

AGENT AGREEMENT

THIS AGREEMENT, made as of the 25th day of February, 2016 (this "Agreement"), by and between the **ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at 333 West Washington Street, Syracuse, New York 13202 (the "Agency") and **G & C FOOD DISTRIBUTORS & BROKERS INC.**, a New York corporation, having its offices at 3407 Walters Road, Syracuse, New York 13209 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 435 of the Laws of 1970 of the State of New York pursuant to Title I 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 Company has requested the Agency's assistance with a certain project (the "Project") consisting of the following: (A) the acquisition of an interest in real property located at 3407 Walters Road in the Town of Van Buren, County of Onondaga (the "Land"); (B) improvements to the existing facility (the "Facility") including (i) the acquisition of new materials, machinery, equipment, fixtures, furnishings and (the "Equipment"), (ii) the construction of an additional refrigerated dock space, (iii) the construction of 50,000 square feet of dry space, (iv) the conversion of the current facility from refrigerator to freezer, and (v) the creation of an agricultural manufacturing line (the Land, Facility and Equipment collectively referred to as the "Project Facility"); and

WHEREAS, the Company has a long-term valid leasehold interest in the Land and Facility pursuant to the terms of a master lease ("Ground Lease" dated February __, 2016, with 3407 Walters RD LLC ("Owner"); and

WHEREAS, by Resolution adopted on January 12, 2016 (the "Resolution"), the Agency authorized the Company to act as its agent for the purposes of undertaking the Project subject to the Company entering into this Agent Agreement and, pursuant to the Resolution and this Agent Agreement, the Company has 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 including but not limited to the individuals and entities described on Schedule A attached hereto. The Company 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.

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. Scope of Agency. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition,

construction and equipping of the Facility. The right of the Company to act as agent of the Agency shall expire on January 31, 2017 unless extended as contemplated by the Resolution. The aggregate amount of work performed as Agent for the Agency shall not exceed the amounts described in the Application of the Company in this matter. All contracts entered into as agent for the Agency following the date of this Agreement shall include the following language:

“This contract is being entered into by G&C Food Distributors & Brokers Inc. or its permitted assignee, (the “Agent”), as agent for and on behalf of the Onondaga County Industrial Development Agency (the “Agency”), in connection with a certain project of the Agency for the Agent 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 3407 Walters Road (the “Premises”). The machinery, equipment and building materials to be incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York, if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption letter of the Agency; and the Agent hereby represents that this contract is in compliance with the terms of the sales tax exemption letter. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any matter 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.”

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

(a) The Company is a corporation, authorized to do business in New York State, duly formed and validly existing under the laws of the State of New York (the “State”), has the authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement.

(b) To the Company's Knowledge, neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement. For purposes of this Agreement, the term "Company's Knowledge" shall mean the actual knowledge of the Company, after due inquiry.

(c) The Company will use its best efforts to ensure that the Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the

Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (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 Company's Knowledge, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way materially diminish or adversely impact on the Company's ability to fulfill its obligations under this Agreement.

(e) The Company covenants 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, (ii) the Company will take all commercially reasonable steps to prevent an unlawful release of hazardous substances at the Facility or onto any other property adjacent thereto, (iii) that no asbestos will be incorporated into the Facility improvements or disposed of on the Facility, (iv) other than an existing 20,000 gallon petroleum underground storage tank, no other 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 Company upon receiving any information or notice contrary to the representations contained in this subsection (e) shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents, 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 material violation of the covenants or failure to be materially accurate of the representations contained in this Section.

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

(g) In accordance with Section 875(3) of the New York General Municipal law, the Company covenants and agrees that, if it receives New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") from the Agency, and it is determined that: (i) the Company is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project, then the Company will (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands in connection therewith. The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine New York State and

local sales and use taxes due from the Company, together with any relevant penalties and interest due on such amounts.

(h) The Company further 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 amount up to \$4,000,000, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$320,000.

(i) The Company further covenants and agrees to complete "IDA Appointment of Project Operator or Agent For Sales Tax Purposes" (NYS Form ST-60) for itself and each agent, subagent, contractor, subcontractor, contractors or subcontractors of such agents and subagents and to such other parties as the Company chooses who provide materials, equipment, supplies or services and execute said form as agent for the Agency (or have the general contractor, if any or other designated subagent execute) and forward said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

(j) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340) regarding the value of sales and use tax exemptions the Company, its agents, subagents, consultants or subcontractors have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with General Municipal Law Section 874(8). The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of same to the Agency; provided, however, in no event later than the first of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of the Company's authority to act as agent for the Agency.

(k) The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123, a copy of which is attached hereto as Exhibit E, and it shall be the responsibility of the Company (and not the Agency) to complete NYS Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill of invoice should state, "G&C Food Distributors & Brokers Inc., certifies that it is a duly appointed agent of the Onondaga County Industrial Development Agency and that it is 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 the agent agreement with the Onondaga County Industrial Development Agency." The Company further acknowledges and agrees that the following information shall be used by the Company to identify the Project on each bill and invoice: "ONON02-64428."

(l) The Company acknowledges and agrees 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 Company shall be the sole party liable thereunder.

3. Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, officers, members, employees, agents (except the Company), representatives, successors and assigns harmless from and against any and all 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 by the Agency's financing, rehabilitating, renovation, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expense incurred in defending any suits or actions which may arise as a result of any of the foregoing; provided that any such liability of the Agency does not arise from, relate to, or result from the negligence or willful misconduct of the Agency or any of its executive director, directors, officers, members, employees, agents (except the Company), representatives, successors and assigns. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, 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 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 Agency consents in writing to a termination, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) (i) Insurance protecting the interests of the Company and the Agency as insureds as their interest may appear, against loss or damage to the Facility by fire, lightning, vandalism, malicious mischief and other perils normally insured against with a uniform extended coverage endorsement, such insurance at all times to be in an amount acceptable to the Company and the Agency, or (ii) as an alternative to the above requirements (including the requirement of periodic appraisal), the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well.

(b) To the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms of insurance which the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Facility or who are responsible for the acquisition, reconstruction or installation of 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 \$1,000,000

per accident or occurrence on account of personal injury, including death resulting therefrom, and \$500,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law; and a blanket excess liability policy in the amount not less than \$3,000,000, protecting the Company against any loss or liability or damage for personal injury or property damage.

5. Additional Provisions Respecting Insurance. (a) All insurance required by Section 4(a) hereof shall name the Agency as a named insured and all other insurance required by Section 4 other than insurance required by Section 4(b) shall name the Agency as an additional insured. All insurance shall be procured and maintained in insurance companies selected by the Company and reasonably acceptable to the Agency and authorized to write such insurance in the State. Such insurance may be written with 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 Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days prior written notice of the cancellation thereof to the Company and the Agency.

(b) All such policies of insurance, or a certificate or certificates of the insurers 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 Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement.

(c) All premiums with respect to the insurance required by Section 4 hereof shall be paid by the Company; provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest thereon at a per annum rate of interest of eight percent (8%), or the maximum rate of interest permitted by law, whichever is less.

6. This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

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, as follows:

TO THE AGENCY: Onondaga County Industrial Development Agency
333 West Washington Street
Syracuse, New York 13202
Attention: Julie Cerio, Executive Director

WITH A COPY TO: Gilberti Stinziano Heintz & Smith, PC
555 East Genesee Street
Syracuse, New York 13202
Attention: Anthony P. Rivizzigno, Esq.

TO THE COMPANY: G&C Food Distributors & Brokers Inc.
3407 Walters Road
Syracuse, New York 13209
Attention: Richard Chapman, President

WITH A COPY TO: Barclay Damon, LLP
2000 HSBC Plaza, 100 Chestnut Street
Rochester, New York 14604
Attention: Steve Tranelli, Esq.

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 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 this Agreement 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 Onondaga County, New York.

9. The parties are contemplating that, after any applicable public hearings, the Agency will negotiate and enter into a lease agreement (the "Lease-Leaseback Agreement") and payment-in-lieu-of-tax agreement (the "PILOT Agreement") with the Company. The Company agrees not to take title to any real property as agent for the Agency until the Lease-Leaseback Agreement and PILOT Agreement have been executed and delivered. At any time prior to the execution of the Lease-Leaseback Agreement and PILOT Agreement, the Agency can transfer title to the Company of all assets acquired by the Company as agent for the Agency. Additionally, at any time prior to execution of the Lease-Leaseback Agreement and PILOT Agreement, the Company can demand that the Agency transfer title to the Company with respect to all assets acquired by the Company as agent for the Agency, provided all amounts owed the Agency have been paid current.

10. By executing this Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency for (1) reasonable legal services, including but not limited to those provided by the Agency's general counsel or transaction counsel in connection with the Project, and (2) other consultants reasonably approved by the Company and retained by the Agency in connection with the Project; with all such charges to be paid by the Company at the closing or, if the closing does not occur, within ten (10) business days of receipt of the Agency's invoices therefore. The Company is entitled to receive a written estimate of fees and costs of the Agency's transaction counsel and any other consultants engaged by the Agency in connection with the Project.

The Company further covenants and agrees that the Company is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses incurred by the Agency in undertaking the Project notwithstanding the occurrence of any of (1) the applicant's withdrawal, abandonment, cancellation or failure to pursue the Project; (2) the

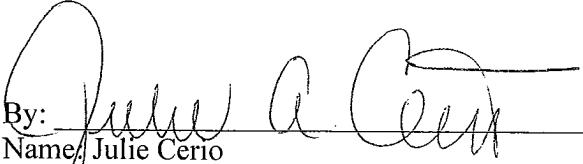
inability of the Agency or the Company to procure the services of one or more financial institutions to provide financing for the Project; or (3) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project; it being understood and agreed, however, that such charges not to exceed Ten Thousand Dollars (\$10,000) beyond the administrative fee and general counsel fee.

11. Upon completion of the acquisition and installation of the Equipment, the Agency shall transfer title to the Equipment to the Company by a bill of sale (the "Bill of Sale") in the form attached hereto as Exhibit A.


12. The Company may not assign its right, title, interest and obligations in, to and under this Agreement without the prior written consent of the Agency, and any such assignment without such prior written consent shall be deemed null and void; provided, however, that the foregoing restriction shall not prohibit: (a) a collateral assignment (a "Collateral Assignment") by the Company of its right, title and interest in and to this Agreement to any Lender of the Company; (ii) an assignment of any right, title and interest in, to and under this Agreement to a Qualified Transferee (as defined in the PILOT Agreement); or (iii) the commencement of any Enforcement Action by a Lender. For purposes of this paragraph, the terms "Lender", "Qualified Transferee" and "Enforcement Action" shall have the meanings ascribed to such terms in the PILOT Agreement, as amended.

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

**ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Julie Cerio
Title: Executive Director

**G & C FOOD DISTRIBUTORS
& BROKERS INC.**

By: 
Name: Richard Chapman
Title: President

SCHEDULE A

EXHIBIT A

FORM BILL OF SALE TO COMPANY

ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York (the "Grantor"), for the consideration of One and 00/100 Dollars (\$1.00), cash in hand paid, and other good and valuable consideration received by the Grantor from G & C FOOD DISTRIBUTORS & BROKERS INC., a New York corporation (the "Grantee"), the receipt of which is hereby acknowledged by the Grantor, hereby sells, transfers and assigns unto the Grantee, and its successors and assigns, all of the Grantor's right, title and interest in and to all the materials, machinery, equipment, fixtures and furnishings which are described in Exhibit B attached hereto (the "Equipment"), whether now owned or hereafter acquired by the Grantor pursuant to a Lease and Leaseback Agreement dated as of February _____, 2016 by and between the Grantor and the Grantee, which Equipment is located or intended to be located on the real property (the "Land") located in the Town of Van Buren, Onondaga County, New York, which Land is more particularly described in Exhibit A attached hereto.

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 ANY OF THE EQUIPMENT DESCRIBED ABOVE. THE GRANTEE ACCEPTS TITLE TO SUCH EQUIPMENT AS IS, WITHOUT RECOURSE AGAINST THE GRANTOR FOR ANY CONDITION NOW OR HEREAFTER EXISTING. IN THE EVENT OF A DEFICIENCY Or DEFAULT OF ANY NATURE, WHETHER PATENT OR LATENT, THE GRANTOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER WITH RESPECT THERETO.

IN WITNESS WHEREOF, the Grantor has caused this bill of sale to be executed in its name by its duly authorized officer on the date indicated beneath the signature of such officer and dated as of the _____ day of February, 2016.

ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Name: Julie Cerio
Title: Executive Director

EXHIBIT A

DESCRIPTION OF THE LAND

(See attached)

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Van Buren, County of Onondaga and State of New York and being a portion of Farm Lot No. 43, in said Town and being more particularly described as follows:

BEGINNING at the intersection of the present southerly right of way line of lands of the New York State Thruway with the present Westerly right of way line of Winchell Road; thence S.15°-40'-08"W., along said westerly line of Winchell Road, a distance of 182.18 feet to a point of curvature in said westerly line;

thence southerly, along said westerly line of Winchell Road, on a curve to the left, said curve having a radius of 494.75 feet, a distance of 117.52 feet to its intersection with the northerly line of property now or formerly owned by Crisafulli Enterprises, as recorded in the Onondaga County Clerk's Office in Liber 5331 of Deeds, Page 301;

thence N.74°-13'-45"W., along said northerly line of said Crisafulli Enterprises property, a distance of 502.48 feet to the northwesterly corner of said Crisafulli Enterprises property;

thence S.14°-44'-37"W., along the westerly line of said Crisafulli Enterprises property, a distance of 386.10 feet to the southwesterly corner of said Crisafulli Enterprises property;

thence S.73°-47'-37"E., along the southerly line of said Crisafulli Enterprises property, a distance of 357.32 feet to the northwesterly corner of property now or formerly owned by Crisafulli Enterprises LLC as recorded in the Onondaga County Clerk's Office in Liber 5155 of Deeds, Page 61;

thence S.7°-17'-37"E., along the westerly line of said Crisafulli Enterprises LLC property and the westerly line of property now or formerly owned by D.P. Kolceski as recorded in the Onondaga County Clerk's Office in Liber 3249 of Deeds, Page 160, a distance of 1134.66 feet to its intersection with the northerly right of way line of Walters Road;

thence N.73°-47'-37"W., along said northerly line of Walters Road, a distance of 239.40 feet to a point of curvature in said northerly line;

thence westerly, along said northerly line of Walters Road, on a curve to the left, said curve having a radius of 1724.00 feet, a distance of 263.33 feet to a point of a tangency in said northerly line of Walters Road;

thence N.82°-32'-43"W., along the northerly line of said Walters Road, a distance of 857.15 feet to the southeasterly corner of property now or formerly owned by Edwin P. Hayes as recorded in the Onondaga County Clerk's Office in Liber 4329 of Deeds, Page 236;

thence N.16°-30'-17"E., along said easterly line of said Hayes property, a distance of 501.94 feet to the northeasterly corner of said Hayes property;

thence N.73°-29'-43"W., along the northerly line of said Hayes property and the northerly line of property now or formerly owned by Anne B. Colburn and Helena Brykarz as recorded in the Onondaga County Clerk's Office in Liber 4802 of Deeds, Page 686, a distance of 500.00 feet to its intersection with the westerly line of Farm Lot No. 43 and the northwesterly corner of said Colburn & Brykarz property;

thence N.16°-30'-17"E., along said westerly line of Farm Lot No. 43, a distance of 1106.76 feet to its intersection with said southerly line of said New York State Thruway;

thence S.83°-52'-46"E., along said southerly line of said New York State Thruway, a distance of 1530.31 feet to the place of beginning.

EXHIBIT B

DESCRIPTION OF THE EQUIPMENT

EXHIBIT C
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY



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

ST-123
 (2/14)

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

This certificate is not valid unless all entries have been completed.
Note: To be completed by the purchaser and given to the seller. See TSB-M-14(1.1)S, *Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities*, for more information.

Name of seller			Name of agent or project operator		
Street address			Street address		
City, town, or village	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 (use OSC 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 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

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

Instructions

To the purchaser

You may use Form ST-123 if you:

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

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

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

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

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

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

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

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

Exempt purchases

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

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

Misuse of this certificate

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

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

To the seller

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

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

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

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

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

Privacy notification

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

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

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

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

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

Need help?



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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