDA will share and split any Agency Fee received in connection with a Project(s) in the following proportion: 50% of the Agency Fee to the WCIDA and 50% of the Agency to the MVIDA. The Agency Fee shall be paid at the closing of any Project(s) (“Closing”) and the WCIDA and MVIDA shall coordinate all invoicing of the Agency Fee prior to such Closing

3. *Termination.* Any party may terminate this Agreement at any time for any reason by giving at least thirty (30) days’ written notice.

4. *Notices.* All notices, letters, or other communications to the respective parties shall be in writing and mailed, by: (x) certified mail, return receipt requested and first

class mail or (y) a United States nationally recognized overnight courier service to the following: if to the MVIDA: City of Mount Vernon Industrial Development Agency, City Hall, 1 Roosevelt Square, Mount Vernon, New York 10550, Attention: Chairwoman; if to WCIDA: County of Westchester Industrial Development Agency, Michaelian County Office Building, 148 Martine Avenue, White Plains, New York 10601, Attention: Director, Office of Economic Development; if to City: City Hall, 1 Roosevelt Square, Mount Vernon, New York 10550, Attention: Corporation Counsel.

5. *Term.* Unless otherwise terminated as provided in this Agreement, this Agreement shall automatically expire on December 31, 2020.

6. *Governing Law.* This Agreement shall be interpreted and enforced according to the laws of the State of New York, without application of its conflicts or choice of law rules and shall be construed without the aid of any presumption or other rule of law regarding construction against the party drafting this Agreement or any part of it. No action shall be commenced or maintained by either party in connection with this Agreement, except in a court of competent jurisdiction in Westchester County, State of New York.

7. *Counterparts.* This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

8. *Waiver.* The failure of any party to enforce any of its rights hereunder or at law shall not be deemed a waiver or a continuing waiver of any of its rights or remedies against the other party, unless such failure or waiver is in writing.

9. *Severability.* If any provision, or part thereof, of this Agreement is judicially declared invalid, void or unenforceable, each and every provision, or part thereof, nevertheless shall continue in full force and effect, and the unenforceable provision shall be changed or interpreted so as to best accomplish the objectives and intent of such provision within the limits of applicable law.

10. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous understandings or agreements, whether oral or written, regarding the subject matter hereof. This Agreement shall be modified or amended only by a writing signed by the parties.

11. *Authority.* The parties executing this Agreement on behalf of the parties represent and warrant that they have the authority from their respective governing bodies to enter into this Agreement and to bind their respective entity to all terms and conditions of this Agreement.

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

COUNTY OF WESTCHESTER INDUSTRIAL  
DEVELOPMENT AGENCY

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

CITY OF MOUNT VERNON

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

CITY OF MOUNT VERNON INDUSTRIAL  
DEVELOPMENT AGENCY

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