

HARRIS BEACH PLLC
ATTORNEYS AT LAW

December 1, 2016

99 GARNSEY ROAD
PITTSFORD, NY 14534
(585) 419-8800

MICHAEL J. TOWNSEND, ESQ.
DIRECT: (585) 419-8656
FAX: (585) 419-8816
MTOWNSEND@HARRISBEACH.COM

Ronald DiChario, Managing Member
RCD Properties, LLC
90 Air Park Drive, Suite 304
Rochester, New York 14624

**Re: County of Monroe Industrial Development Agency ("COMIDA")
RCD Properties, LLC Project located at 50 Air Park Drive
in the Town of Chili, New York**

Dear Mr. DiChario:

Pursuant to your request, enclosed herewith please find a sales tax letter and related documentation which provides for sales tax exemption for your ongoing project referenced above until the date of April 30, 2017. **Please remember to send copies of these (executed) documents to your subcontractors so they have updated documentation showing the extension.**

Also enclosed is an invoice to cover legal fees in the amount of \$300.00. This invoice is due at the time you receive this package.

Please return to me a copy of the signed Sales Tax Appointment Letter (keep original for your files), a copy of the signed Agent Agreement (keep original for your files) and a check made payable to Harris Beach PLLC in the amount of \$300.00.

If you have any questions regarding the enclosed or otherwise, please feel free to contact me or my paralegal, Lori Palmer at 419-8681.

Very truly yours,



Michael J. Townsend

MJT/lap
Enc.

RCD Properties, LLC
Attn: Ronald DiChario, Managing Member
90 Air Park Drive, Suite 304
Rochester, New York 14624

File # 49615-280108

Atty: MJT

December 5, 2016

FOR PROFESSIONAL SERVICES RENDERED AND COSTS INCURRED AS FOLLOWS:

Matter Name: County of Monroe Industrial Development Agency
RCD Properties, LLC – Sales Tax Exemption Extension
50 Air Park Drive in the Town of Chili, New York

<u>Legal Services Rendered As Agency Counsel</u>	<u>Amount</u>
Preparation of Sales Tax Exemption Extension package	\$300.00

AMOUNT DUE THIS INVOICE: \$300.00

Wire Instructions (if necessary):

ABA#: 021313103

Account #: 4199000096
Harris Beach PLLC Operating A/C

Bank: Citizens Bank

Reference: 49615-280108

PLEASE SEND REMITTANCE TO:
*Remember to include your file and invoice
Number on all remittances.*

HARRIS BEACH PLLC
Lori A. Palmer, Paralegal
99 Garnsey Road
Pittsford, New York 14534

TAX ID# 84-1623836

NOTICE

Please be advised NYS has now required IDAs to recapture from the approved project applicant, excess sales tax savings over and above the amount stated in the original sales tax package.

Therefore, please examine the amount of sales tax savings carefully because you (as the approved project applicant) will be required to reimburse NYS for any amount received over and above what was stated on the Form ST-60.

If you anticipate that your project sales tax amount will exceed the amount initially anticipated, please contact the Executive Director at COMIDA immediately [(585) 753-2000] whereupon the IDA will consider if a revised Form ST-60 can be issued.

*****VERY IMPORTANT*** - - The value of the sales tax exemption benefits claimed by the Company must not exceed the amount noted on the ST-60 Form.**

RCD Properties, LLC

December 1, 2016

1. Appointment letter– sign, return a copy to Michael Townsend, Esq. at Harris Beach PLLC, 99 Garnsey Road, Pittsford, New York 14534; keep original in your file.
2. Agent Agreement - COPY. Keep the original AND give a copy to appointed subagents.
3. Form ST-123 (Exhibit B-1 to Agent Agreement) – MAKE NUMEROUS COPIES OF THIS FORM. Use this form to purchase items directly from a vendor. You should fill in the top left side of the form with the respective vendor's name and address and sign and date the bottom of the form. Give a copy of said form to the vendor and keep a copy for your files.
4. Form ST-123 (Exhibit B-2 to Agent Agreement) - MAKE NUMEROUS COPIES OF THIS BLANK FORM – insert the name, address and tax ID of each respective subagent you appoint in the box at the top right; fill in the date of appointment of said subagent (left side of middle box). Then keep a copy of the form you've filled in for your records and give a copy to your subagent. ***Give copy of this blank form to respective subagents for them to use when purchasing items from their vendors – they should also make numerous copies as they will be required to fill in the vendor's name and address and sign and date the bottom of the form for each of their vendors.
5. Memo to "All Contractors et al" – keep original in your file and give a copy to all subagents.
6. Contract in Lieu of Exemption Certificate – to be executed by each party you assign as agent. Keep the original and the assigned agent receives a copy (not limited to equipment).
7. ST-60 Form with Direct Appointment box checked – keep a copy for your records and use a copy for each purchase. The original has been mailed to the State on your behalf.
8. ST-60 Form which is blank as to "Name of IDA project operator or agent" – MAKE NUMEROUS COPIES OF THIS BLANK FORM -- GIVE A BLANK COPY TO EACH SUBAGENT FOR THEM TO COPY AND ASSIGN FURTHER SUB-SUBAGENTS. For your self-appointed subagents, insert the name and tax ID of assigned agent in blank area of form; fill in the date you appoint said subagent in the box on the left/middle side of the form. Give a copy of this form to the subagent, keep a copy for your records and send the original to the State (address on form) within 30 days of appointment. These directions are to be used by the subagent as well when naming sub-subagents (if any). All subagents must have an ST-60 filed with NYS within 30 days of appointment.
9. ST-340 – Must be filled out and mailed by the end of February of each year until the Appointment letter provided by COMIDA expires. Send this form to the State at the address at the bottom of the form, with a copy to COMIDA.

How to Use the Sales Tax Exemption Package:

A. If making a purchase directly from a vendor, you must give the vendor a copy of the Form ST-123 (#3 above) and a copy of the ST-60 initially filed on your behalf by Harris Beach

(#7 above). This serves as proof to the vendor that you are exempt from sales tax for this project. The vendor will keep these copies for their files. Remember to keep a copy of the Form ST-123 and a copy of the ST-60 filed on your behalf, in your files for future use.

B. When appointing an agent, contractor or subcontractor, you must use the blank Form ST-123 included in this packet (#4 above) [REMEMBER TO MAKE NUMEROUS COPIES OF THIS FORM AS YOU MAY APPOINT MANY SUBAGENTS AND WILL NEED TO DO FOR EACH], fill in the name, address and tax ID number of each subagent in the box at the top right of the form and fill in the date of appointment of said subagent (bottom left side of middle box).

(i) The subagent will then use this form [SUBAGENT WILL NEED TO MAKE NUMEROUS COPIES OF THIS FORM AS WELL] when purchasing items directly from vendors by filling in the top left box with the vendor's name and address and signing the bottom of the form. Subagents should keep a copy of each ST-123 form they give so they can have for future reference.

C. When appointing an agent, contractor or subcontractor, you must fill in the middle section (appearing blank at this time) of the second ST-60 included in this packet (#8 above), with the agent's, contractor's or subcontractor's information, including their Tax ID number, fill in the date of appointment of said agent (middle left side of form) and mail a copy of this completed form to NYS at the address on that form. This must be done for each agent, contractor or subcontractor you appoint within thirty (30) days of the appointment of said agent. Give your agent, contractor or subcontractor a copy of what you file and keep a copy for your files. You should make extra copies of this blank ST-60 with the middle section blank for future use.

D. For each agent, contractor or subcontractor you appoint, the information on page 2 of the "Contract In Lieu of Exemption" (#6 above) will need to be filled in and signed by both you and the agent. A copy of this form, together with an executed copy of the Memo to "All Contractors et al" (#5 above) should then be given to the agent, contractor or subcontractor. Keep the original in your files. Because this must be done for each agent, contractor or subcontractor you appoint, you should make extra copies of the "blank", unsigned "Contract In Lieu of Exemption".

E. When your agent, contractor or subcontractor is purchasing directly from a vendor, they must give the vendor a copy of the Form ST-123 the agent/contractor/subcontractor has filled in for that respective vendor (see B(i) above). This Form should be the only proof the vendor needs that your agent, contractor or subcontractor is exempt from sales tax for this project. Your agent, contractor or subcontractor should keep copies of these forms for their files and future use.

****PLEASE NOTE, when/if the sales tax exemption package is extended by COMIDA, each of the forms referenced above is revised with a later termination date therefore, the extension documents should be substituted for the sales tax exemption forms being used at that time, in order to show the proper termination date.****



COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY

December 1, 2016

Ronald DiChario, Managing Member
RCD Properties, LLC
90 Air Park Drive, Suite 304
Rochester, New York 14624

**Re: Sales Tax Appointment Letter
County of Monroe Industrial Development Agency ("COMIDA")
RCD Properties, LLC Project located at 50 Air Park Drive in the Town
of Chili, New York 14624**

Dear Mr. DiChario:

Pursuant to a resolution duly adopted on September 15, 2015, the County of Monroe Industrial Development Agency ("COMIDA") appointed RCD Properties, LLC (the "Company") the true and lawful agent of COMIDA to assist with a certain project (the "Project") consisting of: (A) the acquisition by lease, license or otherwise, of an interest in an approximately 3.56-acre parcel of land located at 50 Air Park Drive in the Town of Chili, New York [Tax Map ID #: 135.03-1-16.122] (the "Land"); (B) the construction thereon of an approximately 33,000 square-foot multi-tenant building (collectively, the "Improvements"), approximately 13% of which will be used by the Company as office space, 30% of which is to be subleased to Trinity Research Center, LLC for use in its development of algorithms for educational platforms based on genetic and DNA screening, and the remainder of the Improvements will be leased to as-yet-unknown tenants; and (C) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "Equipment" and, together with the Land and the Improvements, the "Facility").

The COMIDA appointment created by this letter is limited to the Project, and will expire on **April 30, 2017**. This appointment may be extended by showing good cause. Total costs of the Project cannot exceed the project costs as detailed on the enclosed ST-60 form.

This appointment includes, and this letter evidences, authority to purchase on behalf of COMIDA all materials to be incorporated into and made an integral part of the Facility and the following activities as they relate to any construction, erection and completion of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral, or necessary and/or integral, part of such buildings and/or business: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the construction and equipping of the Facility; (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the construction and equipping of the Facility; and (iii) all purchases, leases, rentals and uses of

equipment, machinery and other tangible personal property (including installation costs), installed, placed or utilized in, upon or under the Facility or in the construction thereof.

The Company is appointed the primary agent of COMIDA, and is empowered to delegate such appointment, in whole or in part to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses including, but not limited to, the individuals and entities described on **Schedule A** attached to the Agent Agreement. The Company shall have the right to amend said **Schedule A** from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency. The Company hereby agrees to complete "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for each agent, subagent, contractor, subcontractor, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses who provide materials, equipment, supplies or services and execute said form as agent for the Agency (or have the general contractor, if any, or other designated subagent execute) and forward said form to the State Department of Taxation and Finance within thirty (30) days of appointment, as set forth in Paragraph 4(b) below.

The State of New York provides in § 874 of the General Municipal Law that Industrial Development Agencies are exempt from property and sales tax. However, the Company, as agent of the IDA, must follow certain steps. This delegation of appointment must be completed in the manner described in these instructions. If you experience any difficulty obtaining sales tax exemption, please do not proceed with your transaction; rather, immediately contact the undersigned.

1. **Form ST-123**. In exercising this appointment, the Company, or its assigned agent, must provide the supplier or vendor a copy of its (respective) Form ST-123 to show that the Company, or its agent, is acting as agent for COMIDA – See Exhibits B-1 and B-2 of the enclosed Agent Agreement for these forms. The supplier or vendor should identify the Facility on each bill or invoice and indicate thereon the name of the agent making the purchase. A copy of the Company's or agent's Form ST-123 may be accepted by such vendor or seller as a "statement and additional documentary evidence of such exemption" as provided by New York Tax Law § 1132(c)(1), thereby relieving such vendor or seller from the obligation to collect sales and use tax with respect to the Project.

There are two different ST-123 Forms as follows:

- (a) Exhibit B-1 to the Agent Agreement - This ST-123 appoints the Company (in the top right hand corner) as the primary agent of COMIDA for the Project. Please use photocopies of this form when making tax-exempt purchases directly from a vendor.
- (b) Exhibit B-2 to the Agent Agreement - This ST-123 is blank in the top right hand corner as to the "Name of Agent or Project Operator." This form must be photocopied and used to appoint each assigned agent. This form must be completed with the assigned agent's name and address. This is the form your assigned agents use when making tax-

exempt purchases for the Project. The Company, when filling in the ST-123 for the assigned agent, should place the date at the bottom of the box in the middle section showing when said agent was appointed.

2. Notice to "All Contractors, Subcontractors, Suppliers and Vendors, etc.". This Notice is to be provided to each party who the Company assigns to act on its behalf to work on the Project, rent or sell material, labor, supplies or services to the Project that would otherwise be subject to sales tax. To ensure sales tax exemption, this Notice instructs the party assigned to execute the "Contract in Lieu of Exemption Certificate".

3. "Contract in Lieu of Exemption Certificate". The Company and each of its assigned agents claiming a sales tax exemption in connection with the Project must execute a copy of the Contract in Lieu of Exemption Certificate. A signed copy must be retained by the Company.

4. ST-60 Forms. Two different ST-60 forms are enclosed, as follows:

- (a) The first ST-60 appoints the Company as the primary agent of COMIDA for the Facility. The original, executed form has been mailed to the New York State Department of Taxation and Finance (the "State"). Please use photocopies of this form when making tax-exempt purchases, providing a copy if requested.
- (b) The second ST-60 is blank as to the "Name of IDA Project Operator or Agent." This form may be photocopied and used in multiple to appoint an assigned agent. This form must be completed with the assigned agent's name, address and EIN number. For each assignment made, the Company is responsible for mailing a copy of the completed ST-60 to the State at the address at the bottom of the form within thirty (30) days of appointment.

5. ST-340. This is the annual report of sales and use tax exemptions claimed for the Project. The Company must complete this form by the end of February following each year this appointment is utilized. It is the Company's responsibility to file the completed ST-340 with the State at the address noted on the bottom of the form, and to send a copy of the completed form to COMIDA.

This letter is being issued pursuant to the Agent Agreement, dated September 15, 2015, by and between the Agency and the Company (the "Agent Agreement"). Please read the Agent Agreement thoroughly as it contains complete instructions regarding sales tax exemption. All agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project should be aware of the Agent Agreement and obtain a copy thereof.

This letter is provided for the sole express purpose of securing exemption from New York State Sales Tax for the Project only. No other principal/agent relationship is intended or may be implied or inferred by this letter.

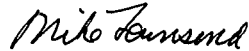
Except to the extent bond proceeds are used for the Project (to the extent bonds are issued by the Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order, in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder. By acceptance of this letter, the vendor hereby acknowledges the limitations on liability described herein.

If, for some reason, this transaction never closes, you will be liable for payment of the sales tax, if applicable, and if you are not otherwise exempt, on all materials purchased.

Please sign and return a copy of this letter for our files.

If you have any questions, please contact the undersigned at (585) 419-8656.

Sincerely,



Michael J. Townsend
Agency Counsel

ACCEPTED & AGREED:

RCD PROPERTIES, LLC

By: _____

Name: Ronald DiChario

Title: Managing Member

COPY

AGENT AGREEMENT

THIS AGENT AGREEMENT (hereinafter, the "Agent Agreement" or "Agreement"), made as of the 15th day of September, 2015, is by and between the **COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, having its offices at 8100 CityPlace, 50 W. Main Street, Rochester, New York 14614 (the "Agency") and **RCD PROPERTIES, LLC**, a New York limited liability company having offices at 90 Air Park Drive, Suite 304, Rochester, New York 14624 (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 55 of the Laws of 1972 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (A) the acquisition by lease, license or otherwise, of an interest in an approximately 3.56-acre parcel of land located at 50 Air Park Drive in the Town of Chili, New York [Tax Map ID #: 135.03-1-16.122] (the "Land"); (B) the construction thereon of an approximately 33,000 square-foot multi-tenant building (collectively, the "Improvements"), approximately 13% of which will be used by the Company as office space, 30% of which is to be subleased to Trinity Research Center, LLC for use in its development of algorithms for educational platforms based on genetic and DNA screening, and the remainder of the Improvements will be leased to as-yet-unknown tenants; and (C) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "Equipment" and, together with the Land and the Improvements, the "Facility"); and

WHEREAS, by Resolution adopted on September 15, 2015 (the "Resolution"), the Agency authorized the Company to act as its agent for the purposes of undertaking the Project subject to the Company entering into this Agent Agreement and, pursuant to the Resolution and this Agent Agreement, the Company has the power to delegate such agency, in whole or in part, to agents, subagents, contractors, subcontractors, contractors and subcontractors of such agents and subagents and to such other parties as the Company chooses including but not limited to the individuals and entities described on Schedule A attached hereto. The Company shall have the right to amend Schedule A from time to time and shall be responsible for maintaining an accurate list of all parties acting as agent for the Agency.

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Scope of Agency. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition of the Equipment and the installation thereof in and around the Facility. The right of the Company

COPY

to act as agent of the Agency shall expire on **December 31, 2015**, unless extended as contemplated by the Resolution. The aggregate amount of work performed as Agent for the Agency shall not exceed the amounts described in the Application of the Company in this matter. All contracts entered into by the Company as agent for the Agency shall include the following language:

"This contract is being entered into by **RCD PROPERTIES, LLC** (the "Agent"), as agent for and on behalf of the County of Monroe 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 incorporation and installation in certain premises located at 50 Air Park Drive in the Town of Chili, New York [Tax Map No. 135.03-1-16.122] (the "Premises"). The acquisition of the machinery, equipment and building materials to be incorporated and installed in the Premises and all services and rentals of equipment related to the acquisition, construction and equipping of the Project shall be exempt from all New York State and local sales and use taxes if the acquisition thereof is effected in accordance with the terms and conditions set forth in the attached sales tax exemption information letter of the Agency; and the Agent hereby represents that this contract is in compliance with the terms of the Agent Agreement by and between RCD Properties, LLC and the Agency, dated as of September 15, 2015. This contract is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever. By execution or acceptance of this contract, the vendor/contractor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

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

(a) The Company is a limited liability company formed and validly existing under the laws of the State of New York (the "State"), has the authority to enter into this Agreement and has duly authorized the execution and delivery of this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The Facility and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency

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harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (c).

(d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agreement.

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

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

(g) In accordance with Section 875(3) of the New York General Municipal Law, the Company covenants and agrees that, if it receives New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") from the Agency, and it is determined that: (i) the Company is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project, then the Company will (1) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (2) promptly pay over any such amounts

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to the Agency that the Agency demands in connection therewith. The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine New York State and local sales and use taxes due from the Company, together with any relevant penalties and interest due on such amounts.

(h) The Company further covenants and agrees that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in the amount up to \$1,531,000, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$122,480.

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

(j) The Company further covenants and agrees to file an annual statement with the State Department of Taxation and Finance on "Annual Report of Sales and Use Tax Exemptions" (NYS Form ST-340) regarding the value of sales and use tax exemptions the Company, its agents, subagents, consultants or subcontractors have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with General Municipal Law Section 874(8). The Company further covenants and agrees that it will, within thirty (30) days of each filing, provide a copy of same to the Agency; provided, however, in no event later than February 15th of each year. The Company understands and agrees that the failure to file such annual statement will result in the removal of the Company's authority to act as agent for the Agency.

(k) The Company acknowledges and agrees that all purchases made in furtherance of the Project shall be made using "IDA Agent or Project Operator Exempt Purchase Certificate" (NYS Form ST-123, copies of which are attached hereto as Exhibits B-1 and B-2, and it shall be the responsibility of the Company (and not the Agency) to complete NYS Form ST-123. The Company acknowledges and agrees that it shall identify the Project on each bill and invoice for such purchases and further indicate on such bills or invoices that the Company is making purchases of tangible personal property or services for use in the Project as agent of the Agency. For purposes of indicating who the purchaser is, the Company acknowledges and agrees that the bill or invoice should state, "I, [NAME OF COMPANY OR SUBAGENT], certify that I am a duly appointed agent of the County of Monroe 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 the agent agreement with the County of Monroe 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: "RCD Properties, LLC Project, 50 Air Park Drive, Chili, New York 14624 [Tax Map No. 135.03-1-16.122], and IDA OSC project number 2602-15-054A."

(1) The Company acknowledges and agrees that, except to the extent of bond proceeds (to the extent bonds are issued by the Agency with respect to the Project), the Agency shall not be liable, either directly or indirectly or contingently, upon any such contract, agreement, invoice, bill or purchase order in any manner and to any extent whatsoever (including payment or performance obligations), and the Company shall be the sole party liable thereunder.

3. Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, officers, members employees, agents (other than the Company), representatives, successors and assigns harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation, or the use thereof or the presence on, in or about the Facility or breach by the Company of this Agreement or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, constructing, equipping, owning and leasing of the Equipment or the Facility, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents (other than the Company) or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

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

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

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

(c) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the

property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law; and a blanket excess liability policy in the amount not less than \$3,000,000, protecting the Company against any loss or liability or damage for personal injury or property damage.

5. Additional Provisions Respecting Insurance. (a) All insurance required by Section 4 hereof shall name the Agency as an additional insured, as its interest may appear. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with commercially reasonable deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) at least thirty (30) days' prior written notice of the cancellation thereof to the Company and the Agency, except in the event of non-payment, in which at least ten (10) days' prior written notice of the cancellation shall be delivered to the Company and the Agency. All insurance requirements in Section 4 may be satisfied by blanket policies subject to the reasonable approval by the Agency; provided, however, that approval or acceptance by a commercial lender (if any) in connection with the financing of the Project shall not require approval by the Agency. All or some of Section 4 insurance requirements may be satisfied by an Owner Controlled Insurance Program ("OCIP") subject to approval by the Agency; provided, however, that approval or acceptance by a commercial lender in connection with the financing of the Project shall not require approval by the Agency.

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

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

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

To the Agency: County of Monroe Industrial Development Agency
8100 CityPlace, 50 W. Main Street
Rochester, New York 14614
Attn: Executive Director

COPY

With a copy to: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attn: Michael J. Townsend, Esq.

To the Company: RCD Properties, LLC
90 Air Park Drive, Suite 304
Rochester, New York 14624
Attn: Ronald DiChario, Managing Member

With a copy to: The Parrinello Law Firm, LLP
36 W. Main Street, Suite 400
Rochester, New York 14614
Attn: J. Matthew Parrinello, 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.

8. This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State 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 Monroe County, New York.

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

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

COPY

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 Agency or 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.

[Remainder of This Page Intentionally Left Blank]

COPY


[Signature Page to Agent Agreement]

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

Dated: September 15, 2015

**COUNTY OF MONROE INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____


Michael J. Townsend
Agency Counsel

Dated: September __, 2015

RCD PROPERTIES, LLC

By: _____

Ronald DiChario
Managing Member

COPY

SCHEDULE A

LIST OF APPOINTED AGENTS¹

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

¹ FOR EACH AGENT APPOINTED BY THE COMPANY, A NYS FORM ST-60 MUST BE COMPLETED AND FILED BY THE COMPANY WITH THE NYS DEPARTMENT OF TAXATION AND FINANCE IDA UNIT INDICATING THE APPOINTMENT OF SUCH AGENT OF THE COMPANY.



IDA Appointment of Project Operator or Agent For Sales Tax Purposes

ST-60

(4/13)

The industrial development agency or authority (IDA) must submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

For IDA use only

Name of IDA County of Monroe Industrial Development Agency		IDA project number (use OSC numbering system for projects after 1998) 2602-15-054A	
Street address 50 West Main Street, Suite 8100		Telephone number (585) 753-2000	
City Rochester		State NY	ZIP code 14614
Name of IDA project operator or agent	Mark an X in the box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or social security number	
Street address	Telephone number ()	Primary operator or agent? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
City	State	ZIP code	
Name of project RCD Properties, LLC Project	Purpose of project (see instructions) services		
Street address of project site 50 Air Park Drive			
City Chili (Town)		State NY	ZIP code 14624
Description of goods and services intended to be exempted from New York State and local sales and use taxes Materials, equipment, services and other tangible personal property used in connection with the construction and equipping of an approx. 33,000 sq. ft. multi-tenant building located at 50 Air Park Drive in the Town of Chili, Monroe County, New York.			
Date project operator or agent appointed (mm/dd/yy)	Date project operator or agent status ends (mm/dd/yy)	04/30/17	Mark an X in the box if this is an extension to an original project: <input checked="" type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: \$1,531,000 (All Agents, All In)		Estimated value of New York State and local sales and use tax exemption provided: \$122,480 (All Agents, All In)	
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 or employee signing on behalf of the IDA Michael J. Townsend		Print title Agency Counsel	
Signature <i>Mike Townsend</i>		Date	Telephone number (585) 419-8656

Instructions

Filing requirements

An IDA must file this form within 30 days of the date the IDA appoints any project operator or other person as agent of the IDA, for purposes of extending any sales and compensating use tax exemptions.

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA need not file this form if the IDA does not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, the IDA must, within 30 days of the change, file a new form with the new information.

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA must, within 30 days, send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. It should attach to the letter a copy of the form it originally filed. The IDA need not send a letter for a form that is not valid merely because the "Completion date of project" has passed.

Purpose of project

For Purpose of project, enter one of the following:

- Services
- Agriculture, forestry, fishing
- Finance, insurance, real estate
- Transportation, communication, electric, gas, sanitary services
- Construction
- Wholesale trade
- Retail trade
- Manufacturing
- Other (specify)

Mailing instructions

Mail completed form to:

**NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227**

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, 1036, 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?



Internet access: www.tax.ny.gov

(for information, forms, and publications)



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



**IDA Agent or Project Operator
Exempt Purchase Certificate**

Effective for projects beginning on or after June 1, 2014

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. See TSB-M-14(1.1)S, *Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities*, for more information.

Name of seller	Name of agent or project operator RCD Properties, LLC		
Street address	Street address 90 Air Park Drive, Suite 304		
City, town, or village	State	ZIP code	
Rochester	NY	14624	
Agent or project operator sales tax ID number (see instructions) N/A			

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 County of Monroe Industrial Development Agency			
Name of project RCD Properties, LLC Project		IDA project number (use OSC number) 2602-15-054A	
Street address of project site 50 Air Park Drive			
City, town, or village Chili (Town)		State NY	ZIP code 14624
Enter the date that you were appointed agent or project operator (mm/dd/yy) 09 / 15 / 2015		Enter the date that agent or project operator status ends (mm/dd/yy) 04 / 30 / 2017	

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

N/A 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.

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Need help?



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- check for new online services and features



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(for persons with hearing and

speech disabilities using a TTY):

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IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. See TSB-M-14(1.1)S, *Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities*, for more information.

Name of seller	Name of agent or project operator
Street address	Street address
City, town, or village State ZIP code	City, town, or village State ZIP code
Agent or project operator sales tax ID number (<i>see instructions</i>) N/A	

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 County of Monroe Industrial Development Agency		
Name of project RCD Properties, LLC Project	IDA project number (<i>use OSC number</i>) 2602-15-054A	
Street address of project site 50 Air Park Drive		
City, town, or village Chili (Town)	State NY	ZIP code 14624
Enter the date that you were appointed agent or project operator (<i>mm/dd/yy</i>)	/	/
Enter the date that agent or project operator status ends (<i>mm/dd/yy</i>)		04 / 30 / 2017

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
- N/A 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 (<i>include title and relationship</i>)	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.

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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.

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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).

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Misuse of this certificate

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- 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

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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

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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.

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Need help?

	<p>Visit our Web site at www.tax.ny.gov</p> <ul style="list-style-type: none"> • get information and manage your taxes online • check for new online services and features
	<p>Sales Tax Information Center: (518) 485-2889</p> <p>To order forms and publications: (518) 457-5431</p>
	<p>Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082</p>

TO: All Contractors, Subcontractors
Suppliers and Vendors, etc. of
RCD Properties, LLC

Attached please find a Contract in Lieu of Exemption Certificate (the "Contract") which will serve as documentation for not charging **RCD PROPERTIES, LLC** (the "Company") for sales or use tax in connection with any purchase, lease, rental and other use of materials, equipment, goods, services or supplies at the Facility owned by the County of Monroe Industrial Development Agency ("COMIDA") and described in Addendum A to the aforesaid Contract (the "Facility").

Also attached is a letter signed by COMIDA appointing the Company as its agent for the purpose of acquiring, constructing and equipping the Facility. This letter authorizes the Company to delegate its authority as agent of COMIDA to its agents, subagents, contractors, subcontractors, materialmen, suppliers, vendors and such other parties as the Company authorizes.

In accordance with the authority granted to the Company by COMIDA, you are hereby appointed as agent of COMIDA for the purpose of making purchases or leases of materials, equipment, goods, services and supplies to the Facility.

The blanks in the Contract are provided so that duplicates may be made of the Contract and Addendum A and forwarded to subcontractors and suppliers, as appropriate.

Very truly yours,

RCD PROPERTIES, LLC

By: _____
Name: Ronald DiChario
Title: Managing Member

CONTRACT IN LIEU OF EXEMPTION CERTIFICATE

THIS CONTRACT is entered into by and between **RCD PROPERTIES, LLC** (the "Company"), as agent for and on behalf of the **COUNTY OF MONROE INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation and a governmental agency of the State of New York, (hereinafter referred to as "COMIDA" or the "Owner" of the facility described in Addendum A hereto (the "Facility") and the contractor or the subcontractor more particularly described on page 2 hereof (hereinafter the "Contractor")).

Pursuant to the authority granted to the Company, as agent of COMIDA, the Contractor is hereby appointed agent of COMIDA for purposes of completing, executing or otherwise carrying out the obligations imposed under this Contract.

The Contractor acknowledges that COMIDA holds title to and owns the Facility and that COMIDA is a public benefit corporation and governmental entity of the State of New York. By reason of such status, the Owner and its agents acting on its behalf are exempt from payment of all New York State and local sales and use taxes on the purchase or lease of all materials, equipment, goods, services and supplies incorporated into and made an integral component part of any structure, building or real property which becomes the property of the Owner, and all equipment, machinery and other tangible personal property (including installation costs with respect thereto) which becomes the property of the Owner. In addition, the Owner and its agents acting on its behalf, are exempt from all sales and use taxes arising out of or connected with the following, as they relate to performance under this Contract: (i) purchases, leases, rentals, uses of tools, machinery and equipment and (ii) purchase, leases, rentals, uses or consumption of supplies, goods, materials and services of every kind and description; provided however, that exemption from sales and use tax with respect to clauses (i) and (ii) above shall apply only if the Contractor is then acting as agent for the Owner under the terms of this Contract.

Pursuant to these exemptions from sales and use taxes, the Contract shall not include such taxes in its contract price, bid, or reimbursable costs, as the case may be. If the Contractor does not comply with the requirements for sales and use tax exemptions, as described above, then it shall be responsible for and pay any and all applicable New York State sales and use taxes, and no portion thereof shall be charged or billed to the Owner or to the Company directly or indirectly, the intent of this Contract being that neither the Owner nor the Company shall be liable for any of the sales or use taxes described above. This Contract may be accepted by the Contractor in lieu of an exemption certificate and the Contractor shall retain a copy thereof to substantiate the sales and use tax exemption.

The aforesaid appointment of the Company as agent of COMIDA to acquire, construct and equip the Facility shall expire at the earlier of (a) the completion of such activities and improvements, or (b) **April 30, 2017**; provided, however, such appointment may be extended at the discretion of COMIDA, upon the written request of the Company if such activities and improvements are not completed by such time, and further provided that the appointment shall not unreasonably withhold its consent to the extension of such appointment.

The Owner shall have the right to assign this Contract to the Company by written notice to the Contractor and without written consent of the Contractor, in which case the Owner shall be relieved of all obligations hereunder. In the event of such assignment, all applicable sales and use taxes shall be added to the purchase price and paid to the Contractor pursuant to a change order. All of the above provisions with respect to exemptions for New York State sales and use taxes shall apply to all subcontractors and other parties in privity of contract with the Company, the Owner or the Contractor pursuant to the terms of this Contract.

OWNER:

RCD PROPERTIES, LLC,
as Agent for and on behalf of the
COUNTY OF MONROE INDUSTRIAL
DEVELOPMENT AGENCY

(Insert name of Contractor or Subcontractor)

By: _____

Name:

Title:

Date: _____

By: _____

Name: Ronald DiChario

Title: Managing Member

Date: _____

Address of Contractor or Subcontractor

ADDENDUM A

DESCRIPTION OF THE PROJECT AND FACILITY

The "Project" consists of: (A) the acquisition by lease, license or otherwise, of an interest in an approximately 3.56-acre parcel of land located at 50 Air Park Drive in the Town of Chili, New York [Tax Map ID #: 135.03-1-16.122] (the "Land"); (B) the construction thereon of an approximately 33,000 square-foot multi-tenant building (collectively, the "Improvements"), approximately 13% of which will be used by the Company as office space, 30% of which is to be subleased to Trinity Research Center, LLC for use in its development of algorithms for educational platforms based on genetic and DNA screening, and the remainder of the Improvements will be leased to as-yet-unknown tenants; and (C) the acquisition and installation therein, thereon or thereabout of certain machinery, equipment and related personal property (the "Equipment" and, together with the Land and the Improvements, the "Facility").

HARRIS BEACH PLLC
ATTORNEYS AT LAW

December 1, 2016

99 GARNSEY ROAD
PITTSFORD, NY 14534
(585) 419-8800

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

LORI A. PALMER
PARALEGAL
DIRECT: (585) 419-8681
FAX: (585) 419-8816
LPALMER@HARRISBEACH.COM

NYS Tax Department, IDA Unit
Building 8, Room 657
W. A. Harriman Campus
Albany, New York 12227

**Re: County of Monroe Industrial Development Agency
Extension of Sales Tax Appointment of Project Operator or Agency**

Dear Sir/Madam:

On behalf of the County of Monroe Industrial Development Agency, I have enclosed, for filing, a *revised* NYS Form ST-60 for **RCD Properties, LLC**, as agent. The only change to this form is the extension of the exemption thru April 30, 2017.

If you have any questions or concerns regarding the foregoing, please don't hesitate to contact me at (585) 419-8681. Thank you.

Very truly yours,



Lori A. Palmer
Paralegal

Enclosure

cc: COMIDA
Ronald C. DiChario



IDA Appointment of Project Operator or Agent For Sales Tax Purposes

ST-60

(4/13)

The industrial development agency or authority (IDA) must submit this form within 30 days of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

For IDA use only

Name of IDA County of Monroe Industrial Development Agency		IDA project number (use OSC numbering system for projects after 1998) 2602-15-054A	
Street address 50 West Main Street, Suite 8100		Telephone number (585) 753-2000	
City Rochester		State NY	ZIP code 14614
Name of IDA project operator or agent RCD Properties, LLC	Mark an X in the box if directly appointed by the IDA: <input checked="" type="checkbox"/>	Employer identification or social security number 47-2346860	
Street address 90 Air Park Drive, Suite 304	Telephone number (585) 436-3400	Primary operator or agent? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
City Rochester	State NY	ZIP code 14624	
Name of project RCD Properties, LLC Project	Purpose of project (see instructions) services		
Street address of project site 50 Air Park Drive			
City Chili (Town)	State NY	ZIP code 14624	
Description of goods and services intended to be exempted from New York State and local sales and use taxes Materials, equipment, services and other tangible personal property used in connection with the construction and equipping of an approx. 33,000 sq. ft. multi-tenant building located at 50 Air Park Drive in the Town of Chili, Monroe County, New York.			
Date project operator or agent appointed (mm/dd/yy) 09/15/15	Date project operator or agent status ends (mm/dd/yy) 04/30/17	Mark an X in the box if this is an extension to an original project: <input checked="" type="checkbox"/>	
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: \$1,531,000 (All Agents, All In)	Estimated value of New York State and local sales and use tax exemption provided: \$122,480 (All Agents, All In)		
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 or employee signing on behalf of the IDA Michael J. Townsend		Print title Agency Counsel	
Signature 	Date 12/01/2016	Telephone number (585) 419-8656	

Instructions

Filing requirements

An IDA must file this form within 30 days of the date the IDA appoints any project operator or other person as agent of the IDA, for purposes of extending any sales and compensating use tax exemptions.

The IDA must file a separate form for each person it appoints as agent, whether directly or indirectly, and regardless of whether the person is the primary project operator or agent. If the IDA authorizes a project operator or agent to appoint other persons as agent of the IDA, the operator or agent making such an appointment must advise the IDA that it has done so, so that the IDA can file a form within 30 days of the date of the new agent's appointment. The IDA should not file this form for a person hired to work on an IDA project if that person is not appointed as agent of the IDA. The IDA need not file this form if the IDA does not extend any sales or use tax exemption benefits for the project.

If an IDA modifies a project, such as by extending it beyond its original completion date, or by increasing or decreasing the amount of sales and use tax exemption benefits authorized for the project, the IDA must, within 30 days of the change, file a new form with the new information.

If an IDA amends, revokes, or cancels the appointment of an agent, or if an agent's appointment becomes invalid for any reason, the IDA must, within 30 days, send a letter to the address below for filing this form, indicating that the appointment has been amended, revoked, or cancelled, or is no longer valid, and the effective date of the change. It should attach to the letter a copy of the form it originally filed. The IDA need not send a letter for a form that is not valid merely because the "Completion date of project" has passed.

Purpose of project

For Purpose of project, enter one of the following:

- Services
- Agriculture, forestry, fishing
- Finance, insurance, real estate
- Transportation, communication, electric, gas, sanitary services
- Construction
- Wholesale trade
- Retail trade
- Manufacturing
- Other (specify)

Mailing instructions

Mail completed form to:

**NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227**

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?

	Internet access: www.tax.ny.gov (for information, forms, and publications)
	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



Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

For Period Ending December 31, (enter year)

Project information

Name of IDA agent/project operator: RCD Properties, LLC; Federal employer identification number (FEIN): 47-2346860; Street address: 90 Air Park Drive, Suite 304; Telephone number: (585) 436-3400; City: Rochester; State: New York; ZIP code: 14624.

Name of IDA: County of Monroe Industrial Development Agency

Name of project: RCD Properties, LLC Project; IDA OSC Project #: 2602-15-054A; Street address of project site: 50 Air Park Drive; City: Chili (Town); State: New York; ZIP code: 14624.

1 Project purpose (mark an X in the appropriate box): [X] Services, [] Construction, [] Agriculture, forestry, fishing, [] Wholesale trade, [] Retail trade, [] Finance, insurance or real estate, [] Transportation, communication, electric, gas, or sanitary services, [] Manufacturing, [] Other (specify)

2 Date project began (mm/dd/yy): 09 / 15 / 2015

3 Beginning date of construction or installation (mm/dd/yy; see instructions): / / ; [] actual [] expected

4 Completion date of construction phase of project (mm/dd/yy; see instructions): / / ; [] actual [] expected

5 Completion date of project (mm/dd/yy; see instructions): 04 / 30 / 2017 ; [] actual [] expected

6 Duration of project (actual or expected; years/months): /

7 Total sales and use tax exemptions (actual tax savings; NOT total purchases) 7 \$

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 signing for the IDA agent/project operator | Title of person signing

Signature | Date

Failure to annually file a complete report may result in the removal of 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.

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 operator(s) directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operator(s) should **not** themselves file Form ST-340. However, the agent/project operator(s) must include on Form ST-340 information obtained from such contractors, subcontractors, consultants, and agents, as described below.

What must be reported?

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 obtained by the agent/project operator; and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

The report requires only the **total combined** exemptions obtained by the above people. A break down of the total is not required. However, since the report must include the value of the exemptions they obtained, the agent/project operator must keep records of the amounts others report to the agent/project operator.

It is important that the agent/project operator make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available so that the agent/project operator can comply with the annual reporting requirements.

Do not include in this report the amount of any sales and use tax exemptions arising out of 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).

See instructions below for additional information required.

When is the report 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 the name, address, federal employer identification number (FEIN), and telephone number of the IDA agent/project operator.

Name of IDA agent/project operator's authorized representative

Enter the name, address, title (for example, attorney or accountant), and telephone number of the individual authorized by the IDA agent/project operator to submit this report.

Name of IDA

Enter the name and address of the IDA. If more than one IDA is involved in a particular project, the IDA agent/project operator must file a separate report for the tax exemptions attributable to each IDA.

Name of project

Enter the name of the project and the address of the project site. If the IDA agent is involved in more than one project, a separate report must be filed by the IDA agent/project operator for each project, even if authorized by the same IDA.

Line instructions

Line 1 — Project purpose — Mark an **X** in the box that identifies the purpose of the project. If you mark *Other*, please be specific in identifying its purpose.

Line 2 — 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.

Line 3 — Enter the date you, or your general contractor or subcontractor, actually began, or expect to begin, construction or installation on the project. Mark an **X** in the appropriate box to indicate if the date entered is actual or expected. If the project does not involve any construction, enter **Does not apply**.

Line 4 — Enter the date the construction phase of the project was completed or is expected to be completed. Mark an **X** in the appropriate box to indicate if the date entered is actual or expected.

Line 5 — 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.

Line 6 — Enter the total number of years and months from the project's inception to its completion or expected completion.

Line 7 — Enter the total amount of New York State and local sales and use taxes exempted during the reporting period (if none, enter **0**) as a result of the project's receipt of IDA financial assistance. 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 on line 7.

Signature area

Enter the name and title of the person signing on behalf of the IDA agent/project operator (for example, the IDA agent/project operator's officer, employee, or other authorized representative). The IDA agent/project operator's officer, employee, or authorized representative must sign the report. Enter the date signed.

Mail completed report to: **NYS Tax Department, IDA Unit, W A Harriman Campus, Albany NY 12227.**

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Internet access: www.tax.ny.gov
(for information, forms, and publications)



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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.

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