

TOWN OF MONTGOMERY INDUSTRIAL DEVELOPMENT AGENCY

110 Bracken Road  
Montgomery, New York 12549  
Tel: 845-649-3930

January 27, 2020

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

The Honorable Steven M. Neuhaus  
County Executive of Orange County  
Orange County Government Center  
255 Main Street  
Goshen, New York 10924

John P. Xanthis, Superintendent of Schools  
Valley Central School District  
944 State Route 17K  
Montgomery, New York 12549

The Honorable Brian Maher, Supervisor  
Town of Montgomery *Hand-Delivered*  
110 Bracken Road  
Montgomery, New York 12549

Sarah Messing, Board President  
Valley Central School District  
944 State Route 17K  
Montgomery, New York 12549

RE: Proposed Deviation from Uniform Tax Exemption  
Policy by the Town of Montgomery Industrial  
Development Agency ("Agency") in connection with  
its Proposed USEF Sailfish, LLC Project

Honorable Sirs and Madame:

This letter is delivered to you pursuant to Section 874(4)(b) of the General Municipal Law.

In December, 2018, Bluewater I LLC, a Delaware limited liability company (the "Company") or such other person(s) or entities as may be designated by the Company and agreed upon by the Agency (collectively, the "Company"), submitted an application (the "Application") to the Agency, a copy of which Application is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 187 acre parcel of land located at NYS Route 17K and 747, AKA 635 International Drive in the Town of Montgomery, Orange County, New York (tax map numbers 31-1-64; 31-1-65.22; 31-1-70.2 and 31-1-89) (collectively the "Land"), (2) the construction on the Land of an approximately 1,010,880 square foot facility with related site work and exterior improvements (the "Facility"), and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other personal property (collectively, the "Equipment"), all of the foregoing to constitute a warehouse/distribution facility (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"); (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 estate 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(s) or entities as may be designated by the Company and agreed upon by the Agency.

At its regular meeting held on November 12, 2019, the Agency authorized an Approving Resolution for the Project and the Financial Assistance set forth therein, which provided, among other things, that the Agency had given due consideration to the Application, the public comments received at the Public Hearing and thereafter, and to representations by the Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project would be an inducement to the Company to undertake the Project in the Town of Montgomery, Orange County, New York, and (B) the completion of the Project would not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and would not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York. The Agency also determined to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of the Town of Montgomery, New York by undertaking the Project in the Town of Montgomery, Orange County, New York and to comply with the Agency's policies, including, without limitation, its Local Labor Policy.

On December 2, 2019, the Agency received an assignment application (the "Assignment Application" and, collectively with the Application, the "Application") from USEF Sailfish, LLC, as assignee (the "Assignee"), seeking to assign the Application and any Financial Assistance authorized for the Project and the Company. The likelihood for this assignment was disclosed by the Company in the Application. In connection with the Application, the Company and the Assignee made a request to the Agency (the "Pilot Request") to enter into a payment in lieu of tax agreement (the "Proposed Pilot Agreement") which terms would deviate from the Agency's Uniform Tax Exemption Policy (the "Policy"). (Capitalized terms not otherwise defined herein are defined in the Policy which can be viewed at [www.montgomeryida.com](http://www.montgomeryida.com). A copy of the Application is also available on this website.)

On December 3, 2019, the Agency authorized its Chair to issue a Notice of Deviation to the Affected Tax Jurisdictions. A copy of that letter addressed to each of you is included with this letter as Exhibit A. As you know, the Agency did not receive an objection to the proposed deviation from the Policy, although objections to the Project were generally raised. Thereafter, the Agency, after proper notice required by the General Municipal Law, held a Public Hearing on January 6, 2020 at Town Hall, 110 Bracken Road, Orange County, Town of Montgomery, New York, to consider the public comments on the Application and the request to assign the Financial Assistance approved at the Agency meeting held on November 12, 2019. The Public Hearing was held on January 6, 2020 and has been held open and will continue on February 11, 2020.

On January 21, 2020, the Agency received a letter from the Assignee on behalf of itself and the Project, advising the Agency of a proposed further deviation to the Proposed Pilot Agreement. A copy of this letter is included as Exhibit B. Pursuant to the General Municipal Law, Section 874(4)(b), prior to taking final action on such Proposed Pilot Request for a deviation from the Policy, the Agency must give to each of you, as an affected tax jurisdiction, prior written notice of the proposed deviation from the Policy and the reasons therefore. This letter is intended to fulfill such requirement.

The Proposed Pilot Agreement would not provide any abatements for any special assessments levied on the Project Facility. The Proposed Pilot Agreement would be for a term of up to 15 years, with the Assignee making the payments in each year as a Pilot Payment to each Affected Tax Jurisdiction as follows:

[DRAFT - TO BE FINALIZED]

<u>Tax Year</u>	<u>Percentage of Exemption</u>
1 to 5	80%
6	50%
7	45%
8	40%
9	35%
10	30%
11	25%
12	20%
13	15%
14	10%
15	5%
16 and thereafter	0%

The purpose of this letter is to inform you of such Pilot Request and that the Agency is considering whether to grant the Pilot Request and to approve a Proposed Pilot Agreement conforming to the terms of the Pilot Request. The Agency expects to consider whether to approve the terms of the Proposed Pilot Agreement at a special meeting expected to be scheduled for February 14, 2020 at 10:00 a.m., local time at the meeting room of the Town Government Center (Town Hall) located at 110 Bracken Road in the Town of Montgomery, Orange County, New York (the "Meeting"). This letter is forwarded to you for purposes of complying with Section 874 of the General Municipal Law of the State of New York and the Policy, which requires notice prior to the Agency taking final action with respect to the Proposed Pilot Agreement (if said Proposed Pilot Agreement may deviate from the provisions of the Policy).

The Agency considered the following factors in considering the proposed deviation:

1. The nature of the Project: Warehouse.
2. The present use of the property: Vacant land. One existing home to be moved to a different location.
3. The economic condition of the area at the time of the request of the Company and the economic multiplying effect that the Project will have on the area: At the time of the filing of

the Application, the economic condition of the area in which the Project Facility is to be located is generally average. The Project is expected to create approximately 800 new jobs within three years of Project commencement.

4. The extent to which the Project will create or retain permanent, private sector jobs and the number of jobs to be created or retained and the salary range of such jobs: In the Application, the Company and the Assignee expect to potentially create 800 new jobs. The Company also expects that the Project will create approximately 300 construction jobs. Under the Agency's Local Labor Policy, the majority of the constructions jobs will be filled by local labor.

5. The estimated value of new tax exemptions to be provided: Real property tax exemption benefit of approximately \$18,300,000; sales tax exemption benefit of approximately \$3,200,000; and mortgage recording tax exemption benefit of approximately \$600,000.

6. The economic impact of the Proposed Pilot Agreement on affected tax jurisdictions: The economic impact of the Proposed Pilot Agreement on affected tax jurisdictions is positive, as development of the Project Facility is expected to result in local construction jobs, the creation of permanent jobs, payments to taxing jurisdictions and multiplier impacts in the regional economy.

7. The impact of the Proposed Pilot Agreement on existing and proposed businesses and economic development projects in the vicinity: The impact of the Project is a positive one on the community, as it creates additional development in the area. The Project will serve to attract additional development projects. The local restaurants and businesses will likewise benefit from the undertaking of the Project.

8. The amount of private sector investment generated or likely to be generated by the Proposed Pilot Agreement: \$75,000,000.

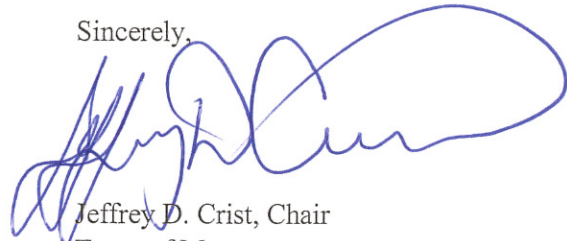
9. The effect of the Proposed Pilot Agreement on the environment: The Agency made a determination pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") regarding the potential environmental impact of the Project at its November 12, 2019 regular meeting. In connection with the assignment of the Application to the Assignee, the Agency expects to make a determination of that assignment at a special meeting to be scheduled for February 14, 2020 as noted above.

10. Project Timing: Anticipated to be completed within three years of commencement.

The Agency will consider the Proposed Pilot Agreement (and the proposed deviation from the Policy) at the special meeting stated above. The Agency would welcome any written comments that you might have on this proposed deviation from the Policy. In accordance with Section 874 of the General Municipal Law, prior to taking final action at such meeting, the Agency will review and respond to any written comments received from any affected tax jurisdiction with respect to the proposed deviation. The Agency will also allow any representative of any affected tax jurisdiction present at the special meeting to address the Agency regarding the proposed deviation.

If you have any questions or comments regarding the foregoing, please do not hesitate to contact me at the above telephone number.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey D. Crist". The signature is fluid and cursive, with a large loop at the end.

Jeffrey D. Crist, Chair  
Town of Montgomery  
Industrial Development Agency

**EXHIBIT A**

NOTICE OF DEVIATION TO THE AFFECTED TAX JURISDICTIONS ISSUED IN  
ACCORDANCE WITH AGENCY RESOLUTION DATED DECEMBER 3, 2019

TOWN OF MONTGOMERY INDUSTRIAL DEVELOPMENT AGENCY  
110 Bracken Road  
Montgomery, New York 12549  
Tel: 845-649-3930

December 11, 2019

The Honorable Steven M. Neuhaus  
County Executive of Orange County  
Orange County Government Center  
255 Main Street  
Goshen, New York 10924

John P. Xanthis, Superintendent of Schools  
Valley Central School District  
944 State Route 17K  
Montgomery, New York 12549

The Honorable Rodney Winchell, Supervisor  
Town of Montgomery *Hand-Delivered*  
110 Bracken Road  
Montgomery, New York 12549

*12/13/19*

Sarah Messing, Board President  
Valley Central School District  
944 State Route 17K  
Montgomery, New York 12549

RE: Proposed Deviation from Uniform Tax Exemption Policy by the  
Town of Montgomery Industrial Development Agency  
in connection with its Proposed USEF Sailfish, LLC Project

Dear Ladies and Gentlemen:

This letter is delivered to you pursuant to Section 874(4)(c) of the General Municipal Law.

In December, 2018, Bluewater I LLC, a Delaware limited liability company (the "Company") or such other person(s) or entities as may be designated by the Company and agreed upon by the Agency (collectively, the "Company"), submitted an application (the "Application") to the Agency, a copy of which Application is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 187 acre parcel of land located at NYS Route 17K and 747, AKA 635 International Drive in the Town of Montgomery, Orange County, New York (tax map numbers 31-1-64; 31-1-65.22; 31-1-70.2 and 31-1-89) (collectively the "Land"), (2) the construction on the Land of an approximately 1,010,880 square foot facility with related site work and exterior improvements (the "Facility"), and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other personal property (collectively, the "Equipment"), all of the foregoing to constitute a warehouse/distribution facility (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"); (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 estate 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(s) or entities as may be designated by the Company and agreed upon by the Agency.

On December 2, 2019, the Agency received a request from the Company to assign the Application and any Financial Assistance to USEF Sailfish, LLC, as Assignee. The potential for this assignment was disclosed by the Company in the Application. In connection with the Application, the Company and the

Assignee have made a request to the Agency (the "Pilot Request") to enter into a payment in lieu of tax agreement (the "Proposed Pilot Agreement") which terms would deviate from the Agency's Uniform Tax Exemption Policy (the "Policy"). (Capitalized terms not otherwise defined herein are defined in the Policy which can be viewed at [www.montgomeryida.com](http://www.montgomeryida.com).)

The Proposed Pilot Agreement would not provide any abatements for any special assessments levied on the Project Facility. The Proposed Pilot Agreement would be for a term of up to 15 years, with the Company making the payments in each year as a Pilot Payment to each Affected Tax Jurisdiction as follows:

[DRAFT – TO BE FINALIZED]

<u>Tax Year</u>	<u>Percentage of Exemption</u>
1 to 5	90%
6	50%
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9	35%
10	30%
11	25%
12	20%
13	15%
14	10%
15	5%
16 and thereafter	0%

The purpose of this letter is to inform you of such Pilot Request and that the Agency is considering whether to grant the Pilot Request and to approve a Proposed Pilot Agreement conforming to the terms of the Pilot Request. The Agency expects to consider whether to approve the terms of the Proposed Pilot Agreement at its meeting scheduled for January 14, 2020 at 5:30 p.m., local time at the offices of the Agency located at 110 Bracken Road in the Town of Montgomery, Orange County, New York (the "Meeting"). This letter is forwarded to you for purposes of complying with Section 874 of the General Municipal Law of the State of New York and the Policy, which requires notice prior to the Agency taking final action with respect to the Proposed Pilot Agreement (if said Proposed Pilot Agreement may deviate from the provisions of the Policy).

The Agency considered the following factors in considering the proposed deviation:

1. **The nature of the Project:** Warehouse.
2. **The present use of the property:** Vacant land.



3. **The economic condition of the area at the time of the request of the Company and the economic multiplying effect that the Project will have on the area:** At the time of the filing of the Application, the economic condition of the area in which the Project Facility is to be located is generally average. The Project is expected to create approximately 800 new jobs within three years of Project commencement.

4. **The extent to which the Project will create or retain permanent, private sector jobs and the number of jobs to be created or retained and the salary range of such jobs:** In the Application, the Company and the Assignee expect to potentially create 800 new jobs. The Company also expects that the Project will create approximately 300 construction jobs

5. **The estimated value of new tax exemptions to be provided:** Real property tax exemption benefit of approximately \$21,500,000; sales tax exemption benefit of approximately \$3,200,000; and mortgage recording tax exemption benefit of approximately \$600,000.

6. **The economic impact of the Proposed Pilot Agreement on affected tax jurisdictions:** The economic impact of the Proposed Pilot Agreement on affected tax jurisdictions is positive, as development of the Project Facility is expected to result in local construction jobs, the creation of permanent jobs, payments to taxing jurisdictions and multiplier impacts in the regional economy.

7. **The impact of the Proposed Pilot Agreement on existing and proposed businesses and economic development projects in the vicinity:** The impact of the Project is a positive one on the community, as it creates additional development in the area. The Project will serve to attract additional development projects. The local restaurants and businesses will likewise benefit from the undertaking of the Project.

8. **The amount of private sector investment generated or likely to be generated by the Proposed Pilot Agreement:** \$75,000,000.

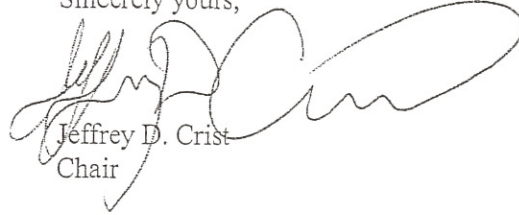
9. **The effect of the Proposed Pilot Agreement on the environment:** The Agency made a determination pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") regarding the potential environmental impact of the Project at its November 12, 2019 regular meeting. In connection with the assignment of the Application to the Assignee, the Agency expects to make a determination of that assignment at its January 14, 2020 meeting.

10. **Project Timing:** Anticipated to be completed within three year of commencement.

The Agency will consider the Proposed Pilot Agreement (and the proposed deviation from the Policy) at the Meeting. The Agency would welcome any written comments that you might have on this proposed deviation from the Policy. In accordance with Section 874(4)(c) of the General Municipal Law, prior to taking final action at the Meeting, the Agency will review and respond to any written comments received from any affected tax jurisdiction with respect to the proposed deviation. The Agency will also allow any representative of any affected tax jurisdiction present at the Meeting to address the Agency regarding the proposed deviation.

If you have any questions or comments regarding the foregoing, please do not hesitate to contact me at the above telephone number.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jeffrey D. Crist". The signature is fluid and cursive, with a large loop at the end.

Jeffrey D. Crist  
Chair

**EXHIBIT B**

COPY OF LETTER FROM ASSIGNEE DATED JANUARY 21, 2020

WHITEMAN  
OSTERMAN  
& HANNA LLP

Attorneys at Law  
[www.woh.com](http://www.woh.com)

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Albany, NY 12260  
518.487.7600 phone  
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Michelle L. Kennedy  
*Of Counsel*  
[mkennedy@woh.com](mailto:mkennedy@woh.com)  
(518) 487-7691

January 21, 2020

**VIA ELECTRONIC MAIL**

Mr. Jeffrey D. Crist, Chairman  
Town of Montgomery Industrial Development Agency  
110 Bracken Road  
Montgomery, New York 12549

*Re: Assignment from BLUEWATER I LLC to USEF SAILFISH, LLC*

Dear Chairman Crist and Members of the Agency:

Since the Agency's January 6<sup>th</sup>, 2020 public hearing, Bluewater I LLC and USEF Sailfish, LLC have considered the fiscal concerns expressed by the Town of Montgomery Board and Supervisor, the Valley Central School District Board of Education and Superintendent and members of the public.

The companies intend to be strong partners within the Town of Montgomery. In a continued good faith effort to be receptive to the community's concerns, the companies hereby extend a new offer for a further decrease in the real property tax abatement by another ten percent (10%) each year over the first five years of the contemplated PILOT. This modification would effectively double the PILOT payments from the Project over the first five years, not including the base land tax and the Fire District ad valorem tax to be paid in full.

The annual property tax payment for the project site currently is approximately \$46,000.00. With the proposed modification of the previously approved Financial Assistance, according to our estimates, in year 1, the combined PILOT payment, existing land tax and ad valorem tax would provide approximately \$786,000.00 to the taxing jurisdictions collectively, an annual increase of approximately \$740,000.00 compared to the existing yearly tax payment.

With this modification, according to our estimates, the proposed PILOT would enable the taxing jurisdictions to receive approximately \$2,700,000.00 in PILOT payments over the first 5 years of the PILOT, materially more than the current Town of Montgomery Industrial Development Agency Uniform Tax Exemption Policy calls for, plus approximately \$230,000.00 in base land tax payments and \$990,000.00 in ad valorem tax to the Fire District. Over the first 5 years, these payments total approximately \$3,920,000.00.

Over the 15-year PILOT Agreement, according to our estimates, the taxing jurisdictions would receive approximately \$26,000,000.00 in payments compared to approximately \$690,000.00 in total tax payments over the same 15 years, if the Project does not proceed. How the taxing jurisdictions decide to budget the funds is within their discretion.

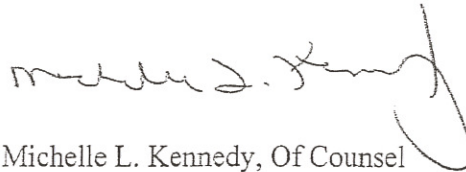
The Financial Assistance presently contemplated by the Agency is less than the limits under the Town of Montgomery Industrial Development Agency's Uniform Tax Exemption Policy Level 3 incentive, for which this project clearly qualifies, and therefore, is more favorable to the taxing jurisdictions. The reduction of another ten percent (10%) in the real property tax abatement doubles the already enhanced, contemplated PILOT payments (excluding the land tax and Fire District ad valorem tax) to the taxing jurisdictions over the first five years of the PILOT.

We respectfully request that the Agency duly convene for a special meeting this week to consider this offer and authorize issuance of notice to the taxing jurisdictions as necessary and practical. We further request that the Agency, at the same meeting this week, schedule a date no later than February 13<sup>th</sup>, 2020, following the close of the public hearing, to deliberate and issue a decision as to the assignment application. Time is of the essence to the companies in determining whether they are able to proceed with the Project, and the Agency's pending decision whether to approve the assignment to USEF Sailfish, LLC is critical to the companies' determination.

Thank you for your service and good work on behalf of the Town of Montgomery.

Very truly yours,

WHITEMAN OSTERMAN & HANNA LLP



Michelle L. Kennedy, Of Counsel

cc: Robert McLaughlin, Esq., Counsel for the Agency  
William Frank, Esq., Counsel for the Town of Montgomery