

AGENT AND PROJECT AGREEMENT

THIS AGENT AND PROJECT AGREEMENT ("Agreement"), made as of the 1st day of June, 2024, by and between the **COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its principal offices located at 548 Broadway, Monticello, New York 12701 ("Agency") and **NY FALLSBURG (FRANK BROWN ROAD), LLC**, a New York limited liability company, having its principal offices located at 140 East 45th Street, Suite 32B-1, New York, New York 10017 ("Company").

W I T N E S S E T H:

WHEREAS, the Agency was created by Chapter 560 of the Laws of 1970 of the State of New York ("State") pursuant to Title I of Article 18-A of the (General Municipal Law of the State of New York (collectively referred to as the "Enabling Act") as a body corporate and politic and as a public benefit corporation of the State; and

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

WHEREAS, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

WHEREAS, pursuant to and in connection with the provisions of the Enabling Act, the Agency is empowered under the Act to undertake the providing of financing and taking of title or a leasehold interest in the Project (as described below); and

WHEREAS, shall be constructed on approximately 45.35 acres on Frank Brown Road located in the Town of Fallsburg (the "Town"), County of Sullivan ("County"), New York, and identified on the Town tax map as Section 28, Block 1, Lot 18.1 and on any lands located in Sullivan County, New York, and occupied by license or easement during construction or improved by third parties for the benefit of the Project (the "Land"); and

WHEREAS, on or about November 18, 2024, the Company presented an application to the Agency (the "Application"), a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project consisting of the construction of an approximately 4MWac solar photovoltaic electricity-generating facility that will be interconnected to the New York State Energy and Gas electrical grid (the "Project"). The Project is new construction and

will be comprised of (a) racking to mount the solar modules (such racking generally to be placed on concrete foundations); (b) solar modules; (c) inverters and transformers to sit on a concrete inverter pad; and (d) assorted electrical components and wiring. The solar array will be constructed on the Land; and

WHEREAS, by resolution, dated December 16, 2024 (the "Project Authorizing Resolution"), the Agency authorized the Company to act as its agent for the purposes of constructing the Project and conferred on the Company certain financial assistance consisting of: (a) an exemption from all State and local sales and use tax for the purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Project or used in the construction of the Project, and (b) a partial abatement from real property taxes for a period of five (5) years following the statutory exemption from real property taxes under Real Property Tax Law Section 487, which exemption shall be conferred through a certain payment-in-lieu-of-tax agreement requiring the Company to make payments in lieu of taxes (the "PILOT Agreement") for the benefit of each municipality and school district having taxing jurisdiction over the Project (collectively, the sales and use tax exemption and the partial abatement from real property taxes, are hereinafter collectively referred to as the "Financial Assistance"). Provision of Financial Assistance is subject to the Company entering into this Agreement; and

WHEREAS, subsequent to the adoption by the Agency of the Project Authorizing Resolution, the Company confirmed that the solar photovoltaic power would equal 2.5MWac; and

WHEREAS, pursuant to and in accordance with Sections 859-a and 874 of the Enabling Act, the Agency requires, as a condition and as an inducement for it to provide any Financial Assistance, that the Company enter into this Agreement for the purposes of, among other things, governing administration of and provide assurances with respect to the provision and recapture of said Financial Assistance upon the terms herein set forth; and

WHEREAS, this Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company.

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 as follows:

1. **Purpose of Project.** The purpose of the Agency's provision of Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the constructing, improving and maintaining the Project to advance job opportunities, health, general prosperity and economic welfare of the people of the County, and to specifically promote the investment commitment, employment commitment, and other commitments of the Company contained herein and within the Company's Application. Additionally, the Project will contribute to important State goals as set forth in the New York Community Distributed Generation Program ("CDG") which was approved and enacted by the Public Service Commission in 2015. CDG is part of the New York Reforming the Energy Vision

initiatives, which has the goal of having 50% of the State's electricity generated from renewable sources by the year 2030.

2. Scope of Agency. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution, and subject to applicable law, to acts reasonably related to the construction of the Project. The right of the Company to act as agent of the Agency **shall expire on March 31, 2026**. The Agency shall issue subsequent periodic sales tax abatement letters to the Company, on not less than thirty (30) days prior written request by the Company, so long as the Company is in compliance with the terms of this Agreement. The subsequent sales tax abatement letters shall be for periods of one (1) year. The aggregate amount of work performed as Agent for the Agency shall not exceed the amounts described in the Application of the Company in this matter. All contracts entered into by the Company as agent for the Agency shall include the following language:

"This contract is being entered into by **NY FALLSBURG (FRANK BROWN ROAD), LLC** ("Agency"), in connection with a certain Project of the Agency for the benefit of the Agent consisting in part of the construction of the Project, all for incorporation on certain premises situated on all or a portion of approximately 45.35 acres on Frank Brown Road located in the Town of Fallsburg (the "Town"), County of Sullivan ("County"), New York, and identified on the Town tax map as Section 28, Block 1, Lot 18.1, and on any lands located in Sullivan County, New York, and occupied by license or easement during construction or improved by third parties for the benefit of the Project (the "Land"). The Project to be incorporated and installed on the Land and all services and rentals of equipment related to the construction of the Project shall be exempt from all New York State and local sales and use taxes if the construction thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption instruction letter of the Agency; and the Agent hereby represents that this contract is in compliance with the terms of the Agent and Project Agreement by and between the Company and the Agency, dated as of December 31, 2024. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

3. Fees.

- (a) Sales Tax Abatement Fee. Upon execution of this Agreement, the Company shall pay the Agency a sales tax abatement fee in the amount of FIVE THOUSAND AND 00/100 (\$5,000.00) Dollars. Within ten (10) days of the execution of this Agreement, the Agency shall deliver a Sales Tax Exemption letter substantially in

the form of Exhibit 3.

- (b) Project Administration Fee. The Company shall pay the Agency a Project Administration Fee of FIFTEEN THOUSAND AND 00/100 (\$15,000.00) Dollars.
- 4. Intentionally omitted.
- 5. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to proceed with the Project:
 - (a) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.
 - (b) The Project and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Project, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (b).
 - (c) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact, in any material manner, on the Company's ability to fulfill its obligations under this Agreement.
 - (d) The Company covenants (i) that the Project will comply in all respects with all applicable environmental laws and regulations, (ii) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Project, except in compliance with all applicable laws, (iii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Project or onto any other property, (iv) that no asbestos will be incorporated into or disposed of on the Project, (v) that no underground storage tanks will be located on the Project, except in full compliance at all times with all applicable laws, rules, and regulations, and (vi) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is, to the knowledge of the Company, threatened, anticipated, or in existence. The Company upon receiving any information or

notice contrary to the representations contained in this Section 5(d) shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its directors, officers, employees, members, agents (except the Company), representatives, their respective successors and assigns and personal representatives from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this Section 5(d). In the event the Agency has reasonable grounds to believe that Company may be in violation of any of the above, and if Company does not provide evidence to the contrary reasonably satisfactory to the Agency within twenty (20) days after notice thereof, the Company agrees to pay the third-party expenses of the Agency incurred in order to determine whether such violation has occurred upon demand.

- (e) The Company further covenants and agrees that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in the amount up to \$1,187,500.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$95,000.00.
- (f) The Company further covenants and agrees to complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (NYS Form ST-60), in the form attached hereto as Exhibit 5(f), for each agent, subagent, contractor, subcontractor, if any, contractors or subcontractors of such agents and subagents, if any, and such other parties as the Company chooses who provide materials, equipment, supplies or services and forward said form to the Agency within twenty (20) days of appointment.
- (g) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340), attached hereto as Exhibit 5(g), regarding the value of sales and use tax exemptions the Company, its agents, subagents, consultants or subcontractors have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with General Municipal Law Section 874(8). The Company further covenants and agrees that it will, within ten (10) days of each filing, provide a copy of same to the Agency; provided, however, in no event later than February 15th of each year. The Company understands and agrees that the failure to file such annual statement will result in the termination of the Company's authority to act as agent for the Agency.
- (h) The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123), a copy of which is attached hereto as Exhibit 5(h)-1 (for use by the Company) and Exhibit 5(h)-2 (for use by subagents of the

Company), and it shall be the responsibility of the Company (and not the Agency) to complete NYS Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill or invoice should state, *"NY Fallsburg (Frank Brown Road), LLC certifies that it is a duly appointed agent of County of Sullivan Industrial Development Agency ("IDA") and that I am purchasing the tangible personal property or services for use in the NY Fallsburg (Frank Brown Road), LLC Project, being IDA OSC Project Code: 4801-24-04A, and that such purchases qualify as exempt from sales and use taxes under the Project Agreement with the County of Sullivan Industrial Development Agency."*

The Company further acknowledges and agrees that the following information shall be used by the Company to identify the Project on each bill and invoice:

Project Name:	NY Fallsburg (Frank Brown Road), LLC Project
Street Address of Project:	Frank Brown Road in the Town of Fallsburg, Sullivan County, NY and any lands located in Sullivan County, New York, and occupied by license or easement during construction or improved by third parties for the benefit of the Project
Project IDA OSC Project Code:	4801-24-04A

- (i) The Company acknowledges and agrees that the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.
- (j) In accordance with Section 875(3)(b) of the Enabling Act and the Agency's Project Recapture and Termination Policy, the Company covenants and agrees that it will be subject to the recapture of State sales and use tax exemption benefits taken (i) in excess of the amounts authorized by the Agency, (ii) on purchases not entitled to the sales and use tax exemption, (iii) on property or services not authorized by the Agency as part of the Project or (iv) when the Company fails to meet and maintain certain material terms and conditions ("Material Terms") as set forth herein.
- (k) In the event of a recapture of the sales and use tax benefit pursuant to Section 875(3)(b) of the Enabling Act and the Agency's Project Recapture and Termination Policy, the Company covenants and agrees (i) to cooperate with the Agency in its efforts to recover or recapture such sales and use tax exemption benefits and (ii)

promptly pay over any such amounts to the Agency as the Agency demands in connection therewith.

- (l) In accordance with Section 874(10) and (11) of the Enabling Act and the Agency's Project Recapture and Termination Policy, the Company covenants and agrees that it may be subject to suspension, termination, modification or recapture of any or all Financial Assistance in the sole discretion of the Agency if (i) an event of a material violation of the Material Terms occur; or (ii) the Company made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the Application or supporting documents false or misleading in any material respect, on the Application for Financial Assistance. For purposes of paragraphs (j) and (k) of this Section 5, Material Terms shall mean completing the Project as described herein and on the Application.
 - (m) In accordance with Section 859-a(6)(b) of the Enabling Act, the Company covenants and agrees to annually provide a certified statement (i) enumerating the full time equivalent jobs retained and created as a result of the Financial Assistance, by category, including independent contractors or employees of independent contractors that work at the Project location; and (ii) indicating the salary and fringe benefit averages or ranges for categories of jobs retained and created that was provided in the Application is still accurate and if not, providing revised information.
 - (n) In accordance with Section 859-a(6)(b) of the Enabling Act, the Company confirms and acknowledges under the penalty of perjury that as of the date hereof, the Company is, to the knowledge of the Company, in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.
 - (o) The Company acknowledges and agrees that a failure by the Company to provide any certification, form or other reporting information required by this Agreement shall constitute an event of default hereunder, whereby the Agency, at its sole and absolute discretion, may suspend, terminate, modify or recapture of any or all Financial Assistance.
6. Hold Harmless Provision. To the fullest extent permitted by law, the Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its directors, officers, employees, members, agents (except the Company), representatives, their respective successors and assigns and personal representatives harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Project or breach by the Company of this Agreement; or (ii) liability arising from or expense incurred by the Agency's constructing, owning and leasing of the Project, including without limiting the

generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expense, incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or its respective directors, officers, employees, members, agents (except the Company), and representatives, their respective successors and assigns and personal representatives and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

7. Insurance Required. Effective as of the date hereof and until the Agency consents in writing to a termination, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

- (a) Worker's compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project.
- (b) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable Worker's Compensation Law; and a blanket excess liability policy in the amount not less than \$2,000,000, protecting the Company against any loss or liability or damage for personal injury or property damage.

8. Additional Provisions Respecting Insurance.

- (a) All insurance required by Section 7 shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company (and reasonably satisfactory to the Agency) and authorized to write such insurance in the State. Such insurance may be written with deductible amounts not exceeding \$10,000.00. All policies of insurance shall be primary and non-contributory. All policies evidencing such insurance shall provide for at least thirty (30) days written notice of the cancellation thereof to the Company and the Agency.
- (b) All such certificates of insurance of the insurers that such insurance is in force and effect, shall be deposited with the Agency on or before the commencement of the term of this Agreement. Prior to expiration of the policy evidenced by said certificates, the Company shall furnish the Agency evidence that the policy has

been renewed or replaced or is no longer required by this Agreement.

9. Counterpart Signatures. This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but which together shall constitute a single instrument.
10. Notices. All notices provided for by this Agreement shall be made in writing, and shall be deemed to have been given on the date of delivery if personally served on the party to whom notice is to be given, or on the next day after mailing if mailed to the party to whom notice is to be given by overnight courier of national reputation providing evidence of receipt and properly addressed, or on the third day after mailing if mailed to the party to whom notice shall be given by First Class, Certified mail, postage prepaid and properly addressed to the following:

To the Agency:

County of Sullivan Industrial Development Agency
548 Broadway
Monticello, New York 12701
Attn: Executive Director

With a copy to:

Walter F. Garigliano P.C.
449 Broadway, P.O. Drawer 1069
Monticello, New York 12701
Attn: Walter F. Garigliano, Esq.

And to:

Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Shawn M. Griffin, Esq.

To the Company:

NY Fallsburg (Frank Brown Road), LLC
140 East 45th Street, Suite 32B-1
New York, New York 10017
Attn: Richard Winter, CEO

With a copy to:

Law Office of Richard W. Chun
1225 Franklin Avenue, Suite 325
Garden City, New York 11530
Attn: Richard Chun, Esq.

or at such other addresses and/or addressees as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section 10.

11. Governing Law. This 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. The parties hereto designate a court of proper jurisdiction located in Sullivan County, New York as the sole venue for resolution of any disputes, which may arise under or by reason of this Agreement.

[The Balance of This Page Intentionally Left Blank]

[Signature Page to Agent and Project Agreement – 1 of 2]

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

COUNTY OF SULLIVAN INDUSTRIAL
DEVELOPMENT AGENCY

By: _____

Name: Jennifer Flad

Title: Executive Director

[Signature Page to Agent and Project Agreement – Page 2 of 2]

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

NY FALLSBURG (FRANK BROWN ROAD), LLC

By: Peter Dolgos
Name: Peter Dolgos
Title: Senior Vice President

SCHEDULE A

LIST OF APPOINTED AGENTS¹

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

¹ FOR EACH AGENT APPOINTED BY THE COMPANY, A NYS FORM ST-60 (ATTACHED AS EXHIBIT 5(F)) MUST BE COMPLETED AND FILED BY THE COMPANY WITH THE NYS DEPARTMENT OF TAXATION AND FINANCE IDA UNIT INDICATING THE APPOINTMENT OF SUCH AGENT OF THE COMPANY.

EXHIBIT 3

FORM OF SALES TAX EXEMPTION LETTER



548 Broadway
Monticello, NY 12701

Tel: (845) 428-7575
Fax: (845) 428-7577

**INFORMATIONAL LETTER
REGARDING SALES AND USE TAX EXEMPTIONS**

December 31, 2024

NY Fallsburg (Frank Brown Road), LLC
140 East 45th Street, Suite 32B-1
New York, New York 10017

Re: County of Sullivan Industrial Development Agency with NY Fallsburg (Frank Brown Road), LLC

Project at Frank Brown Road, Town of Fallsburg, County of Sullivan
IDA OSC Project Code: 4801-24-03A

Ladies and Gentlemen:

Pursuant to a resolution duly adopted by the County of Industrial Development Agency on December 9, 2024 (the "Project Authorizing Resolution"), the Agency appointed the Company as its true and lawful agent of the Agency to undertake a certain project consisting of the construction of an approximately 2.5MW solar photovoltaic electricity generating facility that will be interconnected to the New York State Energy and Gas electrical grid (the "Project"). The Project is new construction and will be comprised of (a) racking to mount the solar modules (such racking generally to be placed on concrete foundations); (b) solar modules; (c) inverters and transformers to sit on a concrete inverter pad; and (d) assorted electrical components and wiring. The Solar Array will be constructed on approximately 45.35 acres on Frank Brown Road, in the Town of Fallsburg (the "Town"), County of Sullivan (the "County"), and identified on the Town tax map as Section 28, Block 1, Lot 18.1, and any lands located in Sullivan County, New York, and occupied by license or easement during construction or improved by third parties for the benefit of the Project (the "Land").

This appointment includes authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Project and the following activities as they relate to any construction of the Solar Array, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such Solar Array: (1) all

purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the construction; (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with the construction; and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in upon or under such Solar Array, including all repairs and replacements of such property.

This agency appointment includes the power to delegate such agency, in whole or in part to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses, as is set forth in the Agent and Project Agreement, dated as of December 31, 2024, by and between the Agency and the Company (the "Project Agreement"). As further set forth in the Project Agreement, the Company is required to complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (NYS Form ST-60) for each agent, subagent, contractor, subcontractor and such other parties as the Company chooses who provide materials, equipment, supplies or services and forward said form to the Agency within twenty (20) days of appointment.

As further set forth in the Project Agreement, in order to be entitled to use the exemption from State and local sales and use taxes (the "Sales Tax"), the Company, its agents, subagents, contractors and subcontractors should present to the supplier or vendor of materials for the Project, a completed "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123), to show that the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency in making the purchases of tangible personal property or services for use in the Project, thereby relieving such vendor or seller from the obligation to collect Sales Tax with respect to the construction of the Project. In connection therewith, it is necessary for the Company to identify the Project on each bill or invoice and indicate thereon which of the Company, its agents, subagents, contractors and subcontractors acted as agent for the Agency in making the purchases.

As further set forth in the Project Agreement, the Company is required to file an annual statement with the State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340) regarding the value of sales and use tax exemptions the Company, its agents, consultants or subcontractors have claimed pursuant to the agency conferred on the Company by the Agency with respect to this Project, and the Company is required to provide a copy of same to the Agency within thirty (30) days of each filing; provided, however, in no event later than February 15th of each year.

The agency authority conferred on the Company by the Agency is limited to the Project and will expire on **March 31, 2026**. The Company may apply to extend this agency authority by showing good cause. Should the agency authority be extended beyond such date, the agency created will continue for as long as the period of the Agency resolution approving such extension.

This letter is provided for the sole purpose of describing the exemption from Sales Tax for this Project only. No other principal/agent relationship is intended or may be implied or inferred by this letter.

[Signature Page to Informational Letter – 1 of 1]

Any personal property acquired by the Company in the name of the Agency shall be located in Sullivan County, New York, except for temporary periods during ordinary use.

This letter is being issued pursuant to the Project Agreement. All agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project should be aware of the Project Agreement and obtain a copy thereof.

As further set forth in the Project Agreement, the Agency is not liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company is the sole party liable thereunder.

Very truly yours,

COUNTY OF SULLIVAN INDUSTRIAL
DEVELOPMENT AGENCY

By:


Jennifer Flad, Executive Director

EXHIBIT 5(f)

FORM OF NYS FORM ST-60 TO BE COMPLETED BY COMPANY
AND FILED WITH NYS IDA UNIT FOR EACH OF ITS SUBAGENTS

[Attached Next Page]



IDA Appointment of Project Operator or Agent For Sales Tax Purposes

ST-60
(1/18)

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

For IDA use only**IDA information**

Name of IDA	IDA project number (use OSC numbering system for projects after 1998)		
County of Sullivan Industrial Development Agency	48012404A		
Street address	Telephone number		
548 Broadway	(845) 428-7575		
City	State	ZIP code	Email address (optional)
Monticello	NY	12701	N/A

Project operator or agent information

Name of IDA project operator or agent	Mark an X in the box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or Social Security number	
Street address	Telephone number	Primary operator or agent?	
	()	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City	State	ZIP code	Email address (optional)
			N/A

Project information

Name of project			
NY Fallsburg (Frank Brown Road), LLC			
Street address of project site			
SBL 28.-1-18.1 on Frank Brown Road			
City	State	ZIP code	Email address (optional)
Fallsburg	NY	12733	N/A
Purpose of project			
electric- clean energy			

Description of goods and services intended to be exempted from New York State and local sales and use taxes

goods and services used to construct and equip an approximately 2.5 MWac solar photovoltaic electricity generating facility

Date project operator or agent appointed (mmddyy)	Date project operator or agent status ends (mmddyy)	033126	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax:		1,187,500.00	Estimated value of New York State and local sales and use tax exemption provided: 95,000.00

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA	Print title		
Jennifer M. Flad	Executive Director		
Signature	Date	Telephone number	
		(845) 428-7575	

Instructions

When to file

An IDA must file this form within 30 days of the date they appoint any project operator or other person as agent of the IDA, for purposes of extending any sales and use tax exemptions.

Requirements to file

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA should not file this form if they do not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, they must, within 30 days of the change, file a new form with the new information.

If the information on this form changes

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA, within 30 days, must send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. They must attach to the letter a copy of the form it originally filed. The IDA should not send a letter for a form that is not valid merely because the *Completion date of project* has passed.

Mailing instructions

Mail completed form to:

NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866

Private delivery services – See Publication 55, *Designated Private Delivery Services*.

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?



Visit our website at **www.tax.ny.gov**

- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Sales Tax Information Center:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service

EXHIBIT 5(g)

NYS FORM ST-340
TO BE COMPLETED AND FILED ANNUALLY BY COMPANY

[Attached Next Page]



Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

ST-340
(1/18)

For period ending December 31, _____ (enter year)

Project information

Name of IDA agent/project operator NY Fallsburg (Frank Brown Road), LLC		Employer identification number (EIN) [REDACTED]	
Street address 140 East 45th Street, Suite 32B-1		Telephone number (646) 998-6457	
City New York		State NY	ZIP code 10017
Name of IDA County of Sullivan Industrial Development Agency	Name of project NY Fallsburg (Frank Brown Road), LLC	IDA project number 48012404A	
Street address of project site SBL 28.-1-18.1 on Frank Brown Road			
City Fallsburg		State NY	ZIP code 12733
Date project began 123124		Completion date of project 033126 Actual <input type="checkbox"/> Expected <input checked="" type="checkbox"/>	
Total sales and use tax exemptions (actual tax savings; not total purchases)			\$

Representative information (not required)

Authorized representative, if any	Title
Street address	Telephone number ()
City	State ZIP code

Certification

I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.		
Print name of officer, employee, or authorized representative		Title of person signing
Signature		Date

If you do not annually file a complete report, **we may remove** your authority to act as an IDA agent/project operator.

Mail completed report to:

**NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866**If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Instructions

General information

Who must file

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as the *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the Tax Department. The agent/project operator required to file this report is the person **directly** appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operators directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operators should **not** themselves file Form ST-340. However, the agent/project operators must include on Form ST-340 information obtained from such contractors, subcontractors, consultants, and agents, as described below.

What you must report

The report must show the **total value** of all state and local **sales and use taxes exempted** during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions the agent/project operator (you) obtained; and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

Include only the **total combined** exemptions obtained by the above people. A breakdown of the total is not required. However, since the report must include the value of the exemptions they obtained, you must keep records of the amounts others report to you.

You must make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available, so that you can comply with the annual reporting requirements.

Do not include on this report the amount of any sales and use tax exemptions from other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

When the report is due

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

Name of IDA agent/project operator: Enter your name, address, employer identification number (EIN), and telephone number.

Name of IDA and IDA project number: Enter the name and address of the IDA. If more than one IDA is involved in a particular project, you must file a separate report for the tax exemptions attributable to each IDA. Also enter the ID project number.

Name of project: Enter the name of the project and the address of the project site. If you are involved in more than one project, you

must file a separate report for each project, even if authorized by the same IDA.

Date project began: Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

Completion date of project: Enter the date installation, lease, or rental of property (for example, machinery or computers) on the project ended, or the date the project is expected to be completed. Mark an **X** in the appropriate box to indicate if the date entered is actual or expected.

Total sales and use tax exemptions: Enter the total amount of New York State and local sales and use taxes exempted during the reporting period as a result of the project's receipt of IDA financial assistance (*if none, enter 0*). This includes exemptions obtained at the time of purchase, as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do **not** enter total purchases.

Representative information

If applicable, enter the name, address, title (for example, attorney or accountant), and telephone number of the individual you authorize to submit this report. This section is not required.

Certification

Enter the name and title of the person signing on your behalf (for example, the IDA agent/project operator's officer, employee, or other authorized representative). Your officer, employee, or authorized representative must sign and date the report.

Mail completed report to:

**NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866**

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

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Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

EXHIBIT 5(h)-1

NYS FORM ST-123 FOR COMPANY USE

[Attached Next Page]



New York State Department of Taxation and Finance

New York State Sales and Use Tax

IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014
ST-123
(7/14)

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller			Name of agent or project operator NY Fallsburg (Frank Brown Road), LLC		
Street address			Street address 140 East 45th Street, Suite 32B-1		
City, town, or village	State	ZIP code	City, town, or village	State	ZIP code
			New York	NY	10017
Agent or project operator sales tax ID number (see instructions)					

Mark an **X** in one: ☐ Single-purchase certificate ☒ Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA County of Sullivan Industrial Development Agency		
Name of project NY Fallsburg (Frank Brown Road), LLC	IDA project number (use OSC number) 48012404A	
Street address of project site SBL 28.-1-18.1 on Frank Brown Road		
City, town, or village Fallsburg	State NY	ZIP code 12733
Enter the date that you were appointed agent or project operator (mm/dd/yy) 12 / 31 / 24	Enter the date that agent or project operator status ends (mm/dd/yy) 03 / 31 / 26	

Exempt purchases

(Mark an **X** in boxes that apply)

- ☐ A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- ☐ B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- ☐ C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

Instructions

To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

Agent or project operator sales tax ID number — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter **N/A**.

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.

Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?



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- get information and manage your taxes online
- check for new online services and features



Sales Tax Information Center:

(518) 485-2889

To order forms and publications:

(518) 457-5431



Text Telephone (TTY) Hotline

(for persons with hearing and speech disabilities using a TTY):

(518) 485-5082

EXHIBIT 5(h)-2

NYS FORM ST-123 FOR SUBAGENT USE

[Attached Next Page]



New York State Department of Taxation and Finance

New York State Sales and Use Tax

IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

ST-123
(7/14)

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller			Name of agent or project operator		
Street address			Street address		
City, town, or village	State	ZIP code	City, town, or village	State	ZIP code
			Agent or project operator sales tax ID number (see instructions)		

 Mark an **X** in one: ☐ Single-purchase certificate ☒ Blanket-purchase certificate (valid only for the project listed below)
To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA		
County of Sullivan Industrial Development Agency		
Name of project	IDA project number (use OSC number)	
NY Fallsburg (Frank Brown Road), LLC	48012404A	
Street address of project site		
SBL 28.-1-18.1 on Frank Brown Road		
City, town, or village	State	ZIP code
Fallsburg	NY	12733
Enter the date that you were appointed agent or project operator (mm/dd/yy)	/	/
Enter the date that agent or project operator status ends (mm/dd/yy)	03	31 / 26

Exempt purchases(Mark an **X** in boxes that apply)

- ☐ A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- ☐ B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- ☐ C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

Instructions

To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

Agent or project operator sales tax ID number — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter **N/A**.

Industrial development agencies and authorities (IDAs) are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

Example 1: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.

Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You **must** identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

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(for persons with hearing and speech disabilities using a TTY):

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