

## SALES AND USE TAX EXEMPTION INCREASE AND EXTENSION AGREEMENT

This Sales and Use Tax Exemption Increase and Extension Agreement is dated May 4, 2020. Pursuant to a request made by V&S New York Galvanizing LLC (the "Company"), the Tioga County Industrial Development Agency (the "Agency") hereby increases the sales and use tax amount from \$671,200.00 to \$771,000.00 and extends said Sales and Use Tax Agreement through, and including, August 31, 2020. Sales and use tax exemption benefits in excess of the amounts authorized or outside the terms defined by the Agency as part of the Project are subject to termination, modification or recapture by the Agency. The increase and extension are granted in order to allow the Company to construct and equip a 70,800+/- square foot building located on the west side of State Route 38 in the Town of Owego, Tioga County and State of New York to be used as a steel galvanizing production facility (the "Project").

It is the intent of the Agency that this Agency appointment include, from the effective date of such appointment, authority to purchase, lease and otherwise use on behalf of the Agency materials, equipment, goods, services and supplies to be incorporated into and made an integral part of the Project and also include the following activities as they relate to the construction and equipping of any buildings or improvements, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings or improvements: (i) purchases, leases, rentals and other uses of tools, machinery and equipment in connection with constructing and equipping the Project, (ii) purchases, leases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with constructing and equipping the Project, including utility services, and (iii) purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in, upon or under the Project.

This Agency appointment includes the power to delegate such Agency appointment, in whole or in part, to agents, subagents, contractors, and subcontractors of the Company and to such other parties as the Company chooses so long as they are engaged, directly or indirectly, in the activities hereinbefore described.

In exercising this Agency appointment, the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency. The Company, its agents, subagents, contractors and subcontractors should identify the Project as the "V&S New York Galvanizing LLC Project" on each bill or invoice and indicate thereon that the Company, its agents, subagents, contractors and subcontractors acted as agent for the Tioga County Industrial Development Agency in making the purchase. **You and each of your agents, subagents, contractors and/or subcontractors claiming a sales and use tax exemption in connection with the Project must execute a copy of the Contract in Lieu of Exemption Certificate and complete a New York State Department of Taxation and Finance Form ST-60. Original copies of each Contract in Lieu of Exemption Certificate and completed Form ST-60 must be delivered to the Agency within five (5) days of the appointment of each of your agents, subagents, contractors or subcontractors. Any agent, subagent, contractor or subcontractor of the Company which delivers a completed Form ST-60 to the Agency will**

**be deemed to be the agent, subagent, contractor or subcontractor of the Agency for purposes of constructing and equipping the Project. Failure to comply with these requirements may result in loss of sales and use tax exemptions for the Project.**


In order to be entitled to use the exemption from New York State Sales and Use Taxes ("Sales and Use Tax"), the Company, its agents, subagents, contractors and subcontractors, if any, should complete an Agency or Project Operator Exempt Purchase Certificate NYS Form ST-123, to show that the Company, its agents, subagents, contractors and subcontractors are each acting as agent for the Agency in making the purchases of tangible personal property or services for use in the Project. In connection therewith, it is necessary for the Company, its agents, subagents, contractors and subcontractors to identify the Project on each bill or invoice and indicate thereon which of the Company's agents, subagents, contractors and subcontractors acted as agent for the Agency in making the purchases.

You should be aware that the New York State General Municipal Law requires you to file an Annual Statement with the New York State Department of Taxation and Finance, Form 340, regarding the value of sales and use tax exemptions you, your agents, subagents, contractors or subcontractors have claimed pursuant to the authority we have conferred on you with respect to this Project. The Company is required to provide a copy of same to the Agency within thirty (30) days of each filing; provided, however, in no event later than February 15<sup>th</sup> of each year. The penalty for failure to file such statement is the removal of your authority to act as our agent.

The aforesaid appointment of the Company as agent of the Agency to construct and equip the Project shall expire at the earlier of (a) the completion of such activities and improvements, (b) August 31, 2020, provided, however, such appointment may be extended at the discretion of the Agency, upon the written request of the Company, if such activities and improvements are not completed by such time, and further provided that the Agency shall not unreasonably withhold its consent to the extension of such appointment, or (c) upon the expiration or termination of the Lease Term.

The Company acknowledges receipt of a copy of Section 875 of the New York State General Municipal Law, a copy of which is attached hereto as Exhibit "A", and agrees to the terms thereof as a condition precedent to receiving or benefiting from a New York State sales and use tax exemption.

V&S NEW YORK GALVANIZING LLC

By:   
TROY GAERKE, CFO

TIOGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY


By:   
Christine Curtis  
Executive Administrator

EXHIBIT "A"

SECTION 875 OF THE  
NEW YORK STATE GENERAL MUNICIPAL LAW

(See Attached)



Effective: March 28, 2013

McKinney's Consolidated Laws of New York Annotated Currentness

General Municipal Law (Refs & Annos)

Chapter 24. Of the Consolidated Laws

▣ Article 18-A. Industrial Development

▣ Title 1. Agencies, Organization and Powers (Refs & Annos)

⇒⇒ § 875. Special provisions applicable to state sales and compensating use taxes and certain types of facilities

1. For purposes of this section: "state sales and use taxes" means sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight. "IDA" means an industrial development agency established by this article or an industrial development authority created by the public authorities law. "Commissioner" means the commissioner of taxation and finance.

2. An IDA shall keep records of the amount of state and local sales and use tax exemption benefits provided to each project and each agent or project operator and shall make such records available to the commissioner upon request. Such IDA shall also, within thirty days of providing financial assistance to a project that includes any amount of state sales and use tax exemption benefits, report to the commissioner the amount of such benefits for such project, the project to which they are being provided, together with such other information and such specificity and detail as the commissioner may prescribe. This report may be made in conjunction with the statement required by subdivision nine of section eight hundred seventy-four of this title or it may be made as a separate report, at the discretion of the commissioner. An IDA that fails to make such records available to the commissioner or to file such reports shall be prohibited from providing state sales and use tax exemption benefits for any project unless and until such IDA comes into compliance with all such requirements.

3. (a) An IDA shall include within its resolutions and project documents establishing any project or appointing an agent or project operator for any project the terms and conditions in this subdivision, and every agent, project operator or other person or entity that shall enjoy state sales and use tax exemption benefits provided by an IDA shall agree to such terms as a condition precedent to receiving or benefiting from such state sales and use exemptions benefits.

(b) The IDA shall recover, recapture, receive, or otherwise obtain from an agent, project operator or other person or entity state sales and use exemptions benefits taken or purported to be taken by any such person to which the person is not entitled or which are in excess of the amounts authorized or which are for property or services not authorized

or taken in cases where such agent or project operator, or other person or entity failed to comply with a material term or condition to use property or services in the manner required by the person's agreement with the IDA. Such agent or project operator, or other person or entity shall cooperate with the IDA in its efforts to recover, recapture, receive, or otherwise obtain such state sales and use exemptions benefits and shall promptly pay over any such amounts to the IDA that it requests. The failure to pay over such amounts to the IDA shall be grounds for the commissioner to assess and determine state sales and use taxes due from the person under article twenty-eight of the tax law, together with any relevant penalties and interest due on such amounts.

(c) If an IDA recovers, recaptures, receives, or otherwise obtains, any amount of state sales and use tax exemption benefits from an agent, project operator or other person or entity, the IDA shall, within thirty days of coming into possession of such amount, remit it to the commissioner, together with such information and report that the commissioner deems necessary to administer payment over of such amount. An IDA shall join the commissioner as a party in any action or proceeding that the IDA commences to recover, recapture, obtain, or otherwise seek the return of, state sales and use tax exemption benefits from an agent, project operator or other person or entity.

(d) An IDA shall prepare an annual compliance report detailing its terms and conditions described in paragraph (a) of this subdivision and its activities and efforts to recover, recapture, receive, or otherwise obtain state sales and use exemptions benefits described in paragraph (b) of this subdivision, together with such other information as the commissioner and the commissioner of economic development may require. The report required by this subdivision shall be filed with the commissioner, the director of the division of the budget, the commissioner of economic development, the state comptroller, the governing body of the municipality for whose benefit the agency was created, and may be included with the annual financial statement required by paragraph (b) of subdivision one of section eight hundred fifty-nine of this title. Such report required by this subdivision shall be filed regardless of whether the IDA is required to file such financial statement described by such paragraph (b) of subdivision one of section eight hundred fifty-nine. The failure to file or substantially complete the report required by this subdivision shall be deemed to be the failure to file or substantially complete the statement required by such paragraph (b) of subdivision one of such section eight hundred fifty-nine, and the consequences shall be the same as provided in paragraph (e) of subdivision one of such section eight hundred fifty-nine.

(e) This subdivision shall apply to any amounts of state sales and use tax exemption benefits that an IDA recovers, recaptures, receives, or otherwise obtains, regardless of whether the IDA or the agent, project operator or other person or entity characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The provisions of this subdivision shall also apply to any interest or penalty that the IDA imposes on any such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that an IDA recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be state sales and use taxes and the IDA shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of the state.

4. The commissioner shall deposit and dispose of any amount of any payments or moneys received from or paid over by an IDA or from or by any person or entity, or received pursuant to an action or proceeding commenced by an IDA, together with any interest or penalties thereon, pursuant to subdivision three of this section, as state sales

and use taxes in accord with the provisions of article twenty-eight of the tax law. The amount of any such payments or moneys, together with any interest or penalties thereon, shall be attributed to the taxes imposed by sections eleven hundred five and eleven hundred ten, on the one hand, and section eleven hundred nine of the tax law, on the other hand, or to any like taxes or fees imposed by such article, based on the proportion that the rates of such taxes or fees bear to each other, unless there is evidence to show that only one or the other of such taxes or fees was imposed or received or paid over.

5. The statement that an IDA is required by subdivision nine of section eight hundred seventy-four of this article to file with the commissioner shall not be considered an exemption or other certificate or document under article twenty-eight or twenty-nine of the tax law. The IDA shall not represent to any agent, project operator, or other person or entity that a copy of such statement may serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of such statement to any person required to collect sales or use taxes as the basis to make any purchase exempt from tax. No such person required to collect sales or use taxes may accept such a statement in lieu of collecting any tax required to be collected. The civil and criminal penalties for misuse of a copy of such statement as an exemption certificate or document or for failure to pay or collect tax shall be as provided in the tax law. In addition, the use by an IDA or agent, project operator, or other person or entity of such statement, or the IDA's recommendation of the use or tendering of such statement, as such an exemption certificate or document shall be deemed to be, under articles twenty-eight and thirty-seven of the tax law, the issuance of a false or fraudulent exemption certificate or document with intent to evade tax.
6. The commissioner is hereby authorized to audit the records, actions, and proceedings of an IDA and of its agents and project operators to ensure that the IDA and its agents and project operators comply with all the requirements of this section. Any information the commissioner finds in the course of such audit may be used by the commissioner to assess and determine state and local taxes of the IDA's agent or project operator.
7. In addition to any other reporting or filing requirements an IDA has under this article or other law, an IDA shall also report and make available on the internet, without charge, copies of its resolutions and agreements appointing an agent or project operator or otherwise related to any project it establishes. It shall also provide, without charge, copies of all such reports and information to a person who asks for it in writing or in person. The IDA may, at the request of its agent or project operator delete from any such copies posted on the internet or provided to a person described in the prior sentence portions of its records that are specifically exempted from disclosure under article six of the public officers law.
8. In consultation with the commissioner of economic development, the commissioner of taxation and finance is hereby authorized to adopt rules and regulations and to issue publications and other guidance implementing the provisions of this section and of the other sections of this article relating to any state or local tax or fee, or exemption or exclusion therefrom, that the commissioner administers and that may be affected by any provision of this article, and any such rules and regulations of the commissioner shall have the same force and effect with respect to such taxes and fees, or amounts measured in respect of them, as if they had been adopted by the commissioner pursuant to the authority of the tax law.
9. To the extent that a provision of this section conflicts with a provision of any other section of this article, the pro-

visions of this section shall control.

CREDIT(S)

(Added L.2013, c. 59, pt. J, § 2, eff. March 28, 2013.)

Current through L.2014, chapters 1 to 552.

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