

**GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
d/b/a
GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER**

AND

HP HOOD LLC

AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAXES AGREEMENT

**Project Address:
5140 Ag Park Drive
Town of Batavia
Genesee County, New York**

**Tax Map Nos.
13.-1-165.111/P**

**Affected Tax Jurisdictions:
Genesee County
Town of Batavia
Batavia City School District**

Dated as of June 30, 2017

**AMENDED AND RESTATED
PAYMENT-IN-LIEU-OF-TAXES AGREEMENT**

THIS AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAXES AGREEMENT, dated as of June 30, 2017 (hereinafter, the "Amended and Restated PILOT Agreement"), is by and between the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER**, a public benefit corporation duly existing under the laws of the State of New York, with its offices located at 99 MedTech Drive, Suite 106, Batavia, New York 14020 (the "Agency") and **HP HOOD LLC**, a Delaware limited liability company duly authorized to conduct business in the State of New York, having offices at 6 Kimball Lane, Suite 400, Lynnfield, Massachusetts 01940 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 565 of the Laws of 1970 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, pursuant to that certain Lease Agreement, dated as of February 1, 2009 (the "2009 Lease Agreement") by and between Genesee Agri-Business LLC ("Genesee Agri-Business"), as lessor and the Agency, as lessee, a memorandum of which was recorded in the office of the Genesee County Clerk on March 2, 2009 in Liber 872 at Page 424, Genesee Agri-Business leased approximately two hundred and three (203) acres of land located in the Town of Batavia, Genesee County, New York to the Agency (the "Ag Park Land"); and

WHEREAS, pursuant to that certain Leaseback Agreement, dated as of February 1, 2009 (the "2009 Leaseback Agreement") by and between the Agency, as lessor, and Genesee Agri-Business as lessee, a memorandum of which was recorded in the office of the Genesee County Clerk on March 2, 2009 in Liber 872 at Page 435, the Agency subleased its interest in the Ag Park Land back to Genesee Agri-Business; and

WHEREAS, pursuant to that certain Amended and Restated Lease Agreement, dated as of June 30, 2017 (the "Amended 2009 Lease Agreement"), by and between Genesee Agri-Business, as lessor and the Agency, as lessee, and that certain Amended and Restated Leaseback Agreement, dated as of June 30, 2017 (the "Amended 2009 Leaseback Agreement"), by and between the Agency, as lessor and Genesee Agri-Business, as lessor, Genesee Agri-Business and the Agency terminated the Agency's leasehold interest in the Land (as hereinafter defined) and Genesee Agri-Business' sub-leasehold interest in the Land, but retained the Agency's leasehold interest in the remaining portion of the Ag Park Land and Genesee Agri-Business' sub-leasehold interest in the remaining portion of the Ag Park Land; and

WHEREAS, pursuant to that certain Purchase and Sale Agreement, dated as of March 2, 2012 by and between Genesee Agri-Business and Wave Holdings, LLC (as predecessor to Muller Quaker Dairy), Genesee Agri-Business sold that certain portion of the Ag Park Land

which constitutes the Land to Muller Quaker Dairy, subject to the Agency's leasehold estate created under the 2009 Lease Agreement and Genesee Agri-Business' sub-leasehold estate created under the 2009 Leaseback Agreement, which said leasehold estate and sub-leasehold estate have now been terminated pursuant to the Amended 2009 Lease Agreement and the Amended 2009 Leaseback Agreement; and

WHEREAS, by Resolution adopted by the Agency on March 12, 2012, the Agency authorized the execution of that certain Payment-In-Lieu-of-Tax Agreement, dated as of August 1, 2012 (the "Original PILOT Agreement") by and between the Agency and Muller Quaker Dairy in connection with a certain project undertaken on the Land (as hereinafter defined) by Muller Quaker Dairy, as agent of the Agency; and

WHEREAS, pursuant to the terms of the Original PILOT Agreement, Muller Quaker Dairy agreed to make payments in lieu of real property taxes to the Agency for the benefit of Genesee County (the "County"), the Town of Batavia (the "Town") and the Batavia City School District (the "School District" and; collectively with the County and the Town, the "Affected Tax Jurisdictions"); and

WHEREAS, pursuant to that certain Assignment and Assumption of Agreements, dated as of January 12, 2016 (the "2016 Assignment and Assumption of Agreements"), by and among the Agency, Muller Quaker Dairy and Batavia Dairy Products, LLC ("Batavia Dairy Products"), which 2016 Assignment and Assumption of Agreements was recorded in the Office of the Genesee County Clerk on February 29, 2016 in Liber 357 at Page 505, Muller Quaker Dairy assigned to Batavia Dairy Products, its rights, title, interest, duties and obligations and liabilities under the Original PILOT Agreement; and

WHEREAS, Batavia Dairy Products and the Agency amended the Original PILOT Agreement pursuant to that certain First Amendment to PILOT Agreement, dated as of January 12, 2016 (the "First Amendment to PILOT Agreement"), whereby Batavia Dairy Products and the Agency modified the Total PILOT Payment (as such term is defined in the Original PILOT Agreement); and

WHEREAS, pursuant to that certain Assignment and Assumption of Agreements, dated as of June 30, 2017 (the "Assignment and Assumption of Agreements"), by and among the Agency, Batavia Dairy Products and the Company, Batavia Dairy Products assigned to the Company, its rights, title, interest, duties and obligations and liabilities under the First Amendment to PILOT Agreement; and

WHEREAS, the Company has requested the Agency's assistance with a certain project (the "Project") consisting of: (A) the acquisition or retention by the Agency of a leasehold interest in, certain land located at 5140 Ag Park Drive West, Town of Batavia, Genesee County, New York (being more particularly described as tax map identification number 13.-1-165.111/P) (the "Land") and the existing improvements located thereon, consisting principally of a 383,000 square-foot manufacturing facility (the "Existing Improvements"), (B) (i) the renovation and equipping of the Existing Improvements and (ii) the construction and equipping on the Land of small external additions, silo tanks, an approximately 100,000 square-foot refrigerated

warehouse and related improvements and infrastructure for use by the Company as a fluid processing plant (the "Improvements") and (C) the acquisition by the Company in and around the Improvements of certain items of machinery, equipment and other tangible personal property, including but not limited to, processing equipment, filling equipment, and waste water treatment equipment (the "Equipment", and collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, in order to induce the Company to acquire, construct and equip the Facility, the Agency is willing to take or retain a leasehold interest in the Land, the Improvements, and the personal property constituting the Facility pursuant to that certain Amended and Restated Lease Agreement, dated as of June 30, 2017 (the "Amended Lease Agreement") by and between the Company and the Agency, and thereafter sublease back to the Company said Land, Improvements, and personal property constituting the Facility pursuant to that certain Amended and Restated Leaseback Agreement, dated as of June 30, 2017 (the "Amended Leaseback Agreement") by and between the Agency and the Company; and

WHEREAS, in order to induce the Company to acquire, construct and equip the Facility the Agency and the Company desire to amend and restate, in its entirety, the Original PILOT Agreement, as amended by the First Amendment to PILOT Agreement in accordance with the terms of this Amended and Restated PILOT Agreement.

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed that the Original PILOT Agreement, as amended by the First Amendment to PILOT Agreement, is hereby amended, restated and replaced in its entirety by this Amended and Restated PILOT Agreement as follows:

Section I - Payment in lieu of Ad Valorem Taxes:

Section 1.1 A. Filing of Form RP-412-a. On September 25, 2012, the Agency filed with the Town of Batavia Assessor and the Affected Taxing Jurisdictions a New York State Form RP-412-a, "Application For Real Property Tax Exemption" (the "2012 Exemption Application") with respect to the Facility under Section 412-a of the New York State Real Property Tax Law (the "RPTL"). Following the execution of the 2016 Assignment and Assumption of Agreements, the Agency and Batavia Dairy Products executed the First Amendment to PILOT Agreement modifying the Total PILOT Payments to be made under the Original PILOT Agreement and on January 25, 2016, the Agency filed with the Town of Batavia Assessor and the Affected Taxing Jurisdictions a New York State Form RP-412-a, "Application For Real Property Tax Exemption" (the "2016 Exemption Application") with respect to the Facility under Section 412-a of the RPTL.

The Agency will file with the Town of Batavia Assessor and the Affected Taxing Jurisdictions a New York State Form RP-412-a, "Application For Real Property Tax Exemption" relating to this Amended and Restated PILOT Agreement under Section 412-a of the RPTL (the "2017 Exemption Application"). The Company shall provide the Agency with the information necessary for the completion and filing of the 2017 Exemption Application and shall provide

such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the 2017 Exemption Application. Notwithstanding anything contained herein or in the Amended Leaseback Agreement to the contrary, in the event the 2017 Exemption Application is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the 2017 Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County, the Town and the School District.

B. Agreement to Make Payments. As long as the Facility is owned by or leased to the Agency, the Company agrees to pay annually to the Affected Tax Jurisdictions as a payment in lieu of taxes, on or before on or before October 1 of each year for School District taxes and on or before January 1 of each year for County and Town taxes (collectively, the "Payment Date"), commencing on October 1, 2017, and January 1, 2018, respectively, an amount equal to the "Total Tax Payment", as described in Schedule A attached hereto. The Company shall make all such Total Tax Payment in the amounts and on the dates specified above directly to each Affected Tax Jurisdiction, whether or not any such Total Tax Payment is billed by the Agency, the Affected Tax Jurisdictions, or any other party. The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

1.2 Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder, *if any*, within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.3 Tax Rates. For purposes of determining the allocation of the Total Tax Payment among the Affected Tax Jurisdictions, the Agency shall use the last tax rate utilized for levy of taxes by each such jurisdiction. For County and Town purposes, the tax rates used to determine the allocation of the Total Tax Payment shall be the tax rates relating to the calendar year which includes the Total Tax Payment due date. For School District purposes, the tax rates used to determine the Total Tax Payment shall be the rate relating to the School District year which includes the Total Tax Payment due date.

1.4 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility constructed or added in any manner after the date of this Amended and Restated PILOT Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the application for a building permit, plans and specifications, and any other relevant information that the Agency may

thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total Tax Payment. The Agency shall notify the Company of any proposed increase in the Total Tax Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased Total Tax Payment until a different Total Tax Payment shall be established. If a lesser Total Annual Payment is determined in any proceeding or by subsequent agreement of the parties, the Total Tax Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding Total Tax Payment(s).

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include, and as more fully set out on Schedule A: (i) the 2017-18 School District tax year through the 2026-27 School District tax year and (ii) the 2018 County and Town tax year through the 2027 County and Town tax year; *provided, however*, the Company shall pay (i) the 2027-28 School District tax bill and (ii) the 2028 County and Town tax bills on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years

This Amended and Restated PILOT Agreement shall expire on December 31, 2027. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Amended and Restated PILOT Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility while this Amended and Restated PILOT Agreement is in effect, which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by Section 485-b of the RPTL. It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section II - Special District Charges, Special Assessments and other charges.

2.1 Special district charges, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full in accordance with normal billing practices.

Section III - Transfer of Facility.

3.1 In the event that the Facility is transferred from the Agency to the Company (the Amended Lease/Amended Leaseback Agreements are terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or this Amended and Restated PILOT Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes

and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

3.2 Total Tax Payments made by the Company for a tax year in which the Facility is transferred from the Agency to the Company (the Amended Lease/Amended Leaseback Agreements are terminated) and the Company is ineligible for a continued tax exemption under some other tax incentive program, or this Amended and Restated PILOT Agreement terminates and the property is not timely transferred back to the Company, shall be applied as a credit against payments to the Affected Tax Jurisdictions that are payable after such transfer or termination, or shall be refunded to the Company by the Affected Tax Jurisdictions (and in no event shall the Agency be liable for any such refund), if and to the extent that the Company's total payment to each Affected Tax Jurisdiction in said year would otherwise exceed the amount of real property taxes that would have been levied on the Facility for the entirety of said year.

Section IV - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this Amended and Restated PILOT Agreement, as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

Section VI - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I within thirty (30) days of the Payment

Date (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty; or (iii) the occurrence and continuance of any events of default under the Amended Leaseback Agreement after any applicable cure periods. Upon the occurrence of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section I herein are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I herein, if said payment is not received by the Delinquency Date defined in Section 6.1 herein, the Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

Section VII - Assignment.

7.1 No portion of any interest in this Amended and Restated PILOT Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed.

Section VIII - Miscellaneous.

8.1 This Amended and Restated PILOT Agreement may be executed in any number of counterparts each of which shall be deemed an original but all of which together shall constitute a single instrument.

8.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: Genesee County Industrial Development Agency
d/b/a Genesee County Economic Development Center
99 MedTech Drive, Suite 106
Batavia, New York 14020-3141
Attn.: President/CEO

With a Copy to: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn.: Russell E. Gaenzle, Esq.

To The Company: HP Hood LLC
6 Kimball Lane, Suite 400
Lynnfield, Massachusetts 01940
Attn: Theresa Bresten, VP and Treasurer

With a Copy to: HP Hood LLC
6 Kimball Lane, Suite 400
Lynnfield, Massachusetts 01940
Attn: Paul Nightingale, SVP and General Counsel

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

8.3 This Amended and Restated PILOT Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Genesee County, New York.

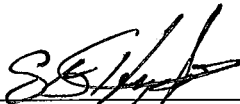
8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. No member of the Agency nor any person executing this Amended and Restated PILOT Agreement on its behalf shall be liable personally under this Amended and Restated PILOT Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Amended and Restated PILOT Agreement.

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[Signature Page to Amended and Restated PILOT Agreement]

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

**GENESEE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY, d/b/a
GENESEE COUNTY ECONOMIC
DEVELOPMENT CENTER**

By: 
Steven G. Hyde, President/CEO

HP HOOD LLC

By: _____
Gary R. Kaneb, Chief Financial Officer

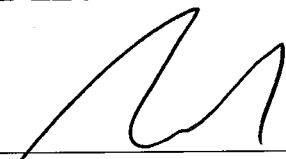
[Signature Page to Amended and Restated PILOT Agreement]

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

**GENESEE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY, d/b/a
GENESEE COUNTY ECONOMIC
DEVELOPMENT CENTER**

By: _____
Stephen G. Hyde, President/CEO

HP HOOD LLC

By:  _____
Gary R. Kaneb, Chief Financial Officer

SCHEDULE A

Amended and Restated PILOT Agreement dated as of June 30, 2017
by and between the Genesee County Industrial Development Agency d/b/a
Genesee County Economic Development Center and
HP Hood LLC

"Total Tax Payment" shall mean an amount equal to (A) the assessed value of the Facility (including any portion of such assessed value attributed to the Land) *multiplied* by the then existing tax rate for the applicable Affected Tax Jurisdiction (after application of any applicable equalization rate) *reduced* by the Percentage Abatement set forth in the table below, plus (B) the assessed value of all Future Additions (determined in accordance with Section 1.4 of this Amended and Restated PILOT Agreement), *multiplied* by the then existing tax rate for the applicable Affected Tax Jurisdiction (after application of any applicable equalization rate).

<u>PILOT Agreement Year</u>	<u>School Tax Year</u>	<u>County Tax Year</u>	<u>Town Tax Year</u>	<u>Percentage Abatement</u>
Year 1	2017-18	2018	2018	100%
Year 2	2018-19	2019	2019	100%
Year 3	2019-20	2020	2020	100%
Year 4	2020-21	2021	2021	80%
Year 5	2021-22	2022	2022	60%
Year 6	2022-23	2023	2023	60%
Year 7	2023-24	2024	2024	40%
Year 8	2024-25	2025	2025	40%
Year 9	2025-26	2026	2026	20%
Year 10	2026-27	2027	2027	20%
Year 11	2027-28	2028	2028	Full Taxes

The abatement schedule shall allow for a 100% exemption from taxation for the Facility in the Amended and Restated PILOT Agreement Years 1, 2 and 3 with such exemption thereafter being eliminated in a 20% increment for Year 4, and a 20% increment on an every-other-year basis thereafter. After the tenth (10th) Amended and Restated PILOT Agreement Year, the Facility shall be subject to full taxation by the Affected Taxing Jurisdictions.