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NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY
as sublessor

AND

400 KARIN LANE NA, LLC,
as sublessee

SUBLEASE AGREEMENT
(UNIFORM PROJECT AGREEMENT)

DATED AS OF September 1, 2021

ADDRESS:	400 Karin Lane, Hicksville,
TOWN:	Town of Oyster Bay
COUNTY:	Nassau
STATE:	New York
SECTION:	46
BLOCK:	585
LOT:	38

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**FIRST AMENDMENT TO SUBLEASE AGREEMENT
(UNIFORM PROJECT AGREEMENT)**

THIS FIRST AMENDMENT TO SUBLEASE AGREEMENT (UNIFORM PROJECT AGREEMENT) dated as of September 1, 2021 (this "Amendment") by and between the NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having an office at One West Street, Mineola, NY 11501 (the "Agency"), and 400 KARIN LANE NA, LLC, a limited liability company organized and existing under the laws of the State of New York, having an office at 400 Karin Lane, Hicksville, Town of Oyster Bay, Nassau County, New York 11801 (the "Company").

W I T N E S S E T H :

WHEREAS, Acutis Diagnostics, Inc. a business corporation organized and existing under the laws of the State of New York (the "Sublessee") and/or any parent entity, affiliate, or entity formed or to be formed on its behalf, including without limitation, the Company (collectively, the "Applicant"), has presented an application for financial assistance (the "Application") to the Agency, which Application requests that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in an approximately 2.336 acre parcel of land located at 400 Karin Lane, Hicksville, Town of Oyster Bay, Nassau County, New York (Section: 46; Block: 585; Lot: 38) (the "Land"), (2) the renovation of an existing approximately 40,091 square foot building (the "Building") and other related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the "Equipment") necessary for the completion thereof (collectively, the Land, Building, and Equipment are the "Project Facility"), all of the foregoing for use by the Sublessee as a research and development facility for the testing of new tools used in molecular and infectious disease diagnostics and specialized laboratory operations; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, the Agency appointed the Company as agent of the Agency to undertake the renovation, installation and equipping of the Project Facility, all pursuant to the terms and conditions set forth in the SUBLEASE AGREEMENT (UNIFORM PROJECT AGREEMENT), dated as of December 1, 2018 between the Company and the Agency (the "Project Agreement"), and the other Transaction Documents (as defined in the Project Agreement); and

WHEREAS, the Company has requested that the Agency consent to the amendment of the Project Agreement and the other Transaction Documents to extend the expiration date of the Scheduled Completion Date (as defined in the Project Agreement) to allow the Company to complete the Initial Work (as defined in the Project Agreement) in the manner contemplated by the Project Agreement and the other Transaction Documents;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Company and the Agency mutually covenant, warrant and agree as follows:

SECTION I. DEFINITIONS.

SECTION 1.1 Interpretation. For purposes of this Amendment, unless otherwise defined herein, all capitalized terms used herein including, but not limited to, those capitalized terms used and/or defined in the recitals hereto, shall have the respective meanings assigned to such terms in the Transaction Documents.

SECTION 2. AMENDMENTS.

SECTION 2.1 The first sentence of subsection (A) of Section 4.2 of the Project Agreement is amended and restated in its entirety to read as follows:

“The Company will proceed with due diligence to commence the acquisition, construction, renovation, installation, and equipping of the Project Facility (including, without limitation, the 2019 Project Facility and the Initial Work) in accordance with Section 4.1 of this Lease within thirty (30) days after the Closing Date and shall proceed with due diligence to complete the acquisition, construction, renovation, installation, and equipping of the Project Facility (including, without limitation, the Initial Work) in accordance with the Plans and Specifications on or before December 1, 2021 (the “Scheduled Completion Date”), as such date may be extended in accordance with this Lease.”

SECTION 2.2 Subsection (B)(1) of Section 8.12 of the Project Agreement is amended and restated in its entirety to read as follows:

“The Sales Tax Agency Agreement shall be dated the Closing Date and shall be effective for a term commencing on its date and expiring upon the earliest to occur of: (a) the termination of this Lease, (b) December 1, 2021, as such date may be extended in accordance with this Lease, or (c) the termination of the Sales Tax Agency Agreement pursuant to the terms hereof and thereof;”

SECTION 2.3 Exhibit E of the Project Agreement is hereby deleted in its entirety and Exhibit E attached hereto is inserted in place thereof.

SECTION 3. CONDITIONS.

SECTION 3.1 Conditions Precedent. This Amendment shall only become effective upon the fulfillment, prior to or contemporaneously with the delivery hereof; of the following conditions precedent:

(A) the execution and delivery by the Company and the Agency of an original or counterpart originals of this Amendment;

(B) the Company shall deliver such other documents, instruments and agreements as the Agency may reasonably require in connection with the transactions contemplated by this Amendment; and

(C) the Company shall pay all fees and expenses (including attorneys' fees and expenses) incurred by the Agency in connection with the preparation, execution and delivery of this Amendment and the closing of the transactions contemplated herein.

SECTION 4. MISCELLANEOUS.

SECTION 4.1 Representations and Warranties.

(A) All terms, conditions, covenants, representations and warranties of the Company contained in the Transaction Documents, except as expressly modified hereby, are ratified, confirmed and reaffirmed by the Company as of the date hereof, remain in full force and effect as of the date hereof, and are subject to the terms of this Amendment.

(B) The Company represents and warrants to the Agency that it has the necessary power and has taken all necessary action to make this Amendment the valid and enforceable obligation it purports to be, and that this Amendment constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

SECTION 4.2 Additional Matters. All other documents and legal matters in connection with this Amendment and the transactions contemplated by the Project Agreement as amended by this Amendment shall be satisfactory in form and substance to the Agency.

SECTION 4.3 Survival of Representations and Warranties. All representations and warranties made in this Amendment or any other documents furnished in connection with this Amendment shall survive the execution and delivery of this Amendment and no investigation by the Agency or any closing shall affect the representations and warranties or the right of the Agency to rely upon them.

SECTION 4.4 Reference to Project Agreement. The Project Agreement, the Transaction Documents and any and all other agreements, documents, or instruments heretofore, now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Project Agreement, as amended hereby, are hereby amended so that any reference in the Project Agreement, the Transaction Documents or such other agreements, documents or instruments executed in connection with the Project Agreement shall mean a reference to the Project Agreement, as amended hereby.

SECTION 4.5 Governing Law. This Amendment, the transactions described herein and the obligations of the parties hereto shall be construed under, and governed by, the laws of the State of New York, as in effect from time to time, without regard to principles of conflicts of laws.

SECTION 4.6 Successors and Assigns. The Company and the Agency, as such terms are used herein, shall include the legal representatives, successors and assigns of those parties.

SECTION 4.7 Counterparts. This Amendment may be executed in any number of counterparts and by the Company and the Agency on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same Amendment.

SECTION 4.8 Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

SECTION 4.9 Conflicting Provisions. In the event of any conflict in the terms and provisions of this Amendment and the terms and provisions of the Project Agreement, the terms and provisions of this Amendment shall govern.

SECTION 4.10 Entire Agreement. This Amendment constitutes the entire agreement and, understanding between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior negotiations, understandings, and agreements between such parties with respect to such transaction.

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[Signature Page to First Amendment to Project Agreement]

IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto as of the day and year first above written.

**NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Harry Coghlan
Chief Executive Officer / Executive Director

400 KARIN LANE NA, LLC

By: _____
Wahid Sarij
Member

[Acknowledgment Page to First Amendment to Project Agreement]

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

On the 30th day of August, 2021, before me, the undersigned, personally appeared **Harry Coghlan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Candace A. Tarana

Notary Public **CANDACE A TARANA**
Notary Public - State of New York
No. 01TA6419848

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

Qualified in Monroe County
My Commission Expires July 19, 20 25

On the ____ day of _____, 2021, before me, the undersigned, a notary public in and for said state, personally appeared **Wahid Sarij**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

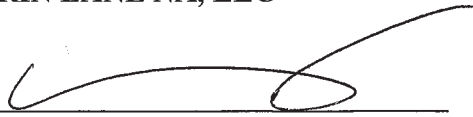
[Signature Page to First Amendment to Project Agreement]

IN WITNESS WHEREOF, this Amendment has been duly executed by the parties hereto as of the day and year first above written.

**NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Harry Coghlan
Chief Executive Officer / Executive Director

400 KARIN LANE NA, LLC

By:  _____
Name: Wahid Sarij
Title: Member

[Acknowledgment Page to First Amendment to Project Agreement]

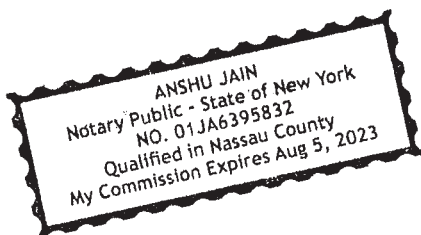
STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

On the 13 day of September, 2021, before me, the undersigned, personally appeared **Harry Coghlan**, personally known to me or proved to me on the basis or satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

On the 13 day of September, 2021, before me, the undersigned, a notary public in and for said state, personally appeared **Wahid Sarij**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.





Notary Public

EXHIBIT E

AMENDED AND RESTATED SALES TAX AGENCY AGREEMENT

Sec Attached

SALES TAX AGENCY AGREEMENT

Effective as of April 2, 2019; Amended and
Restated as of September 1, 2021

Acutis Diagnostics, Inc.
400 Karin Lane,
Hicksville, New York 11801
Attn: Wahid Sarij, CEO

Re: Nassau County Industrial Development Agency
(400 Karin Lane NA, LLC/Acutis Diagnostics, Inc., 2019 Project)

Ladies and Gentlemen:

The Nassau County Industrial Development Agency (the “Agency”) **ACUTIS DIAGNOSTICS, INC.** (the “Company”) agree as follows:

1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, including the acquisition of property, is exempt from the imposition of any New York State or Nassau County sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.

2. Pursuant to a resolution adopted by the Agency on February 28, 2019 (the “Authorizing Resolution”) and a Sublease Agreement, dated as of April 1, 2019 (as amended, modified, supplemented or restated, the “Lease Agreement”), between the Agency and 400 Karin Lane NA, LLC and an Agency Compliance Agreement, dated as of April 1, 2019 (as amended, modified, supplemented or restated, the “Agency Agreement”), between the Agency and the Company, the Agency has authorized the Company to act as its agent to acquire, construct, renovate, install and equip facility in Nassau County, New York, consisting of: (A)(1) the acquisition of an interest in an approximately 2.336 acre parcel of land located at 400 Karin Lane, Hicksville, Town of Oyster Bay, Nassau County, New York (Section: 46; Block: 585; Lot: 38) (the “Land”), (2) the renovation of an existing approximately 40,091 square foot building (the “Building”) and other related improvements to the Land, and (3) the acquisition of certain furniture, fixtures, machinery and equipment (the “Equipment”) necessary for the completion thereof (collectively, the Land, Building, and Equipment are the “Project Facility”), all of the foregoing for use by the Company as a research and development facility for the testing of new tools used in molecular and infectious disease diagnostics and specialized laboratory operations; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of potential exemptions or partial exemptions from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency.

3. As agent for the Agency, the Company agrees that each contract, agreement, lease, invoice, bill or purchase order entered into by the Company as agent for the Agency in connection with the acquisition, construction, installation or equipping of the Project Facility shall include language in substantially the following form:

"This [contract, agreement, lease, invoice, bill or purchase order] is being entered into by [] (the "Agent"), as approved agent for and on behalf of the Nassau County Industrial Development Agency (the "Agency") in connection with a certain project (the "Project") of the Agency for Acutis Diagnostics, Inc. (the "Company") consisting in part of the acquisition, construction, renovation, installation and equipping of research and development facility located at 400 Karin Lane, Hicksville, Town of Oyster Bay, Nassau County, New York 11801 (the "Premises") and the acquisition of certain capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of the Project. The capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for completion of the Project which are the subject of this [contract, agreement, lease, invoice, bill or purchase order] shall be exempt from the sales and use taxes levied by the State of New York and the County of Nassau if effected in accordance with the terms and conditions set forth in the attached Sales Tax Agency Agreement of the Agency, and the Agent hereby represents that this [contract, agreement, lease, invoice, bill or purchase order] is in compliance with the terms of the Sales Tax Agency Agreement. This [contract, agreement, lease, invoice, bill or purchase order] 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, agreement, lease, invoice, bill or purchase order], the [vendor, lessor, licensor, contractor or subcontractor] hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

4. The acquisition of capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property necessary for the completion of the Project Facility (collectively, the "Property") shall be exempt from the sales and use taxes levied by the State of New York and the County of Nassau on the condition that (i) such items of Property are separately identifiable property of the Agency, and (ii) each item of Property shall have a useful life of one year or more, and shall solely be for the use of the Company at and in the Project Facility, and for no other entity and at no other location, and shall be effected by and at the sole cost of the Company. The exemption provided pursuant to Section 4.1(E) of the Lease Agreement and to Section 4.1(E) of the Compliance Agreement shall not apply to the acquisition of: (i) inventory, (ii) rolling stock, (iii) any item of personalty having a

useful life of less than one (1) year or which shall not constitute a tangible capital asset, (iv) plants, shrubs, trees, flowers, lawns or plants, (v) fine art or other similar decorative items, or (vi) motor vehicles, including any cars, trucks, vans or buses that are licensed by the Department of Motor Vehicles or other similar agency for use on public highways or streets.

5. The Agency shall have no liability or performance obligations under any contract, agreement, lease, invoice, bill or purchase order entered into by the Company, as agent for the Agency pursuant to Section 4.1(E) of the Compliance Agreement or Section 4.1(E) of the Lease Agreement, and in the event liability should arise under any such contract, agreement, lease, invoice, bill, or purchase order, the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, lease, invoice, bill or purchase order in any manner and to any extent whatsoever, and the Company shall be the sole party liable thereunder.

6. By execution of its acceptance of the terms of this Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Agreement by the Company is and will be strictly for the purposes above stated.

7. Until the earliest of (i) December 1, 2021, (ii) the completion of the Project as provided in the Lease Agreement, (iii) the receipt by the Company of the Maximum Sales Tax Benefit (as defined in the Lease Agreement), and (iv) the termination of the Lease Agreement and/or revocation of the appointment of the Company as agent of the Agency (the earliest to occur of the foregoing, the "Termination Date"), all vendors, lessors, licensors, contractors and subcontractors are hereby authorized to rely on the ST-123 Form (attached hereto as Exhibit A) prepared by the Company and issued to such vendor, lessor, licensor, contractor or subcontractor pursuant to Paragraph 11 hereof as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, construction, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Company, as agent for the Agency, are exempt from all New York State and Nassau County sales and use taxes.

8. Any vendor, lessor, licensor, contractor or subcontractor that does not collect otherwise applicable sales or use tax in reliance upon this Agreement and the ST-123 Form issued by the Company to such vendor, lessor, licensor, contractor or subcontractor, shall be deemed to have acknowledged and agreed to the provisions of Paragraph 3 hereof regardless of whether or not the provisions thereof are inserted in the contract, agreement, lease, invoice, bill or purchase order entered into with the Company.

9. This Agreement and the ST-123 Form issued by the Company to a vendor, lessor, licensor, contractor or subcontractor are provided solely for the purposes described herein and therein. No other principal/agent relationship is intended or may be implied or inferred from this Agreement or the issuance of such ST-123 Form.

10. The exemption from sales and use taxes provided under the Lease Agreement is granted subject to the requirements of Section 875 of the General Municipal Law, which requirements are incorporated herein by reference, and the Company agrees to such requirements as a condition precedent to receiving the exemption from sales and use taxes.

11. The Company agrees to provide a completed Form ST-123, *IDA Agent or Project Operator Exempt Purchase Certificate*, to each vendor, lessor, licensor, contractor or subcontractor from which the Company purchases and/or leases Property, or with which the Company enters into an improvement or installation contract relating to the acquisition, construction, installation and equipping of the Project Facility. All vendors, lessors, licensors, contractors and subcontractors are authorized to rely on such completed Form ST-123 as evidence that purchases and leases of Property, and improvement and installation contracts relating to the acquisition, construction, installation and equipping of the Project Facility (but not the operation thereof), to the extent effected by the Company as agent for the Agency pursuant to Section 4.1(E) of the Compliance Agreement and Section 4.1(E) of the Lease Agreement, are exempt from all New York State and Nassau County sales and use taxes. The Company agrees to provide the Agency a copy of each such Form ST-123 within five (5) days after the delivery of such form to the vendor, lessor, licensor, contractor or subcontractor.

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The signature of a representative of the Company where indicated below will indicate that the Company has accepted the terms hereof.

**NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____


Harry Coghlan
Chief Executive Officer / Executive
Director

ACCEPTED AND AGREED TO BY:

ACUTIS DIAGNOSTICS, INC.,
a New York corporation

By: _____

Name: Wahid Sarij

Title: Chief Executive Officer

The signature of a representative of the Company where indicated below will indicate that the Company has accepted the terms hereof.

**NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Harry Coghlan
Chief Executive Officer / Executive
Director

ACCEPTED AND AGREED TO BY:

ACUTIS DIAGNOSTICS, INC.,
a New York corporation

By:  _____
Name: Wahid Sarij
Title: Chief Executive Officer

EXHIBIT A

NYS ST-123 FORM



New York State Department of Taxation and Finance

New York State Sales and Use Tax

**IDA Agent or Project Operator
Exempt Purchase Certificate****Effective for projects beginning on or after June 1, 2014****ST-123**
(2/14)

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 Acutis Diagnostics, Inc.		
Street address	Street address 400 Karin Lane		
City, town, or village	State	ZIP code	
Hicksville	NY	11801	
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 Nassau County IDA		
Name of project 400 Karin Lane NA, LLC/Acutis Diagnostics, Inc. 2019 Project		IDA project number (use OSC number) 2803-19-02A
Street address of project site 400 Karin Lane**		
**and any lands located in Nassau County and occupied by license or easement during construction or improved by third parties for the benefit of the Project		
City, town, or village Town of Oyster Bay	State NY	ZIP code 11801
Enter the date that you were appointed agent or project operator (mm/dd/yy) 4 / 2 / 19	Enter the date that agent or project operator status ends (mm/dd/yy) 09 / 01 / 21	

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, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?



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

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



Sales Tax Information Center: (518) 485-2889

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