

## PROJECT AGREEMENT

**THIS PROJECT AGREEMENT** (the “*Project Agreement*”), is made as of July 1, 2022, by and between the **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation existing under the laws of the State of New York, with offices at the Orange County Business Accelerator, 4 Crotty Lane, Suite 100, New Windsor, New York 12553 (the “*Agency*”) and **WEST WARWICK ENERGY STORAGE 3 LLC**, a Delaware limited liability company authorized and in good standing under the laws of the State of Delaware and the State of New York, with offices at 7 Times Square Tower, Suite 3504, New York, New York 10036 (the “*Company*”).

### WITNESSETH:

**WHEREAS**, Title I of Article 18-A of the General Municipal Law of the State of New York (the “*Enabling Act*”) was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

**WHEREAS**, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the “*State*”) and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

**WHEREAS**, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 390 of the Laws of 1972 of the State, as amended (collectively, with the Enabling Act, the “*Act*”) and is empowered under the Act to undertake the Project (as hereinafter defined) in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

**WHEREAS**, the Company submitted an application (the “*Application*”) to the Agency requesting the Agency’s assistance with respect to a certain project (the “*Project*”) consisting of: (A)(i) the acquisition of a (sub)leasehold interest in an approximately 10,410.37 sq.ft. of land located at 28 Church Street, Warwick, New York (the “*Land*”) which is a portion of a larger approximately 29.2 acre parcel (bearing tax map no. 208-2-10); (ii) the construction of an approximate 17,500 sq.ft. 4MW/17.9MWh battery storage system, including an auxiliary switchboard and a metal enclosed switchgear located on the Land to service the local distribution grid, and provide improvements to the distribution systems' reliability and resiliency, as well as

providing emission free energy to the residents of Orange County (collectively, the "**Facility**"); and (iii) the acquisition and installation in and on the Facility of furniture, fixtures and equipment, (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and real property tax (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the (sub)sublease of the Project Facility back to the Company pursuant to a subleaseback agreement. The stored energy from the Project Facility will be utilized by Orange and Rockland Utilities, Inc.; and

**WHEREAS**, Warwick Valley BBA, LLC (the "**Owner**") is the current fee owner of the Land. The Company leases the Land from the Owner pursuant to a long-term Energy Storage Lease Agreement, dated March 23, 2021, with a term of 12 years (the "**Ground Lease**") and upon construction will be the fee owner of the Facility and the operator of the Project Facility; and

**WHEREAS**, by resolution of its members adopted on June 15, 2022 (the "**Resolution**"), the Agency authorized certain financial assistance for the benefit of the Project consisting of: (a) an exemption from New York State and local sales and use taxes for purchases and rentals related to the Project with respect to qualifying personal property included in or incorporated into the Project Facility or used in the acquisition, construction or equipping of the Project Facility in the amount listed below; and (b) an abatement from real property taxes through a 15-year payment in lieu of taxes agreement with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project (collectively referred to as the "**Financial Assistance**"); and

**WHEREAS**, it has been estimated and confirmed by the Company within its Application for Financial Assistance that: (i) the purchase of goods and services relating to the Project, and subject to New York State and local sales and use taxes, are estimated to cost an amount up to **\$6,032,963**; and therefore, the value of the State and local sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$490,178.24**; and (ii) real property tax abatement benefits to be provided to the Company over the 15-year benefit period of the anticipated payment in lieu of taxes agreement are estimated to be approximately **\$932,010.71**; and

**WHEREAS**, the Company proposes to sublease the Land and Facility to the Agency, and the Agency desires to sublease the Land and Facility from the Company pursuant to the terms of a certain sublease agreement dated as of July 1, 2022 (the "**Sublease Agreement**"), by and between the Company and the Agency; and

**WHEREAS**, the Agency proposes to acquire an interest in the Equipment pursuant to a bill of sale dated as of July 1, 2022 from the Company (the "**Bill of Sale**"); and

**WHEREAS**, the Agency proposes to sublease the Project Facility to the Company, and the Company desires to sublease the Project Facility from the Agency, upon the terms and conditions set forth in a certain Subleaseback Agreement dated as of July 1, 2022 (the “*Subleaseback Agreement*”); and

**WHEREAS**, contemporaneously with the execution of this Project Agreement, the Company shall execute and deliver an environmental compliance and indemnification agreement dated as of July 1, 2022 in favor of the Agency (the “*Environmental Compliance and Indemnification Agreement*”); and

**WHEREAS**, in order to define the obligations of the Company regarding payments in lieu of taxes for the Project Facility, the Agency and the Company will enter into a Tax Agreement, dated as of July 1, 2022 (the “*Tax Agreement*”), by and between the Agency and the Company; and

**WHEREAS**, by its Resolutions, the Agency authorized the Company to act as its agent for the purposes of undertaking and completing the Project and the Agency delegated to the Company the authority to appoint sub-agents subject to the execution of this Project Agreement and compliance with the terms set forth herein, in the Resolutions and in the Subleaseback Agreement; and

**WHEREAS**, the Agency requires, in accordance with Section 859-a and 874 of the Act, as a condition and as an inducement for it to enter into the transactions contemplated by the Resolutions, and as more particularly described in the Tax Agreement and this Project Agreement, and to confer the approved Financial Assistance, that the Company provide assurances with respect to the terms and conditions herein set forth; and

**WHEREAS**, this Project Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company. No Financial Assistance shall be provided to the Company prior to the effective date of this Project Agreement.

**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:

## **ARTICLE I PROJECT AND TERM**

**Section 1.01** Recitals. The foregoing recitals are incorporated by referenced as if fully set forth herein.

**Section 1.02** Defined terms. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Table of Definitions attached to the Subleaseback Agreement as Exhibit “C.”

**Section 1.03** Purpose of Project. It is understood and agreed by the parties that the purpose of the Agency’s provision of Financial Assistance with respect to the Project is to, and

the entering by the Agency into the Sublease Agreement, Subleaseback Agreement, Tax Agreement and this Project Agreement is in order to, promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping, furnishing and completing of the Project Facility, to advance job opportunities, health, general prosperity and economic welfare of the people of Orange County and to otherwise accomplish the public purpose of the Act.

**Section 1.04** Term. The term of this Project Agreement shall be: (a) the term of the Tax Agreement; or (b) in the event the Subleaseback Agreement is terminated early, then the earlier of (i) five years following the termination of the Subleaseback Agreement or (ii) the term of the Tax Agreement (the "**Term**"). The Project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the Term of this Project Agreement and the Company's reporting obligations hereunder shall continue during the Term hereof. In addition, during the Term hereof, the Company and the Project shall be subject to Article V hereof.

## **ARTICLE II REAL PROPERTY TAX EXEMPTION**

**Section 2.01.** Tax Agreement. Attached hereto and made a part hereof as **Exhibit A** is a copy of the Tax Agreement by and between the Company and the Agency.

## **ARTICLE III SALES AND USE TAX EXEMPTION AND MORTGAGE RECORDING TAX EXEMPTION**

**Section 3.01.** Scope of Agency. The Company agrees to limit its activities as agents for the Agency under the authority of the Resolutions and this Project Agreement solely to acquisition, reconstruction, installation and completion of the Project Facility. The right of the Company to act as agent of the Agency shall expire on **April 30, 2023**, unless extended by a resolution adopted by the members of the Agency, or unless terminated early in accordance with the terms of the Subleaseback Agreement. The value of the sales and use tax exemption benefits shall not exceed the amounts described in the Application and as set forth in Section 3.04(b) unless approved by a resolution adopted by the members of the Agency. All contracts entered into by the Company as agent for the Agency shall include the following language:

"This contract is being entered into by \_\_\_\_\_ (the "**Agent**"), as agent for and on behalf of the Orange County Industrial Development Agency (the "**Agency**"), in connection with a certain project of the Agency for the benefit of the Agent consisting in part of the acquisition and installation of certain machinery, equipment and building materials, all for use in construction and/or incorporation and installation in certain premises located at 28 Church Street, Warwick, New York (the "**Premises**"). The machinery, equipment and building materials (collectively, the "**Equipment**") to be used in the construction and/or incorporated and installed in the Premises shall be exempt from the sales and use taxes levied by the State of New York if the use and/or acquisition of the

Equipment is effected in accordance with the terms and conditions set forth in the Project Agreement dated as of July 1, 2022 by and between the Agency and the Company (the “**Project Agreement**”); and the Agent represents that this contract is in compliance with the terms of the Project Agreement. 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 acknowledges and agrees to the terms and conditions set forth in this paragraph.”

**Failure by the Company and/or any Sub-Agent (as hereinafter defined) thereof to include such language may disqualify the agent status and Sales Tax Exemption derived by virtue of this Project Agreement. The Company, for itself and on behalf of all duly appointed Subagents, hereby agrees that all contacts entered into by the Company and any Subagents thereof shall be available to the Agency for inspection and confirmation of the foregoing mandatory language.**

**Section 3.02. Appointment of Sub-Agents.**

(a) Subject to the terms and conditions of this Project Agreement and pursuant to the Resolutions, the Agency hereby delegates to the Company the authority to appoint sub-agents of the Agency in connection with the Project, which may be agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and other parties as the Company chooses (each, a “**Sub-Agent**”). The appointment of each such Sub-Agent will be effective only upon: (1) the execution by the Sub-Agent and the Company of the Sub-Agent Appointment Agreement attached as Exhibit F to the Subleaseback Agreement (the “**Sub-Agent Agreement**”), the terms and provisions of which are incorporated herein; (2) the receipt by the Agency of a completed Form ST-60 in accordance with Section 3.04(c) below; and (3) receipt of any required insurance as set forth in the Sub-Agent Agreement.

(b) The Company shall ensure that each Subagent shall observe and comply with the terms and conditions of this Project Agreement.

**Section 3.03. Reserved.**

**Section 3.04. Representations and Covenants of the Company.**

(a) The Company hereby incorporates acknowledges and restates its representations, covenants and warranties made in the Subleaseback Agreement, including but not limited to Section 8.12.

(b) The Company further covenants and agrees that the purchase of goods and services relating to the Project and subject to State and local sales and use taxes are estimated in the amount up to **\$6,032,963**, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed **\$490,178.24**.

(c) The Company further covenants and agrees to complete “IDA

Appointment of Project Operator or Agent For Sales Tax Purposes” (Form ST-60) for itself and each Sub-Agent and to provide said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

(d) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance an “Annual Report of Sales and Use Tax Exemptions” (Form ST-340), a copy of which is attached hereto at **Exhibit "C"**, regarding the value of sales and use tax exemptions the Company and its Sub-Agents have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with Section 874(8) of the Act. The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of their filed ST-340 to the Agency, but in no event later than March 29 of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of: (1) the Company’s authority to act as agents for the Agency; and (2) the authority of any Sub-Agent of the Agency appointed by the Company pursuant to Section 3.02 hereof to act as agent for the Agency. **Please note, the Company is to report only the Sales Tax Exemption derived as a result of the Agency's participation in the Project and not those received as a result of other available State exemptions. For the avoidance of doubt, other State exemptions, which the Company should not report on its NYS Form ST-340, include, but are not limited to, exemptions available to certain manufacturers or those exemptions that apply to capital improvements.**

(e) The Company further acknowledges and agrees that all purchases made in furtherance of the Project by the Company and any Sub-Agent shall be made using “IDA Agent or Project Operator Exempt Purchase Certificate” (Form ST-123), a copy of which is attached hereto at **Exhibit "D"**, and it shall be the responsibility of the Company and the Sub-Agent, as the case may be, (and not the Agency) to complete 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, “I, [NAME OF AGENT], certify that I am a duly appointed agent of Orange County Industrial Development Agency 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 Project Agreement with the Orange 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: West Warwick Energy Storage 3 LLC Project; 28 Church Street, Warwick, New York; IDA Project No.: IDA-1088.

(f) By execution by the Company of this Project Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of the Sales Tax Exemption by the Company or by any Agent is strictly for the purposes stated herein.

(g) The Company acknowledges and agrees that the Agency shall not be liable, either directly or indirectly or contingently, upon any 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.

(h) The Company acknowledges that the Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company that the Company is in default under this Project Agreement (or other Company Document) until such default is cured to the satisfaction of the Agency.

(i) The Company acknowledges that upon the Termination Date, the Company and each Agent shall cease being agents of the Agency, and the Company shall immediately notify each Agent in writing of such termination.

(j) The Company hereby acknowledges and agrees that the Financial Assistance being provided by the Agency under the Company Documents constitutes "public funds" unless otherwise excluded under Section 224-a(3) of the New York Labor Law, and by executing this Project Agreement, (i) confirms that it has received notice from the Agency pursuant to Section 224-a(8)(d) of the New York Labor Law and (ii) acknowledges its obligations pursuant to Section 224-a(8)(a) of the New York Labor Law. Other than the Agency Financial Assistance estimates provided herein and disclosed to the Company, the Agency makes no representations or covenants with respect to the total sources of "public funds" received by the Company in connection with the Project.

### **Section 3.05. Hold Harmless Provisions.**

(a) The Company releases the Agency and its members, officers, agents (other than the Company) and employees from, agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the Project, including, but not limited to: (1) liability for loss or damage to property or bodily injury to or death of any and all persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any person or property on, in or about the Project Facility; (2) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, installing, owning, leasing or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Project Agreement or the enforcement of or defense of validity of any provision of this Project Agreement; (3) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Sections 3.01 and 3.02 hereof; and (4) all causes of action and reasonable attorneys' fees and other expenses incurred in connection with any suits or actions that may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the gross negligence or intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part

of the Agency or any of its officers, members, agents (other than the Company) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents (other than the Company) or employees by any employee of the Company or any contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefits laws or other employee benefit laws.

(c) To effectuate the provisions of this Section 3.05, the Company agrees to provide for and insure, in the liability policies required by Section 3.06 of this Project Agreement, its liabilities assumed pursuant to this Section 3.05.

(d) Notwithstanding any other provisions of this Project Agreement, the obligations of the Company pursuant to this Section 3.05 shall remain in full force and effect after the termination of this Project Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency, or its officers, members, agents (other than the Company) or employees, relating thereto.

(e) The obligations and agreements of the Agency contained herein shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent (other than the Company), employee or servant of the Agency in his individual capacity, and the members, officers, agents (other than the Company), employees and servants of the Agency shall not be liable personally hereon or be subject to any personal liability of accountability based upon or in respect hereof or of any transaction contemplated hereby.

### **Section 3.06. Insurance Required.**

(a) The Company agrees that it shall at all times maintain all insurance required under the Subleaseback Agreement as if such terms were set forth herein.

(b) The Company agrees that it shall cause its general contractor for the Project to maintain, effective as of the date of its Sub-Agent Agreement until the expiration or termination of the general contractor's employment by the Company, or its designee, with respect to the Project Facility, all of the same insurance with respect to the Project Facility, as set forth in Article 6 of the Subleaseback Agreement as if the general contractor were the Company thereunder. The Company further agrees that it shall cause its general contractor for the Project to comply and abide, effective as of the date of the Sub-Agent Agreement and until the expiration or termination of the general contractor's employment by the Company, or its designee, with respect to the Project Facility, with all of the terms and conditions set forth in



Article 6 of the Subleaseback Agreement with respect to the type, nature and proof of insurance required thereunder.

#### ARTICLE IV COMMITMENTS AND REPORTING

**Section 4.01. Compliance Commitments.** The Company agrees and covenants that it shall meet and maintain the commitments set forth in (a) below, and report on same as provided for herein, beginning in the first year following the Completion Date of the Project and continuing for the Term (as defined herein) hereof. The Company further agrees and covenants that it shall meet and maintain the commitments set forth in (b) below with respect to retained jobs set forth in the Application starting in the first year in which Financial Assistance is claimed and/or provided; and with respect to new jobs, the Company shall create, in years one (1) through five (5) following the Completion Date of the Project the new jobs set forth in and in accordance with the Company's Application. The reporting of, and the commitment to, each of (a), (b) and (c) below shall continue for the Term hereof:

(a) The total investment actually made with respect to the Project at the Project's Completion Date shall equal or exceed **\$6,156,085**, being the total project cost as stated in the Company's Application for Financial Assistance (the "***Investment Commitment***").

(b) There were no full time equivalent ("***FTE***") employees were retained by the Project Facility as of the date of the Application for Financial Assistance. The Company's Application estimated the creation of twenty (20) new construction FTEs (the "***New Construction FTEs***") at the Project Facility. The Project is not designed to be a job creation project beyond the New Construction FTEs. Rather the Project is designed to provide improvements to the distribution systems' reliability and resiliency, as well as providing emission free energy to the residents of Orange County. The Company covenants and agrees to create and demonstrate the New Construction FTEs for the construction period of the Project Facility.

(c) The Company shall annually provide to the Agency certain information to confirm that the Project is achieving the investment, job retention, job creation, and other objectives of the Project for the Term hereof (the "***Reporting Commitment***").

**Section 4.02. Reporting Requirement.** As part of the commitments set forth in Section 4.01, the Company shall provide annually, to the Agency, a certified statement and supporting 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, by zip code, 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. **Exhibit B** contains a form of annual certification that the Company must complete and submit to the Agency on an annual basis. The Agency reserves the right to modify such form to require additional information that the Agency must have in order to comply with its reporting

requirements under the Act and/or its policies and to request such information more frequently than annually.

In addition to the foregoing, the Company shall submit a copy of quarterly NYS-45 reports, a copy of which is attached hereto at **Exhibit "E"**, and any other reports required by the Agency to evidence the employment commitment.

## **ARTICLE V**

### **SUSPENSION, DISCONTINUATION, RECAPTURE AND/OR TERMINATION OF FINANCIAL ASSISTANCE**

**Section 5.01.** Suspension, Discontinuation, Recapture and/or Termination of Financial Assistance. It is understood and agreed by the Parties that the Agency is entering into the Company Lease, the Agency Lease and this Project Agreement in order to ensure the completion of the Project and provide Financial Assistance to the Company for the Project Facility and to accomplish the public purposes of the Act.

(a) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, this Project Agreement, the Agency Lease and the Resolutions, the Company covenants and agrees that it is subject to recapture of all State sales and use tax exemption benefits if:

(1) the Company or its Sub-Agents, if any, authorized to make purchases for the benefit of the Project are not entitled to the State sales and use tax exemption benefits; or

(2) the State sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or

(3) the State sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(4) the Project has failed to comply with a material term or condition to use the property or services in the manner required by any project document between the Company and the Agency.

Each of the foregoing four events are hereinafter referred to as a “***State-Mandated Recapture Event***”. The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency’s attention, whether a State-Mandated Recapture Event has occurred.

(b) In addition to Section 5.01(a), in accordance with the policies of the Agency and the Resolutions, the Company covenants and agrees that the Agency shall have the right to suspend, discontinue or terminate all or any portion of any Financial Assistance and recapture all or a portion of the Recapture Amount to the extent any of the following occur (each a “***Deficit***”):

(1) for projects that utilized local sales and use tax exemptions, the Project was not entitled to such exemptions, such exemptions were in excess of the amounts authorized by the Agency, and/or such exemptions were for property or services not authorized by the Agency (each, a “**Local Sales Tax Benefit Violation**”);

(2) the Company, upon completion of the Project, fails to reach and maintain its employment requirements for job creation and/or retention in accordance with the Agency's policies (“**Job Deficit**”);

(3) the total investment actually made with respect to the Project at the Project's completion date is less represented as its total investment amount in its Application (“**Investment Deficit**”);

(4) the Company fails to provide annually to the Agency certain information to confirm that the project is achieving the investment, job retention, job creation, and other objectives of the Project (“**Reporting Failure**”); or

(5) there otherwise occurs any event of default under any Company Document (each, an “**Event of Default**”) or a material violation of the terms and conditions of any Company Document (a “**Material Violation**”).

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency's attention, whether a Local Sales Tax Benefit Violation, Job Deficit, Investment Deficit, Reporting Failure Event of Default or Material Violation (each a “**Noncompliance Event**”) has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any Project Document in accordance with the terms of the Project Document.

At the time of any Noncompliance Event, the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance in accordance with the terms hereof, the Agency Lease, as well as its Recapture Policy; and shall consider the following various factors, including but not limited to, the following in determining whether to proceed to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance:

- (i) Whether the Company has proceeded in good faith.
- (ii) Whether the Project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the Company.
- (iii) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create a more adverse situation for the Company, such

as the Company going out of business or declaring bankruptcy, which would not occur if the Agency's rights were not exercised.

- (iv) Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create an adverse situation for the residents of Orange County.
- (v) The assessment prepared in accordance with the Agency's Annual Assessment Policy.
- (vi) Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance.

The Agency shall document its evaluation of the above criteria in writing and based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance (the "**Determination**"). The Determination shall provide terms, if any, by which the Company may remedy any Noncompliance Event upon which the Determination was based. The Company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume Financial Assistance to the Company (which will be at the Agency's sole discretion).

(c) If a State-Mandated Recapture Event occurs or the Agency makes a Determination, the Company agrees and covenants that it will: (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company; 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 jurisdictions, unless agreed to otherwise by any local taxing jurisdiction. 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 the State sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

(d) In the event any payment owing by the Company under this Section shall not be paid upon demand of the Agency, such payment shall bear interest from the date of such demand at the rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(e) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including, without limitation, reasonable legal fees, incurred with the

recovery of all amounts due under this Section from amounts received by the Agency pursuant to this Section.

## **ARTICLE VI DEFAULTS AND REMEDIES**

### **Section 6.01. Event of Default.**

(a) A default in the performance or the observance of any covenants, conditions, or agreements on the part of the Company in this Project Agreement or any other Company Document;

(b) The Company has made a material 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

(c) Failure of the Company to file a copy of the Form ST-340 with the Agency in compliance with Section 3.04 hereof; or

(d) The occurrence and continuation of a Recapture Event.

**Section 6.02 Remedies.** Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

(e) Cease performing under this Project Agreement;

(f) Terminate this Project Agreement or any of the other Company Documents; and/or

(g) Take any other action at law or in equity, which may appear necessary or desirable to collect any amounts then due, or thereafter to become due, hereunder or under any of the other Company Documents, including but not limited to recapture.

**Section 6.03 Remedies Cumulative.** No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Project Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right and power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article VI it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Project Agreement.

**Section 6.04** Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Project Agreement or the Company Documents and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the fees of such attorneys and such other expenses so incurred.

## **ARTICLE VII MISCELLANEOUS PROVISIONS**

**Section 7.01. Survival.** All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Project Agreement to the Agency regardless of any investigation made by the Agency. The obligations of the Company to repay, defend and/or provide the indemnity required by Section 3.05 hereof shall survive the termination of the Agency's interest in the Project Facility and all such payments after such termination shall be made upon demand of the party to whom such payment is due. The obligations of the Company to repay, defend and/or provide the indemnity required by Section 3.05 hereof shall survive the termination of the Agency's interest in the Project Facility until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency or its officers, members, agents (other than the Company) or employees relating thereto. The obligations of the Company pursuant to Article IV hereunder shall survive the Agency's interest in the Project Facility, and for the avoidance of doubt, the Agency's rights under Article V shall survive the termination of the Agency's interest in the Project Facility.

**Section 7.02. Notices.** All notices, certificates and other communications under this Project Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by overnight delivery service, addressed as follows:

If to the Agency:

Orange County Industrial Development Agency  
Orange County Business Accelerator  
4 Crotty Lane, Suite 100  
New Windsor, New York 12553  
Attn: William Fioravanti, Chief Executive Officer

With a copy to:

Bousquet Holstein PLLC  
One Lincoln Center  
110 West Fayette Street, Suite 1000  
Syracuse, New York 13202  
Attn: Susan R. Katzoff, Esq.

If to the Company:

West Warwick Energy Storage 3 LLC  
7 Times Square Tower, Suite 3504  
New York, New York 10036  
Attn: Frank Genova

With a copy to:

Hodgson Russ LLP  
140 Pearl Street, Suite 100  
Buffalo, New York 14202  
Attn: Daniel Spitzer, 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 received or delivery of same is refused by the recipient or personally delivered in the manner provided in this Section.

**Section 7.03. Amendments.** No amendment, change, modification, alteration or termination of this Project Agreement shall be made except in writing upon the written consent of the Company and the Agency.

**Section 7.04. Severability.** The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Project Agreement or the Application thereof shall not affect the validity or enforceability of the remaining portions of this Project Agreement or any part thereof.

**Section 7.05. Counterparts.** This Project 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.

**Section 7.06. Governing Law.** This Project Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State 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 Orange County, New York.

**Section 7.07. Fees and Costs.** By executing this Project Agreement, the Company covenants and agrees to pay all fees, costs and expenses incurred by the Agency (a) for legal services including, but not limited to, those provided by the Agency's general counsel and bond/transaction counsel; (b) for other consultants retained by the Agency, if any, in connection with the Project; and (c) with respect to the Agency's enforcement of any event of default or failure to comply with the terms of this Project Agreement (including reasonable attorneys fees). 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 (i) the Company's withdrawal, abandonment, cancellation or failure to pursue the Project; (ii) the inability of the Company to procure the services of one or more financial institutions to provide

financing for the Project; or (iii) the Company's failure, for whatever reason, to undertake and/or successfully complete the Project.

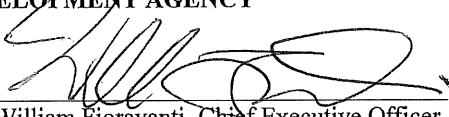
**Section 7.08. Section Headings.** The headings of the several Sections in this Project Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Project Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



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

**ORANGE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
William Fioravanti, Chief Executive Officer

**WEST WARWICK ENERGY STORAGE 3 LLC**

By: Convergent West Warwick LLC  
its sole member

By: Convergent Energy and Power LP,  
its sole member

By: \_\_\_\_\_  
Frank Genova, President

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

**ORANGE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
William Fioravanti, Chief Executive Officer

**WEST WARWICK ENERGY STORAGE 3 LLC**

By: Convergent West Warwick LLC  
its sole member


By: Convergent Energy and Power LP,  
its sole member

By: \_\_\_\_\_  
Frank Genova, President

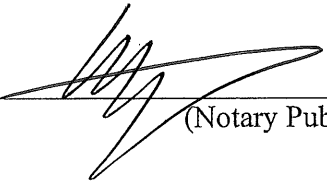
COMMONWEALTH OF PENNSYLVANIA     )  
COUNTY OF LEBANON                     )

**FRANK GENOVA**, being first duly sworn, deposes and says:

1. That I am the President of Convergent Energy and Power LP, the sole member of Convergent West Warwick LLC, the sole member of West Warwick Energy Storage 1 LLC and that I am duly authorized on behalf of the Company to bind the Company and to execute this Project Agreement.
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.

  
\_\_\_\_\_  
(Signature of Officer)

Subscribed and affirmed to me  
under penalties of perjury  
this 14 day of July, 2022.

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

Commonwealth of Pennsylvania - Notary Seal  
Tonika M Stenson, Notary Public  
Lebanon County  
My Commission Expires March 24, 2023

**EXHIBIT A**

Executed Copy of Tax Agreement

## **EXHIBIT B**

### FORM OF ANNUAL REPORTING QUESTIONNAIRE

Orange County Industrial Development Agency  
4 Crotty Lane, Suite 100  
New Windsor, New York 12553  
(845)234-4192

#### **Re: Project Compliance- NYS Reporting Requirements for IDA Projects**

As stated in your project agreement with the Orange County Industrial Development Agency, you are required to annually report the information requested in this document to the Orange County IDA.

The IDA is under an obligation to annually report the information requested below to the New York State Authorities Budget Office (ABO) and Office of the State Comptroller (OSC). Under Article 18A of the New York State Municipal Law, failure to immediately provide the Agency with the requested information may result in lease default and the recapture of benefits, including the loss of sales and use tax exemptions and PILOT rights.

To complete the information requested below you will need:

- A. A Completed ST-340 Form and Sales Tax Exemption information, if applicable;
- B. Employment information accompanied by a Completed NYS-45 Form for the Quarter ending: \_\_\_\_\_;
- C. Mortgage Recording Tax Exemption information, if applicable;
- D. Project Budget evidencing amount of capital investments and expenditures on furnishings and equipment;
- E. NYS Transfer Tax Return (TP-584), for new projects that purchased property;
- F. All insurance documentation as required under the Company's Agreement with the IDA;
- G. Bond information, if applicable; and
- H. PILOT Information.

Please complete this form along with the additional forms specified throughout and return to the address provided below. Please contact us if you have any questions.

Orange County Industrial Development Agency  
4 Crotty Lane, Suite 100  
New Windsor, New York 12553  
Attention: William Fioravanti, Chief Executive Officer  
bfioravanti@ocnyida.com  
(845)234-4192

**COMPANY NAME & ADDRESS:**

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

Email address: \_\_\_\_\_

Telephone: \_\_\_\_\_

**Project Location:** \_\_\_\_\_

**I. SALES TAX INFORMATION**

The ST-340, New York State Department of Taxation and Finance Form, relative to sales tax exemptions taken for the 2022 calendar year (even if no exemptions were claimed). This form should be completed and sent to the New York State Department of Finance and Taxation with a copy to the Orange County IDA office. This form cannot be dated prior to January 1, 2022.

**Original ST-340 Form to:**

NYS Division of Taxation & Finance- IDA Unit  
W A Harriman Campus, Albany, NY 12227  
(518) 485-1210 (Phone)  
(518) 435-8543 (FAX)

**Check here if sent original to NYS** ☐

**Copy to IDA Enclosed** ☐

**Please Provide:** Total Sales Tax Exemptions Received Between 1/1/22 through 12/31/22  
(actual sales tax savings, not total purchases).

**Insert amount here** \$ \_\_\_\_\_

I hereby certify that any sales tax exemption claimed was applied for and taken during the time period specified in the project agreement (e.g., during construction) and that the total amount claimed to date has not exceeded the amount approved in compliance with said agreement. Failure to certify indicates that the total amount claimed to date has exceeded the amount approved.

**Check here to certify** ☐

II. **(A) EMPLOYMENT INFORMATION**

Agency Employment Reporting. You must report the current number of jobs during the calendar year 2022 as reported in your NYS-45 Tax Form. **Please submit a copy of the NYS-45 Form for the Quarter ending 12/31/22.**

**Current full time employees  
(FTEs) retained by the Project  
as set forth in the Application  
(as of 12/31/22)** \_\_\_\_\_

**Current part time employees  
(PTEs) retained by the Project  
as set forth in the Application  
(as of 12/31/22)** \_\_\_\_\_

**Current full time employees  
(FTEs) created by the Project as  
set forth in the Application  
(as of 12/31/22)** \_\_\_\_\_

**Current part time employees  
(PTEs) created by the Project as  
set forth in the Application  
(as of 12/31/22)** \_\_\_\_\_

**# of FTE construction jobs in 2022 (If  
the project is in construction  
phase)** \_\_\_\_\_

**(B) INDEPENDENT CONTRACTORS**

If any full or part-time independent contractors or employees of independent contractors worked at your facility in 2022, indicate the number by job category and indicate their wage information (if known).

*Example: Independent Accountant, Independent Food Services/Cafeteria in Building*

<b>Category</b>	<b># FTEs</b>	<b>#PTEs</b>	<b>Avg. Annual/Hourly Wage</b>
Management	_____	_____	_____
Professional	_____	_____	_____
Administrative	_____	_____	_____
Production	_____	_____	_____

Other \_\_\_\_\_

Other \_\_\_\_\_

**III. MORTGAGE RECORDING TAX INFORMATION**

If a mortgage recording tax (MRT) exemption was received in 2022, provide the principal amount of mortgage and total MRT Exemption Amount.

**Insert amount here \$ \_\_\_\_\_**

**IV. PROJECT INFORMATION**

Certify that total project cost is consistent with original IDA application and Building Department records.

- A. For new projects that purchased property, insert the purchase price as reported on the NYS Transfer Tax Return (TP-584).

**Insert amount here \$ \_\_\_\_\_**

**Check here if TP-584 enclosed ☐**

- B. For all projects, provide amount of any capital investments made in 2022.

**Insert amount here \$ \_\_\_\_\_**

- C. For all projects, provide the amount spent on furnishing and equipment purchases in 2022.

**Insert amount here \$ \_\_\_\_\_**

**Please provide project budget evidencing amount of capital investments and expenditures on furnishings and equipment, listed in B & C above.**

**V. INSURANCE INFORMATION**

Please provide a copy of up-to-date insurance documentation as required under the Company's agreements with the IDA.

**Check here if insurance is current ☐**

**Check here if a copy is attached ☐**



VI. **BOND INFORMATION, IF APPLICABLE**

If you have a bond through the IDA please complete the following:

- A. Date of the bond issue \_\_\_\_\_
- B. Bond Amount at time of issue \_\_\_\_\_
- C. Principal Amount Paid in 2022 \_\_\_\_\_
- D. Principal Balance as of 12/31/2022 \_\_\_\_\_
- E. Final Maturity Date \_\_\_\_\_
- F. Bank or Trustee (the Bank or Trustee name, Address) \_\_\_\_\_

VII. **PILOT INFORMATION:** Total PILOT payments made during year \_\_\_\_\_

VIII. **FIRST TIME REPORTING**

For companies that will be reporting for the first time, please also provide the following information:

- A. # of FTEs before IDA Status \_\_\_\_\_
- B. Original Estimate of jobs to be created \_\_\_\_\_
- C. Average estimated annual salary for jobs to be created \_\_\_\_\_
- D. Annualized salary range of jobs to be created \_\_\_\_\_ to \_\_\_\_\_
- E. Original estimate of jobs to be retained \_\_\_\_\_
- F. Estimated average annual salary of jobs to be retained \_\_\_\_\_

## CERTIFICATIONS

The undersigned hereby certifies that:

(Initial below to certify)

1. All sales tax exemptions claimed for this Project during the preceding calendar year were applied for and taken during the time period specified in the project agreement (e.g., during construction), and the total amount claimed to date has not exceeded the amount approved in compliance with said agreement. \_\_\_\_\_
2. All insurance required under the Company's agreements with the IDA is currently in effect. \_\_\_\_\_
3. The Company has listed all applicable new 2022 employment opportunities with the NYS Department of Labor, Community Services Division and with the administrative entity of the service delivery area in which the project is located, pursuant to the Job Training Partnership Act. \_\_\_\_\_
4. There are no outstanding real estate tax or PILOT obligations in respect of the Project facility beyond the date(s) when such payments are due. \_\_\_\_\_
5. The information in this report is true, accurate, and complete. \_\_\_\_\_

*Please retain a copy for your files. Under Article 18A of the New York State Municipal Law, failure to immediately provide the Agency with the requested information may result in lease default and the recapture of benefits, including the loss of sales and use tax exemptions and PILOT rights.*

**Company representative (Name & Title):** \_\_\_\_\_

**Date:** \_\_\_\_\_

Please give this matter your urgent attention and contact the IDA if you have any questions.

Orange County Industrial Development Agency  
4 Crotty Lane, Suite 100  
New Windsor, New York 12553  
Attention: William Fioravanti, Chief Executive Officer  
bfioravanti@ocnyida.com  
(845)234-4192

**EXHIBIT "C"**

Annual Report of Sales and Use Tax Exemptions  
(Form ST-340)



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, 2017 (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  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0666

If not using U.S. Mail, see Publication 55, *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:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service

### 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.

**EXHIBIT "D"**

IDA Agent or Project Operator Exempt Purchase Certificate  
(Form ST-123)



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

(7/14)

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 (use OS2 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 rendered 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 1638 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 1115(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

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) 485-5082



**EXHIBIT "E"**

NYS-45  
Quarterly Combined Withholding, Wage, Reporting,  
And Unemployment Insurance Return

41918415

For office use only  
Postmark

Received date

44 55 WT  
SK

If seasonal employer, mark an X in the box ☐

[illegible]

12. New York State tax withheld .....	
13. New York City tax withheld .....	
14. Yonkers tax withheld .....	
15. Total tax withheld (add lines 12, 13, and 14) .....	
16. WT credit from previous quarter's return (see instr.) .....	
17. Form NYS-1 payments made for quarter .....	
18. Total payments (add lines 16 and 17) .....	
19. Total WT amount due (line 15 is greater than line 18, enter difference) .....	
20. Total WT overpaid (if line 18 is greater than line 15, enter difference here and mark an X in 20a or 20b) .....	
20a. Apply to outstanding liabilities and/or refund .....	or
	20b. Credit to next quarter withholding tax .....

[illegible][illegible]

Withholding  
identification number



### Part D - Form NYS-1 corrections/additions

Use Part D **only** for corrections/additions for the quarter being reported in Part B of **this** return. To correct original withholding information reported on Form(s) NYS-1, complete columns a, b, c, and d. To report additional withholding information not previously submitted on Form(s) NYS-1, complete **only** columns c and d. Lines 12 through 15 on the front of this return **must** reflect these corrections/additions.

a Original last payroll date reported on Form NYS-1, line A (mmdd)	b Original total withheld reported on Form NYS-1, line 4	c Correct last payroll date (mmdd)	d Correct total withheld
▶			
▶			
▶			
▶			
▶			
▶			

### Part E - Change of business information

22. This line is not in use for this quarter.

23. If you **permanently ceased paying wages**, enter the date (mmddyy) of the final payroll (see Note below) ..... 07/20/15

24. If you **sold or transferred all or part of your business**:

• Mark an **X** to indicate whether in whole ☐ or in part ☒

• Enter the date of transfer (mmddyy) ..... 07/20/15

• Complete the information below about the acquiring entity

Legal name	EIN
Address	

**Note:** For questions about other changes to your withholding tax account, call the Tax Department at 518-485-8654; for your unemployment insurance account, call the UI Employer Hotline at 1-888-899-3810. If you are using a paid preparer or a payroll service, the section below must be completed.

Paid preparer's use	Preparer's signature	Date	Preparer's NYTPRIN	Preparer's SSN or PTIN	NYTPRIN excl. code
	Preparer's firm name (or yours, if self-employed)	Address		Firm's EIN	Telephone number ( )
Payroll service's name				Payroll service's EIN	

Checklist for mailing:

- File original return and keep a copy for your records.
- Complete lines 9 and 19 to ensure proper credit of payment.
- Enter your withholding ID number on your remittance.
- Make remittance payable to *NYS Employment Contributions and Taxes*.
- Enter your telephone number in boxes below your signature.
- See *Need help?* on Form NYS-45-I if you need forms or assistance.

Mail to:

NYS EMPLOYMENT  
CONTRIBUTIONS AND TAXES  
PO BOX 4119  
BINGHAMTON NY 13902-4119

NYS-45 (1/19) (back)