

## PROJECT AND AGENT AGREEMENT

THIS PROJECT AND AGENT AGREEMENT (hereinafter, the "Agent Agreement"), made as of the day of July, 2023, by and between the TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, with offices at One Town Place, Clarence, New York 14031 (the "Agency"), and Quintessence, 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 3284 Walden Avenue, Depew, New York 14043 and Dean Architect, PLLC a professional Limited Liability Company duly organized, validly existing and in good standing under the laws of the State of New York, with offices at 3284 Walden Avenue, Depew Ny 14043 (the "Company" or "Companies").

### WITNESSETH:

WHEREAS, the Agency was created by Chapter 364 of the Laws of 1973 of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Companies have submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: the construction and equipping of a 4,000 square foot architectural services back-office building located at 8353 Main Street, in the Town of Clarence, New York on a .52 acre parcel by Quintessence, LLC as agent for the Agency for lease to the Agency and subsequent leaseback to the Quintessence, LLC and further sublease to Dean Architect, PLLC; and

WHEREAS, by Resolution adopted on June 22, 2023 (the "Resolution") the Agency authorized the Companies to act as its agent for the purposes of undertaking the Project subject to the Companies entering into this Agent Agreement, and pursuant to the Resolution and this Agent Agreement, the Companies have 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 Companies choose including but not limited to the individuals and entities described on SCHEDULE A attached hereto (collectively, the "Subagent"). The Companies shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency; and

WHEREAS, by its Resolution, the Agency has conferred on the Companies in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from all New York State and local sales and use tax exemption benefits for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility, (b) an exemption benefit from mortgage recording tax, and (c) a partial abatement from real property taxes benefit through a five-year "payment in lieu of tax-agreement" (the "PILOT Agreement") with Quintessence, LLC for the benefit of each municipality and school district having taxing jurisdiction over the Project, (collectively, the sales and use tax exemption

benefit, the mortgage recording tax benefit, and the partial abatement from real property taxes benefit, are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, pursuant to and in accordance with Sections 859-a and 874 of the Act, the Agency requires, as a condition and as an inducement for it to provide any Financial Assistance, that the Companies enter into this Agent Agreement for the purposes of, among other things, to govern 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 Companies; and

WHEREAS, no agent status in favor of the Companies or any subagent thereof, nor any amount of Financial Assistance shall be provided to the Companies by the Agency prior to the execution of a Project and Agent Agreement and partial pre-payment of the Agency Fee;

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 and Scope of Agency. The purpose of the Agency's provision of Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project facility to advance job opportunities, health, general prosperity and economic welfare of the people of the Town of Clarence and to specifically promote the activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation thereof in and around the Facility. The right of the Companies to act as agent of the Agency shall expire on **June 22, 2024**, unless extended as contemplated by the Resolution. The aggregate amount of work performed as agent for the Agency shall not exceed the amounts identified in the Resolution and Section 2(h)(i) of this Agreement. All contracts entered into as agent for the Agency shall include the following language set forth as **APPENDIX A**.

2. Representations and Covenants of the Companies. The Companies makes the following representations and covenants in order to induce the Agency to proceed with the Project/Facility:

(a) The Companies are both limited liability companies duly organized, validly existing and in good standing under the laws of the State of New York, have the authority to enter into this Agent Agreement, and have duly authorized the execution and delivery of this Agent Agreement.

(b) Neither the execution and delivery of this Agent Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agent 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 Companies are a party or by which they are 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 Companies under the terms of any such instrument or agreement.

(c) The Facility and the operation thereof will conform with all applicable zoning, planning, and building laws and regulations of governmental authorities having jurisdiction over the Facility, and the Companies shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Companies to comply with the provisions of this subsection (c).

(d) 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 Companies, threatened against or affecting the Companies, to which the Companies are a party, and in which an adverse result would in any way diminish or adversely impact on the Companies' abilities to fulfill its obligations under this Agent Agreement.

(e) The Companies covenant that the Facility will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Facility except in compliance with all material applicable laws, (ii) that the Companies will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances onto the Facility or onto any other property, (iii) that no asbestos will be incorporated into or disposed of on the Facility, (iv) that no underground storage tanks will be located on the Facility, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Companies upon receiving any information or notice contrary to the representations contained in this Section shall immediately notify the Agency in writing with full details regarding the same. The Companies hereby release the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents (except the Company's), representatives, successors, and assigns 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. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Facility, the Companies agree to pay the expenses of same to the Agency upon demand.

(f) Any personal property acquired by the Companies in the name of the Agency shall be located in the Town of Clarence, except for temporary periods during ordinary use.

(g) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolution, the Companies covenant and agree that they may be subject to a Recapture Event Determination (as hereinafter defined) resulting in the potential recapture and/or termination of any and all Financial Assistance, as described below, if the Companies receive, or their Subagents receives any Financial Assistance from the Agency, and it is determined by the Agency that:

- (1) the Companies or their Subagents, if any, authorized to make purchases for the benefit of the Project not entitled to the sales and use tax exemption benefits; or
- (2) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Companies or their Subagents, if any; or
- (3) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or
- (4) the Companies have made a materially false or misleading statement, or omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect) on its application for Financial Assistance; or
- (5) the Companies fail to meet and maintain the thresholds and requirements representing certain material terms and conditions including the Investment Commitment, the Construction Commitment, the Investment Commitment, the Employment Commitment and the Local Labor Commitment two (2) years following the construction completion date (the "Project Completion Date" and then for the duration of the PILOT being defined as the "Material Terms and Conditions Monitoring Period):

(a) Construction Commitment-the Companies must complete the Building substantially in accordance with the provisions of the Companies' application for financial assistance no later than November 30, 2023, but may be subject to modifications as long as the Facility as constructed meets the needs of the Companies and that the Companies will build a 4,000 square foot architectural services back-office building and maintain such employment for the duration of the PILOT (the period following the achieving of the Employment Commitment threshold and the PILOT period following being defined as the "Material Terms and Conditions Monitoring Period").

(b) Investment Commitment, the total investment actually made with respect to the Project at the Project Completion Date must equal 85% of the project cost (\$1,105,000.00) as set forth in the application for Financial Assistance. The Companies shall have the right to establish that it did not meet the requirements due to cost savings achieved by the Companies and that the benefits that the Companies has received have been reduced proportionately in accordance with the reduction in investment.

(c) Employment Commitment-that they will **retain 12 FTE and hire 8 FTE**, as stated in the Companies' application for Financial Assistance (the "Baseline FTE") and if the Companies fail to maintain employment at 85% of the total of the Baseline new FTE. The Companies shall have the right to establish that the failure to comply with the Employment Commitment was due to circumstances beyond their control.

(d) Local Labor Commitment-that the Companies adhere to and undertakes or has undertaken construction activities in compliance with the Agency's Local Labor Workforce Policy, attached as **EXHIBIT A**.

(e) Project Reporting Commitment-that the Companies must supply the information required by this Agreement to allow the Agency to evaluate whether the Companies are in compliance with the requirements of this Agreement. The reporting requirements are set forth in paragraph below.

(f) the Companies agree that they will occupy the Facility and utilize the Facility as an architectural services back-office (the "Project Use Commitment").

(g) the Companies agree to make the payment-in-lieu-of taxes to the municipalities within the time frame required (the "Payment-in-Lieu-of-Taxes Commitment").

(h) the Companies agree to maintain the insurance requirements as required in connection with this Agreement, the Leaseback Agreement and the Installment Sale Agreement and to provide copies to the Agency as required herein (the "Insurance Commitment").

In order to accomplish the foregoing, the Companies shall provide annually, to the Agency, a certified statement and documentation: i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the financial assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, and (iii) such other information, as so requested from time to time, to enable the Agency to assess the progress of the Project toward achieving the investment, job retention, job creation, or other objectives of the Project indicated in the Application for Financial Assistance. The Companies shall annually complete and submit to the Agency the Annual Certification Report in the form attached hereto as **EXHIBIT B**. Failure by the Companies to complete and submit said form to the Agency by January 29, of each year during the Material Terms and Conditions Monitoring Period shall constitute an Event of Default hereunder, whereby the Agency, in its sole and absolute discretion, may terminate this Agreement and/or the PILOT Agreement and undertake a Recapture Event Determination.

The findings made by the Agency with respect to Section 2(g)(1), (2), (3) and/or (4) and/or failure to provide the written confirmation as required by Section 2(g)(5) with respect to the thresholds and requirements as identified in Section 2(g)(5), above, and/or failure to meet the thresholds and requirements as identified in Section 2(g)(5) above, may potentially be determined by the Agency, in accordance with the Agency's "Recapture of Benefits Policy", attached hereto as **EXHIBIT C**, to constitute a failure to comply with Section 875(3) of the New

York General Municipal Law, and/or a failure to comply with a material term or condition to use property or services or Agency Financial Assistance in the manner approved by the Agency in connection with the Project, and/or a failure to comply with the Agency's policies and Resolution (collectively, findings and determinations made as described herein with respect to Section 2(g)(1), (2), (3) and/or (4) and/or the failure under Section 2(g)(5) to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in Section 2(g)(5) are hereby defined as a "Recapture Event Determination". If the Agency makes a Recapture Event Determination, the Companies agree and covenant that they will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Companies and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s). The Companies further understand and agree that in the event that the Companies fail to pay over such amounts to the Agency, the New York State Tax Commissioner and/or County Comptroller may assess and determine the Financial Assistance due from the Companies, together with any relevant penalties and interest due on such amounts.

**Termination or Modification of Benefits.** In addition to the recapture provisions as set forth in Exhibit C referenced above, the Agency reserves the right to terminate the Lease Agreement and Leaseback Agreement, Installment Sale Agreement and end the Payment-in-Lieu-of Tax benefits to the Companies if the Companies fail to comply with the Project Use Commitment, the Project Reporting Commitment, the Payment-in-Lieu-of-Taxes Commitment and the Insurance Commitment. In the event that it is determined that based upon the number of employees created or retained, the Companies would have been eligible for Financial Assistance but for a less generous Payment-in-Lieu-of-Tax provision, the Agency reserves the right to modify the benefits to reduce the benefits to the benefits that would have been available based upon the actual employment numbers.

The Companies acknowledge and understand that a Recapture Event Determination made with respect to Section 3(a)(4) of this Agreement, will, in addition to requiring the repayment of benefits, in addition immediately result in the loss and forfeiture of the Companies' rights and abilities to obtain any and all future Financial Assistance with respect to the Project.

(h) In accordance with the Resolution the Companies further: (i) covenants 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 an amount up to \$ 425,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 2(g) of this Agent Agreement, cannot exceed \$ 37,187.00, (ii) confirms that the mortgage recording tax exemption amount shall be approximately \$ 6,000.00 and (iii) and confirms that real property tax abatement benefits to be provided to the Companies over the five-year benefit period of the payment in lieu of tax agreement (the "PILOT Agreement"), said-PILOT Agreement attached hereto as EXHIBIT D immediately upon its execution, are estimated to be approximately \$ 44,216.00.

(i) The Agency following the adoption of the Resolution and the execution and delivery of this Agreement will complete and within thirty (30) days of appointment forward to the State

Department of Taxation and Finance the "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (NYS Form ST-60) in the form attached hereto as **EXHIBIT E** for the Project. The Companies shall immediately notify the Agency of its appointment of any agents or subagents in connection with the Project and shall, on request of the Agency, complete and submit to the Agency a NYS Form ST-60 for each such agent or subagent.

(j) The Companies acknowledge and agree 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 **EXHIBITS F-1 AND F-2**), and it shall be the responsibility of the Companies (and not the Agency) to complete NYS Form ST-123. The Companies acknowledge and agree that they shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Companies are 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 Companies acknowledge and agree that the bill or invoice should state, "I, [NAME OF COMPANY OR SUBAGENT], certify that I am a duly appointed agent of the TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY and that I am purchasing the tangible personal property or services for use in the Dean Architect PLLC Project located at 8353 Main Street, Clarence, IDA Project Number " 1402-23-01". For convenience purposes, in the instance where the vendor does not print on each invoice the acknowledgment as described in the prior sentence, an "Invoice Rider" (a copy of which is attached hereto as **EXHIBIT F-3**) can be utilized for record keeping purposes.

(k) The Companies further covenant and agree 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, a copy of which is attached hereto as **EXHIBIT G**) regarding the value of sales and use tax exemptions the Companies and their Subagents, if any, have claimed pursuant to the agency conferred on the Companies with respect to the Project in accordance with General Municipal Law Section 874(8). The Companies further covenant and agree that they will, within thirty (30) 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 Companies understand and agree that the failure to file such annual statement will result in the removal of the Companies' authority to act as agent for the Agency.

(l) The Companies acknowledge and agree that, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), 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 Companies shall be the sole party liable thereunder.

(m) The Companies covenant and agree that at all times during the Material Terms and Conditions Monitoring Period, they will (i) maintain their existence and not dissolve, (ii) continue to be a limited liability company subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the

United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise sell, assign, or dispose of all or substantially all of its property, business or assets. This Agreement may not be assigned in whole or part without the prior written consent of the Agency.

(n) The Companies agree that they will, throughout the term of this Agent Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof. Notwithstanding the foregoing, the Companies may in good faith contest the validity of the applicability of any requirement of the nature referred to this Section 2(p). In such event, the Companies, with the prior written consent of the Agency (which shall not be unreasonably conditioned, delayed or withheld) may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency shall notify the Companies that they must comply with such requirement or requirements.

3. Hold Harmless Provision. The Companies hereby release the Agency from, agree that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, members, officers, employees, agents (except the Companies), representatives, successors and assigns 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 Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or breach by the Companies of this Agent Agreement or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, constructing, rehabilitating, renovating, equipping, owning and leasing of the Equipment or of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses 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 any of its respective executive director, directors, members, officers, agents or employees 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.

#### 4. Insurance Required.

Effective as of the date hereof and until the expiration or termination of the right of the Companies to act as agent of the Agency hereunder, the Companies shall maintain, or cause to be maintained by its subagent or subcontractors, certain insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type, and paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:



(a) (i) Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Facility, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Companies or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Companies may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well. Such insurance shall have a commercially reasonable deductible.

(b) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Agency or the Companies are required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Companies who are located at or assigned to the Facility.

(c) 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 \$5,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$5,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Companies by any applicable workers' compensation law.

#### 5. Additional Provisions Respecting Insurance.

(a) All insurance required by Section 8 (c) hereof shall name the Agency as an additional insured, as its interest may appear. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Companies and authorized to write such insurance in the State. Such insurance may be written with commercially reasonable deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Companies is engaged. All policies evidencing such insurance shall provide for at least thirty (30) days prior written notice of the cancellation thereof to the Companies and the Agency, except in the event of non-payment, in which at least ten (10) days prior written notice of the cancellation shall be delivered to the Companies and the Agency. All insurance requirements in Section 8 may be satisfied by blanket policies subject to the reasonable approval by the Agency; provided, however, that approval or acceptance by a commercial lender (if any) in connection with the financing of the Project shall not require approval by the Agency. All or some of Section 8 insurance requirements may be satisfied by an Owner Controlled Insurance Program ("OCIP") subject to approval by the Agency; provided, however, that approval or acceptance by a commercial lender in connection with the financing of the Project shall not require approval by the Agency.

(b) All such policies of insurance, or a certificate or certificates of insurance that such insurance is in force and effect, shall be deposited with the Agency on the date hereof. Prior to expiration of any such policy, the Companies shall furnish evidence to the Agency that the policy has been renewed or replaced or is no longer required by this Agreement.

6. This Agent 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.

7. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, or by a nationally recognized overnight courier, addressed as follows:

To the Agency: Chairman  
Town of Clarence, Erie County, Industrial Development Agency  
One Town Place  
Clarence, New York 14031

To the Companies: Quintessence, LLC  
Dean Architects, PLLC  
3284 Walden Avenue  
Depew, New York 14043

With a Copy to: Mark Dean  
3284 Walden Avenue  
Depew, New York 14043

With a copy to

Company Counsel: Thomas F. Keefe, Esq.  
4455 Transit Road, Suite 2E  
Williamsville, New York 14221

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

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

9. The warranties, representations, obligations and covenants of the Companies under this Agent Agreement shall be absolute and unconditional and shall remain in full force and effect during the term of this Agent Agreement, shall be deemed to have been relied upon by the Agency, and shall survive the delivery and termination of this Agent, regardless of any investigation made by the Agency. This Agent Agreement shall survive any termination or expiration of the Leaseback Agreement or the PILOT Agreement, as described below.

10. The parties are contemplating that, after any applicable public hearing(s), if required, the Agency will negotiate and enter into a lease agreement (the "Lease Agreement"), a leaseback agreement (the "Leaseback Agreement"), an Installment Sale Agreement, and a PILOT

Agreement with the Companies. The Companies agree not to take title to any real property as agent for the Agency. The Agency will provide the Companies with a bill of sale (a form of which is attached hereto as **EXHIBIT E**) which sells, transfers and delivers unto the Companies and its successors and assigns, all Equipment which were acquired and installed and/or are to be acquired and installed by the Companies as agent for the Agency pursuant to this Agent Agreement which Equipment is located or intended to be located at 8353 Main Street, Clarence, New York.

11. By executing this Agent Agreement, the Companies covenant and agree to pay all fees, costs and expenses incurred by the Agency for (a) legal services, including but not limited to those provided by the Agency's general counsel or transaction counsel, (b) other consultants retained by the Agency, if any, in connection with the Project; in accordance with the terms of the Administrative Fee Agreement between the Companies and the Agency, and (c) with respect to enforcing this Agent Agreement (including reasonable attorney fees). The Companies agree that the Companies are liable for payment to the Agency of all charges Agency in undertaking the Project notwithstanding the occurrence of any of (i) the Companies' withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Agency or the Companies to procure the services of one or more financial institutions to provide financing for the Project; or (iii) the Companies' failure, for whatever reason, to undertake and/or successfully complete the Project.

[Signature Page to Project and Agent Agreement]

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

TOWN OF CLARENCE, ERIE COUNTY,  
INDUSTRIAL DEVELOPMENT AGENCY

Dated: July 26, 2023

Lawrence M. Meckler  
Name: LAWRENCE M. MECKLER  
Title: ASSISTANT Secretary / Counsel

State of New York)

County of Erie ) ss.:

On the day of 26<sup>th</sup> July in the year 2023, before me, the undersigned, personally appeared, Lawrence M. Meckler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

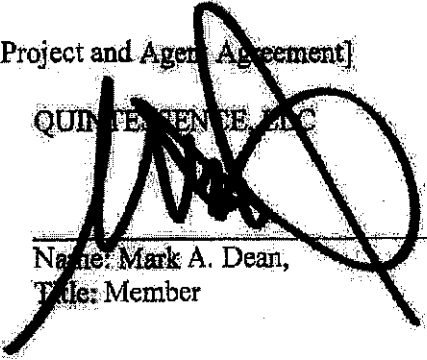
Cynthia M. Rosel  
Notary Public, State of New York

CYNTHIA M. ROSEL  
Notary Public, State of New York  
Qualified in Erie County  
Commission No. 01R05020826  
My Commission Expires Nov. 22, 2025

[Signature Page to Project and Agent Agreement]

QUINTESENCE LLC


Dated: 7-24-23

  
Name: Mark A. Dean,  
Title: Member

State of New York)

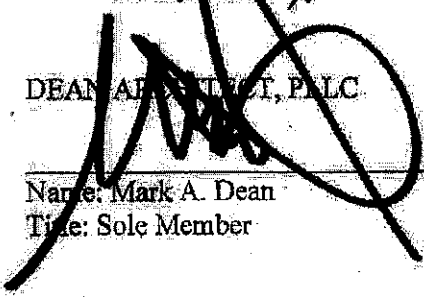
County of Erie ) ss.:

On the 24<sup>th</sup> day of July in the year 2023, before me, the undersigned, personally appeared, Mark A. Dean, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

DEAN AGENCY, PLLC

Dated: 7-24-23

  
Name: Mark A. Dean  
Title: Sole Member

State of New York)

County of Erie ) ss.:

On the 24<sup>th</sup> day of July in the year 2023, before me, the undersigned, personally appeared, Mark A. Dean, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

THOMAS F. KEEFE  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires August 16, 2026

STATE OF NEW YORK)

COUNTY OF ERIE ) ss.:

Mark A. Dean, being first duly sworn, deposes and says:

1. That I am the Members of Quintessence, LLC (Company) and that I am duly authorized on behalf of the Company to bind the Applicant.

2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

  
\_\_\_\_\_  
Mark A. Dean

Subscribed and affirmed to me under penalties of perjury this 24<sup>th</sup> day of July 2023.

  
\_\_\_\_\_  
(Notary Public)

THOMAS F. KEEFE  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires August 16, 2024

STATE OF NEW YORK)

COUNTY OF ERIE ) ss.:

Mark A. Dean, being first duly sworn, deposes and says:

1. That I am the Sole Member of Dean Architect, PLLC (Sublessee) and that I am duly authorized on behalf of the Sublessee to bind the Applicant.

2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

  
Mark A. Dean

Subscribed and affirmed to me under penalties  
of perjury this 21<sup>st</sup> day of July 2023.

  
(Notary Public)

THOMAS F. KEEFE  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires August 16, 2026

**SCHEDULE A**

**LIST OF APPOINTED AGENTS**

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

**Note:** For each agent or subagent appointed by the Company, the Company must immediately notify the Agency and the Company shall, on request of the Agency, complete and submit to the Agency a NYS Form ST-60 for each agent or subagent.



## APPENDIX A

### LANGUAGE TO BE INCLUDED IN ALL CONTRACTS

"This contract is being entered into by [NAME OF COMPANY OR NAME OF SUBAGENT (the "Agent"), as agent for and on behalf of the TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY (the "Agency"), in connection with a certain project of the Agency for the benefit of {COMPANY}, consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for incorporation and installation in certain premises located at {Project Address} (the "Premises"). The acquisition of the machinery, equipment and building materials to be incorporated and installed in the Premises and all services and rentals of equipment related to the acquisition, construction and equipping of the Project shall be exempt from all New York State and local sales and use taxes if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption information letter of the Agency attached hereto as EXHIBIT A-A; and the Agent hereby represents that this contract is in compliance with the terms of the Agent and Financial Assistance Agreement by and between {COMPANY} and the Agency dated as of {Insurance Approval Date}. 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.

**EXHIBIT A-A**

**FORM OF SALES TAX LETTER**

**SALES TAX LETTER**

[NAME OF COMPANY]  
[ADDRESS OF COMPANY]

*Re: Town of Clarence, Erie County, Industrial Development Agency and [Name of Company]*

Ladies and Gentlemen:

Pursuant to a resolution duly adopted on \_\_\_\_\_ (the "Resolution"), the Town of Clarence, Erie County, Industrial Development Agency (the "Agency") appointed [NAME OF COMPANY] (the "Company") the true and lawful agent of the Agency to undertake a certain project (the "Project") consisting of: [PROJECT DESCRIPTION].

This appointment includes authority to purchase on behalf of the Agency all materials to be incorporated into and made an integral part of the Facility and the following activities as they relate to any construction, erection and completion of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (1) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction and equipping, (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with construction and equipping 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 building or facility, 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 Agreement, dated as of \_\_\_\_\_, by and between the Agency and the Company (the "Agent Agreement"). As further set forth in the Agent Agreement, the Agency will complete "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (NYS Form ST-60) for the Company and the Agency will execute said form forward said form to the New York State ("State") Department of Taxation and Finance within thirty (30) days of appointment.

As further set forth in the Agent Agreement, in order to be entitled to use the exemption from New York State Sales and Use Taxes ("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 and installation and equipping of the Facility. 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. Copies of each NYS Form ST-123 issued by the Company to a seller shall be forwarded to the Agency within thirty (30) days following the issuance by the Company.

As further set forth in the Agent 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 15<sup>th</sup> of each year.

The agency conferred on the Company by the Agency is limited to the Project, and will expire on [DATE OF EXPIRATION OF AGENT STATUS]. The Company may apply to extend this agency authority by showing good cause; *provided, however, the exemption for leases executed prior to said date shall continue through the term or extended term of said lease and any acquisition of said leased property.* 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.

With respect to registered vehicles acquired by the Company in the name of the Agency, the Agency shall transfer title to such vehicles immediately back to the Company, or as soon thereafter as reasonably practicable; and any personal property acquired by the Company in the name of the Agency shall be located in the Town of Clarence, New York, except for temporary periods during ordinary use.

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

As further set forth in the Agent Agreement, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), 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,

TOWN OF CLARENCE, ERIE COUNTY,  
INDUSTRIAL DEVELOPMENT AGENCY

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT A**

**LABOR POLICY**

**INTENTIONALLY OMMITED**

**EXHIBIT B**

**Town of Clarence, Erie County Industrial Development Agency  
Annual Reporting Questionnaire for 2020**

Project address:

SBL#:

Project name:

Company contact:

Contact phone number:

**Section #1: Employment (only for the location receiving IDA benefits):**

Number of Full-Time Employees (as of 12/31/20)	Number of Part-Time Employees (as of 12/31/20)

Estimated number of construction jobs created in 2020  
(For projects in construction phase only): \_\_\_\_\_

**For multi-tenant clients only:**

Tenant Name	Number/Estimate of Full-Time Employees	Number/Estimate of Part-Time Employees

**Section #2: Sales Tax Exemptions (complete only if you purchased goods with a CIDA sales tax letter in 2020):**

Total sales tax exemptions from 1/1/20 through 12/31/20  
(actual tax savings, NOT total purchases): \_\_\_\_\_

***Please attach your 2020 NYS ST-340 Form(s) for the sales tax exemptions referenced above.***

**Section #3: Bond Information (complete only if you have an IDA issued bond):**

Date of Bond Issue: \_\_\_\_\_ Bond amount at date of issue: \_\_\_\_\_

Principal amount paid in 2020: \_\_\_\_\_ Principal balance as of 12/31/20: \_\_\_\_\_

Company contact for bond information: \_\_\_\_\_

Bank trustee (trustee name, bank, address, city, state, zip): \_\_\_\_\_

(For outstanding bonds, please provide a copy of your 12/31/20 bond statement.) \_\_\_\_\_

**Section #4: Mortgage Tax Exemptions in 2020 (if applicable):**

Mortgage tax exemption amount (1% of mortgage amount): \_\_\_\_\_

**Section #5: Certification:**

The information furnished on this form is correct to the best of my knowledge according to our records as of December 31, 2020.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

*If any contact information is incorrect, please provide the updated information below:*

\_\_\_\_\_  
\_\_\_\_\_

Please email your completed survey and the requested documents to Jared Pickard at [jpickard@dm-llp.com](mailto:jpickard@dm-llp.com) or return via mail to 3083 William Street, Suite 5, Buffalo, NY 14227. Your survey is due on or before January 29, 2021.

## EXHIBIT C

### **Town of Clarence, Erie County, Industrial Development Agency (CIDA) Policy for Recapture and/or Termination and/or Modification of Financial Assistance Adopted: June 16, 2016**

#### **Purpose:**

To establish and provide a fair procedure compliant with Sections 874 and 875 of the New York State General Municipal Law and Town of Clarence, Erie County, Industrial Development Agency (CIDA) policies establishing a policy for recapture and/or termination and/or modification of all or a portion of Agency Financial Assistance.

#### **Annual Review:**

The Chairman will review annual reports it receives from companies to determine compliance with the Material Factors or other Significant Factors set forth in the Inducement Resolution. If the Chairman determines that a company appears to be in violation of a Material or Significant Factor, the project will be considered non-compliant and enter full review by the Executive Committee. The Chairman will notify the entire Board of Directors of his determination.

#### **Non-Compliance Process:**

1. The CIDA shall notify the company in writing that in the Agency's determination they are or have violated a Material or Significant Factor. The notification will include the Factor(s) violated and seek an explanation from the company that may include economic or natural factors that led to the default. These factors should be discussed and predetermined to the extent possible by the Board and may include items such as, natural disaster, industry dynamics, unfair competition or economic events that were outside the control of the company.
2. The company shall be given an opportunity to remedy the violation and will have thirty (30) days to provide a written response or seek an extension of such response.
3. Upon receipt of the company's response, Chairman will review with the Executive Committee and notify the entire Board of Directors. The company shall be provided the opportunity to present before the Executive Committee, any information in the written response outlined above regarding why the Factor was not achieved. The Executive Committee will have the option of entering into Executive Session should material evidence be deemed proprietary.
4. Upon hearing the company's position, the Executive Committee will make a recommendation for proposed action and forward the matter to the full CIDA Board of Directors. A written record will occur clearly stating the reason to, or not to, recapture and/or modify and/or reduce financial assistance.
5. Notwithstanding the foregoing, the CIDA Board of Directors, acting through its Chairman, retains the right to terminate Agency benefits for other significant factors. Cause for such termination of Agency benefits include, but are not limited to, failure to make PILOT payments,



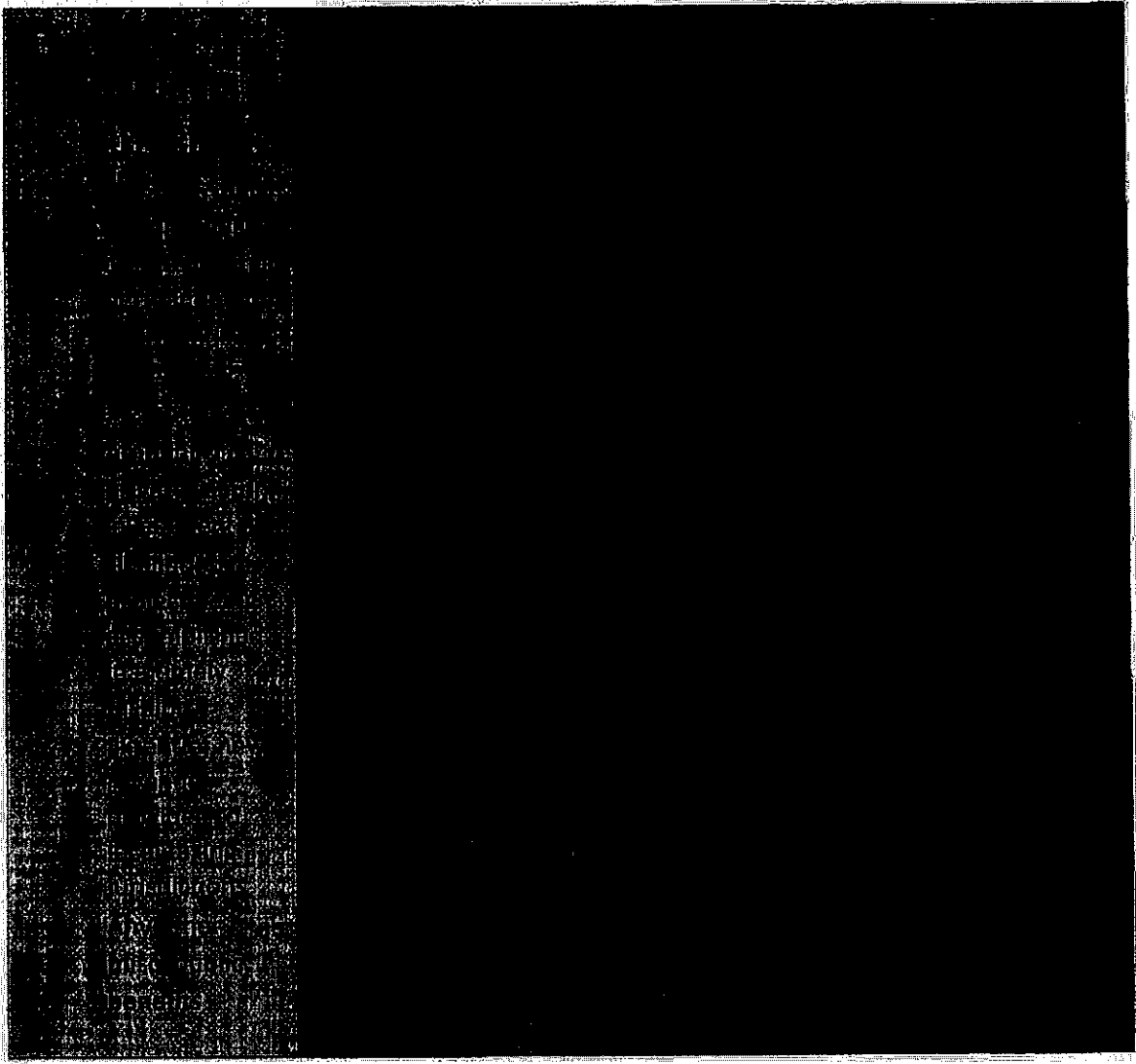
failure to make reports to the CIDA as detailed in transaction documents, failure to maintain insurance requirements, or other uncured breaches of CIDA transaction documents.

**Compliance Period:**

Unless otherwise noted in the Project's Inducement Resolution, Private Sector Investment and Local Labor during construction must be met by the Project Completion Date. Job creation and/or job retention targets must be met within 2 years of Project Completion Date and such job creation and/or job retention numbers must be maintained for one calendar year following the calendar year that the applicant met the job creation and/or job retention numbers. Projects that do not involve a PILOT would be subject to maintaining its material terms one calendar year after a certificate of occupancy is issued or the expiration of a sales tax exemption.

**Distribution of Recaptured Financial Assistance:**

Any and all such returned/recaptured amounts of Agency Financial Assistance shall be redistributed to the appropriate tax jurisdiction unless agreed to otherwise by a local taxing jurisdiction.



<sup>1</sup> Employment Commitment – that there were to be at least a certain stated number of FTE employees located at, or to be located at the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE") with an additional stated number of FTE to be created by the Company and the Company fails to maintain employment at 85% of the total of the Baseline FTE and new FTE. The Company shall have the right to establish that the failure to comply with the Employment Commitment was due to circumstances beyond their control.

<sup>2</sup> Investment Commitment, the total investment actually made with respect to the Project at the Project Completion Date must equal 85% of the project cost as set forth in the application for Financial Assistance. The Company shall have the right to establish that it did not meet the requirements due to cost savings achieved by the Company and that the benefits that the Company has received have been reduced proportionately in accordance with the reduction in investment.

**EXHIBIT D**  
**PILOT AGREEMENT**

**EXHIBIT C**

**PAYMENTS IN LIEU OF TAXES PROVISION**

**2023 Dean Architect, PLLC Project: 8353 Main Street, Clarence, New York**

It is recognized that under the provisions of the Act, the Agency is required to pay no real estate taxes upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities. Except as otherwise provided herein and in Section 4.4 of the Leaseback Agreement, while the Facility is being used in accordance with the Act and the Payments in Lieu of Taxes Provision contained in this Appendix C to the Leaseback Agreement (referred to herein as this "Agreement"), the provisions of this Agreement with respect to payments in lieu of real estate taxes shall be applicable. Until the commencement of the tax fiscal year of the appropriate taxing authority subsequent to the first tax status date on which the Agency is the owner of record of a leasehold interest in the Facility, Quintessence, LLC (the "Lessee") shall continue to pay all appropriate taxing authorities all taxes due. Thereafter, the Lessee shall pay to the Town of Clarence (the "Town"), County of Erie (the "County") and the Clarence Central School District (the "School District") and in lieu of exempted taxes in the following amounts:

A. To the Town, c/o the Supervisor Town of Clarence, One Town Place, Clarence, New York 14031, no later than January 15th of each year,

1. Commencing in 2025, an amount equal to the Town taxes which would be due, were there no such exemption, based upon the value of the non-depreciable portion of the real property (assessed as land); and

2. Commencing in 2025, an amount equal to the Town taxes which would be due, were there no such exemption, based upon the assessed value of the depreciable portion of the Facility Realty (assessed as buildings and other improvements) in accordance with the following schedule:

<u>Fiscal Year</u>	<u>Percentage</u>
2025	25%
2026	35%
2027	45%
2028	55%
2029	65%

3. Commencing in 2030, an amount equal to the Town taxes which would be due, were there no such exemption upon the then assessed value of the Facility Realty.

B. To the County, c/o the Supervisor Town of Clarence, One Town Place, Clarence, New York 14031, no later than January 15th of each year,

1. Commencing in 2025, an amount equal to the County taxes which would be due, were there no such exemption, based upon the value of the non-depreciable portion of the Facility Realty (assessed as land); and

2. Commencing in 2025, an amount equal to the County taxes which would be due, were there no such exemption, based upon the assessed value of the depreciable portion of the Facility Realty (assessed as buildings and other improvements) in accordance with the following schedule:

<u>Fiscal Year</u>	<u>Percentage</u>
2025	25%
2026	35%
2027	45%
2028	55%
2029	65%

3. Commencing in 2030, an amount equal to the County taxes which would be due, were there no such exemption upon the then assessed value of the Facility Realty.

C. To the School District, Clarence Central School District, Business Office, 9625 Main Street, Clarence, New York 14031, no later than October 15th of each year,

1. Commencing with the School District's fiscal year 2024-2025, an amount equal to the School District taxes which would be due, were there no such exemption, based upon the value of the non-depreciable portion of the Facility Realty (assessed as land); and

2. Commencing with the School District's fiscal year 2024-2025, an amount equal to the School District taxes which would be due, were there no such exemption, based upon the assessed value of the depreciable portion of the Facility Realty (assessed as buildings and other improvements) in accordance with the following schedule:

<u>Fiscal Year</u>	<u>Percentage</u>
2024-2025	25%
2025-2026	35%
2026-2027	45%
2027-2028	55%
2028-2029	65%

3. Commencing with the School District's fiscal year 2030-2031, an amount equal to the School District taxes which would be due, were there no such exemption upon the then assessed value of the Facility Realty.

The parties intend that the Lessee shall receive a five year PILOT policy of the Agency on the assessed valuation of improvements to the Facility Realty upon completion of the Project (the "Intended Benefit"). They assume the full value of the completed Project will first appear

on the tax roll as of tax status date on March 1, 2024. If this assumption is incorrect, the dates in paragraphs A, B and C of this Agreement shall be adjusted accordingly and the payments in lieu of taxes will commence one year later.

The foregoing is subject, in each case, to the Lessee's rights to obtain reductions in the assessed valuation of the Facility Realty, to maintain existing exemptions from taxes, and to obtain other exemptions, abatements or discounts therefrom, if any, and to seek to obtain a refund of any such tax payments made, all of which are hereby expressly reserved by the Lessee.

If the Lessee shall fail to make any such installments of payments in lieu of real estate taxes required pursuant to this Agreement, the amount or amounts so in default shall continue as an obligation of the Lessee until fully paid and the Lessee agrees to pay the same with interest thereon as set forth below.

In addition, a late payment penalty of five percent (5%) of the amount due shall be paid by the Lessee if payment is not received by Agency by the due date. For each month, or part thereof, that the payment in lieu of taxes is delinquent beyond the first month, interest shall accrue and be paid to the affected tax jurisdiction through the Agency on the total amount due in the amount of one percent (1%) per month until the payment is made. Once having paid the amount required by this Agreement to be paid by it in lieu of real estate taxes, the Lessee shall not be required to pay any such taxes for which a payment in lieu thereof has been made to the Agency hereunder.

The Agency shall cause officers of the Town, the County and the School District, as applicable, to ratably apportion, within fifteen days prior to the date on which the Agency is no longer to be the owner or lessee of the Facility as contemplated by the Leaseback Agreement as provided for in this Agreement and after the Lessee has realized the Intended Benefit, that payment in lieu of tax paid by the Lessee to the Town, the County and the School District, as the case may be, immediately preceding the date on which the Agency will no longer own or lease the Facility, as of such date, and apply that portion attributable to the period from such date to the end of the period for which such payment in lieu of taxes was made as a credit against the amount of real estate tax that would have been due for such period had the Facility been privately owned throughout the tax year in which the Agency no longer owns or leas the Facility and bill the Lessee for the balance of such installment, which amount shall be paid by the Lessee to such officer within thirty (30) days after the receipt thereof. The Agency shall cause such officers to return the Facility to the tax rolls as of the date of transfer of the title out of the Agency to the new owner of the Facility, who shall pay the remaining installments due for such tax fiscal year.

If the Lessee fails to perform any obligation under this Agreement in any material respect (including, but not limited to, failure to make any payment hereunder), and such failure continues for more than thirty (30) days after written notice is given to the Lessee, such failure shall constitute an Event of Default under Section 7.1 (b) of the Leaseback Agreement and the

Agency may exercise its rights and remedies as set forth in Article VII of the Leaseback Agreement. If, as a result of such Event of Default and the Agency's exercise of such rights and remedies, the Lessee shall be required to make full payments in lieu of real estate taxes on the land, building and improvements constituting the Facility in such amount as would result from taxes levied on the Facility if the Facility were owned by the Lessee and without any exemption from the Agency, such amounts shall commence to be paid for the period subsequent to the date of such Event of Default. In such event, the tax rate and valuation shall be those then in effect in the records of the proper Town, County and School District departments, respectively. The Agency in its discretion may waive the increased payments set forth in this paragraph and agree to the continuation of the payments as otherwise set forth in this Agreement.

The obligations of the Lessee under this Agreement shall survive the termination or expiration of this Leaseback Agreement for any reason whatsoever. The Agency, in its discretion and in furtherance of the purposes of the Act, may waive, in whole or in part, payments in lieu of taxes, set forth in this Agreement, for good cause shown.

Payments for the Town shall be made payable to the Town of Clarence and mailed to the Town of Clarence, c/o the Supervisor, Town of Clarence, One Town Place, Clarence, New York 14031 and are due no later than February 15th of each year.

Payments to the County shall be made payable to the Town of Clarence and mailed to the Town of Clarence, c/o the Supervisor, Town of Clarence, One Town Place, Clarence, New York 14031 and are due no later than February 15th of each year.

Payments for the School District shall be made payable to the Clarence Central School District and mailed to the Clarence Central School District, Business Office, 9625 Main Street, Clarence, New York 14031 and are due no later than October 15th of each year.

The Town of Clarence has agreed to collect the PILOT payments on behalf of the county of Erie and will remit them to the county of Erie. In the event that in the future, the County requests that payments be made directly to them, the Agency will notify the Lessee of the change.

**EXHIBIT E**

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

**(Attached Next Page)**



**EXHIBIT F-1**

**NYS FORM ST-123**

**FOR**

**COMPANY**

**(Attached Next Page)**

**EXHIBIT F-2**

**NYS FORM ST-123**

**FOR**

**SUBAGENTS OF COMPANY**

**(Attached Next Page)**

**EXHIBIT F-3**  
**INVOICE RIDER FORM**  
**(Attached Next Page)**

**INVOICE RIDER**

(Complete and Attach to Invoice)

I, \_\_\_\_\_ the \_\_\_\_\_ of certify that I am a duly appointed agent of the Town of Clarence, Erie County, Industrial Development Agency ("Agency") and that I am purchasing the tangible personal property or services for use in the following Agency Project and that such purchases qualify as exempt from sales and use taxes under the Agent and Financial Assistance Agreement, dated as of {Insurance Approval Date}, by and between the Agency and {Company},

Name of the Project: {Company} Project

Street address of the Project Site: {Project Address} City/Town of  
County, New York

IDA OSC project number: 140

**EXHIBIT G**

**NYS FORM ST-340 TO BE COMPLETED BY THE COMPANY AND FILED ANNUALLY  
WITH THE NYS TAX DEPARTMENT IDA UNIT NO LATER THAN FEBRUARY 15TH OF  
EACH YEAR**

**(Attached Next Page)**

**EXHIBIT H**

**BILL OF SALE**

The TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York with offices at {New York} (the "Grantor"), for the consideration of One Dollar (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from {COMPANY}, a {Entity Type} duly organized, validly existing and in good standing under the laws of the State of with offices at {Company Address} (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and delivers unto the Grantee and its successors and assigns, the Equipment [as defined in the Agent and Financial Assistance Agreement dated {Insurance Approval Date} (the "Agent Agreement"), as may be amended from time to time], which were acquired and installed and/or are to be acquired and installed by the Grantee as agent for the Grantor pursuant to the Agent Agreement, which Equipment is located or intended to be located at the Grantee's Facility located at {Project Address}.

TO HAVE AND TO HOLD the same unto the Grantee and its successors and assigns, forever.

THE GRANTOR MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE EQUIPMENT OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE EQUIPMENT OR ANY PART THEREOF FOR THE GRANTEE'S PURPOSES OR NEEDS. THE GRANTEE SHALL ACCEPT TITLE TO THE EQUIPMENT "AS IS," WITHOUT RECOURSE OF ANY NATURE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. NO WARRANTY OF FITNESS

FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. THE EVENT OF ANY DEFECT OF DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be-executed in its name by the officer described below on the date indicated beneath signature of such officer and dated as of the day of \_\_\_\_\_, 20\_\_\_\_

TOWN OF CLARENCE, ERIE COUNTY,  
INDUSTRIAL DEVELOPMENT AGENCY

Form Only - Do Not Sign

By:  
Name:  
Title:



Department of Taxation and Finance

# 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 1999)		
Street address	Telephone number ( )		
City	State	ZIP code	Email address (optional)

### 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 type="checkbox"/>	
City	State	ZIP code	Email address (optional)

### Project information

Name of project:			
Street address of project site			
City	State	ZIP code	Email address (optional)
Purpose of project			

Description of goods and services intended to be exempted from New York State and local sales and use taxes		
Date project operator or agent appointed (mmddyy)	Date project operator or agent status ends (mmddyy)	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:		Estimated value of New York State and local sales and use tax exemption provided:

<b>Certification:</b> 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
Signature	Date	Telephone number ( )

## 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](http://www.tax.ny.gov)

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

#### Telephone assistance

Sales Tax Information Center:	518-485-2869
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





# 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. 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	
Name of project	IDA project number (see G&C number)
Street address of project site	
City, town, or village	State      ZIP code
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)

### 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 1636 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 1118(e)(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-08(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?



Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)

- 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) 485-6082



Department of Taxation and Finance

# 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		Employer identification number (EIN)	
Street address		Telephone number ( )	
City		State	ZIP code
Name of IDA	Name of project	IDA project number	
Street address of project site			
City		State	ZIP code
Date project began		Completion date of project Actual <input type="checkbox"/> Expected <input 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  
WA HARRIMAN CAMPUS  
ALBANY NY 12227-0866

If not using U.S. Mail, see Publication 58, *Designated Private Delivery Services*.

### Need help?



Visit our website at [www.tax.ny.gov](http://www.tax.ny.gov)

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

#### Telephone assistance

Sales Tax Information Center:	518-486-2889
To order forms and publications:	518-467-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service

#### 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.