

## INDUCEMENT AGREEMENT AND PROJECT AGREEMENT

THIS INDUCEMENT AGREEMENT AND PROJECT AGREEMENT RELATING TO THE **EDGE/CREE, INC. FACILITY** (the "AGREEMENT") is by and among the **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 584 Phoenix Drive, Rome, New York 13441 (the "Agency"), **ECONOMIC DEVELOPMENT GROWTH ENTERPRISES CORPORATION**, a not-for-profit corporation, duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 584 Phoenix Drive, Rome, New York 13441 ("EDGE") and **CREE, INC.**, a corporation duly organized, validly existing and in good standing under the laws of the State of North Carolina, with offices at 4600 Silicon Drive, Durham, NC 27703 (the "Company" and together with EDGE the "Applicants").

Article 1. Preliminary Statement. Among the matters of mutual inducement which have resulted in the execution of this AGREEMENT are the following:

1.01. The Agency is authorized and empowered by the provisions of Article 18-A of the General Municipal Law of the State of New York as amended, and Chapter 372 of the Laws of 1970 of the State of New York, as may be amended from time to time (collectively, the "Act") to undertake "Projects" (as defined in the Act) and to lease or sell the same upon such terms and conditions as the Agency may deem advisable.

1.02. The purposes of the Act are (i) to promote industry and develop trade by inducing manufacturing, industrial, warehousing, research, recreation and commercial enterprises to locate or remain in the State and (ii) to encourage and assist in the providing of industrial pollution control facilities and (iii) to promote the economic welfare and prosperity of the inhabitants of the State. The Act vests the Agency with all powers necessary to enable it to accomplish such purposes.

1.03. (a) The Applicants have submitted to the Agency an Application for Financial Assistance dated September 24, 2019, which Application may be amended from time to time prior to closing of the sale-leaseback or lease-leaseback transaction described below (the "Application") requesting that the Agency assist in the (i) acquisition of an interest in a 55.25± acre parcel of land situate at Edic Road in the Town of Marcy, Oneida County, New York (the "Land"), (ii) construction on the Land of four buildings with 450,000± square feet of floor area consisting of (a) a three-story administrative building measuring 75,000± square feet; (b) a three-story, 300,000± square foot ballroom style wafer fabrication building with total cleanroom space measuring 100,000 - 135,000 square feet; (c) a HPM Warehouse, (d) a single-story Central Utilities Building measuring 70,000± square feet, and (e) all utilities and infrastructure to support the same (collectively, the "Improvements"); and (iii) acquisition and installation of furniture, fixtures and equipment in the Improvements (the "Equipment"), all for the purpose of providing a state of the art wafer fabrication plant to support the substantial growth of the Company in its target markets (the Land, the Improvements and the Equipment is referred to collectively as the "Facility" and the

construction, renovation and equipping of the Improvements is referred to as the "Project").

(b) The People of the State of New York, acting by and through the State University of New York (the "State") owns in fee a 53.76± acre portion of the Land (the "State Land") and leases the State Land to Fort Schuyler Management Corporation ("FSMC") pursuant to an Amended and Restated Ground Lease dated as of May 1, 2010, as may have been or may be amended from time to time (the "SUNY/FSMC Ground Lease"). FSMC will ground sublease the State Land to EDGE pursuant to a Ground Sublease, as may be amended from time to time (the "FSMC/EDGE Ground Sublease"). EDGE owns in fee a 1.49± acre portion of the Land (the "EDGE Land") and will lease and/or sub-sublease the Facility to the Company pursuant to a Ground Sublease, as may be amended from time to time (the "EDGE/Company Ground Sublease"). The Company will construct, equip and own the Improvements which comprise a part of the Facility, and will lease the Facility to the Agency. The Agency will lease the Facility back to the Company pursuant to a Leaseback Agreement (the "Leaseback Agreement").

1.04. The Company hereby represents to the Agency that the Project (a) will not result in the removal of an industrial or manufacturing plant from one area of the State to another area of the State or an abandonment of one or more plants of the Company located in the State; (b) is reasonably necessary to discourage the Company from removing such other plant or facility to a location outside the State, or (c) is reasonably necessary to preserve the competitive position of the Company in its industry. The renovation and equipping of the Facility has not/did not commence(d) as of September 27, 2019.

1.05. The Agency has determined that the Project, as described in the Application, will promote and further the purposes of the Act.

1.06. On September 27, 2019, the Agency adopted a resolution (the "Resolution" or the "Inducement Resolution") agreeing to undertake the Project in order to assist the Applicants and to effectuate the purposes of the Act and, subject to the happening of all acts, conditions and things required precedent to such undertaking and the satisfactory completion of such additional acts and reviews as the Agency may deem appropriate, to undertake a sale-leaseback or lease-leaseback transaction in connection with the Project.

1.07. In the Resolution, the Agency appointed the Company and its agents and other designees, as its agent for the purposes of the Project, and such appointment includes the following activities as they relate to the Project, whether or not the materials, services or supplies described below are incorporated into or become an integral part of the Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the Project, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used

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in connection with the Project, and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under the Facility, including all repairs and replacements of such property. Such agency appointment includes the power to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and with the same validity as the Agency could do if acting on its own behalf.

1.08. (a) In the Resolution, the Agency contemplates that it will provide financial assistance (i) to and/or for the benefit of EDGE in the form of exemptions from mortgage recording taxes and (ii) to the Company in the form of exemptions from sales and use taxes on materials and/or equipment used or incorporated in the Facility and payment of real property taxes consistent with the Agreement Approving PILOT Terms and Allocating PILOT Payments dated as of October 1, 2013 by and among the Agency, the County of Oneida, Whitesboro Central School District, the Town of Marcy, Maynard Fire District, Dunham Public Library and EDGE (the "PILOT Allocation Agreement"), conditioned upon the Company maintaining certain employment levels at the Facility, which financial assistance represents a deviation from the Agency's Uniform Tax Exemption Policy, to be more particularly described in a Final Authorizing Resolution to be adopted by the Agency prior to the closing of the transactions described herein (collectively, the "Financial Assistance").

(b) Based upon representations made by the Applicants in the Application, the value of the Financial Assistance currently authorized by the Agency is as follows:

Sales and use tax exemption estimated at \$22,000,000.00 but not to exceed \$36,093,750.00; and

Mortgage recording tax exemptions estimated at \$115,000.00 but not to exceed \$126,500.000.

In accordance with the Allocation Agreement and based on current Facility specifications, the Company shall pay approximately \$69,947,356.00 in real property taxes over 49 years; and

1.09. It is understood and agreed by the parties that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project facility to advance job opportunities, health, general prosperity and economic welfare of the people of Oneida County and to otherwise accomplish the public purpose of the Act.

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1.10. Attached as Exhibit A to this Agreement is a copy of the PILOT Agreement that reflects the Financial Assistance currently contemplated by the Agency in the Resolution. The Company acknowledges that the Agency (a) reserves all rights to amend the PILOT Agreement to reflect the terms of the Financial Assistance for which the Agency grants final approval as it authorizes in the final authorizing resolution, (b) is under no obligation to enter into the PILOT Agreement unless all conditions described in Section 4.02 hereof are met to the satisfaction of the Agency and (c) will request the Taxing Jurisdictions agree in writing that the attached form of PILOT Agreement, as modified to reflect the terms of this Project, is consistent with the Essential PILOT Terms contained in the Allocation Agreement.

Article 2. Undertakings on the Part of the Agency. Based upon the statements, representations and undertakings of the Applicants regarding the Facility and subject to the conditions set forth herein, the Agency hereby confirms and acknowledges:

2.01. Upon satisfactory completion of the conditions precedent set forth herein and in the Resolution and the satisfactory completion of such additional acts and reviews as the Agency may deem appropriate, the Agency will (A) adopt, or cause to be adopted, such proceedings and authorize the execution of such documents as may be necessary or advisable for (i) a sale-leaseback or lease-leaseback transaction, (ii) the acquisition, construction, renovation and equipping of the Facility, and (iii) the leasing of the Facility to the Company pursuant to the Leaseback Agreement, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company and (B) shall enter into a sale-leaseback or lease-leaseback transaction pursuant to the terms of the Act, as then in force, for the purpose of financing certain costs of the Facility.

2.02. The Leaseback Agreement shall be for an approximately 49-year term and shall obligate the Company to make aggregate basic payments each year in the amount of \$750.00 as and when the same shall become due and payable. The Company shall assign to a third party the obligation to acquire from the Agency title to (or terminate the Agency's leasehold interest in) the Facility for an aggregate amount of \$1.00, plus such additional amounts as shall be prescribed in the Leaseback Agreement. The Leaseback Agreement shall contain all provisions required by law and such other provisions as shall be mutually acceptable to the Agency and the Company.

2.03. That all services, costs and expenses of whatever nature incurred in connection with the Project and the installation, replacement, rebuilding, restoration, repair, maintenance and operation of the Facility have been and will continue to be undertaken by the Company as agent for the Agency, regardless of whether such services, costs and expenses were undertaken and/or paid in its own name or in the name of the Agency, and the Agency shall furnish to the Company an appropriate letter on Agency letterhead evidencing the authority of the Company to act as agent of the Agency.

2.04. That, in connection with any lease by the Agency to the Company that is, in turn, subleased or leased by the Company, it is the intent of all parties to the transactions that any sublease or lease is undertaken by the Company as agent for the Agency.

2.05. That, at the request of the Company, and subject to the agreement between the Agency and the Company, any future transfers of fee or leasehold interest of any portion of real property upon which the Facility is located and not owned by the Agency, are hereby authorized, such transfers to be from the Company to the Agency, and there shall be no need for any further official action on behalf of the Agency other than the execution of the appropriate documents evidencing such transfer.

2.06. The Agency will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

Article 3. Undertakings on the Part of the Company. Based upon the statements, representations and undertakings of the Agency herein and in the Resolution and subject to the conditions set forth herein and in the Resolution, the Company agrees as follows:

3.01. The Company hereby accepts the appointment made by the Agency in the Resolution to be the true and lawful agent of the Agency to (i) complete the Project and repair and maintain the Facility and (ii) make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent of the Agency, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and the same validity as the Agency could do if acting on its own behalf, including the authority to delegate such Agency appointment, as described in the Resolution.

3.02. In the Application, the Company represented that it will create the following full time equivalent ("FTE") positions at the Facility, as a result of undertaking the Facility (the "Employment Obligation"):

Year 1	37
Year 2	270
Year 3	321
Year 4	350
Year 5	414
Year 6	488
Year 7	564
Year 8	614
Year 9	614
Year 10	614

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The Company acknowledges that the Financial Assistance is conditioned upon the Company maintaining the Employment Obligation for a ten (10) year portion of the term of the Leaseback Agreement (said ten (10) year term to commence on a date specified by the Agency) and failure to do so may result in the termination or recapture of Financial Assistance. The Company further acknowledges that the Agency intends to count the FTE positions at the Facility in the same manner that New York State Urban Development Corporation a/k/a Empire State Development counts such FTE portions.

3.03. The Company will, to the extent deemed by it to be necessary or desirable, enter into a contract or contracts for the Project (including any necessary contracts for the acquisition of real property necessary or useful in said Facility).

3.04. Contemporaneously with the closing of the sale-leaseback or lease-leaseback transaction the Company will enter into the Leaseback Agreement with the Agency containing, among other things, the terms and conditions described in Section 2.02 hereof.

3.05. (a) The Company shall not permit to stand, and will, at its own expense, take all steps reasonably necessary to remove (or bond the same if acceptable to the Agency and its counsel), any mechanics' or other liens against the Facility for labor or materials furnished in connection with the Project. The Company shall forever defend, indemnify and hold the Agency, its members, officers, employees, and agents, and anyone for whose acts or omissions the Agency or any of them may be liable, harmless from and against all costs, losses, expenses, claims, damages and liabilities of whatever kind or nature arising, directly or indirectly, out of or based on labor, services, materials and supplies, including equipment, ordered or used in connection with the Project or arising out of any contract or other arrangement therefor (and including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether such claims or liabilities arise as a result of the Company acting as agent for the Agency pursuant to this AGREEMENT or otherwise.

(b) The Company shall forever defend, indemnify and hold harmless the Agency, its members, officers, employees and agents, and anyone for whose acts or omissions the Agency or any of them may be liable, from and against all claims, causes of action, liabilities and expenses (including without limitation attorneys' fees) howsoever arising for loss or damage to property or any injury to or death of any person (including, without limitation, death of or injury to any employee of the Company or any sublessee) that may occur subsequent to the date hereof by any cause whatsoever in relation to the Facility including the failure to comply with the provisions of Article 3.05 hereof, or arising, directly or indirectly, out of the Project or the ownership, acquisition, operation, maintenance, repair or financing of the Facility, and including, without limitation, any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing.

(c) The defense and indemnities provided for in this Article 3 shall apply whether or not the claim, liability, cause of action or expense is caused or alleged to be caused, in whole or in part, by the activities, acts, fault or negligence of the Agency, its members, officers, employees and agents, anyone under the direction and control of any of them, or anyone for whose acts or omissions the Agency or any of them may be liable, and whether or not based upon the breach of a statutory duty or obligation or any theory or rule of comparative or apportioned liability, subject only to any specific prohibition relating to the scope of indemnities imposed by law. Without limiting the generality of the foregoing, the foregoing indemnifications shall apply to and encompass any action (or alleged failure to act) of the Agency pursuant to the SEQR Act.

(d) The Company shall provide and carry workers' compensation and disability insurance as required by law and comprehensive liability insurance with such coverages (including, without limitation, owner's protective for the benefit of the Agency and contractual coverage covering the indemnities herein provided for), with such limits and with such companies as may be approved by the Agency. Upon the request of the Agency, the Company shall provide certificates of insurance in form satisfactory to the Agency evidencing such insurance.

3.06. With the exception of the authorizations required to be adopted by the Agency for the Agency to enter into the sale-leaseback or lease-leaseback transaction, the Company agrees that, as agent for the Agency or otherwise, it will comply with all the requirements of all federal, state and local laws, rules and regulations of whatever kind and howsoever denominated applicable to the Agency and/or the Company with respect to the Facility, the Project, the operation and maintenance of the Facility and the financing thereof. Every provision required by law to be inserted herein shall be deemed to be set forth herein as if set forth in full; and upon the request of either party, this AGREEMENT shall be amended to specifically set forth any such provision or provisions. The Company certifies, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

3.07. The Company will take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

3.08. If it should be determined that any State or local sales or compensatory use taxes or similar taxes however denominated are payable with respect to the acquisition, purchase or rental of machinery or equipment, materials or supplies in connection with the Project, or are in any manner otherwise payable directly or indirectly in connection with the Project, the Company shall pay the same and defend and indemnify the Agency from and against any liability, expenses and penalties arising out of, directly or indirectly, the imposition of any such taxes.

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3.09. The Company shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility, in compliance with Section 874(8) of the New York State General Municipal Law. The Company shall provide the Agency with a copy of such annual statement at the time of filing with the State Department of Taxation and Finance. Based upon representations made by the Company in the Application, the value of the sales tax to be abated relating to the Project is estimated at \$22,000,000.00 but shall not exceed \$36,093,750.00. The Company acknowledges that the financial assistance currently authorized by the Agency is limited to \$36,093,750.00, and the Agency is required by law to recapture the New York State portion of sales tax of any exemptions claimed by the Company that exceed this amount. Upon the closing of the sale-leaseback or lease-leaseback transaction, the Agency will issue an agency appointment letter in the full value of the amount authorized, unless a partial exemption is authorized prior to closing.

3.10. If the Facility is leased to another party by the Agency and subleased to the Company, then in such event, the Company guarantees all of the covenants, undertakings and indemnities of such other party as set forth in this Article 3.

3.11. The Company shall provide annually, to the Agency, a certified statement and documentation: (i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created. Exhibit B contains the form of annual certification as well as additional Project assessment information that the Agency requires, on an annual basis, to be submitted to the Agency by the Company. If the Company does not provide said annual certified statement to the Agency by the stated due date, a \$500.00 late fee will be charged to the Company for each thirty (30) day period the report is late beyond the due date, up until the time the report is submitted.

3.12. In accordance with Section 875(3) of the General Municipal Law, the policies of the Agency, and the Resolution, the Company covenants and agrees that it may be subject to recapture of any and all Financial Assistance if it is determined by the Agency that:

(a) the Company or its subagents, if any, authorized to make purchases for the benefit of the Project is not entitled to the sales and use tax exemption benefits; or

(b) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its subagents, if any; or

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(c) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(d) the Company has made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, on its application for Financial Assistance; or

(e) the Company fails to meet and maintain the Employment Obligation; or

(f) the Company failed to submit to the Agency its annual report so that the Agency can confirm that the Project is achieving the Employment Obligation and other objectives of the Project.

If the Agency determines to recapture any Financial Assistance, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s), unless agreed to otherwise by any tax jurisdiction(s). The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the New York State and local sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

#### Article 4. General Provisions.

4.01. This AGREEMENT sets forth the terms and conditions under which Financial Assistance shall be provided to the Applicants; no Financial Assistance shall be provided to the Applicants prior to the effective date of this Agreement. This AGREEMENT shall remain in effect until the Leaseback Agreement becomes effective. It is the intent of the Agency and the Applicants that this AGREEMENT be superseded in its entirety by the Leaseback Agreement, except for the indemnities and guarantee of indemnities contained herein, which shall survive.

4.02. It is understood and agreed by the Agency and the Applicants that entering into the lease-leaseback transaction and the execution of the Leaseback Agreement and related documents are subject to (i) obtaining all necessary governmental approvals, (ii) approval of the directors of the Applicants, (iii) approval of the members of the Agency, (iv) satisfactory completion of the environmental review of the Facility by the Agency in compliance with the State Environmental Quality Review Act, (v) agreement by the Agency and the Company upon mutually acceptable terms and conditions for the Leaseback Agreement, and agreement by the Agency and the

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Applicants upon mutually acceptable terms and conditions of other documentation usual and customary to transactions of this nature, (vi) the condition that there are no changes in New York State Law which prohibit or limit the Agency from fulfilling its obligation and commitment as herein set forth to enter into the sale-leaseback or lease-leaseback transaction and (vii) payment by the Company of the Agency's transaction fee and the fees and disbursements of bond counsel or transaction counsel. The Agency's transaction fee is typically calculated based upon the size of the project; notwithstanding the same, the Agency has agreed the transaction fee for the Project shall be \$352,000.00, which will be payable in full at closing.

4.03. The Company agrees that it will reimburse the Agency for all reasonable and necessary direct out-of-pocket expenses that the Agency may incur as a consequence of executing this AGREEMENT or performing its obligations hereunder. Examples of such expenses include, but are not limited to, photocopies, phone and fax charges, postage and other shipping charges incurred in connection with closing the lease-leaseback transaction or complying with any requests after closing relating to the lease-leaseback transaction.

4.04. This AGREEMENT and the Financial Assistance contemplated by the Agency hereunder shall be valid for a period of twelve (12) months from the Inducement Date. If for any reason the lease-leaseback transaction does not close on or before twelve (12) months from the Inducement Date, the Company shall submit a written request to the Agency describing the reasons for the delay and requesting this AGREEMENT be extended for a period of twelve (12) months under the same terms and conditions contained herein. If the Company has made exempt purchases during the initial term of the AGREEMENT, the Company shall pay (a) to the Agency the first year's annual rent payment of \$750.00 at the time this AGREEMENT is extended and (b) to Agency and Transaction Counsel the out-of-pocket expenses and legal fees incurred in connection with the Project as of the extension date.

4.05. If for any reason the lease-leaseback transaction does not close on or before twelve (12) months from the Inducement Date and is not extended by written agreement of the parties, the provisions of this AGREEMENT (other than the provisions of Articles 3.05, 3.06, 3.07 and 3.08 above, which shall survive) shall terminate and be of no further force or effect, and following such termination neither party shall have any rights against the other party except:

(a) The Company shall pay the Agency for all expenses which were authorized by the Company and incurred by the Agency in connection with the Project;

(b) The Company shall assume and be responsible for any contracts for construction or purchase of equipment entered into by the Agency at the request of or as agent for the Company in connection with the Project; and

(c) The Company will pay the out-of-pocket expenses of members of the Agency, counsel for the Agency and Transaction Counsel incurred in connection with the Project and will pay the reasonable fees of counsel for the Agency and Transaction Counsel for legal services relating to the Project or the proposed financing thereof.

[signature page follows]

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IN WITNESS WHEREOF, the parties hereto have entered into this AGREEMENT to be effective as of September 27, 2019.

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: David C. Grow  
David C. Grow  
Chairman

ECONOMIC DEVELOPMENT GROWTH ENTERPRISES CORPORATION

By: \_\_\_\_\_  
Steven J. DiMeo  
President

CREE, INC.

By: Gregg Lowe  
Name: Gregg Lowe  
Title: CEO & President

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

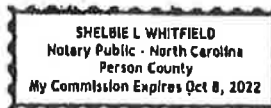
Gregg Lowe, being first duly sworn, deposes and says:

1. That I am the CEO & President (Corporate Office) of CREE, INC. (the "Company") and that I am duly authorized on behalf of the Company to bind the Company and to execute this Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

Gregg Lowe  
(Signature of Officer)

Subscribed and affirmed to me under penalties of perjury  
this 4 day of March 2019.

Sherbie L. Whitfield  
(Notary Public)



IN WITNESS WHEREOF, the parties hereto have entered into this AGREEMENT to be effective as of September 27, 2019.

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: \_\_\_\_\_  
David C. Grow  
Chairman

ECONOMIC DEVELOPMENT GROWTH ENTERPRISES CORPORATION

By: Steven J. DiMeo  
Steven J. DiMeo  
President

CREE, INC.

By: Gregg Lowe  
Name: Gregg Lowe  
Title: CEO & President

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

Gregg Lowe, being first duly sworn, deposes and says:

1. That I am the CEO & President (Corporate Office) of CREE, INC. (the "Company") and that I am duly authorized on behalf of the Company to bind the Company and to execute this Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

Gregg Lowe  
(Signature of Officer)

Subscribed and affirmed to me under penalties of perjury  
this 4 day of March 2019.

Shelbie L. Whitfield  
(Notary Public)

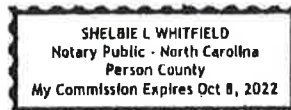


EXHIBIT A  
PILOT AGREEMENT

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CREE, INC.

and

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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PAYMENT-IN-LIEU-OF-TAX AGREEMENT

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Oneida County Industrial Development Agency  
2020 Real Estate Lease  
(Cree, Inc. Facility)

Oneida County, Town of Marcy, Whitesboro Central School District,  
Maynard Fire District and Dunham Public Library

Tax Account Nos.: TO BE PROVIDED BY COMPANY

## PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 2020, is by and between **CREE, INC.**, a North Carolina corporation having an office at 4600 Silicon Drive, Durham, North Carolina 27703 (the "Company") and **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 584 Phoenix Drive, Rome, New York 13441 (the "Agency").

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

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

WHEREAS, the Company has requested the Agency assist in the (i) acquisition of an interest in a 55.25± acre parcel of land situate at Edic Road in the Town of Marcy, Oneida County, New York (the "Land"), (ii) construction on the Land of four buildings with 450,000± square feet of floor area consisting of (a) a three-story administrative building measuring 75,000± square feet; (b) a three-story, 300,000± square foot ballroom style wafer fabrication building with total cleanroom space measuring 100,000 - 135,000 square feet; (c) a HPM Warehouse, (d) a single-story Central Utilities Building measuring 70,000± square feet, and (e) all utilities and infrastructure to support the same (collectively, the "Improvements"); and (iii) acquisition and installation of furniture, fixtures and equipment in the Improvements (the "Equipment"), all for the purpose of providing a state of the art wafer fabrication plant to support the substantial growth of the Company in its target markets (the Land, the Improvements and the Equipment is referred to collectively as the "Facility" and the construction, renovation and equipping of the Improvements is referred to as the "Project"); and

WHEREAS, The People of the State of New York, acting by and through the State University of New York (the "State"), owns in fee a 53.76± acre portion of the Land (the "State Land") and leases the State Land to Fort Schuyler Management Corporation ("FSMC") pursuant to an Amended and Restated Ground Lease dated as of May 1, 2010, as has been or may be amended from time to time (the "SUNY/FSMC Ground Lease"); and

WHEREAS, FSMC has ground subleased or will ground sublease the State Land to Economic Development Growth Enterprises Corporation ("EDGE") pursuant to a Ground Sublease, as may be amended from time to time (the "FSMC/EDGE Ground Sublease"); and



WHEREAS, EDGE owns in fee a 1.49± acre portion of the Land (the "EDGE Land"); and

WHEREAS, EDGE has leased and/or sub-subleased or will lease and/or sub-sublease the Facility to the Company pursuant to a Ground Sublease (the "EDGE/Company Ground Sublease"); and

WHEREAS, the Company will sublease the Facility to the Agency, pursuant to Article 18-A of the General Municipal Law of the State of New York and Chapter 372 of the Laws of 1970 of the State of New York, as may be amended from time to time (collectively, the "Act") and the Agency will lease the Facility back to the Company pursuant to a Leaseback Agreement (the "Leaseback Agreement"); and

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

WHEREAS, the Facility will be exempt from real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company commencing \_\_\_\_\_, 2020 (the "Exempt Taxes"), because the Agency will own a leasehold interest in the Facility and the Facility will be used for a purpose within the meaning of the applicable Constitutional and statutory provisions, including the Enabling Act, provided, however, such exemption will not extend to special assessments or ad valorem levies; and

WHEREAS, the Company understands that it, as lessee of the Facility leased by the Agency, will, in fact, have Exempt Taxes to pay under the provisions of the Leaseback Agreement from the first day of the Construction PILOT Payment Period (as such term is hereinafter defined) through the term of the Leaseback Agreement; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into this Agreement making provision for payments-in-lieu-of-taxes and such assessments by the Company to the Agency to be allocated and disbursed by the Agency in accordance with that certain Agreement Approving PILOT Terms and Allocating PILOT Payments dated as of October 1, 2013 by and among the Town of Marcy (the "Town"), or any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located, the County of Oneida, the Whitesboro Central School District, the Maynard Fire District and the Dunham Public Library (each, individually, an "Affected Tax Jurisdiction" and, collectively, the "Affected Tax Jurisdictions"), and EDGE (the "PILOT Allocation Agreement"), a copy of which PILOT Allocation Agreement is attached hereto as Schedule 2.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

A. Definitions. Capitalized terms used in this Agreement not otherwise defined in herein shall have the meaning set forth in the Leaseback Agreement. For purposes of this Agreement, the following terms shall have the meaning set forth opposite them:

*"Affected Tax Jurisdictions"* means the County of Oneida, the Whitesboro Central School District, the Town of Marcy, the Maynard Fire District and the Dunham Public Library.

*"Affected Tax Jurisdictions' Fund"* shall have the meaning ascribed to such term in the PILOT Allocation Agreement.

*"Ancillary Warehousing Space"* means a building, or space within a building, that is used for the storage of materials, chemicals, hazardous materials, and equipment and/or tooling or to maintain equipment and/or tooling to support semiconductor manufacturing or other related use.

*"Applicable Square Footage"* means the square footage of a building or space within a building, as the case may be, to be taken into account for purposes of calculating the PILOT Payments for that building. The Agency shall determine the Applicable Square Footage for the Facility in the manner described in this Agreement.

*"Cleanroom"* means that portion of a building constructed with one or more highly purified and regulated rooms used for production, research and/or testing equipment, sensitive to contamination, and which includes in its design, systems for the minimization of airborne pollutants or other contaminants.

*"Community Host"* means the Town of Marcy, a New York municipal corporation with an office at 8881 Paul Becker Road, Marcy, New York 13403, and its successors.

*"Community Host Payment Fund"* shall have the meaning ascribed to such term in the PILOT Allocation Agreement.

*"Completion Date"* means the earlier of (a) the taxable status date that the Facility is reflected on the annual assessment roll or property record card as having a Certificate of Occupancy, or (b) December 31, 2021.

*"Construction Commencement Date"* means the earlier of (a) the taxable status date of the Town following the date of the issuance of a building permit for the Facility, or (b) the date that grading and other site development work commenced on the Land, to wit: November 4, 2019, pursuant to the Town Planning Board's approval for such construction activities.

*"Construction PILOT Payment Period"* means the period of time (not to exceed two (2) years) beginning on the Construction PILOT Payment Period Commencement Date and continuing through and including the date immediately preceding the Permanent PILOT Payment Period Commencement Date.

*"Construction PILOT Payment Period Commencement Date"* means January 1 of the first year following the Construction Commencement Date for the Facility.

*"Construction PILOT Payment Period PILOT Year"* means (a) the first calendar year occurring during said Construction PILOT Payment Period and (b) if the Completion Date has not yet occurred, the second calendar year occurring during said Construction PILOT Payment Period.

*"Declaration"* means any instrument whereby common area maintenance charges are levied, assessed or imposed by the State, SUNY, the Company, EDGE or a landowners/tenants association against or upon the Company for the maintenance, landscaping, signage or the provision of other amenities within any common or similar areas located at the Marcy Nanocenter Site or within the Marcy-SUNY Parkway Corridor.

*"EDGE Lenders"* means those lenders to whom EDGE is obligated with respect to the EDGE Project-Related Debt.

*"EDGE Project-Related Debt"* means any debt incurred by EDGE for the purposes of financing and/or refinancing the hard and soft costs of making Project-Related Improvements and paying for other Project-Related Development Costs including, without limitation, the costs of the following: on-site and off-site wetlands mitigation, site development and infrastructure improvements, construction of access roads and parking improvements, the construction of an electric substation and extension of a redundant power feed to the Land, the relocation of electric transmission and other utility lines, the construction of a gas yard, incentive financing to help offset the construction costs of clean room manufacturing space, administrative offices, R & D facilities, warehousing and related semiconductor facilities, the purchase of real property in fee and other interests therein (e.g., easements), incentive financing to help offset the costs of constructing a neutralization plant for direct discharges in the NYS Barge Canal and upgrades to MVWA's water distribution system necessary to support the Company's requirements, and all legal, accounting, architectural design, engineering and construction supervision fees, planning and project administration, consulting and marketing fees, professional, permitting and governmental fees, lender closing costs and fees, and interest charges and other necessary capital expenditures for the Project, including reimbursements for job training and recruitment-relocation costs for a permitted end-user. EDGE Project-Related Debt shall include any monies which EDGE is obligated to set aside in order to maintain a minimum debt service coverage ratio of 1.15 to 1.0. Notwithstanding anything to the contrary contained herein, in order for any indebtedness incurred by EDGE to qualify as "EDGE Project-Related Debt", the same must first be approved by the Agency (after it first consults with EDGE), which approval shall not be unreasonably withheld, conditioned or delayed.

*"Excess SID Credit"* shall have the meaning ascribed to such term in Paragraph E.2. hereof.

*"Exempt Taxes"* means all real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company.

*"MVWA"* means the Mohawk Valley Water Authority, a New York public authority.

*"Office Space"* means a building, or space within a building, that is used primarily as administrative offices and support space (e.g., cafeteria, rest rooms, health facilities, training and education space, security-information room/counter, network/computer rooms, meeting and conference rooms, corridors and lobby area).

*"Other Facilities"* means buildings located on the Land other than a Semiconductor Manufacturing Building, Office Space, Ancillary Warehousing Space, a Technology Development Building or a Technology Manufacturing Building. Other Facilities shall not include standalone Support Facilities.

*"Permanent PILOT Payment Period Commencement Date"* means the January 1, 2022.

*"Permanent PILOT Payment Period"* means that period of time of up to forty-seven (47) years (unless such period is extended pursuant to the provisions hereof) beginning on the Permanent PILOT Payment Period Commencement Date.

*"Permanent PILOT Payment Period PILOT Year"* means (a) each calendar year occurring during said Permanent PILOT Payment Period up to, but not including, the last calendar year (or portion thereof) occurring during said Permanent PILOT Payment Period and (b) the last calendar year (or portion thereof) occurring during said Permanent PILOT Payment Period.

*"PILOT Extension Term"* shall have the meaning ascribed to such term in Paragraph E.3. hereof.

*"PILOT Payments"* means payments in lieu of real property taxes on the Facility, required to be made pursuant to this Agreement or the Leaseback Agreement.

*"PILOT Value"* means the value of the Facility or space within the Facility, as the case may be, determined in the manner described herein by multiplying the Applicable Square Footage of the Facility or space within the Facility times the PILOT Value Per Square Foot Rate.

*"PILOT Value Per Square Foot Rate"* means the value per square foot that shall be used to calculate the PILOT Value for the Facility or space within the Facility, as the case may be, in the manner described herein. The PILOT Value Per Square Foot Rates for the Facility, or space within the Facility, as the case may be, are as set forth in Schedule 1 to this Agreement.

*"PILOT Year"* means, with respect to the Facility, each Construction PILOT Payment Period PILOT Year and each Permanent PILOT Payment Period PILOT Year.

*"Plans and Specifications"* means all the drawings, renderings, plans and other information describing the Facility submitted to the Agency by the Company in connection with the Application for Financial Assistance dated September 24, 2019, which may be amended from time to time up until the Completion Date.

*"Project-Related Development Costs"* means any cost related to the development of the Project (as such term defined in the second Recital above) including, without limitation, the costs of making Project-Related Improvements.

*"Project-Related Improvements"* means any improvements made or to be made in connection with the Project (as such term is defined in the second Recital above).

*"Proprietary Sublease"* shall have the meaning ascribed to such term in Paragraph B.4. hereof.

*"Semiconductor Manufacturing Building"* means a building (which may have pedestrian connections to other buildings) to be used primarily for semiconductor fabrication or flat panel display manufacturing (provided, however, any glass plant associated with flat panel display manufacturing shall be considered a Technology Manufacturing Building). The definition of a Semiconductor Manufacturing Building will include those buildings normally associated with a semiconductor manufacturing or flat panel display manufacturing facility, such as a main fab, a spine, a central utility building, private utility building, gas yard, and an electrical services building. If a building has primarily Cleanroom space but includes ancillary space used solely for general office purposes, such ancillary space shall not be deemed Office Space nor shall it require a separate PILOT Payment.

*"SID Charges"* means any special ad valorem levies, special assessments or other special district or improvement district or area charges.

*"SID Credit"* shall have the meaning ascribed to such term in Paragraph E.1 hereof.

*"SID Credit Amount"* shall have the meaning ascribed to such term in Paragraph E.1 hereof.

*"SID Taxing Entity"* shall have the meaning ascribed to such term in Paragraph E.1 hereof.

*"Support Facilities"* means standalone utility buildings, gas yards, electrical service buildings, electrical sub-stations, generators and co-gen facilities, guard or security stations, water and wastewater treatment facilities, parking structures, construction management buildings, and similar facilities that support the construction and operation of Semiconductor Manufacturing Buildings, Technology Development Buildings, Technology Manufacturing Buildings, Office Space, and Ancillary Warehousing Space.

*"Technology Development Building"* means a building (which may have pedestrian connections to other buildings) consisting of Cleanroom, laboratory, and testing facilities for the testing and development of semiconductor manufacturing processes and related uses, office space and other support space.

*"Technology Manufacturing Building"* means a building (which may have pedestrian connections to other buildings) exclusive of a Semiconductor Manufacturing Building, that is used primarily for manufacturing and assembly of advanced technologies in modern industries

such as energy, communications, information and computing technologies, microtechnology, electronics, and nanotechnology, companies that supply and support the semiconductor, flat panel display, and/or photo voltaic industry, or other related uses. If a flat panel display manufacturing facility is built, the portion of the flat panel display manufacturing facility that is a glass plant shall be classified as a Technology Manufacturing Building.

B. Obligation to Make PILOT Payments - General

1. Prior to Permanent PILOT Payment Period Commencement Date. No PILOT Payments shall be required prior to the Permanent PILOT Payment Period Commencement Date.

2. Duration of PILOT Payments. Beginning on the Permanent PILOT Payment Period Commencement Date and continuing thereafter for up to forty-seven (47) years (unless extended pursuant to the provisions hereof), the Company shall pay the Agency annual PILOT Payments with respect to the Facility in the amounts determined as described herein. Upon the expiration or termination of this Agreement, the Facility shall become subject to real property taxation and the Company shall be required to make PILOT Payments to the Agency in an amount equal to 100% of real property taxes that would be due with respect to the Facility if the Agency had no interest in the Facility. Notwithstanding anything to the contrary contained in this Agreement or the PILOT Allocation Agreement, the Company shall pay to the Agency all sums due under this Agreement in addition to any real property taxes and/or assessments which it is obligated to pay to the Affected Tax Jurisdictions from and after the expiration or termination of this Agreement.

3. Payments During Permanent PILOT Payment Period. PILOT Payments during the Permanent PILOT Payment Period shall equal the payment amount calculated in the manner described in Paragraph C below, based on the expected nature and use of the Facility as described in the Plans and Specifications for the Facility, multiplied by the percentage of completion as of the taxable status date used by the Town for its annual assessment rolls.

4. Exempt Uses. Notwithstanding anything herein to the contrary, in any year in which the Facility, or portion thereof, is leased or occupied by education or other tax-exempt organizations described in New York Real Property Tax Law Section 420-a, and is not used for non-exempt uses, no PILOT Payment shall be required for the Facility, or portion thereof. If, however, the Facility is leased or occupied by education or other tax-exempt organization described in New York Real Property Tax Law Section 420-a and is being subleased to a proprietary or taxable entity having exclusive use and/or possession of the Facility or portion thereof (a "Proprietary Sublease"), then PILOT Payments shall be required for the Facility, or portion thereof that is the subject of a Proprietary Sublease.

5. Issuance of PILOT Invoice. The Agency shall prepare all PILOT invoices (each, individually, a "PILOT Invoice") using the methods of calculation described herein in substantially the form attached hereto as Schedule 3. All PILOT Payments shall be remitted to the Agency and paid in accordance with the terms and conditions contained in this PILOT Agreement. During the Permanent PILOT Payment Period, the Agency shall submit the PILOT Invoice to the Company by February 15 of each PILOT Year. PILOT Payments due pursuant to

each such PILOT Invoice may either be paid in full prior to March 31 or in equal quarterly installments due on March 31, June 30, September 30 and December 31 of such PILOT Year.

C. Calculation of Annual PILOT Payment due during Permanent PILOT Payment Period.

1. Classification and Measurement of the Facility for PILOT Purposes. During the Permanent PILOT Payment Period, the PILOT Payments for the Facility, or space within the Facility, shall be based on the classification of the building or space as a Semiconductor Manufacturing Building, Technology Development Building, Technology Manufacturing Building, Office Space or Ancillary Warehousing Space. The Agency shall classify the Facility, or space within the Facility, as the case may be, and determine the appropriate measurement of the Applicable Square Footage within the Facility, or space within the Facility, as the case may be, based on Plans and Specifications and other information provided by the Company to the Agency. Within thirty (30) days after the Plans and Specifications are finalized but in no event later than the Completion Date, the Agency shall provide written notice to the Company setting forth the final classifications and measurements of the Facility, or the space within the Facility.

The Company shall take all requisite action to ensure the timely issuance of separate tax identification numbers by the Town Assessor that may be necessary to implement this PILOT Agreement, and shall advise the Agency in writing within ten (10) days after tax identification numbers have been issued but in any event prior to the Permanent PILOT Payment Period Commencement Date.

2. Formula for Calculating PILOT Payments. In general, subject to the specific terms described herein, during the Permanent PILOT Payment Period the annual PILOT Payment for the Facility or space within the Facility, as the case may be, shall be calculated as follows:

$$\text{Applicable Square Footage} \times \text{PILOT Value Per Square Foot Rate} = \text{PILOT Value}$$

$$\text{PILOT Value} \times \text{current property tax rates}/\$1,000 \text{ determined from the assessment roll} = \text{PILOT Payment}$$

For purposes of calculating the PILOT Payment, the property tax rate shall be taken from the assessment roll that exists on the date the calculation is performed.

3. PILOT Value of Semiconductor Manufacturing Building. The PILOT Value of a Semiconductor Manufacturing Building shall equal the gross square footage of the Cleanroom floor level plus the gross square footage of any Cleanroom space (e.g., Class 10, Class 100, Class 1,000, or Class 10,000) situate within the subfab space multiplied by the PILOT Value Per Square Foot Rate for a Semiconductor Manufacturing Building set forth in Schedule 1. The Applicable Square Footage of a Semiconductor Manufacturing Building shall be comprised of the entire gross square footage of the Cleanroom level and plus the gross square footage of any cleanroom space, situated within the subfab space only and shall not include other space or facilities such as the subfab space (other than any Cleanroom space situate within such subfab

space), Office Space or mechanical and all other space in the Semiconductor Manufacturing Building, or central utility buildings and other Support Facilities.

For example, if (a) the gross square footage of the Cleanroom floor level of a Semiconductor Manufacturing Facility is 148,477 square feet, but the Cleanroom area on such level is only 113,633 square feet, and (b) there are 24,216 gross square feet of Cleanroom space situate within the subfab space, the Applicable Square Footage would be 172,693 square feet (148,477 sq. ft. + 24,216 sq. ft. = 172,693 sq. ft.) The PILOT Value would be computed by multiplying 172,693 sq. ft. (the Applicable Square Footage) by the PILOT Value Per Square Foot Rate for a Semiconductor Manufacturing Building as set forth in Column A of Schedule 1 for each year of this Agreement..

4. PILOT Value of Technology Development Building. The Applicable Square Footage of a Technology Development Building shall be comprised of the Cleanroom space, laboratory, testing and manufacturing space, Office Space and any Ancillary Warehousing Space in that building. The PILOT Value of a Technology Development Building shall equal the sum of:

- (a) gross square footage of Cleanroom space multiplied by the PILOT Value Per Square Foot for Cleanroom space set forth in Column E of Schedule 1;
- (b) gross square footage of laboratory, testing and manufacturing space (excluding Cleanroom space) multiplied by the PILOT Value Per Square Foot Rate for a Technology Manufacturing Building set forth in Column D of Schedule 1;
- (c) gross square footage of Office Space multiplied by the PILOT Value Per Square Foot for Office Space set forth in Column B of Schedule 1; and
- (d) gross square footage of Ancillary Warehousing Space multiplied by the PILOT Value Per Square Foot for Ancillary Warehousing Space set forth in Column C of Schedule 1.

5. PILOT Value of Technology Manufacturing Building. The Applicable Square Footage of a Technology Manufacturing Building shall be comprised of the total gross square footage of the building, excluding Support Facilities. The PILOT Value of a Technology Manufacturing Building shall equal the gross square footage of the building, excluding Support Facilities, multiplied by the PILOT Value Per Square Foot Rate for Technology Manufacturing Buildings set forth in Column D of Schedule 1.

6. PILOT Value of Office Space. The Applicable Square Footage of Office Space in a standalone office building (which may have pedestrian connections to other buildings) shall be comprised of the total gross square footage of the building. Office Space located in a Semiconductor Manufacturing Building, Technology Development Building, Technology Manufacturing Building, Ancillary Warehousing Space or in Other Facilities shall be taken into account in the manner and to the extent (if any) provided for determining the PILOT Value of those other buildings and facilities.



The PILOT Value for Office Space shall equal the Applicable Square Footage of Office Space multiplied by the PILOT Value Per Square Foot Rate for Office Space set forth in Column B of Schedule 1.

7. PILOT Value of Ancillary Warehousing Space. The Applicable Square Footage of Ancillary Warehousing Space (e.g., General Warehouse, HPM, Chemical Storage, and/or High Pile Storage Space) in a standalone warehouse building (which may have pedestrian connections to other buildings) shall be comprised of the total gross square footage of the building. Ancillary Warehousing Space located in a Semiconductor Manufacturing Building (e.g., HPM Rooms within subfab areas), Technology Development Building, Technology Manufacturing Building, Office Space or Other Facilities shall be taken into account in the manner and to the extent (if any) provided for determining the PILOT Value of those other buildings and facilities.

The PILOT Value for Ancillary Warehousing Space shall equal the Applicable Square Footage of Ancillary Warehousing Space multiplied by the PILOT Value Per Square Foot Rate for Ancillary Warehousing Space set forth in Column C of Schedule 1.

8. PILOT Value of Other Facilities. If Other Facilities are constructed on the Land, the PILOT Value of those facilities shall be determined by the Agency in its reasonable discretion based on comparable data from sources deemed to be reflective of the industry.

9. Support Facilities. Notwithstanding anything herein to the contrary, no separate PILOT Value shall be assigned to Support Facilities. The value of Support Facilities is included in the PILOT Value of the other buildings and improvements located on the Land.

D. Intentionally Omitted

E. Special Assessments/Credit for SID Charges.

1. (a) If for any reason the Facility shall be subject to any SID Charges, notwithstanding the Town and County's agreement set forth in Section 2(b) of the PILOT Allocation Agreement, then the amount of SID Charges assessed against the Facility each year shall be applied as a dollar for dollar credit (the "SID Credit") that shall reduce the PILOT Payments due from the Company with respect to such Facility for the PILOT Year in which the SID Charges are due and payable. An amount equal to the SID Credit (the "SID Credit Amount") shall be subtracted from the Aggregate Annual PILOT Payment Allocation, as hereinafter defined in subparagraph (b), to the Affected Tax Jurisdiction that levied the SID Charges (the "SID Taxing Entity"). Once the SID Credit Amount has been subtracted from the Aggregate Annual PILOT Payment Allocation of the SID Taxing Entity in question, the Agency shall then re-allocate said subtracted amount in the manner necessary to place the Affected Tax Jurisdictions (other than the SID Taxing Entity in question) and the funds established under the PILOT Allocation Agreement (other than the Affected Tax Jurisdictions' Fund and, if applicable, the Community Host Payment Fund) in the same position that they would have been in had there been no SID Credit (or as nearly so as is possible). The provisions of this paragraph will not apply for any SID Charges or assessments requested by the Company and does not cover

the imposition of any common area or similar charges that may be levied, assessed or imposed against or on the Company by means of a Declaration.

(b) The term "Aggregate Annual PILOT Payment Allocation" shall mean, with respect to the PILOT Year in question, the aggregate amount of all payments in lieu of real property taxes under this Agreement allocated to an Affected Tax Jurisdiction under the PILOT Allocation Agreement. In any instance where the Affected Tax Jurisdiction in question is the Town, the Aggregate Annual PILOT Payment Allocation of the Town for the PILOT Year in question shall be the aggregate amount of all payments in lieu of real property taxes under this Agreement allocated to the Town out of (a) the Affected Tax Jurisdictions' Fund (as defined in the PILOT Allocation Agreement) established under the PILOT Allocation Agreement, and (b) the Community Host Payment Fund (as defined in the PILOT Allocation Agreement) established under the PILOT Allocation Agreement. In any instance where the Affected Tax Jurisdiction in question is one other than the Town, the Aggregate Annual PILOT Payment Allocation of such Affected Tax Jurisdiction for the PILOT Year in question shall be aggregate amount of all payments in lieu of real property taxes under this Agreement allocated to such Affected Tax Jurisdiction out of the Affected Tax Jurisdictions' Fund.

2. If the SID Credit Amount for any year exceeds the Aggregate Annual PILOT Payment Allocation of the SID Taxing Entity in question, the excess amount (the "Excess SID Credit") shall be carried forward to subsequent years and applied each year to reduce the annual PILOT Payment due from the Company, and shall be subtracted from the Aggregate Annual PILOT Payment Allocation of the SID Taxing Entity, until the entire amount of the Excess SID Credit has been fully used.

3. If necessary, the term of this PILOT Agreement shall be extended for such period of time necessary for the entire Excess SID Credit to be applied to reduce PILOT Payments due from the Company (the "PILOT Extension Term"). During the PILOT Extension Term, the Company shall make annual PILOT Payments to the Agency in amounts equal to the real property taxes that would be due if the Facility were owned by the Company and the Agency had no interest therein, less the available Excess SID Credit. The PILOT Payments during the PILOT Extension Term shall be allocated pro rata among the Affected Tax Jurisdictions in proportion to the amount of real property taxes that each Affected Tax Jurisdiction would receive if the Facility was subject to normal taxation and will not be subject to the fixed allocation set forth in Section 3 of the PILOT Allocation Agreement. The Excess SID Credit shall be applied to reduce the SID Taxing Entity's share of PILOT Payments during the PILOT Extension Term until the entire remaining Excess SID Credit has been fully used.

F. Challenges to Assessed Value.

If for any reason the Facility shall be subject to any SID Charges, notwithstanding the Town and County's agreement set forth in Section 2(b) of the PILOT Allocation Agreement, but excluding SID Charges or assessments requested by the Company and/or common area charges levied, assessed or imposed against or on the Company pursuant to a Declaration, the Company may pursue review of the Facility's assessed value under Article 7 of the New York State Real Property Tax Law or any other law or ordinance then in effect relating to disputes over assessed valuation of real property in the State of New York, and may take any and all

other action available to it at law or in equity. If an Article 7 challenge is brought by the Company, the challenge to the assessment may only be utilized to reduce the SID Charges payable by the Company and may not be used to modify or reduce PILOT Payments.

G. Waiver of Right to Other Real Property Tax Exemptions.

The Company hereby unconditionally and irrevocably waive their respective rights, if any, to apply for and/or receive the benefit of, any other real property tax exemption including, without limitation, any real property tax exemptions that may be available under Section 485-b and Section 485-e of the Real Property Tax Law for so long as the PILOT Agreement is in effect.

H. Nonrecourse to EDGE.

Neither the Agency nor the Affected Tax Jurisdictions shall have any remedies against or seek recourse against the State, FSMC or EDGE and the sole recourse of the Agency and the Affected Taxing Jurisdictions shall be against the Company, and the Agency and the Affected Taxing Jurisdictions shall look only to the Company for the complete and sole satisfaction of any remedies for unpaid sums due under this Agreement.

I. PILOT Mortgage.

At the Agency's election, the Company's obligations under the PILOT Agreement shall be secured by a mortgage on the Agency's and the Company's interest in the Facility, which mortgage shall contain such terms as the Agency deems necessary or appropriate.

J. Termination of PILOT Agreement.

(a) Anything herein to the contrary notwithstanding, this Agreement shall terminate on the date on which the Leaseback Agreement terminates and the Agency's interest in the Facility is terminated pursuant to the Leaseback Agreement.

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

(c) Until such time as the EDGE Project-Related Debt has been indefeasibly paid, in full, the Agency shall consult with EDGE before terminating this Agreement or the Leaseback Agreement and/or exercising and of its other rights and remedies hereunder or under any other Transaction Document.

K. Taxes Covered by this Agreement. The PILOT Payments to be made by the Company pursuant to this Agreement are intended to be in lieu of all Exempt Taxes with respect to the Facility.

L. Deduction of Any Taxes Paid. If by reason of a change in the Constitution or laws of the State of New York, or an interpretation of the Constitution or the laws of the State of New York by the Court of Appeals (or such lower court from which the time to appeal has expired) of the State of New York, or for any other reason, the Company is required to pay any tax which the payments specified herein are intended to be in lieu of, the Company may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of such taxes and need only pay the difference (the "Difference"). Furthermore, inasmuch as the PILOT Payments herein agreed to be made by the Company are intended to be in lieu of all Exempt Taxes, it is agreed that said payments shall not, as to any PILOT Year, be in an amount greater than would be payable for such year for such Exempt Taxes, in the aggregate, by a private corporation on account of its ownership of the Facility.

M. Taxpayer Rights and Remedies. Subject to Paragraph F of this Agreement, it is the intent of the parties that the Company will have all the rights and remedies of a taxpayer with respect to any real property or other tax, service charge, special benefit, ad valorem levy, assessment or special assessment or service charge because of which, or in lieu of which, the Company is obligated to make a payment hereunder, as if and to the same extent as if the Agency did not own a leasehold interest in the Facility. Subject to Paragraph F of this Agreement, it is the further intent of the parties that the Company will have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency did not own a leasehold interest in the Facility with respect to any proposed assessment or change in assessment concerning the property, or any portion thereof, whether through an assessor, board of assessment review, court of law, or otherwise and likewise will be entitled to protest before and be heard by such assessor, board of assessment review, court of law or otherwise and will be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any taxes that would have been payable but for the provisions hereof. In the event, however, that a court of competent jurisdiction shall enter an order or judgment determining or declaring that, by reason of the Agency's leasehold interest in the Facility, the Company does not have the right to bring a proceeding to review such assessment under the Real Property Tax Law or any other law, then the Company shall have the right to contest such assessment in the name and as the agent of the Agency, and the Agency agrees to cooperate with the Company in all respects in any such proceeding at the sole cost and expense of the Company.

N. Payments to Agency; Allocation of Payments by Agency.

(a) All amounts payable by the Company hereunder will be paid to the Agency and will be payable in such lawful money of the United States of America as at the time of payment is legal tender for the payment of public and private debts, including a check payable in such money. Upon receipt of PILOT Payments hereunder, the Agency shall allocate and disburse the PILOT Payments in accordance with the PILOT Allocation Agreement. The Company shall have no liability or responsibility regarding the allocation and disbursement of PILOT Payments by the Agency.

(b) The Company will make PILOT Payments to the Agency no later than the date listed on the PILOT invoice. PILOT Payments that are delinquent under this Agreement shall be subject to a late penalty of five percent (5%) of the amount due which shall be paid by the Company to the Agency at the time the PILOT Payment is paid, and the Agency shall allocate the penalty among the Affected Tax Jurisdictions in the same pro-rata proportion that the Affected Tax Jurisdictions would have received taxes, if the Agency did not have a leasehold interest. For each month, or part thereof, that the PILOT Payment is delinquent beyond the first month, interest shall accrue to and be paid to the Affected Tax Jurisdictions on the total amount due plus a late payment penalty in the amount of one percent (1%) per month until the payment is made; provided, however, nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document.

O. Debt Service Insufficiency and PILOT Assignment

If, prior to the date that the EDGE Project-Related Debt is indefeasibly paid in full, the aggregate amount of PILOT Payments due hereunder in any given PILOT Year reduces or is reduced due to the application of a SID Credit Amount to a level such that the amount allocable by the Agency to the EDGE Project-Related Debt Service Fund for such PILOT Year would be insufficient to enable EDGE to pay and/or otherwise service the EDGE Project-Related Debt and maintain a minimum debt service coverage ratio of 1.15 to 1.0 (the "Debt Service Insufficiency") the Agency shall promptly deliver written notice of such insufficiency to the Company and the Company shall, at its option, either (i) pay such insufficiency directly to the Agency for deposit by the Agency into the EDGE Project-Related Debt Service Fund at the normal time when PILOT Payments are due, or, (ii) roll forward for utilization in a future year under this Agreement, the amount of the SID Credit Amount which creates the Debt Service Insufficiency. In the event that the Debt Service Insufficiency was caused by the application of a SID Credit Amount which is related to an SID Charge which the Company did not consent to as required under Section 2(b) of the PILOT Allocation Agreement, then an amount equal to the SID Credit Amount shall be subtracted from the Aggregate Annual PILOT Payment Allocation of the Affected Tax Jurisdiction that levied the SID Charges, pursuant to Section 2(c)(i) of the PILOT Allocation Agreement.

As collateral security for the payment of the EDGE Project-Related Debt, the parties acknowledge and agree that the Agency may assign its rights under the PILOT Allocation Agreement, the payments due to the Agency under this Agreement (except for the payments due to the Affected Tax Jurisdictions under Section 3 of the PILOT Allocation Agreement), and the guarantees thereof and/or security instruments relating thereto, if any, to the EDGE Lenders to the extent necessary to enable said EDGE Lenders to enforce and fully collect upon their security for the EDGE Project-Related Debt. Each such assignment shall be in form and content satisfactory to the Agency, EDGE and the EDGE Lenders, in their sole discretion. Each of the Affected Tax Jurisdictions has previously in the PILOT Allocation Agreement consented to each of such assignments, guarantees and/or security instruments. The parties to this Agreement acknowledge and agree that Parties shall be obligated to execute and deliver such other

documents and/or agreements to confirm the terms, covenants and conditions of this Agreement.

P. Miscellaneous.

(a) If any term or provision hereof should be for any reason held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, the parties shall negotiate in good faith so as to replace each such invalid, illegal or unenforceable term or provision with a valid, legal and enforceable provision which will carry out the parties' intentions in entering into this Agreement.

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

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

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

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

To the Company: Cree, Inc.  
4600 Silicon Drive  
Durham, North Carolina 27703  
Attn.: Bradley D. Kohn, Esq.,  
Senior Vice President and General Counsel

With a Copy To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

(d) This Agreement shall be governed by and construed in accordance with the law of the State of New York, without regard to its choice of law rules or principles. Any party bringing an action or proceeding against the other party arising out of or relating to this Agreement or the transaction it forum shall bring such action or proceeding in the Supreme Court of the State of New York in and for the County of Oneida or in the United States District Court for the Northern District of New York and each party consents to the jurisdiction of such courts (including their respective appellate courts) and agrees that any judgment obtained in either of the above forums may be enforced in such forum or in any other appropriate forum.

(e) This Agreement shall be binding upon the successors and assigns of the parties.

(f) The section headings contained in this Agreement are for convenience and reference only and shall not be used to interpret or construe provisions.

(g) The parties agree to do such further acts and things and to execute and deliver such additional agreements and instruments as may be reasonably necessary to give effect to the purposes of this Agreement and the parties' agreements hereunder, including but not limited to entering into additional agreements to memorialize the PILOT Payments intended hereunder.

(h) This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(i) This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

(j) This Agreement (including the exhibits and schedules hereto) contains the entire agreement of the parties with respect to the subject matter hereof and no oral statement or written matter prior to the date of this Agreement shall have any effect or force.

(k) To the extent that a particular right, obligation or covenant in this Agreement does not have a specifically identified survival period, then such right, obligation and/or covenant shall remain in effect beyond any expiration of termination of this Agreement.

[signature pages follow]





SECOND SIGNATURE PAGE OF PILOT AGREEMENT  
(ONEIDA COUNTY IDA AND CREE, INC.)

ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
David C. Grow  
Chairman

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

On the \_\_\_\_ day of \_\_\_\_\_, 2020 before me, the undersigned a notary public in and for said state, personally appeared **David C. Grow**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**SCHEDULE 1**

**PILOT Value  
Per Square Foot Rates  
Permanent PILOT Payment Period**

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<b>Year</b>	<b>Semiconductor Manufacturing Building (GSF Clean Room Levels Only)</b>	<b>Office Space (GSF)</b>	<b>Ancillary Warehousing Space (GSF)</b>	<b>Technology Manufacturing Building (GSF)</b>	<b>Cleanroom Space (NSF within Technology Development Building)</b>	<b>Other Facilities</b>
<b>1</b>	<b>\$365</b>	<b>\$100</b>	<b>\$60</b>	<b>\$125</b>	<b>\$450</b>	<b>*</b>
<b>2</b>	<b>348</b>	<b>98</b>	<b>58</b>	<b>123</b>	<b>430</b>	<b>*</b>
<b>3</b>	<b>332</b>	<b>96</b>	<b>56</b>	<b>121</b>	<b>410</b>	<b>*</b>
<b>4</b>	<b>316</b>	<b>94</b>	<b>54</b>	<b>119</b>	<b>390</b>	<b>*</b>
<b>5</b>	<b>300</b>	<b>92</b>	<b>52</b>	<b>117</b>	<b>370</b>	<b>*</b>
<b>6</b>	<b>284</b>	<b>90</b>	<b>50</b>	<b>115</b>	<b>350</b>	<b>*</b>
<b>7</b>	<b>267</b>	<b>88</b>	<b>48</b>	<b>113</b>	<b>330</b>	<b>*</b>
<b>8</b>	<b>251</b>	<b>86</b>	<b>46</b>	<b>111</b>	<b>310</b>	<b>*</b>
<b>9</b>	<b>235</b>	<b>84</b>	<b>44</b>	<b>109</b>	<b>290</b>	<b>*</b>
<b>10</b>	<b>219</b>	<b>82</b>	<b>42</b>	<b>107</b>	<b>270</b>	<b>*</b>
<b>11</b>	<b>203</b>	<b>80</b>	<b>40</b>	<b>105</b>	<b>250</b>	<b>*</b>
<b>12</b>	<b>186</b>	<b>78</b>	<b>38</b>	<b>103</b>	<b>230</b>	<b>*</b>
<b>13</b>	<b>170</b>	<b>76</b>	<b>36</b>	<b>101</b>	<b>210</b>	<b>*</b>
<b>14</b>	<b>154</b>	<b>74</b>	<b>34</b>	<b>99</b>	<b>190</b>	<b>*</b>
<b>15</b>	<b>146</b>	<b>72</b>	<b>32</b>	<b>97</b>	<b>180</b>	<b>*</b>
<b>16-47</b>	<b>146</b>	<b>72</b>	<b>32</b>	<b>97</b>	<b>180</b>	<b>*</b>

**Schedule 2**

PILOT Allocation Agreement

**Schedule 3**

**Form of PILOT Bill**

[TO BE PROVIDED BY IDA]

EXHIBIT B  
FORM OF ANNUAL REPORT TO AGENCY

GW

Project Code: 0 Fund Type: 0 Project Name:

**Schedule of Supplemental Information (Bonds/Notes or Straight Lease)**

**Project Owner and Address:**

Contact Name  
Company  
Address

Total Project/Lease Amount: \$  
Bonded Project Amount: \$  
Non-profit?

Straight Lease End Date:  
Bond/Note Amount: \$  
New tax revenues if no exemptions granted:

Please check box if applicable:  
 Not all data is reported. Letter of explanation attached.

**2016 Tax Exemptions – Amounts that would have been payable, AS TAXES, without IDA exemptions.**

Sales Tax (ST)	Real Property Tax (RPT)	Mortgage Recording Tax (MR)	Total Tax Exemptions (Sum of ST, RPT and MRT)	Total Exemptions Net of RPTL Sec 485-b Exemptions
State: \$	County: \$	\$	\$	\$
Local: \$	Local (sum of city/town/village): \$			
	School: \$			

**2016 Payments in Lieu of Taxes (PILOTS) Paid. DO NOT INCLUDE SPECIAL DISTRICT ASSESSMENT PAYMENTS (ie; sewer, water, lighting, etc. districts)**

County	Local (sum of city/town/village)	School District	Total PILOTS Paid	Code
\$	\$		\$	0

**Straight Lease:** Identify method of financial assistance utilized by project, other than tax exemptions claimed by project. Identify by amount and type:

**FORM CONTINUED ON NEXT PAGE**

Project Code: 0 Fund Type: 0 Project Name:

**Schedule of Supplemental Information Continues (Bonds/Notes or Straight Lease)**

**Full-Time Equivalent (FTE) Jobs Created and Retained**

# FTE Employees at Project Location Prior to IDA Status	Original Estimate of Jobs to be Created	Original Estimate of Jobs to be Retained	# Current FTE Employees	# FTE Jobs Created During Fiscal Year	# FTE Jobs Retained During Fiscal Year	# FTE Construction Jobs Created during Fiscal Year

**FOR PROJECTS CLOSED AFTER JULY 2016 ONLY. If the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, that was provided in the original project application is still accurate, please check this box:**  **if the information is no longer accurate, complete chart below.**

**Salary and Fringe Benefits for Jobs to be Retained and Created:**

Category of Jobs to be Retained and Created	# CURRENT FTE Per Category	Average Annual Salary or Range of Salary	Average Annual Fringe Benefits or Range of Fringe Benefits
Management			
Administrative			
Production			
Independent Contractor			
Other			

\*Contact Name (if different from page 1): \_\_\_\_\_  
 \*Contact Address (if different from page 1): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \*Contact Telephone: \_\_\_\_\_  
 \*Contact Fax: \_\_\_\_\_  
 \*Contact Email: \_\_\_\_\_  
 \*Person Completing Form: \_\_\_\_\_ \* Required

I certify that to the best of my knowledge and belief all of the information on this form is correct. I also understand that failure to report completely and accurately may result in enforcement of provisions of my agreement, including but not limited to avoidance of the agreement and potential claw back of benefits.

Signed: \_\_\_\_\_  
 (authorized company representative)  
 Date: \_\_\_\_\_

PROJECT CODE: 0

**Bonds and Notes Related to Project\***

(\*If you do not have a Bond, please skip this section)

Type of Debt:	Bond(s) <input checked="" type="checkbox"/> Note(s) <input type="checkbox"/>	Bond(s) <input checked="" type="checkbox"/> Note(s) <input type="checkbox"/>	Bond(s) <input checked="" type="checkbox"/> Note(s) <input type="checkbox"/>	Bond(s) <input checked="" type="checkbox"/> Note(s) <input type="checkbox"/>	Total
Date of Issue:					
Interest Rate:					
<ul style="list-style-type: none"> <li>At issuance</li> <li>If variable, applicable range</li> </ul>					
Outstanding Beginning of Fiscal Year:					
Issued During Fiscal Year:					
Paid During Fiscal Year:					
Outstanding End of Fiscal Year:					
Final Maturity Date:					Final maturity date of last outstanding bond:



Project Code: 0      Fund Type: 0      Project Name:

**Questions for Housing Projects ONLY**

(1) Describe the housing project constructed or renovated in detail (type of housing, number of units, etc.):

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If construction or renovation is incomplete, when is the issuance of a Certificate of Occupancy anticipated? \_\_\_\_\_  
If available, please attach copy of Certificate of Occupancy.

(2) Describe how you changed the pre-Project use of the facility or property being utilized, for the Project.

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(3) Did the project have any impact on the existing infrastructure or upgrades to the current infrastructure (water, sewer, electrical, gas, etc.)? If yes please provide detail and who you are working with at the applicable organization(s).

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(4) If your project is a multi-use facility please provide details of the project, project square footage breakdown of non-housing to housing usage: detail the job creation and retention associated with the non-housing component.

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(5) Does the project provide a community benefit? If yes, provide detail substantiating (reference the IDA policy).

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