

FIRST AMENDMENT TO AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT

THIS FIRST AMENDMENT TO AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, dated as of December 31, 2017, is by and between the **ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 95 Perry Street, Suite 403, Buffalo, New York 14203 (the "Agency") and **2855 CLINTON ST., INC.**, a corporation duly organized, validly existing and in good standing under the laws of the State of New York ("2855 Clinton") and **SHELL FAB & DESIGN INC.**, a corporation duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 2855 Clinton Street, West Seneca, New York 14224 ("Shell Fab", and together with 2855 Clinton, the "Company").

WITNESSETH:

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 293 of the Laws of 1970 of the State of New York, as amended (collectively, the "Act"), the ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing, commercial and other facilities as authorized by the Act; and

WHEREAS, the Company has submitted an application to the Agency (the "Application") requesting the Agency's assistance with a certain project (the "Project") consisting of: (i) a portion of land located at 3254 Clinton Street, West Seneca, New York (the "Land") to be improved thereon with a 55,040+/- SF building to be utilized as manufacturing/processing, warehouse, and office space (the "Improvements"), and (ii) the acquisition and installation by the Company of certain items of machinery, equipment and other tangible personal property (the "Equipment", and collectively with the Land and Improvements, the "Facility"); and

WHEREAS, by Resolution dated August 24, 2016 (the "Resolution"), the Agency authorized the Company to act as its Agent for the purposes of acquiring, constructing and equipping the Facility subject to the Company entering into an Agent Agreement; and

WHEREAS, the Agency and the Company entered into that certain Agent and Financial Assistance Project Agreement, dated as of December 20, 2016, as may be amended from time to time, (collectively, the "Agent Agreement"), whereby the Agency authorized the Company to act as its Agent for the purposes of acquiring, constructing and/or equipping the Facility; and

WHEREAS, the Company has notified the Agency that the project has not been completed and has requested an additional extension of the New York State and local sales and use tax exemption benefit provided by the Agency, which the Agency has agreed to provide to the Company; and

WHEREAS, the Agency requires a First Amendment to Agent Agreement be executed, and the Company and the Agency have agreed to execute the First Amendment to Agent Agreement to reflect the additional extension of the New York State and local sales and use tax exemption benefit provided by the Agency and any additional amendments thereto.

WHEREAS, the Agency and the Company desire to amend the Agent Agreement.

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

The Agent Agreement is amended as follows:

1. Any references to the sales tax exemption expiration in the Agent Agreement shall be changed from December 31, 2017 to June 30, 2018.

Unless otherwise amended pursuant to the terms contained herein, the terms of the Agent Agreement shall remain unchanged.

[The Balance of this Page Intentionally Left Blank]

[Signature Page to First Amendment to Agent and Financial Assistance Project Agreement]

IN WITNESS WHEREOF, the Company and the Agency have caused this First Amendment to Agent and Financial Assistance Project Agreement to be executed in their respective names, all as of the date first above written.

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: _

Name: K

Caren M. Fiala

Assistant Treasurer

2855 CLINTON ST., INC.

Michelle M. Monaco

Title:

President

SHELL FAB & DESIGN INC.

Name:

Michelle M. Monaco

Title:

President



IDA Appointment of Project Operator or Agent For Sales Tax Purposes

Exhibit A

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 anot	ner agent.					Г	OF IDA U	se only
Name of IDA Erie County Industrial Development Agency				IDA project nur	nber (use OSC 14(numbering s 04-16-1	ystem for projec	ts after 1998)
Street address		······································				Telephone		
95 Perry Street, Suite 403							856-6525	
City Buffalo						State NY	ZIP code 14203	
Name of IDA project operator or agent X		in the box if pointed by the IDA	.: No-	Employer id	entification of	or social s	ecurity numb	er
Street address		· · · · · · · · · · · · · · · · · · ·	Telephone nu	ımber		Pri	mary operato	r or agent?
X			()				Yes	₩ No
City X						State	ZIP code	
Name of project 2855 Clinton St., Inc.			Purpose of p	roject <i>(see in</i> Irina	structions)			
Street address of project site 3254 Clinton Street						1		
City West Seneca						State NY	ZIP code 14224	
Description of goods and services intended to be exempted Mat from New York State and local sales and use taxes	erials, equipme	nt, services, re	entals and	other tang	jible pers	onal pro	perty in	
connection with the construction, installation and equipping of a 55,040+/- SF manufacturing/processing, warehouse facility located at								t
3254 Clinton Street, West Seneca, NY 14224.								
Date project operator Date or agent appointed (mm/dd/yy) 12/20/16 Date ager	project operator it status ends (mi	or n/dd/yy) 06/30		l e	extension to	o an oria	x if this is a	: 1 1
Estimated value of goods and services that will be exempt from New York State Estimated value of New York State and local sales and use tax exemption provided:						tion		
Approximately \$842,500.00 (all agents, all in) Approximately			proximately \$73,719.00 (all agents, all in)					
Certification: I certify that the above statements are true, compl with the knowledge that willfully providing false or fraudulent info Law, punishable by a substantial fine and possible jail sentence, information entered on this document.	rmation with this	document mav (constitute a	felony or of	her crime	under Ne	w York Sta	ate
Print name of officer or employee signing on behalf of the IDA Karen M. Fiala /		Print title Assistant Tre	easurer					
Signature Laver M. Jala			Date 12/3	31/2017	Te	elephone n 716) 8	number 56-6525	
Instructions								

Filing requirements

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

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 need not file this form if the IDA does 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, the IDA must, within 30 days of the change, file a new form with the new information.

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 must, within 30 days, 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. It should attach to the letter a copy of the form it originally filed. The IDA need not send a letter for a form that is not valid merely because the "Completion date of project" has passed.

Construction

Retail trade

- Manufacturing

Other (specify)

- Wholesale trade

Purpose of project

For Purpose of project, enter one of the following:

- Agriculture, forestry, fishing
- Finance, insurance, real estate
- Transportation, communication, electric, gas, sanitary services

Mailing instructions

Mail completed form to:

NYS TAX DEPARTMENT **IDA UNIT** WA HARRIMAN CAMPUS **ALBANY NY 12227**

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



Internet access: www.tax.nv.gov

(for information, forms, and publications)

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):



Exhibit A



IDA Appointment of Project Operator or Agent For Sales Tax Purposes

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 of Indirectly by the operator or another age	nt.			г	or IDA use oni		
Name of IDA Erie County Industrial Development Agency			IDA project number (use OS	C numbering sy 404-16-13	ystem for projects after 1998		
Street address				Telephone			
95 Perry Street, Suite 403				(716) 8	356-6525		
City Buffalo				State	ZIP code		
				NY	14203		
Name of IDA project operator or agent	Mark an X in the box if directly appointed by the IDA	_{4:}	Employer identification	or social se	ecurity number		
Street address		Telephone n	umber	Prir	nary operator or agent'		
X		()]Yes 💌 No		
City X				State	ZIP code		
Name of project 2855 Clinton St., Inc.		Purpose of p	oroject (see instructions,				
Street address of project site 3254 Clinton Street			9	7.45			
City West Seneca				State NY	ZIP code 14224		
Description of goods and continue intended to be seemed all							
from New York State and local sales and use taxes Materials, equipment, services, rentals and other tangible personal property in							
connection with the construction, installation and equipping of a 55,040+/- SF manufacturing/processing, warehouse facility located at							
3254 Clinton Street, West Seneca, NY 14224.							
Date project operator or agent appointed (mm/dd/yy) 12/20/16 Date project agent statu	ot operator or s ends (mm/dd/yy) 06/30	0/18			if this is an		
Estimated value of goods and services that will be exempt from New York State Estimated value of New York State and local sales and local sa							
and local sales and use tax:							
Approximately \$100,000.00 (all agents, all in)	proximately \$100,000.00 (all agents, all in) Approximately \$8,750.00 (all agents, all in)						
Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements							
I with the knowledge that willfully providing talse or traudulent information with this document may constitute a felony or other crime under New York State							
Law, punishable by a substantial fine and possible fail sentence. I also understand that the Tay Department is authorized to investigate the validity of any							
information entered on this document.					anally of any		
Print name of officer or employee signing on behalf of the IDA	Print title						
Karen M. Fiala	Assistant Tr	easurer					
Signature Laus W. Fala		Date 12/	31/2017	Telephone ni (716) 8			
Instructions							

Filing requirements

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

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 need not file this form if the IDA does 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, the IDA must, within 30 days of the change, file a new form with the new information.

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 must, within 30 days, 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. It should attach to the letter a copy of the form it originally filed. The IDA need not send a letter for a form that is not valid merely because the "Completion date of project" has passed.

Construction

Retail trade

Other (specify)

Wholesale trade

Manufacturing

Purpose of project

For Purpose of project, enter one of the following:

- Agriculture, forestry, fishing
- Finance, insurance, real estate
- Transportation, communication, electric, gas, sanitary services

Mailing instructions

Mail completed form to:

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This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

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New York State Department of Taxation and Finance
New York State Sales and Use Tax

ST-123

IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

This certificate is not valid unless all entries have been completed. Note: To be completed by the purchaser and given to the seller. See TSB-M-14(1.1)S, Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities, for more information. Name of seller Name of agent or project operator 2855 Clinton St., Inc. Street address Street address 2855 Clinton Street City, town, or village State ZIP code City, town, or village State ZIP code West Seneca NY 14224 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. Erie County Industrial Development Agency Name of project IDA project number (use OSC number) 2855 Clinton St., Inc. 1404-16-13A Street address of project site 3254 Clinton Street City, town, or village State ZIP code West Seneca NY 14224 Enter the date that you were appointed agent or Enter the date that agent or project operator project operator (mm/dd/yy) 12/20/16 status ends (mm/dd/yy) 06/30/18 **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 oxdot 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)

Type or print the name, title, and relationship that appear in the signature box

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 bullding, 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).

- A. 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.
- B. 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.
- C. 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

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This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

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speech disabilities using a TTY):



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 Jun

Shell Fab & Design Inc. Street address Street address 2855 Clinton Street City, town, or village State ZIP code Otty, town, or village West Seneca NY 14224 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) For 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 for project operator of the IDA was the purchaser. Project information 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 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 Eric County Industrial Development Agency Name of project Shell Fab & Design Inc. IDA project number (use OSC number) 1404-16-13B Street address of project sile 3254 Clinton Street West Seneca NY IDA project operator IDA project number (use OSC number) 1404-16-13B Street address of project dependence of the project operator of the IDA of the	Name of seller	Name of agent or project ope	rator	·	
Sixet address Sixet Sixe					
City, town, or village State ZIP code City, town, or village State ZIP code NY 14224	Street address				
West Seneca NY 14224 Agent or project operator sales tax ID number (see instructions)		2855 Clinton Street			
Agent or project operator seles tax [D 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 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 the following IDA project and that such purchases qualify as exempt from seles and use taxes under my agreement with the IDA. Name of IDA Eric County Industrial Development Agency Name of project Shell Fab & Design Inc. IDA project number (sus OSC number) 1404-16-13B Zip code NY 14224 Enter the date that agent or project operator or status ends (mm/sdd/yy)	City, town, or village State ZIP code	•			
Mark an X in one: Single-purchase certificate					
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Project information 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 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 Erie County Industrial Development Agency Name of project Shell Fab & Design Inc. IDA project number (use OSO number)				•	
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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).

- A. 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.
- B. 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.
- C. 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

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(l).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage vour 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):



New York State Department of Taxation and Finance

New York State Sales and Use Tax

ST-<u>123</u>

IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

This certificate is not valid unless all entries have been completed. Note: To be completed by the purchaser and given to the seller. See TSB-M-14(1.1)S, Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities, for more information. Name of seller Name of agent or project operator Street address Street address City, town, or village ZIP code City, town, or village 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. Erie County Industrial Development Agency Name of project IDA project number (use OSC number) 2855 Clinton St., Inc. 1404-16-13A Street address of project site 3254 Clinton Street City, town, or village State ZIP code West Seneca NY 14224 Enter the date that you were appointed agent or Enter the date that agent or project operator project operator (mm/dd/yy) 12/20/16 status ends (mm/dd/yy) 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) Type or print the name, title, and relationship that appear in the signature box

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).

- A. 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.
- B. 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.
- C. 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

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

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



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

This certificate is not valid unless a Note : To be completed by the purc Requirements for Industrial Develo	haser and given to the seller. S	ee TSB-M-14(1.1)S Sales	Tax Repor	ting and Re	cordkeeping	
Name of seller		Name of agent or project operator X				
Street address		Street address		•		
City, town, or village	State ZIP code	City, town, or village		State	e ZIP code	
		Agent or project operator sales	tax ID number	r (see instruction	s)	
Mark an X in one: Single-pu	rchase certificate Bla	nket-purchase certificate (valid only fo	r the projec	ct listed below)	
To the seller: You must identify the project on eac or project operator of the IDA was th	ch bill and invoice for such purcl ne purchaser.	hases and indicate on the l	bill or invoic	e that the I	DA or agent	
Project information certify that I am a duly appointed agent n the following IDA project and that such	or project operator of the named II n purchases qualify as exempt from	DA and that I am purchasing to sales and use taxes under m	ne tangible po y agreement	ersonal prope	erty or services for us	
Name of IDA Erie County Industrial	Development Agency			***		
Name of project Shell Fab & Design	Inc.		IDA project nu	imber (use OSC	number)	
Street address of project site 3254 Clinton Street						
City, town, or village West Seneca				State NY	ZIP code 14224	
Enter the date that you were appointed project operator (mm/dd/yy)		Enter the date that agent or status ends (mm/dd/yy)		itor		
Exempt purchases Mark an X in boxes that apply)						
A. Tangible personal pr	operty or services (other than ut ng motor vehicle) used to compl	tility services and motor vel lete the project, but not to c	nicles or tan	gible person completed p	nal property project	
B. Certain utility service used to complete the	es (gas, propane in containers of a project, but not to operate the	of 100 pounds or more, ele completed project	ectricity, refr	igeration, o	r steam)	
C. Motor vehicle or tan	gible personal property installed	d in a qualifying motor vehi	cle	1		
ertification: I certify that the above state atements and issue this exemption certicity to a transaction or transactions for vay constitute a felony or other crime uncomment is required to be filed with, and be a document required to be filed wathous authorized to investigate the validity of the state	ficate with the knowledge that this of which I tendered this document and der New York State Law, punishable delivered to, the vendor as agent fo with the Tax Department for the purp ax exclusions or exemptions claims	document provides evidence to that willfully issuing this docu e by a substantial fine and a port the Tax Department for the cose of prosecution of offense	hat state and ment with the ossible jail se purposes of s. Laiso unde	l local sales of e intent to even entence. I und Tax Law sect	or use taxes do not ade any such tax derstand that this ion 1838 and is	
ignature of purchaser or purchaser's represer				·	ate	
ype or print the name, title, and relationship th	at appear in the signature box				· · · · · · · · · · · · · · · · · · ·	

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.

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