PROJECT AGREEMENT

THIS PROJECT AGREEMENT (hereinafter, the "Project Agreement"), is made as of March 21, 2022, by and between the **TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York, with offices at 401 E. State Street, Suite 402B, Ithaca, New York 14850 (the "Agency"), and **NSF ENFIELD SITE 2, LLC,** a New York limited liability company formed and validly existing under the laws of the State of New York, with offices at 700 Universe Boulevard, Juno Beach, Florida 33408 (the "Company").

W I T N E S S E T H:

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 (the "State"); 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 the Agency of a leasehold or other interest in approximately 48.873 acres of certain real property located on Applegate Road South and 1805 Mecklenburg Road, Town of Enfield, Tompkins County, New York (the "Land", being more particularly identified as tax map number 9.-1-27.1), (B) the planning, design, construction and operation of a 5MWac PV solar electrical generation system, including panel foundations, inverters, transformers, interconnect wiring, utility connections, sitework, landscaping, fencing, security and related improvements (the "Improvements"), and (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other items of tangible personal use including, but not limited to, posts, racking solar modules, concrete pads, transformers and inverters (the "Equipment"; and, together with the Land and the Improvements, the "Facility"); and

WHEREAS, by Resolution adopted on August 11, 2021 (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 Project Agreement; and

WHEREAS, by the Resolution, the Agency approved certain financial assistance for the benefit of the Company in connection with the Project consisting of: (a) an exemption from all New York State and local sales and use tax for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility, and (b) a partial abatement from real property taxes conferred through a certain tax agreement, by and between the Agency and the Company (the "Tax Agreement"), requiring the Company to make payments-in-lieu-of-taxes for the benefit of each municipality and school district having taxing jurisdiction over the Project (collectively, (a) through (b) are hereinafter collectively referred to as, the "Financial Assistance"); and

WHEREAS, pursuant to and in accordance with Sections 859-a and 874 of the Act, the Agency requires, as a condition and as an inducement for it to provide any Financial Assistance, that the Company enter into this Project Agreement for the purposes of, among other things, to

govern the administration of, and provide assurances with respect to, the provision and recapture of said Financial Assistance upon the terms herein set forth; and

WHEREAS, this Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

WHEREAS, no agency appointment of the Company or any subagent thereof, nor any amount of Financial Assistance shall be provided to the Company by the Agency prior to the effective date of this Project Agreement.

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

ARTICLE I.
DEFINITIONS

Section 1.1 Definitions of Terms. The words and terms as used in this Project shall have the same meanings as used in **Schedule A** attached hereto and made a part hereof, unless the context or use indicates another or different meaning or intent.

ARTICLE II.
REPRESENTATIONS AND COVENANTS

Section 2.1 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/Facility:

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

(b) Neither the execution and delivery of this Project Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Project Agreement will to the best of the Company's knowledge 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 in all material respects with all applicable zoning, planning, and building laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this Section 2.1(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 Project Agreement.

(e) The Company covenants that the Facility will comply in all material respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, and except as disclosed in writing pursuant to the Phase I Environmental Site Assessment Report dated December, 2021, (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) that 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 the Facility, and any existing asbestos will be handled in accordance with applicable laws, (iv) that no underground storage tanks will be located on the Facility, and (v) that to the best of the Company's knowledge 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 2.1(e) shall promptly 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 2.1(e). 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 within thirty (30) days of demand therefor.

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

(g) The Company hereby represents to the Agency that facilities and property that are primarily used in making retail sales of goods and services to customers who personally visit the Facility, if any, will not constitute more than one-third (1/3) of the total costs of the Facility, except in accordance with New York General Municipal Law (the "GML") Section 862.

(h) 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.

(i) The Company covenants and agrees that at all times, it will (i) maintain its existence and not dissolve, (ii) continue to be a limited liability company subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business in the State, (iii) not liquidate, wind-up or dissolve or otherwise sell, assign, or dispose of all or substantially all of its

assets. This Project Agreement may not be assigned to another company in whole or part without the prior written consent of the Agency.

(j) The Company confirms and acknowledges under the penalty of perjury that as of the date hereof, the Company, as owner, occupant, or operator of the Project receiving Financial Assistance from the Agency in connection with the Project, is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations. The Company agrees that it will, throughout the term of this Project Agreement, promptly comply in all material respects with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof. Notwithstanding the foregoing, the Company may in good faith contest the validity of the applicability of any requirement of the nature referred to this Section 2.1(j). In such event, the Company, with the prior written consent of the Agency (which shall not be unreasonably conditioned, delayed or withheld), may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom.

(k) The Company covenants that it will comply with the Off-Site Commercial Solar Photovoltaic Policy of the Agency, attached hereto as **Exhibit G**.

(l) The Company covenants that it will comply with the Labor Utilization Policy of the Agency, attached hereto as **Exhibit H**, which requires providing documentation that construction bids were solicited from local and monthly construction labor reporting as outlined in the Labor Utilization Policy of the Agency.

ARTICLE III.
GENERAL

Section 3.1 Purpose of Project. The purpose of the Financial Assistance with respect to the Project is to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Facility, to advance job opportunities, health, general prosperity and economic welfare of the people of Tompkins County, New York, and to specifically promote the investment commitment, employment commitment, and other commitments of the Company contained herein and in the Company's Application.

ARTICLE IV.
FINANCIAL ASSISTANCE AND RECAPTURE OF BENEFITS

Section 4.1 In accordance with the Resolution and the Cost-Benefit Analysis (or such other equivalent document or report, as determined by the Agency) (the "CBA"), attached hereto as **Exhibit A**, disclosed by the Agency at its public hearing for the Project (the "Public Hearing"), the Company further: (i) covenants, with respect to the Sales Tax Exemption (as defined in Section 4.3(d) hereof), that it shall comply with this Project Agreement, specifically, but not limited to, Section 4.3 hereof; and (ii) confirms that real property tax abatement to be provided to

the Company shall conform to those disclosed within the CBA at the Public Hearing for the Project and as contained within the Tax Agreement, the terms of which Tax Agreement shall comply with the Agency's Uniform Tax Exemption Policy (the "UTEP"). If the terms of the Tax Agreement deviate from the UTEP, the Agency has or will comply with procedures for deviation from the UTEP.

Section 4.2 Tax Agreement. The parties hereto have executed or will execute the Lease Agreement, the Leaseback Agreement and the Tax Agreement. As provided in the Tax Agreement, the Company agrees to certain payments (as described in the Tax Agreement) in addition to paying all special ad valorem levies, special assessments or special district taxes and service charges against real property in the jurisdiction where the Facility is located.

Section 4.3 Sales Tax Exemption.

(a) The Agency hereby appoints and confirms its appointment of the Company as the true and lawful agent of the Agency to undertake the Project. Such appointment was made by the Agency pursuant to the Resolution and this Project Agreement.

(b) The Company, as agent of the Agency, will undertake the Project. The Company hereby agrees to limit its activities as agent of the Agency under the authority of the Resolution to acts reasonably related to the acquisition, construction and equipping of the Facility. The right of the Company to act as agent of the Agency shall expire on the earlier of (x) the completion of the Project, or (y) **December 31, 2022** ("Termination Date"); provided, however, that the Agency, through its Administrative Director, may extend the Company's agent appointment at its discretion 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.

(c) Agency's Exempt Status. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of Sales and Use Taxes. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required. Notwithstanding the foregoing, the Agency makes no representation to the Company, any Agent (as defined in **Schedule C** attached hereto) or any third party that any Sales Tax Exemption is available under this Project Agreement.

(d) Scope of Authorization of Sales Tax Exemption. The Agency hereby authorizes the Company, subject to the terms and conditions of this Project Agreement, to act as its agent in connection with the Project for the purpose of effecting purchases and leases of certain items so that such purchases and leases are exempt from the imposition of Sales and Use Taxes (the "Sales Tax Exemption"). The Agency's authorization with respect to such Sales Tax Exemption provided to the Company and its Agents pursuant to this Project Agreement shall be subject to the following limitations:

(i) The Sales Tax Exemption shall be effective only for a term commencing on the date hereof and expiring upon the earliest of (A) the termination of this Project Agreement, (B) the Termination Date, (C) failure of the Company to file

Form ST-340, as described in Section 4.5 below, (D) the termination of the Sales Tax Exemption authorization pursuant to Section 6.2 or (E) the date upon which the Company received the Maximum Sales Tax Exemption (as defined in **Schedule A** attached hereto).

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

(iii) The Sales Tax Exemption authorization shall be subject to all of the terms, conditions and provisions of this Project Agreement.

(iv) The Sales Tax Exemption shall only be utilized for items which shall be purchased, incorporated, completed or installed for use only by the Company at the Facility or in connection with the Project (and not with any intention to sell, transfer or otherwise dispose of any such item to a Person as shall not constitute the Company), it being the intention of the Agency and the Company that the Sales Tax Exemption shall not be made available with respect to any item unless such item is used solely by the Company at the Facility or in connection with the Project.

(v) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Facility, other than the Company, without the prior written consent of the Agency.

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

(vii) Upon the Termination Date, the Company and each Agent shall cease being agents of the Agency, and the Company shall immediately notify each Agent in writing of such termination.

(viii) The Company agrees that the aggregate amount of Sales Tax Exemption realized by the Company and by all Agents of the Company, if any, in connection with the Facility shall not exceed in the aggregate the Maximum Sales Tax Exemption.

Section 4.4 Procedures for Appointing Subagents. If the Company desires to seek the appointment of a contractor, a subcontractor or other party to act as the Agency's agent, including, but not limited, to the individuals and entities described on **Schedule B** attached hereto (a "Subagent") for the purpose of effecting purchases which are eligible for the Sales Tax Exemption pursuant to authority of this Project Agreement, it must complete the following steps:

(i) The Company shall have the right to amend **Schedule B** from time to time and shall be solely responsible for maintaining an accurate list of all parties acting as agent for the Agency. The Company's right to appoint Subagents is expressly

conditioned upon updating of **Schedule B** attached hereto, along with, for each Subagent, the Company must complete and submit Form ST-60 to the Agency, attached hereto as **Exhibit B**. An Authorized Representative of the Agency (as defined in **Schedule A** attached hereto) must sign the Form ST-60 and return the same to the Company. Following receipt of the signed Form ST-60, the Company must file such Form ST-60 within thirty (30) days of the date that the Agency appoints a project operator or other person or entity to act as a Subagent of the Agency for purposes of extending a the Sales Tax Exemption to such Subagent. The Company acknowledges and agrees that it shall be the Company's sole and exclusive responsibility to file a completed Form ST-60 with respect to any Subagent and the failure to timely do so could result in an Event of Default and Recapture Event (as hereinafter defined).

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

(iii) Form ST-60 Not an Exemption Certificate. The Company acknowledges that the executed Form ST-60 designating the Company or any Subagent as an agent of the Agency shall not serve as a Sales Tax Exemption certificate or document. Neither the Company nor any other Agent may tender a copy of the executed Form ST-60 to any person required to collect sales or use tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE LAW. IN ADDITION, THE USE BY A SUBAGENT, THE COMPANY, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY-EIGHT AND THIRTY-SEVEN OF THE NEW YORK STATE TAX AND FINANCE LAW (THE "TAX LAW"), THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(iv) Form ST-123 Requirement. As an agent of the Agency, the Company agrees that it will, and will cause each Subagent to, present to each seller or vendor a completed and signed Form ST-123, attached hereto as **Exhibit C-1**, for each contract, agreement, invoice, bill or purchase order entered into by the Company or by any Subagent, as agent for the Agency, for the purpose of undertaking the Project. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill or invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. For the purposes of indicating who the purchaser is, each bill or invoice should state:

"I, NSF ENFIELD SITE 2, LLC [OR, NAME OF SUBAGENT: _____], certify that I am a duly appointed agent of the TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY, and that I am purchasing the tangible personal property or services for use in the NSF Enfield Site

2, LLC Project located at Applegate Road S. and 1805 Mecklenburg Road in the Town of Enfield, Tompkins County, New York, being IDA OSC Project Number 5003-21-05A."

For the purpose of convenience, in the instance where the vendor does not print on each invoice the acknowledgment as described in the prior sentence, an "Invoice Rider" (a copy of which is attached hereto as **Exhibit C-3**) can be utilized for record keeping purposes. The Company shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six (6) years from the date thereof. For each Subagent the Form ST-123 shall be completed as follows: (i) the "Project information" section of Form ST-123, attached hereto as **Exhibit C-2**, should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Subagent; (ii) the date that the Subagent was appointed as indicated on the Form ST-60.

All contracts entered into by the Company and all Subagents thereof as agent for the Agency shall include the language contained within **Schedule C** attached hereto. **Failure by the Company and/or any Subagent thereof to include such language may disqualify the agent status and Sales Tax Exemption derived by virtue of this Project Agreement. The Company, for itself and on behalf of all duly appointed Subagents, hereby agrees that all contracts entered into by the Company and any Subagents thereof shall be available to the Agency for inspection and confirmation of the foregoing mandatory language.**

Section 4.5 Form ST-340 Filing Requirement. The Company shall annually file a statement with the State Department of Taxation and Finance (the "Commissioner") on NYS Form ST-340, entitled "Annual Report of Sales and Use Tax Exemptions" (a copy of which is attached hereto as **Exhibit D**) regarding the value of Sales Tax Exemption the Company and its Subagents, if any, have claimed pursuant to the agency conferred on the Company with respect to the Project in accordance with General Municipal Law Section 874(8). **Please note, the Company is to report only the Sales Tax Exemption derived as a result of the Agency's participation in the Project and not those received as a result of other available State exemptions. For the avoidance of doubt, other State exemptions, which the Company should not report on its NYS Form ST-340, include, but are not limited to, exemptions available to certain manufactures or those exemptions that apply to capital improvements.** On or before February 15th of each year, the Company shall provide a copy of same to the Agency. 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 and/or Recapture of Agency Benefits as described in Section 4.8 hereof.

Section 4.6 GML Provisions Relating to Sales Tax Savings.

(a) The Company covenants and agrees to comply, and to cause each of its contractors, subcontractors, Subagents, persons or entities to comply, with the requirements of GML Sections 875(1) and (3) (the "GML Provisions"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Project Agreement and the GML Provisions, the GML Provisions shall control.

(b) The Company acknowledges and agrees that pursuant to GML Section 875(3), the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company, Sales Tax Savings (as defined in **Schedule A** attached hereto) taken or purported to be taken by the Company, any Subagent or any other person or entity acting on behalf of the Company to which the Company is not entitled or which are in excess of the Maximum Sales Tax Exemption or which are for property or services not authorized or taken in cases where the Company, any Subagent or any other person or entity acting on behalf of the Company failed to comply with a material term or condition to use property or services in the manner required by this Project Agreement. The Company shall, and shall require each Subagent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such Sales Tax Savings and shall promptly pay over any such amounts to the Agency or any other entity that it requests. The failure to pay over such amounts to such recipient shall be grounds for the Commissioner to assess and determine State Sales and Use Taxes due from the Company as defined and imposed under Article 28 of the Tax Law, together with any relevant penalties and interest due on such amounts.

Subject to the provisions of Section 4.6(b) above, in the event that the Company or any Subagent shall utilize the Sales Tax Exemption in violation of the provisions of this Project Agreement, the Company shall promptly deliver notice of same to the Agency, and the Company shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized Sales Tax Savings together with interest at the rate of two percent (2%) in excess of the Prime Rate per annum beginning on the date and with respect to the dollar amount for which each such unauthorized Sales Tax Exemption was availed of by the Company or any Subagent (as applicable).

(c) Upon request by the Agency with reasonable notice to the Company, the Company shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Agent, and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and/or the Independent Accountant (as defined in **Schedule A** attached hereto), as shall be necessary (i) to indicate in reasonable detail those costs for which the Company or any Subagent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (ii) to permit the Agency to determine any amounts owed by the Company under this Section 4.6(c).

Section 4.7 Reserved.

Section 4.8 Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency is entering into this Project Agreement in order to provide the Financial Assistance to the Company for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees that if there shall occur a Recapture Event (as defined below) after the after the date hereof and during the Recapture Term (as defined below), the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits.

(b) The term "Recaptured Benefits" shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency's participation in the transaction contemplated by this Project Agreement including, but not limited to, the amount equal to 100% of:

(i) Reserved; and

(ii) Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Subagent; and

(iii) real property tax abatements granted pursuant to the Tax Agreement the maximum amount of such real property tax abatements that may be recaptured is equal to, but may be less than, the sum total of real property tax abatement received by the Company in the year or years that an Event of Default occurred as so determined by the Agency and as provided in the Resolution;

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of Section 4.8(c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State of New York if so directed by the Agency within ten (10) days after such notice.

(c) The term "Recapture Term" shall mean the date hereof through and including December 31, 2033.

(d) The term "Recapture Event" shall mean any of the following events:

(i) The occurrence and continuation of an Event of Default under this Project Agreement which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder; or

(ii) The Company receives Sales Tax Savings in connection with property or services not authorized by the Agency as part of the Project; provided, however, that the foregoing shall constitute a Recapture Event with respect to such Sales Tax Savings only. It is further provided that failure to repay the Sales Tax Savings within thirty (30) days after written demand from the Agency to the Company shall constitute a Recapture Event with respect to all Recapture Benefits; or

(iii) The Company receives Sales Tax Savings in connection with the Project in excess of the Maximum Sales Tax Exemption; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Sales Tax Savings only. It is further provided that failure to repay the Sales Tax Savings within thirty (30) days after written demand from the Agency to the Company shall constitute a Recapture Event with respect to all Recapture Benefits; or

(iv) The Company has made a knowingly material false or misleading statement, or omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, on its application for Financial Assistance and if capable of being

cured, is not cured within thirty (30) days of the Company obtaining knowledge of such event; or

(v) Failure of the Company to create or cause to be maintained the number of full-time equivalent (FTE) jobs at the Facility as provided in the Application, if any, which failure is not reflective of the business conditions of the Company or the subtenants of the Company, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions. The Agency acknowledges that this Project will not create or maintain any FTE jobs at the Facility as detailed in the Company's Application.

In order to certify and verify the foregoing, the Company shall provide annually, to the Agency, a certified statement and documentation: (i) enumerating the full-time equivalent jobs retained and the full-time equivalent jobs created as a result of the Financial Assistance, by category, if any, including full-time equivalent independent contractors or employees of independent contractors that work at the project location, (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that was provided in the application for Financial Assistance is still accurate and if it is not still accurate, providing a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and jobs created, and (iii) such other information, as so requested from time to time, to enable the Agency to assess the progress of the Project toward achieving the investment, job retention, job creation, or other objectives of the Project indicated in the Application for Financial Assistance.

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

(f) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section 4.8, from amounts received by the Agency pursuant to this Section 4.8.

ARTICLE V.
INSURANCE

Section 5.1 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) 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 as an alternative to the foregoing, the Company may insure the Facility under a blanket insurance policy or policies covering not only the Facility but other properties as well, provided a periodic appraisal is performed and provided to the Agency.

(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 (including the contractual liability assumed by the Company under Section 7.1 hereof) 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, **$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. Such liability limits may be satisfied by any combination of primary and excess liability policies. Such primary general liability insurance may have a $500,000 self-insured retention and such excess liability policy may have a commercially reasonable deductible.

Section 5.2 Additional Provisions Respecting Insurance. (a) **All insurance required by Section 5.1(a) hereof shall name the Agency as a named insured and the insurance required by Section 5.1(c) shall name the Agency as an additional insured.** 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 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 (i) for payment of the losses of the Company and the Agency as their respective interest may appear, and (ii) that the insurance company shall endeavor to give thirty (30) days' prior written notice or such other notice as the policy provides for, of the cancellation thereof (or ten (10) days for nonpayment of premium) to the Company and the Agency.

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

ARTICLE VI.
EVENTS OF DEFAULT AND REMEDIES

Section 6.1 The following shall each be "Events of Default" under this Project Agreement:

(a) the failure by the Company to observe and perform any covenant contained in Sections 2.1(g) (Retail Sales Limitation), 2.1(i) (Company Existence), 4.3 (Sales Tax Exemption), 4.5 (Form ST-340 Filing Requirement), 5.1 (Insurance Requirements), 5.2 (Additional Insurance Requirements), 7.1 (Hold Harmless) and 7.6 (Agency Fees) and such failure shall have continued for a period of thirty (30) days after the Agency gives written notice to the Company, specifying that failure and stating that it be remedied, or in the case of any such default which can be cured with due diligence but not within such thirty (30) day period, the Company's failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence;

(b) the failure by the Company to pay the Recapture Benefits on the date due and such failure shall have continued for a period of ten (10) days after the Agency gives written notice of such failure to the Company;

(c) the occurrence and continuation of a Recapture Event and such failure shall have continued for a period of thirty (30) days after the Agency gives written notice to the Company, specifying that failure and stating that it be remedied, or in the case of any such default which can be cured with due diligence but not within such thirty (30) day period, the Company's failure to proceed promptly to cure such default and thereafter prosecute the curing of such default with due diligence;

(d) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within one-hundred twenty (120) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; or the commencement by the Company (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor), wherein a court having jurisdiction over the Project enters a decree or order for relief against the Company as the debtor, or such case or proceeding is consented to by the Company or remains undismissed for one-hundred twenty (120) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of creditors.

Section 6.2 Remedies on Default.

(a) Whenever any Event of Default shall have occurred and be continuing, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps:

(i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all

due and owing Recapture Benefits and (B) all other payments due under this Project Agreement; or

(ii) terminate this Project Agreement and the Sales Tax Exemption authorization; or

(iii) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements and covenants of the Company under this Project Agreement.

(b) No action taken pursuant to this Section 6.2 (including termination of the Project Agreement) shall relieve the Company from its obligation to make all payments required by the Leaseback Agreement, the Tax Agreement or Recapture Benefits.

Section 6.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Project Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right and power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article VI it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Project Agreement.

Section 6.4 Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Project Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, within thirty (30) days of written demand therefor, pay to the Agency the fees of such reasonable attorneys and such other expenses actually incurred.

ARTICLE VII.
MISCELLANEOUS

Section 7.1 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, members, officers, 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 Project Agreement or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, constructing, equipping, owning and leasing of the Equipment or of 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 executive director, directors, members, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

Section 7.2 This Project Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The exchange of copies of this Project Agreement and of signature pages by facsimile or portable document format (PDF) transmission shall constitute effective execution and delivery of this Project Agreement as to the parties hereto and may be used in lieu of the original Project Agreement and signature pages for all purposes.

Section 7.3 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, or by a nationally-recognized overnight courier, addressed as follows:

To the Agency: Tompkins County Industrial Development Agency
401 E. State Street, Suite 402B
Ithaca, New York 14850
Attention: Heather McDaniel, Administrative Director

With a copy to: Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534
Attention: Russell E. Gaenzle, Esq.

To the Company: NSF Enfield Site 2, LLC
700 Universe Boulevard
Juno Beach, Florida 33408
Attention: Business Manager-Distributed Generation

With a copy to: Barclay Damon LLP
Barclay Damon Tower, 12th Floor
125 East Jefferson Street
Syracuse, New York 13202
Attn: Kevin R. McAuliffe, Esq.

And a copy to: General Counsel
NextEra Energy Resources, LLC
700 Universe Boulevard
Juno Beach, Florida 33408

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

Section 7.4 This Project Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York 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 Tompkins County, New York.

Section 7.5 The warranties, representations, obligations and covenants of the Company under this Project Agreement shall be absolute and unconditional and shall remain in full force and effect during the term of this Project Agreement, shall be deemed to have been relied upon by the Agency, and shall survive the delivery and termination of this Project Agreement to the Agency, regardless of any investigation made by the Agency until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought.

Section 7.6 By executing this Project Agreement, the Company covenants and agrees to pay all reasonable fees, costs and expenses incurred by the Agency for (a) legal services, including, but not limited to, those provided by the Agency's general counsel and bond/transaction counsel, (b) other consultants retained by the Agency, if any, in connection with the Project; and (c) with respect to Agency's enforcement of any event of default or failure to comply with the terms of this Project Agreement (including reasonable attorney fees). The Company further covenants and agrees that the Company is liable for payment to the Agency of all charges referred to above, as well as all other actual costs and expenses actually 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.

[Signature Page to Project Agreement]

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

TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: _____
Name: Heather McDaniel
Title: Administrative Director

NSF ENFIELD SITE 2, LLC

By: _____
Name: Matthew Ulman
Title: Vice President

[Signature Page to Project Agreement]

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

TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By:_____
Name: Heather McDaniel
Title: Administrative Director

NSF ENFIELD SITE 2, LLC

By: _____
Name: Matthew Ulman
Title: Vice President

SCHEDULE A

SCHEDULE OF DEFINITIONS

"Authorized Representative" means, in the case of the Agency, the Administrative Director, the Chair or the Vice Chair and such additional persons as, at the time, are designated to act on behalf of the Agency; and in the case of the Company, the members and such additional persons as, at the time, are designated to act on behalf of the Company.

"Independent Accountant" shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Agency (such approval not to be unreasonably withheld or delayed).

"Lease Agreement" shall mean that certain Lease Agreement, dated as of March 1, 2022 (or other such appropriate date) by and between the Company and the Agency.

"Leaseback Agreement" shall mean that certain Leaseback Agreement, dated as of March 1, 2022 (or other such appropriate date) by and between the Company and the Agency.

"Maximum Sales Tax Exemption" shall mean the aggregate maximum dollar amount of Sales Tax Savings that the Company and all Subagents acting on behalf the Company are permitted to receive under this Project Agreement, which shall equal **$349,472.00** or such maximum dollar amount as may be determined by the Agency pursuant to such additional documents as may be required by the Agency for such increase.

"Prime Rate" means (i) if no lender, the rate designated by The Wall Street Journal from time to time as its "prime rate", or (ii) if a lender exists, the rate designated by the lender from time to time as its "prime rate".

"Sales Tax Exemption" shall mean an exemption from Sales and Use Taxes resulting from the Agency's participation in the Facility.

"Sales and Use Taxes" shall mean local and State sales and compensating use taxes and fees imposed pursuant to Article 28 of the New York State Tax Law, as the same may be amended from time to time.

"Sales Tax Savings" shall mean all Sales Tax Exemption savings relating to Sales and Use Taxes realized by or for the benefit of the Company, including any savings realized by any Subagent, pursuant to this Project Agreement.

"State Sales and Use Taxes" shall mean sales and compensating use taxes and fees imposed by Article 28 of the New York State Tax Law but excluding such taxes imposed in a city by Section 1107 or 1108 of such Article 28, as the same may be amended from time to time.

SCHEDULE B

LIST OF APPOINTED AGENTS[1]

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.

SCHEDULE C

MANDATORY AGENT AND SUBAGENT CONTRACT LANGUAGE

"This contract is being entered into by **NSF ENFIELD SITE 2, LLC [OR, NAME OF SUBAGENT: _____]** (the "Agent"), as agent for and on behalf of the **TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency"), in connection with a certain project of the Agency for the benefit of NSF Enfield Site 2, LLC, 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 Applegate Road S. and 1805 Mecklenburg Road in the Town of Enfield, Tompkins County, New York (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 Project Agreement, by and between NSF Enfield Site 2, LLC and the Agency, dated as of March 21, 2022. 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 is this paragraph."

EXHIBIT A

COST BENEFIT ANALYSIS

[Attached]

EXHIBIT B

FORM OF NYS FORM ST-60 TO BE COMPLETED BY COMPANY AND FILED WITH THE NYS TAX DEPARTMENT IDA UNIT FOR EACH OF ITS SUBAGENTS WITHIN THIRTY (30) DAYS OF APPOINTMENT

[See Attached Page]

Department of Taxation and Finance

IDA Appointment of Project Operator or Agent
For Sales Tax Purposes

ST-60
(1/18)

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

IDA information

Name of IDA			IDA project number (use OSC numbering system for projects after 1998)
Tompkins County IDA			5003-21-05A
Street address			Telephone number
410 E. State Street / E MLK Jr Street, Ste 402B			(607) 273-0005
City	State	ZIP code	Email address *(optional)*
Ithaca	NY	14850	info@tcad.org

Project operator or agent information

Name of IDA project operator or agent	Mark an X in the box if directly appointed by the IDA: ☐	Employer identification or Social Security number
Street address	Telephone number ( )	Primary operator or agent? Yes ☐ No ☒
City / State / ZIP code	Email address (optional) N/A	

Project information

Name of project
NSF Enfield Site 2, LLC Project

Street address of project site
Applegate Road South & 1805 Mecklenburg Rd**

**and any lands located in Tompkins County and occupied by license or easement during construction or improved by third parties for the benefit of the Project

City	State	ZIP code	Email address (optional)
Town of Enfield	NY	14850	N/A

Purpose of project
(A) the acquisition by the Agency of a leasehold or other interest in approximately 48.873 acres of certain real property located on Applegate Road South and 1805 Mecklenburg Road, Town of Enfield, Tompkins County, New York (the "Land", being more particularly identified as tax map number 9.-1-27.1), (B) the planning, design, construction and operation of a 5MWac PV solar electrical generation system, including panel foundations, inverters, transformers, interconnect wiring, utility connections, sitework, landscaping, fencing, security and related improvements (the "Improvements")

Description of goods and services intended to be exempted from New York State and local sales and use taxes
Goods and services, inclusive of fuel and utilities, whether the goods and services are purchased or rented, and notwithstanding that they continue to constitute personal property or the item is used after the completion of the Project, or the item is geographically located outside the legal boundaries of the Project Facility; provided there is a reasonable basis to acquire the item to benefit the Project.

Date project operator or agent appointed *(mmddyy)*	Date project operator or agent status ends *(mmddyy)* 123122	Mark an X in the box if this is an extension to an original project: ☐
Estimated value of goods and services that will be exempt from New York State and local sales and use tax: $4,368,400 all agents; all in	Estimated value of New York State and local sales and use tax exemption provided: $349,472 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	Print title	
Heather McDaniel	Administrative Director	
Signature	Date	Telephone number
	03/21/2022	(607) 273-0005

EXHIBIT C-1

NYS FORM ST-123 FOR USE BY COMPANY

[See Attached Page]

New York State Department of Taxation and Finance

New York State Sales and Use Tax

IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

ST-123
(2/14)

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

Name of seller	Name of agent or project operator
	NSF Enfield Site 2, LLC
Street address	Street address
	700 Universe Boulevard
City, town, or village — State — ZIP code	City, town, or village — State — ZIP code
	Juno Beach — FL — 33408
	Agent or project operator sales tax ID number *(see instructions)*

Mark an **X** in one: ☐ Single-purchase certificate ☒ Blanket-purchase certificate (valid only for the project listed below)

To the seller:
You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA: Tompkins County IDA			
Name of project: NSF Enfield Site 2, LLC Project		IDA project number *(use OSC number)*: 5003-21-05A	
Street address of project site: Applegate Road South and 1805 Mecklenburg Rd**	**and any lands located in the Tompkins County and occupied by license or easement during construction or improved by third parties for the benefit of the Project		
City, town, or village: Town of Enfield		State: NY	ZIP code: 14850
Enter the date that you were appointed agent or project operator *(mm/dd/yy)*: 03 / 21 / 22		Enter the date that agent or project operator status ends *(mm/dd/yy)*: 12 / 31 / 22	

Exempt purchases

*(Mark an **X** in boxes that apply)*

☒ A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project

☐ B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project

☐ C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

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

Instructions

To the purchaser

You may use Form ST-123 if you:

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

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

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

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

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

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

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

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

Exempt purchases

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

A. 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.

B. 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.

C. Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

Misuse of this certificate

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

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

To the seller

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

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

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

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

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

Privacy notification

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

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

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

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

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

Need help?

Visit our Web site at ***www.tax.ny.gov***
- get information and manage your taxes online
- check for new online services and features

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

EXHIBIT C-2

NYS FORM ST-123 FOR USE BY SUBAGENTS OF COMPANY

[See Attached Page]

New York State Department of Taxation and Finance

New York State Sales and Use Tax

IDA Agent or Project Operator Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

ST-123 (2/14)

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

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

Name of seller	Name of agent or project operator
Street address	Street address
City, town, or village State ZIP code	City, town, or village State ZIP code
	Agent or project operator sales tax ID number *(see instructions)*

Mark an **X** in one: ☐ Single-purchase certificate ☒ Blanket-purchase certificate (valid only for the project listed below)

To the seller:

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA: Tompkins County IDA			
Name of project: NSF Enfield Site 2, LLC Project		IDA project number *(use OSC number)*: 5003-21-05A	
Street address of project site: Applegate Road South & 1805 Mecklenburg Rd**	**and any lands located in the Tompkins County and occupied by license or easement during construction or improved by third parties for the benefit of the Project		
City, town, or village: Town of Enfield		State: NY	ZIP code: 14850
Enter the date that you were appointed agent or project operator *(mm/dd/yy)* ..... / /		Enter the date that agent or project operator status ends *(mm/dd/yy)* ..... 12 / 31 / 22	

Exempt purchases

*(Mark an **X** in boxes that apply)*

☒ A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project

☐ B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project

☐ C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

Certification: I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

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

Instructions

To the purchaser

You may use Form ST-123 if you:

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

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

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

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

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

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

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

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

Exempt purchases

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

A. 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.

B. 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.

C. Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

Misuse of this certificate

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

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

To the seller

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

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

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

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

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

Privacy notification

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

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

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

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

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

Need help?

Visit our Web site at ***www.tax.ny.gov***
- get information and manage your taxes online
- check for new online services and features

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

EXHIBIT C-3

INVOICE RIDER FORM

I, _____ *(name)*, the _____ *(title)* of NSF Enfield Site 2, LLC (or, subagent name: _____) certify that I am a duly appointed agent of Tompkins County Industrial Development Agency (the "Agency") and that I am purchasing the tangible personal property or services for use in the following Project and that such purchases qualify as exempt from sales and use taxes under the Project Agreement, dated as of March 21, 2022, by and between the Agency and NSF Enfield Site 2, LLC.

Name of the Project:	NSF Enfield Site 2, LLC Project
Street address of the Project Site:	Applegate Road S. and 1805 Mecklenburg Road Town of Enfield Tompkins County, New York 14850
IDA OSC project number:	5003-21-05A

EXHIBIT D

NYS FORM ST-340 TO BE COMPLETED BY THE COMPANY AND FILED ANNUALLY WITH THE NYS TAX DEPARTMENT IDA UNIT NO LATER THAN FEBRUARY 15TH OF EACH YEAR

[See Attached Page]

NEW YORK STATE

Department of Taxation and Finance

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

ST-340
(1/18)

For period ending December 31, _____ *(enter year)*

Project information

Name of IDA agent/project operator	Employer identification number (EIN)
NSF Enfield Site 2, LLC	
Street address	**Telephone number** ( )
City	**State** **ZIP code**

Name of IDA	Name of project	IDA project number
Tompkins County IDA	NSF Enfield Site 2, LLC Project	5003-21-05A

Street address of project site		City	State	ZIP code
Applegate Road South 1805 Mecklenburg Rd.**	**and any lands located in Tompkins County and occupied by license or easement during construction or improved by third parties for the benefit of the Project	Town of Enfield	NY	14850

Date project began	Completion date of project	
	Actual ☐	Expected ☒

Total sales and use tax exemptions (actual tax savings; **not** total purchases)	$

Representative information *(not required)*

Authorized representative, if any	Title
Street address	**Telephone number** ( )
City	**State** **ZIP code**

Certification

I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer, employee, or authorized representative	Title of person signing	
Signature		**Date**

If you do not annually file a complete report, **we may remove** your authority to act as an IDA agent/project operator.

Mail completed report to:

NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services.*

Instructions

General information

Who must file

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as the *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the Tax Department. The agent/project operator required to file this report is the person **directly** appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

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

What you must report

The report must show the **total value** of all state and local **sales and use taxes exempted** during the calendar year, as a result of the project's designation as an IDA project. This includes:

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

Include only the **total combined** exemptions obtained by the above people. A breakdown of the total is not required. However, since the report must include the value of the exemptions they obtained, you must keep records of the amounts others report to you.

You must make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available, so that you can comply with the annual reporting requirements.

Do not include on this report the amount of any sales and use tax exemptions from other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

When the report is due

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

Name of IDA agent/project operator: Enter your name, address, employer identification number (EIN), and telephone number.

Name of IDA and IDA project number: Enter the name and address of the IDA. If more than one IDA is involved in a particular project, you must file a separate report for the tax exemptions attributable to each IDA. Also enter the ID project number.

Name of project: Enter the name of the project and the address of the project site. If you are involved in more than one project, you must file a separate report for each project, even if authorized by the same IDA.

Date project began: Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

Completion date of project: Enter the date installation, lease, or rental of property (for example, machinery or computers) on the project ended, or the date the project is expected to be completed. Mark an ***X*** in the appropriate box to indicate if the date entered is actual or expected.

Total sales and use tax exemptions: Enter the total amount of New York State and local sales and use taxes exempted during the reporting period as a result of the project's receipt of IDA financial assistance *(if none, enter **0**)*. This includes exemptions obtained at the time of purchase, as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do **not** enter total purchases.

Representative information

If applicable, enter the name, address, title (for example, attorney or accountant), and telephone number of the individual you authorize to submit this report. This section is not required.

Certification

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

Mail completed report to:

NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services.*

Need help?

Visit our website at ***www.tax.ny.gov***

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

Telephone assistance

Sales Tax Information Center:	518-485-2889
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification.* See *Need help?* for the Web address and telephone number.

EXHIBIT E

RESERVED

EXHIBIT F-1

NYS FORM FT-123
FOR USE BY
COMPANY

The Company must complete and submit to vendor an NYS Form FT-123 when purchasing FUEL for the Project

[See Attached Page]

New York State Department of Taxation and Finance

New York State Taxes on Fuel (Articles 12-A, 13-A, 28, and 29)

IDA Agent or Project Operator Exempt Purchase Certificate for Fuel

FT-123
(10/14)

This certificate is not valid unless all entries have been completed.
To be completed by the purchaser and given to the seller.

Name of seller	Name of agent or project operator NSF Enfield Site 2, LLC
Street address	Street address 700 Universe Boulevard
City, town, or village — State — ZIP code	City, town, or village — State — ZIP code Juno Beach — FL — 33408
	Agent or project operator sales tax ID number *(see instructions)*

Mark an **X** in one: ☐ Single-purchase certificate ☒ Blanket-purchase certificate (valid only for the project listed below)

To the seller:
You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the fuel for use in the following IDA project and that such purchases qualify as exempt from excise taxes and sales and use taxes under my agreement with the IDA.

Name of IDA Tompkins County IDA		
Name of project NSF Enfield Site 2, LLC Project	IDA project number *(use OSC number)* 5003-21-05A	
Street address of project site Applegate Road South and 1805 Mecklenburg Rd.**	**and any lands located in the Tompkins County and occupied by license or easement during construction or improved by third parties for the benefit of the Project.	
City, town, or village Town of Enfield	State NY	ZIP code 14850
Enter the date that you were appointed agent or project operator *(mm/dd/yy)* ..... 03 / 11 / 22	Enter the date that agent or project operator status ends *(mm/dd/yy)* ..... 12 / 31 / 22	

Exempt purchases – Only fuel or residual petroleum product used to **complete** the project may be purchased by IDA agents or project operators exempt from the fuel excise tax, petroleum business tax, and sales and use tax. Fuel or residual petroleum product used to **operate** a business after the project is completed does not qualify for this exemption *(see instructions)*.

Mark an **X** in boxes that apply:

☐ **A.** Motor fuel
☐ **B.** Highway diesel motor fuel
☐ **C.** Non-highway diesel motor fuel
☐ **D.** Residual petroleum product

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 excise taxes and 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 FT-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 excise taxes and sales and use tax as described in the IDA contract.

You may use Form FT-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. However, IDAs do not normally make direct purchases for projects. Commonly, an IDA instead appoints 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. Purchases made by an agent or project operator to operate a business after the project is completed are subject to tax.

> **Example:** *An IDA agreement with its agent, Contractor X, 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 purchases non-highway diesel motor fuel for use in construction equipment that will be used to prepare the site for construction. Since the fuel is being used to complete the project, Contractor X may purchase the fuel exempt from taxes.*
>
> *When the project is completed, Contractor X purchases motor fuel and highway diesel motor fuel for use in snowplows and other maintenance vehicles used to maintain the parking lots for the business. Contractor X may not purchase this fuel exempt from tax because it is being used to operate, not to complete, the project.*

Exempt purchases

To qualify for exemption, the purchases must be made within the authority granted by the IDA and used to **complete** the project, but not to **operate** the completed project.

Box A – *Motor fuel* is gasoline, benzol, reformulated blend stock for oxygenate blending, conventional blend stock for oxygenate blending, E85, fuel grade ethanol that meets the ASTM International active standards specification D4806 or D4814, or other product which is suitable for use in the operation of a motor vehicle engine. If you are purchasing motor fuel exempt from tax, mark this box.

Box B – *Highway diesel motor fuel* is any diesel motor fuel that is **not** non-highway diesel motor fuel. If you are purchasing highway diesel motor fuel exempt from tax, mark this box.

Box C – *Non-highway diesel motor fuel* is any diesel motor fuel designated for use other than on a public highway, and is dyed diesel motor fuel. If you are purchasing non-highway diesel motor fuel exempt from tax, mark this box.

Diesel motor fuel is No. 1 diesel fuel, No. 2 diesel fuel, biodiesel, kerosene, fuel oil, or other middle distillate, and also motor fuel suitable for operating a diesel engine. Diesel motor fuel does not include any product specifically designated "No. 4 diesel fuel."

Box D – *Residual petroleum product* means the topped crude of refinery operations, including No. 5 fuel oil, No. 6 fuel oil, bunker C, and the special grade of diesel product designated as No. 4 diesel fuel, that is not suitable for use in the operation of a motor vehicle engine. If you are purchasing residual petroleum product exempt from tax, mark this box.

Misuse of this certificate

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

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

To the seller

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

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

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

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

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

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?

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

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

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

EXHIBIT F-2

NYS FORM FT-123
FOR USE BY SUBAGENTS OF THE
COMPANY

Subagents must complete and submit to vendor an NYS Form FT-123 when purchasing FUEL for the Project

[See Attached Page]

New York State Department of Taxation and Finance

New York State Taxes on Fuel (Articles 12-A, 13-A, 28, and 29)

IDA Agent or Project Operator Exempt Purchase Certificate for Fuel

FT-123
(10/14)

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

To be completed by the purchaser and given to the seller.

Name of seller	Name of agent or project operator
Street address	Street address
City, town, or village — State — ZIP code	City, town, or village — State — ZIP code
	Agent or project operator sales tax ID number *(see instructions)*

Mark an **X** in one: ☐ Single-purchase certificate ☒ Blanket-purchase certificate (valid only for the project listed below)

To the seller:
You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the fuel for use in the following IDA project and that such purchases qualify as exempt from excise taxes and sales and use taxes under my agreement with the IDA.

Name of IDA: Tompkins County IDA			
Name of project: NSF Enfield Site 2, LLC Project		IDA project number *(use OSC number)*: 5003-21-05A	
Street address of project site: Applegate Road South & 1805 Mecklenburg Rd.**	**and any lands located in the Tompkins County and occupied by license or easement during construction or improved by third parties for the benefit of the Project.		
City, town, or village: Town of Enfield		State: NY	ZIP code: 14850
Enter the date that you were appointed agent or project operator *(mm/dd/yy)* ..... / /		Enter the date that agent or project operator status ends *(mm/dd/yy)* ..... 12 / 31 / 22	

Exempt purchases – Only fuel or residual petroleum product used to **complete** the project may be purchased by IDA agents or project operators exempt from the fuel excise tax, petroleum business tax, and sales and use tax. Fuel or residual petroleum product used to **operate** a business after the project is completed does not qualify for this exemption *(see instructions)*.

Mark an **X** in boxes that apply:

☐ **A.** Motor fuel

☐ **B.** Highway diesel motor fuel

☐ **C.** Non-highway diesel motor fuel

☐ **D.** Residual petroleum product

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 excise taxes and 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 FT-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 excise taxes and sales and use tax as described in the IDA contract.

You may use Form FT-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. However, IDAs do not normally make direct purchases for projects. Commonly, an IDA instead appoints 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. Purchases made by an agent or project operator to operate a business after the project is completed are subject to tax.

> **Example:** *An IDA agreement with its agent, Contractor X, 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 purchases non-highway diesel motor fuel for use in construction equipment that will be used to prepare the site for construction. Since the fuel is being used to complete the project, Contractor X may purchase the fuel exempt from taxes.*
>
> *When the project is completed, Contractor X purchases motor fuel and highway diesel motor fuel for use in snowplows and other maintenance vehicles used to maintain the parking lots for the business. Contractor X may not purchase this fuel exempt from tax because it is being used to operate, not to complete, the project.*

Exempt purchases

To qualify for exemption, the purchases must be made within the authority granted by the IDA and used to **complete** the project, but not to **operate** the completed project.

Box A – *Motor fuel* is gasoline, benzol, reformulated blend stock for oxygenate blending, conventional blend stock for oxygenate blending, E85, fuel grade ethanol that meets the ASTM International active standards specification D4806 or D4814, or other product which is suitable for use in the operation of a motor vehicle engine. If you are purchasing motor fuel exempt from tax, mark this box.

Box B – *Highway diesel motor fuel* is any diesel motor fuel that is **not** non-highway diesel motor fuel. If you are purchasing highway diesel motor fuel exempt from tax, mark this box.

Box C – *Non-highway diesel motor fuel* is any diesel motor fuel designated for use other than on a public highway, and is dyed diesel motor fuel. If you are purchasing non-highway diesel motor fuel exempt from tax, mark this box.

Diesel motor fuel is No. 1 diesel fuel, No. 2 diesel fuel, biodiesel, kerosene, fuel oil, or other middle distillate, and also motor fuel suitable for operating a diesel engine. Diesel motor fuel does not include any product specifically designated "No. 4 diesel fuel."

Box D – *Residual petroleum product* means the topped crude of refinery operations, including No. 5 fuel oil, No. 6 fuel oil, bunker C, and the special grade of diesel product designated as No. 4 diesel fuel, that is not suitable for use in the operation of a motor vehicle engine. If you are purchasing residual petroleum product exempt from tax, mark this box.

Misuse of this certificate

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

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

To the seller

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

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

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

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

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

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification.* See *Need help?* for the Web address and telephone number.

Need help?

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

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

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

EXHIBIT G

Off-Site Commercial Solar Photovoltaic Policy

[See Attached]

EXHIBIT H

Local Labor Utilization Policy

Local Labor Utilization Policy
Adopted: April 14, 2016

Policy is to apply to all IDA applications.

Applicants are encouraged to hire locally wherever possible. Applicants must solicit construction bids from local subcontractors and submit monthly construction labor reports during the construction period. This is an effort to collect data regarding local construction labor utilization. There is no minimum or maximum local construction labor utilization requirement.

Local is defined as anyone residing in Tompkins County, or any of the 6 contiguous counties of Cayuga, Seneca, Schuyler, Chemung, Tioga, and Cortland Counties. Zip codes will be used to determine local labor utilization rates. The IDA recognizes that some zip codes reach into other non-contiguous counties, but determined this to be a relatively adequate indicator.

The following reporting information will be required:

Proof of Local Bids
The general contractor will provide (in a format acceptable to the IDA) a bid list with the name, address, contact information and detail of type of work for all firms that were solicited and documentation that an 'invitation to bid' was sent. If there are categories or types of work for which no bid was solicited from a local firm, a written explanation must be attached (i.e. no firms locally provide that service).

Construction Labor Reporting
The general contractor will provide monthly payroll reports for workers for all contractors and subcontractors on site. Monthly reports will cover any pay periods ending during that month. Reports will be submitted within 30 days of the end of each month during construction. The reporting format will be provided by the IDA and will include a written certification, similar to a certified payroll report. Reports will include the name of the individual or an identifying number, total hours, gross amount earned, and zip code of residence.

Electronic construction labor reporting forms may be obtained by contacting heatherm@tcad.org.