

CLOSING ITEM NO.: A-8

TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY

AND

AIR PRODUCTS AND CHEMICALS, INC.

UNIFORM AGENCY PROJECT AGREEMENT

DATED AS OF JANUARY 1, 2018

RELATING TO FINANCIAL ASSISTANCE GRANTED BY THE
AGENCY WITH RESPECT TO A CERTAIN PROJECT LOCATED AT
461 RIVER ROAD IN THE TOWN OF BETHLEHEM, ALBANY
COUNTY, NEW.

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UNIFORM AGENCY PROJECT AGREEMENT

THIS UNIFORM AGENCY PROJECT AGREEMENT dated as of January 1, 2018 (the "Uniform Agency Project Agreement") by and among TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 445 Delaware Avenue, Delmar, New York (the "Agency") and AIR PRODUCTS AND CHEMICALS, INC., a business corporation organized and existing under the laws of the State of Delaware having an office for the transaction of business located at 7201 Hamilton Boulevard, Allentown, Pennsylvania (the "Company");

WITNESSETH:

WHEREAS, Title 1 of Article 18 A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 582 of the Laws of 1973 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in February, 2017, Air Products and Chemicals, Inc. (the "Company"), a business corporation duly organized and validly existing under the laws of the State of Delaware, presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest in all or a portion of an approximately 26.908 acre parcel of land located at 461 River Road in the Town of Bethlehem, Albany County, New York (the "Site Land"), together with the existing improvements located thereon containing approximately 7,000 square feet in the aggregate (the "Existing Facility"), (2) the construction on the Site Land of certain improvements containing in the aggregate approximately 5,000 square feet of space (the "New Facility") (the Existing Facility and the New Facility hereinafter collectively referred to as the "Facility"), and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the "Equipment") (the Site Land, the Facility, and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to be initially owned by the Company and, following the Completion Date (as hereinafter defined), operated by the Joint Venture (as hereinafter defined) as an industrial facility

for the production and distribution of liquid nitrogen, liquid oxygen and liquid argon and other directly and indirectly related uses; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on February 24, 2017 (the “Public Hearing Resolution”), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on March 10, 2017 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located, (B) caused notice of the Public Hearing to be posted on March 10, 2017 on a bulletin board located outside the Town Clerk’s office located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York and on the Agency’s website, (C) caused notice of the Public Hearing to be published on March 11, 2017 in the Albany Times Union, a newspaper of general circulation available to the residents of the Town of Bethlehem, Albany County, New York, (D) conducted the Public Hearing on March 22, 2017 at 5:00 o’clock p.m., local time in the Auditorium of the Town of Bethlehem Town Hall located at 445 Delaware Avenue in the Town of Bethlehem, Albany County, New York, and (E) prepared a report of the Public Hearing (the “Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on March 23, 2017 (the “SEQR Resolution”), the Agency determined (A) to conduct an uncoordinated review of the Project, (B) that the Project is an “Unlisted action” which will not have a significant effect on the environment and, therefore, that an environmental impact statement is not required to be prepared with respect to the Project, and (C), as a consequence of the foregoing, to prepare a negative declaration with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on March 23, 2017 (the “Approving Resolution”), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of January 1, 2018 (the “Lease Agreement”) between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the “Basic Documents”). Pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, in July, 2017, East Coast Nitrogen Company LLC (the “Joint Venture”), a limited liability company organized and existing under the laws of the State of Delaware, submitted an application to the Agency requesting that the Agency agree that, upon the Company’s completion of the acquisition, construction and equipping of the Project Facility, the Company had the right to assign to the Joint Venture

a portion of the Company's interest in the Lease to Agency, the Lease Agreement and the other Basic Documents (as defined in the Lease Agreement to the Company); and

WHEREAS, by further resolution adopted by the members of the Agency on July 26, 2017 (the "Assignment Resolution"), the Agency agreed to an assignment of all or a portion of the Company's interest in the Basic Documents from the Company to the Joint Venture and approved the execution and delivery of this Assignment and Assumption Agreement to provide for such assignment and assumption, effective as of the Completion Date; and

WHEREAS, with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of January 1, 2018 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Site Land and all improvements now or hereafter located on said portion of the Site Land (collectively, the "Leased Premises") for a lease term ending on December 31, 2030; and (2) a certain bill of sale dated as of January 1, 2018 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver (1) a certain payment in lieu of tax agreement dated as of January 1, 2018 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (C) the Agency and the Company will execute and deliver the uniform agency project agreement dated as of January 1, 2018 (the "Uniform Agency Project Agreement") by and between the Agency and the Company relating to the terms of the granting by the Agency of the Financial Assistance to the Company; (D) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (E) the Agency will execute and deliver to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (F) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, (A) the Agency has established certain policies allowing denial of Financial Assistance to any project which does not deliver the public benefits estimated at the time said project was approved by the Agency (the "Public Benefits"), (B) the Agency is unwilling to grant Financial Assistance to a project unless the beneficiary of such project agrees that the amount of Financial Assistance to be received by such beneficiary with respect to such project shall be contingent upon, and shall bear a direct relationship to, the success or lack of success of such project in delivering the promised Public Benefits, and (C) the Agency has created this Uniform Agency Project Agreement in order to establish the conditions under which the Agency will be entitled to recapture some or all of the Financial Assistance that has been granted to the Company under the Basic Documents if the Project is unsuccessful in whole or in part in delivering the promised Public Benefits; and

WHEREAS, the Company desires to receive certain Financial Assistance from the Agency with respect to the Project, and accordingly is willing to enter into this Uniform Agency Project Agreement in order to secure such Financial Assistance from the Agency; and

WHEREAS, all things necessary to constitute this Uniform Agency Project Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Uniform Agency Project Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS TO WIT:

ARTICLE I

DEFINITIONS

SECTION 1.01. DEFINITIONS. The following words and terms used in this Uniform Agency Project Agreement shall have the respective meanings set forth below, or the definitions set forth in the Lease Agreement, unless the context or use indicates another or different meaning or intent.

“Application” means the application submitted by the Company to the Agency in February, 2017 with respect to the Project, in which the Company (A) described the Project, (B) requested that the Agency grant certain Financial Assistance with respect to the Project, and (C) indicated the Public Benefits that would result from approval of the Project by the Agency.

“Basic Documents” means the Conveyance Documents, the Lease Agreement, the Payment in Lieu of Tax Agreement, the Uniform Agency Project Agreement and all other instruments and documents related thereto and executed in connection therewith, and any other instrument or document supplemental thereto, each as amended from time to time.

“Completion Date” means the earlier to occur of (A) December 31, 2019 or (B) such date as shall be certified by the Company to the Agency as the date of completion of the Project pursuant to Section 4.2 of the Lease Agreement, or (C) such earlier date as shall be designated by written communication from the Company to the Agency as the date of completion of the Project.

“Contract Employee” means (A) a full-time, private-sector employee (or self-employed individual) that is not on the Company’s payroll but who has worked for the Company at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee, or (B) 2 part-time, private-sector employees (or self-employed individuals) that are not on the Company’s payroll but who have worked for the Company at the Project Facility for a combined minimum of 35 hours per week for not less than 4 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee.

“Conveyance Documents” means, collectively, the Lease to Agency and the Bill of Sale to Agency.

“Equipment” shall have the meaning set forth in the Lease Agreement.

“Facility” shall have the meaning set forth in the Lease Agreement.

“Financial Assistance” means exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes as more particularly described in the Basic Documents.

“Full Time Equivalent Employee” means (A) a full-time, permanent, private-sector employee on the Company’s payroll, who has worked at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties; or (B) two part-time, permanent, private-sector employees on Company’s payroll, who have worked at the Project Facility for a combined minimum of 35 hours per week for not less than 4 consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties; or (C) a Contract Employee.

“Joint Venture” means East Coast Nitrogen Company LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns, to the extent permitted pursuant to Section 8.4 of the Lease Agreement.its successors and permitted assigns.

“Land” means an approximately 5.8 acre parcel of land located at 461 River Road in the Town of Bethlehem, Albany County, New York.

“Lease Agreement” means the lease agreement dated as of January 1, 2018 by and between the Agency, as landlord, and the Company, as tenant, pursuant to which, among other things, the Agency has leased the Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

“Payment in Lieu of Tax Agreement” means the payment in lieu of tax agreement dated as of January 1, 2018 by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Project Facility, as such agreement may be amended or supplemented from time to time.

“Project” shall have the meaning set forth in the Lease Agreement.

“Uniform Agency Project Agreement” means the uniform agency project agreement dated as of January 1, 2018 by and between the Agency and the Company, pursuant to which among other things, the Agency and the Company have agreed to certain conditions relating to the granting of Financial Assistance, as said uniform agency project agreement may be amended or supplemented from time to time.

“Project Facility” means, collectively, the Site Land, the Facility and the Equipment.

“Recapture Events” shall mean the following:

- (1) failure to complete the acquisition, construction and installation of the Project Facility by the Completion Date;
- (2) failure by the Company to meet at least eighty percent (80%) of the Employment Level requirements contained in Section 3.02(E) hereof;
- (3) liquidation of substantially all of the Company’s operating assets and/or cessation of substantially all of the Company’s operations;
- (4) relocation of all or substantially all of Company’s operations at the Project Facility to another site, or the sale, lease or other disposition of all or substantially all of the Project Facility;
- (5) transfer of jobs equal to at least fifteen percent (15%) of the Company’s Employment Level out of the Town of Bethlehem, New York;
- (6) failure by the Company to comply in all material respects with the annual reporting requirements or to provide the Agency with requested information;
- (7) sublease of all or part of the Project Facility in violation of the Basic Documents;

(8) a change in the use of the Project Facility, other than as an industrial and a manufacturing facility for the production and distribution of liquid nitrogen, liquid oxygen and liquid argon and other directly and indirectly related uses; or

(9) failure by the Company to make an actual investment in the Project by the Project's Completion Date equal to or exceeding 80% of the Total Project Costs as set forth in the Company's application for Financial Assistance.

"Recapture Period" means an approximately twelve (12) year period ending on December 31, 2030.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into this Uniform Agency Project Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Uniform Agency Project Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Uniform Agency Project Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Uniform Agency Project Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 2.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a business corporation duly organized and validly existing under the laws of the State of Delaware, is duly authorized to do business in the State of New York and has the power under the laws of the State of Delaware to enter into this Uniform Agency Project Agreement and to perform and carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement, and by proper action of its board of directors has been duly authorized to execute, deliver and perform this Uniform Agency Project Agreement.

(B) Authorization. The Company is authorized and has the power under its articles of formation, operating agreement and the laws of the State of Delaware to enter into this Uniform Agency Project Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement. By proper action of its board of directors, the Company has duly authorized the execution, delivery and performance of this Uniform Agency Project Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Uniform Agency Project Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement by (and the execution, delivery and performance of this Uniform Agency Project Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Uniform Agency Project Agreement will not

conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its certificate of formation, by-laws or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Uniform Agency Project Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) 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 of the foregoing, and this Uniform Agency Project Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Uniform Agency Project Agreement by the Company or as a condition to the validity of this Uniform Agency Project Agreement.

ARTICLE III

COVENANTS AND AGREEMENTS

SECTION 3.01. FINANCIAL ASSISTANCE. (A) Financial Assistance. In the Application, the Company certified to the Agency employment information with respect to the Project Facility and the operations of the Company. In reliance on the certifications provided by the Company in the Application, the Agency has agreed to provide the Company with the following Financial Assistance related to the Project:

- | | |
|---|-------------------|
| (1) sales and use tax exemptions: | \$465,300 (est) |
| (2) a mortgage recording tax exemption: | \$-0- |
| (3) a real property tax exemption: | \$2,900,000 (est) |

(B) Description of Project and Public Purpose of Granting Financial Assistance to the Project. In the Application and in the discussions had between the Company and the Agency with respect to the Company's request for Financial Assistance from the Agency with respect to the Project, the Company has represented to the Agency as follows:

(1) That the Project is described as follows: (1) the acquisition of an interest in all or a portion of an approximately 26.908 acre parcel of land located at 461 River Road in the Town of Bethlehem, Albany County, New York (the "Site Land"), together with the existing improvements located thereon containing approximately 7,000 square feet in the aggregate (the "Existing Facility"), (2) the construction on the Site Land of certain improvements containing in the aggregate approximately 5,000 square feet of space (the "New Facility") (the Existing Facility and the New Facility hereinafter collectively referred to as the "Facility"), and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the "Equipment") (the Site Land, the Facility, and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to be owned by the Company and operated as an industrial facility for the production and distribution of liquid nitrogen, liquid oxygen and liquid argon and other directly and indirectly related uses.

(2) That the Project will furnish the following benefits to the residents of the Town of Bethlehem, New York (the "Public Benefits"): As described in the Approving Resolution.

(C) Payment in Lieu of Tax Agreement. A copy of the Payment in Lieu of Tax Agreement is attached as Exhibit C. The attached Payment in Lieu of Tax Agreement describes the dates the payments in lieu of taxes are to be made and includes a table describing the amount of payments in lieu of taxes to be made.

(D) Contingent Nature of the Financial Assistance. The Agency and the Company agree that the purpose of the Project is to create or retain permanent private sector jobs in the Town of Bethlehem, New York in the form of direct employees at the Project Facility. Accordingly, the Agency and the Company agree that the amount of Financial Assistance to be received by the Company and the Joint Venture with respect to the Project shall be contingent upon, and shall bear a direct relationship to the success or lack of success of the Project in achieving this goal.

SECTION 3.02. COMPANY AGREEMENTS. The Company hereby agrees as follows:

(A) Filing – Closing Date. To file with the Agency, prior to the Closing Date, an employment plan, based on the employment projections contained in the Application, in substantially the form attached as Exhibit G to the Lease Agreement.

(B) Filing – Annual. To file with the Agency, on an annual basis, within sixty (60) days after the end of each calendar year, reports regarding the number of people employed at the Project Facility and certain other matters, including as required under Applicable Law, the initial said annual employment report (the “Annual Report”) to be in substantially the form annexed as Exhibit H to the Lease Agreement.

(C) Employment Listing. To list or to cause the Joint Venture to list new employment opportunities created as a result of the Project with the following entities (hereinafter, the “JTPA Entities”): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)).

(D) Employment Consideration. Except as otherwise provided by collective bargaining agreement, to first consider or to cause the Joint Venture to first consider, where practicable, for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(E) Employment Level. (1) (a) To maintain either individually or in combination with the Joint Venture the following employment level (the “Employment Level”) during the term of the Lease Agreement, beginning no later than the Closing Date:

Year:	Total Employees:
2018	44 Full Time Equivalent Employees
2019 and thereafter	66 Full Time Equivalent Employees

(b) For purposes of determining the number of Full Time Equivalent Employees, no more than ten percent (10%) of such Full Time Equivalent Employees may consist of Contract Employees.

(c) Notwithstanding anything in this Uniform Project Agency Agreement to the contrary, if the Completion Date is later than January 1, 2019, then the Employment Level shall remain at 44 Full Time Equivalent Employees until the Completion Date at which time the Employment Level shall increase to 66 Full Time Equivalent Employees. For the sake of clarity, in no event shall the Completion Date be later than December 31, 2019.

(2) To submit the following reports for the purpose of verifying that the Company individually or in combination with the Joint Venture is achieving the Employment Level: (a) by the 15th day of the first calendar month of each new quarter, Parts A and B of form NYS-45 (the “Quarterly Report,” a copy of which is attached hereto as Exhibit A) or some other form of reporting that is explicitly approved by the Agency, and (b) by February 1 of each year during the term of this Uniform Agency Project Agreement, a project and employment plan status report (the “Status Report,” a copy of which is attached hereto as Exhibit B and, together with the Annual Report described in Section 3.02(B) above, being collectively referred to as the “Employment

Affidavits”) or some other form that is explicitly approved by the Agency. Full Time Equivalent Employees for each calendar year during the term of this Uniform Agency Project Agreement shall be determined by calculating the average number of Full Time Equivalent Employees for the prior calendar year, computed by adding the number of Full Time Equivalent Employees as of the Company’s or the Joint Venture’s last payroll date in the months of March, June, September and December and dividing that sum by 4.

(F) Non-Discrimination. (1) To not discriminate or to permit the Joint Venture to discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Company shall use its reasonable efforts to ensure that employees and applicants for employment with the Company, the Joint Venture or any subtenant of the Project Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term “treated” shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(2) To state or to cause the Joint Venture to state in substance, in all solicitations or advertisements for employees placed by or on behalf of the Company during the term of this Uniform Agency Project Agreement, that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

SECTION 4.01. EVENTS OF DEFAULT DEFINED. (A) The following shall be "Events of Default" under this Uniform Agency Project Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Uniform Agency Project Agreement, any one or more of the following events:

- (1) A material default in the performance or observance of any of the covenants, conditions or agreements on the part of the Company in this Uniform Agency Project Agreement and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute the same with due diligence.
- (2) The occurrence of an "Event of Default" under any other Basic Document.
- (3) Any representation or warranty made by the Company herein or in any other Basic Document proves to have been false in a material way at the time it was made.

SECTION 4.02. REMEDIES ON DEFAULT. (A) Whenever any Event of Default hereunder shall have occurred, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps as its sole and exclusive remedy or remedies:

- (1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 of the Lease Agreement up to the date of the occurrence of the Event of Default, and (b) all other payments due under this Uniform Agency Project Agreement or any of the other Basic Documents up to the date of the occurrence of the Event of Default;
- (2) terminate the Lease to Agency, the Lease Agreement and the Payment in Lieu of Tax Agreement and convey to the Company all the Agency's right, title and interest in and to the Project Facility (The conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the delivery by the Agency of the Termination of Lease to Agency and the Bill of Sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such transfer of title; or
- (3) take any other action at law or in equity which may appear necessary or desirable to collect any monetary obligations or amounts then due or thereafter to become due hereunder

(B) No action taken pursuant to this Section 4.02 shall relieve the Company from its obligations to make any payments required by this Uniform Agency Project Agreement and the other Basic Documents.

SECTION 4.03. RECAPTURE OF FINANCIAL ASSISTANCE. (A) General. Upon the occurrence of a Recapture Event that occurs during the Recapture Period, the Agency may require the Company to provide for the recapture of the project financial assistance (the "Project Financial Assistance"), all in accordance with the terms of this Section 4.03. The Company hereby agrees if requested by the Agency, to pay to the Agency the recapture of the Project Financial Assistance, as provided in this Section 4.03.

(B) Project Financial Assistance. The Project Financial Assistance to be recaptured, as adjusted by the provisions of Section 4.03(C) below, by the Agency from the Company upon the occurrence of a Recapture Event during a Recapture Period shall be an amount equal to a percentage (as provided in subsection (C) below) multiplied by the sum of the following:

(1) the portion of the amount of New York State sales and use taxes allocable to the Town of Bethlehem that the Company would have paid in connection with the undertaking of the Project if the Project Facility was privately owned by the Company and not deemed owned or under the jurisdiction and control of the Agency;

(2) the amount, if any, of any mortgage recording tax exemption provided by the Agency to the Company in connection with the undertaking of the Project; and

(3) the difference between the amount of the payment in lieu of tax payments paid by the Company under the Payment in Lieu of Tax Agreement and the amount of the general real property ad valorem taxes that would have been payable by the Company to the Taxing Entities if the Project Facility was privately owned by the Company and not deemed owned or under the jurisdiction and control of the Agency.

(C) Amount of Project Financial Assistance to be Recaptured. Upon the occurrence of a Recapture Event, the Company shall pay or cause to be paid to the Agency the following amounts as recapture:

(1) (a) With respect to the portion of the Project Financial Assistance described in Section 4.03(B)(1) above, the amount of such Project Financial Assistance to be recaptured shall be adjusted as follows:

Year	Amount of Recapture
2018	100% of the Project Financial Assistance
2019	100% of the Project Financial Assistance
2020	100% of the Project Financial Assistance
2021	66 2/3% of the Project Financial Assistance
2022	33 1/3% of the Project Financial Assistance
2023 and thereafter	0% of the Project Financial Assistance

(b) The Agency and the Company understand and agree that beginning on January 1, 2023 there will be no recapture of the portion of the Project Financial Assistance described in Section 4.03(B)(1) above upon the occurrence of a Recapture Event on or after January 1, 2023.

(2) With respect to the portion of the Project Financial Assistance described in Section 4.03(B)(2) and (3) above, the amount of such Project Financial Assistance to be recaptured shall be adjusted as follows:

Year	Amount of Recapture
2018	100% of the Project Financial Assistance
2019	100% of the Project Financial Assistance
2020	100% of the Project Financial Assistance
2021	100% of the Project Financial Assistance
2022	90% of the Project Financial Assistance

2023	80% of the Project Financial Assistance
2024	70% of the Project Financial Assistance
2025	60% of the Project Financial Assistance
2026	50% of the Project Financial Assistance
2027	40% of the Project Financial Assistance
2028	30% of the Project Financial Assistance
2029	20% of the Project Financial Assistance
2030	10% of the Project Financial Assistance

(D) Redistribution of Project Financial Assistance to be Recaptured. Upon the receipt by the Agency of any amount of Project Financial Assistance pursuant to this Section 4.03, the Agency shall redistribute such amount within thirty (30) days of such receipt to the Taxing Entity that would have received such amount but for the granting by the Agency of the Project Financial Assistance.

(E) Survival of Obligations. The Company acknowledges that the obligations of the Company in this Section 4.03 shall survive the conveyance of the Project Facility to the Company and the termination of the Lease Agreement.

(F) Agency Review of Recapture Determination. If the Agency determines that a Recapture Event has occurred, it shall give notice of such determination to the Company. The Company shall have fourteen (14) days from the date the notice is deemed given to submit a written response to the Agency's determination and to request a written and/or oral presentation to the Agency why the proposed recapture amount should not be paid to the Agency. The Company may make its presentation at a meeting of the Agency. The Agency shall then vote on a resolution recommending (i) a termination of Financial Assistance, (ii) a recapture of Financial Assistance, (iii) both a termination and a recapture of Finance Assistance, (iv) a modification of Financial Assistance or (iv) no action.

SECTION 4.04. LATE PAYMENTS. (A) One Month. If the Company shall fail to make any payment required by this Uniform Agency Project Agreement within thirty days of the date that written notice of such payment is sent from the Agency to the Company at the address provided in Section 5.05 of this Uniform Agency Project Agreement, the Company shall pay the amount specified in such notice together with a late payment penalty equal to three percent (3%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Uniform Agency Project Agreement when due and such delinquency shall continue beyond the thirty days after such notice, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the Agency until such payment in default shall have been made in full, and the Company shall pay the same to the Agency together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

SECTION 4.05. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. If the Company should default in performing any of its obligations, covenants or agreements under this Uniform Agency Project Agreement and the Agency should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.06. REMEDIES; WAIVER AND NOTICE. (A) No Specified Remedy Exclusive. No remedy set forth in Section 4.02 hereof conferred upon or reserved to the Agency is intended to be exclusive of any other remedy or remedies available under such Section, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under such Section.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of a Recapture Event or an Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency to exercise any remedy reserved to it in this Uniform Agency Project Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Uniform Agency Project Agreement.

(D) No Waiver. In the event any provision contained in this Uniform Agency Project Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Uniform Agency Project Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V
MISCELLANEOUS

SECTION 5.01. TERM. This Uniform Agency Project Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the execution and delivery of this Uniform Agency Project Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Uniform Agency Project Agreement shall continue to remain in effect until December 31, 2030.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Uniform Agency Project Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Uniform Agency Project Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, property addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Air Products and Chemicals, Inc.
7201 Hamilton Boulevard
Allentown, Pennsylvania 18195
Attention: Thomas L. Kenyon, General Counsel, Americas

and

Air Products and Chemicals, Inc.
7201 Hamilton Boulevard
Allentown, Pennsylvania 18195
Attention: John Robinson, General Manager North Region

WITH A COPY TO:

Whiteman Osterman & Hanna LLP
One Commerce Plaza
Albany, New York 12260
Attention: J. Stephen Reilly, Esq.

IF TO THE JOINT VENTURE:

East Coast Nitrogen Company LLC
416 River Road
Glenmont, New York 12077
Attention: Plant Manager

IF TO THE AGENCY:

Town of Bethlehem Industrial Development Agency
Town Hall, 445 Delaware Avenue
Delmar, New York 12054
Attention: Chairman

WITH A COPY TO:

Town of Bethlehem Industrial development Agency
Town Hall, 445 Delaware Avenue
Delmar, New York 12054
Attention: Thomas P. Connolly, Esq.

and

Hodgson Russ LLP
677 Broadway, Suite 301
Albany, New York 12207
Attention: A. Joseph Scott, III, Esq.

(C) Change of Address. The Agency, the Company and the Joint Venture may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Uniform Agency Project Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Uniform Agency Project Agreement are intended to be for the benefit of the Agency.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Uniform Agency Project Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Uniform Agency Project Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Uniform Agency Project Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Uniform Agency Project Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Uniform Agency Project Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

TOWN OF BETHLEHEM INDUSTRIAL
DEVELOPMENT AGENCY

BY: 
(Vice) Chairman

AIR PRODUCTS AND CHEMICALS, INC.

BY: _____
Authorized Officer

SPECIAL PROJECT CERTIFICATION

As required under Section 859-a (6) of the Act, the Company hereby certifies, under penalty of perjury, that the Company is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

AIR PRODUCTS AND CHEMICALS, INC.

BY: _____
Authorized Officer

IN WITNESS WHEREOF, the Agency and the Company have caused this Uniform Agency Project Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

TOWN OF BETHLEHEM INDUSTRIAL
DEVELOPMENT AGENCY

BY: _____
(Vice) Chairman

AIR PRODUCTS AND CHEMICALS, INC.

BY:  _____
Authorized Officer

SPECIAL PROJECT CERTIFICATION

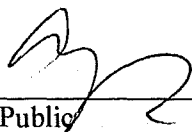
As required under Section 859-a (6) of the Act, the Company hereby certifies, under penalty of perjury, that the Company is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

AIR PRODUCTS AND CHEMICALS, INC.

BY:  _____
Authorized Officer

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

On the 9th day of January, in the year 2018, before me, the undersigned, personally appeared JOSEPH P. RICHARDSON, 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 signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

A. Joseph Scott III
Notary Public, State of New York
Qualified in Albany County
No. 02SC4811591
Commission Expires December 31, 2018

COMMONWEALTH OF PENNSYLVANIA)
) ss.:
COUNTY OF LEHIGH)

On the 1 day of ~~January~~ ^{February}, in the year 2018, before me, the undersigned, personally appeared CHARLES G. STINNER, 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

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Andrea I. Rennig, Notary Public
Lower Milford Twp., Lehigh County
My Commission Expires June 18, 2019
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

EXHIBIT A
QUARTERLY REPORT

- SEE ATTACHED -

Withholding identification number



Part D - Form NYS-1 corrections/additions

Use Part D only for corrections/additions for the quarter being reported in Part B of this return. To correct original withholding information reported on Form(s) NYS-1, complete columns a, b, c, and d. To report additional withholding information not previously submitted on Form(s) NYS-1, complete only columns c and d. Lines 12 through 15 on the front of this return must reflect these corrections/additions.

a Original last payroll date reported on Form NYS-1, line A (mmdd)	b Original total withheld reported on Form NYS-1, line 4	c Correct last payroll date (mmdd)	d Correct total withheld
▶			
▶			
▶			
▶			
▶			
▶			
▶			

Part E - Change of business information

- 22. This line is not in use for this quarter.
- 23. If you permanently ceased paying wages, enter the date (mmddy) of the final payroll (see Note below)
- 24. If you sold or transferred all or part of your business:
 - Mark an X to indicate whether in whole or in part
 - Enter the date of transfer (mmddy)
 - Complete the information below about the acquiring entity

Legal name	EIN
Address	

Note: For questions about other changes to your withholding tax account, call the Tax Department at (518) 485-6654; for your unemployment insurance account, call the Department of Labor at (518) 485-8589 or 1 888 899-8810. If you are using a paid preparer or a payroll service, the section below must be completed.

Paid preparer's use	Preparer's signature	Date	Preparer's NYTPRIN	Preparer's SSN or PTIN	Mark an X if self-employed <input type="checkbox"/>
	Preparer's firm name (or yours, if self-employed)	Address	Firm's EIN	Telephone number ()	
Payroll service's name			Payroll service's EIN	<input type="text"/>	

Checklist for mailing:

- File original return and keep a copy for your records.
- Complete lines 9 and 19 to ensure proper credit of payment.
- Enter your withholding ID number on your remittance.
- Make remittance payable to NYS Employment Contributions and Taxes.
- Enter your telephone number in boxes below your signature.
- See Need help? on Form NYS-45-1 If you need forms or assistance.

Mail to:

NYS EMPLOYMENT
CONTRIBUTIONS AND TAXES
PO BOX 4119
BINGHAMTON NY 13902-4119

NYS-45 (2/13) (back)

EXHIBIT B
ANNUAL STATUS REPORT

[Update Form To Be Inserted]

EXHIBIT C

COPY OF PAYMENT IN LIEU OF TAX AGREEMENT