

FIRST AMENDMENT TO AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT

THIS FIRST AMENDMENT TO AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, dated as of the 1st day of October, 2022, 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 **SINATRA** & **COMPANY** REDEVELOPMENT LLC, a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 617 Main Street, Suite 200, Buffalo, New York 14203 (the "Company").

WITNESSETH:

WHEREAS, by Resolution dated September 22, 2021 (the "Resolution"), the Agency authorized the Company to undertake the Project and act as its Agent for the purposes of acquiring, constructing and equipping the Facility and 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 January 10, 2022, as 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 extension of the New York State and local sales and use tax exemption benefit time period 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 extension of the New York State and local sales and use tax exemption benefit time period provided by the Agency and any additional amendments thereto.

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 September 30, 2022 to April 30, 2023.
- 2. <u>Exhibit A, Exhibit B-1</u> and <u>Exhibit B-2</u> attached hereto shall be made part of, and incorporated into, the Original Agent Agreement in place of Exhibit A, Exhibit B-1 and Exhibit B-2, respectively, in the Original Agreement.

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 Agency and the Company 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: Elizabeth A. O'Keefe

Title: Vice President of Operations

SINATRA & COMPANY REDEVELOPMENT LLC

By: Matt Connors

Title: Vice President of Development

EXHIBIT A REVISED

FORM OF NYS FORM ST-60 TO BE COMPLETED BY COMPANY AND FILED WITH THE NYS TAX DEPARTMENT IDA UNIT FOR EACH OF ITS SUBAGENTS WITHIN THIRTY (30) DAYS OF APPOINTMENT

[Attached Next Page]



Χ

Χ

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Department of Taxation and Finance

IDA Appointment of Project Operator or Agent For Sales Tax Purposes

Х

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		· ····	l i	DA project number (u	se OSC numb	erina system	for projects after
Erie County Industrial Development Agency				404-21-22A			· Projecto ano
Street address				Telephone number			
95 Perry Street, Suite 403			- 1	(716) 856-6528	5		
City	State	ZIP code		mail address (options			
Buffalo	NY	14203		(op.,o.,	41)		
		200					"
Project operator or agent in	nformation						
Name of IDA project operator or agent			Mark an X in the	hav if directly	Empleyentd		
			appointed by the	· —	Employeride	entification or a	Social Security nu
Street address	· · · · · · · · · · · · · · · · · · ·			elephone number		T5	
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City	State	ZIP code		/	N	Yes	s ∐ No
	Otate	ZIF code	'	Email address (optiona	al)		
Project information							
Name of project							
Sinatra & Company Redevelopme	m411.0						· · · · · · · · · · · · · · · · · · ·
Street address of project site	nt LLC						
Street address of project site 257 Elmwoo	od Avenue, and any land	ds located in	Erie County a	and occupied by lice	ense or ease	ement during	construction o
City	it by time parties for the	Delielli Oi II	e project.				
Buffalo	State	ZIP code		Email address (option	al)		
	NY	14222	ı				
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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.nv.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 B-1 – REVISED

NYS FORM ST-123 FOR COMPANY

[Attached Next Page]



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

Exhibit B-1

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 unles Note: To be completed by the p from tax. See Form FT-123, <i>IDA</i>	urchaser and given to the	seller Do	not use this form to purchase	motor fu	el or diese	el mo	otor fu	el exempt
Name of seller	rigent of Project Operato	r Exempt.	Name of agent or project operator					
Street address			Sinatra & Company Redevelores	opment	LLC			
			617 Main Street, Suite 200					
City, town, or village	State ZIP co	de	City, town, or village	·	State		ZIP cod	
			Buffalo					
			Agent or project operator sales tax ID	number (See instructions	IY_	14203	<u> </u>
Mark an X in one: Single	-purchase certificate	Blan	ket-purchase certificate (valid	only for	the projec	t liste	ed belo	ow)
To the seller: You must identify the project on or project operator of the IDA was	each bill and invoice for so as the purchaser.	uch purch	ases and indicate on the bill or	· invoice	that the IC)A o	r agen	t
Project information I certify that I am a duly appointed a in the following IDA project and that	gent or project operator of the such purchases qualify as ex	e named ID.	A and that I am purchasing the tar	ngible per	rsonal prope	erty c	r servic	es for use
			sales and use taxes under my agr	eement v	VIIN THE IDA	•		
Name of IDA								
Erie County Industrial Developr	nent Agency							
Name of project			IDA į	roject nur	nber (use OSC	numb	er)	
Sinatra & Company Redevelop	ment LLC				1404-21			
Street address of project site							·	
257 Elmwood Avenue								
City, town, or village					State	ZII	ode -	
Buffalo					NY	14	222	
Enter the date that you were appoir project operator (mm/dd/yy)		/ 22	Enter the date that agent or proje status ends (mm/dd/yy)	ct operat	or 04		30	/ 23
Exempt purchases (Mark an X in boxes that apply)								
A. Tangible person installed in a qu	al property or services (oth alifying motor vehicle) used	ner than ut d to compl	ility services and motor vehicle ete the project, but not to opera	s or tanç ate the c	gible perso ompleted p	nal p oroje	ropert ct	y
B. Certain utility se used to comple	ervices (gas, propane in co te the project, but not to op	ontainers on perate the	of 100 pounds or more, electric completed project	city, refri	geration, o	r ste	am)	
C. Motor vehicle o	r tangible personal propert	ty installed	I in a qualifying motor vehicle					
Certification: I certify that the above statements and issue this exemption apply to a transaction or transactions may constitute a felony or other crim document is required to be filed with deemed a document required to be is authorized to investigate the validition.	s for which I tendered this doc the under New York State Law, , and delivered to, the vendor filed with the Tax Department ty of tax exclusions or exemp	cument and punishable as agent for for the purp tions claime	that willfully issuing this documen by a substantial fine and a possit or the Tax Department for the purp	state and t with the ole jail se oses of T	local sales intent to ev ntence. I un fax Law sec	or us ade derst tion	e taxes any suc tand tha 1838 ar	do not tax at this
Signature of purchaser or purchaser's re	presentative (include title and relation	nship)				ate		
Type or print the name, title, and relation	ship that appear in the signature	box			1_			

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).

- 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

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

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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 B-2 – REVISED

NYS FORM ST-123 FOR SUBAGENTS OF COMPANY

[Attached Next Page]



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

Exhibit B-2

IDA Agent or Project Operator Exempt Purchase Certificate Effective for projects beginning on or after June 1, 2014

from tax. See Form FT-123, IDA Agent or Project Operator Exemp	Name of agent or project operator					
	X					
Street address	Street address					
	x					
City, town, or village State ZIP code	City, town, or village	State	ZIP code			
	x					
	Agent or project operator sales tax ID n	umber (see instructions,)			
Mark an X in one: Single-purchase certificate Bla	anket-purchase certificate (valid o	nly for the project	t listed below)			
To the seller:						
You must identify the project on each bill and invoice for such purd or project operator of the IDA was the purchaser.	chases and indicate on the bill or i	nvoice that the IE	OA or agent			
Project information I certify that I am a duly appointed agent or project operator of the named in the following IDA project and that such purphases qualify as exempt for	IDA and that I am purchasing the Assert					
in the following IDA project and that such purchases qualify as exempt from	n sales and use taxes under my agree	ible personal properment with the IDA	erty or services for u			
Name of IDA						
Erie County Industrial Development Agency						
Name of project	IDA pro	oject number (use OSC	number)			
Sinatra & Company Redevelopment LLC		1404-21				
Street address of project site						
257 Elmwood Avenue						
City, town, or village		State	ZIP code			
Buffalo		NY	14222			
Enter the date that you were appointed agent or project operator (mm/dd/yy)	Enter the date that agent or project status ends (mm/dd/yy)	t operator 04	/ 30 / 23			
Exempt purchases	· · · · · · · · · · · · · · · · · · ·					
(Mark an X in boxes that apply)						
A. Tangible personal property or services (other than installed in a qualifying motor vehicle) used to com-	utility services and motor vehicles plete the project, but not to operat	or tangible perso e the completed p	nal property project			
B. Certain utility services (gas, propane in containers used to complete the project, but not to operate the	s of 100 pounds or more, electricit ne completed project	ty, refrigeration, c	or steam)			
B. Certain utility services (gas, propane in containers used to complete the project, but not to operate the C. Motor vehicle or tangible personal property install	ne completed project	y, refrigeration, c	r steam)			
Certification: I certify that the above statements are true, complete, and certification and issue this exemption certificate with the knowledge that this apply to a transaction or transactions for which I tendered this document a may constitute a felony or other crime under New York State Law, punished document is required to be filed with, and delivered to, the vendor as agendeemed a document required to be filed with the Tax Department for the product of the control of the contr	ed in a qualifying motor vehicle correct, and that no material informations document provides evidence that stand that willfully issuing this document ble by a substantial fine and a possible that the Tax Department for the purpose of presecution of effective that	n has been omitted ate and local sales with the intent to eve e jail sentence. I ur ses of Tax Law sec	f. I make these or use taxes do not vade any such tax nderstand that this stion 1838 and is			
Certification: I certify that the above statements are true, complete, and c statements and issue this exemption certificate with the knowledge that thi apply to a transaction or transactions for which I tendered this document a may constitute a felony or other crime under New York State Law, punisha document is required to be filed with, and delivered to, the vendor as agen	ed in a qualifying motor vehicle correct, and that no material informations document provides evidence that stand that willfully issuing this document ble by a substantial fine and a possible that the Tax Department for the purpose of presecution of effective that	n has been omitted ate and local sales with the intent to eve e jail sentence. I ur ses of Tax Law sed so understand that tion entered on this	f. I make these or use taxes do not vade any such tax nderstand that this stion 1838 and is			

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.

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