

Resolution of the New York City Industrial Development Agency reauthorizing a sales tax exemption program to assist small companies with purchases of, and services associated with, construction materials, equipment and furnishings for the purpose of upgrading, expanding, and growing business activities and authorizing certain other actions

WHEREAS, New York City Industrial Development Agency (the “Agency”) has found that there are significant number of food retail, industrial and non-retail commercial businesses located in highly distressed areas and other areas of need in the City that cannot afford the costs associated with current Agency programs and that require assistance to invest in needed capital improvements including equipment upgrades, expansions or renovations;

WHEREAS, in order to provide incentives for such companies to implement capital improvements including equipment upgrades, expansions or renovations, the Agency seeks provide assistance to such businesses by reauthorizing, on the terms more particularly described in the executive summary to which this resolution is attached, the Accelerated Sales Tax Exemption Program (the “Program”), a program to provide sales tax exemptions in an amount not to exceed \$100,000 for each company with respect to purchases of building, construction and renovation materials, machinery and equipment, and other items of personal property and installation and associated services to such businesses for the purpose of assisting such businesses with the renovation and improvement to their properties and other capital investment;

NOW, THEREFORE, BE IT RESOLVED BY THE NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. The execution and delivery of Agency and Lease Agreements, sale agreements to convey items purchased or leased by approved applicants as agent of the Agency and such other agreements and documents as may be necessary or desirable to provide sales and use tax exemptions to approved applicants and to implement the Program (the documents referenced in this Section 1 being, collectively, the “Agency Documents”), each being substantially in the form similar to prior agreements approved by the Agency, is hereby authorized. The Chairman, Executive Director, Deputy Executive Director and General Counsel of the Agency are hereby authorized to execute, acknowledge and deliver each such Agency Document. The execution and delivery of each such Agency Document by said officer shall be conclusive evidence of due authorization and approval.

Section 2. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution and contained in the Agency Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution and the Agency Documents shall be

exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in any of the Agency Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his individual capacity and neither the members of the Agency nor any officer executing the Agency Documents shall be liable personally on the Agency Documents or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 3. Pursuant to the Agency Documents, each approved applicant will be required to comply, and to cause each of its contractors, subcontractors, agents, persons or entities to comply, with the terms and conditions of Section 875(1) and (3) of Title 1, Article 18-A of the General Municipal Law, as such provisions may be amended from time to time. Each approved applicant shall be required to acknowledge and agree that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from such applicant New York State sales or use tax savings taken or purported to be taken by such applicant, and any agent or any other person or entity acting on behalf of such applicant, to which such applicant is not entitled or which are in excess of the maximum sales or use tax exemption amount authorized for the project which shall not exceed \$100,000 or which are for property or services not authorized or taken in cases where such applicant, or any agent or any other person or entity acting on behalf of such applicant, failed to comply with a material term or condition to use property or services in the manner required by this Resolution or any Agency Documents or any other agreements entered into among the Agency, such applicant and/or any agent or any other person or entity acting on behalf of such applicant. Each approved applicant shall, and shall require each agent and any other person or entity acting on behalf of such applicant, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such New York State sales or use tax savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner") to assess and determine New York State sales or use taxes due from such applicant under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

Section 4. Each approved applicant will be notified (provided that such notification is not a covenant or obligation and does not create a duty on the part of the Agency to such applicant or any other party) that the Agency is subject to certain requirements under the General Municipal Law, including the following:

(i) In accordance with General Municipal Law Section 875(3)(c), if the Agency recovers, recaptures, receives, or otherwise obtains, any amount of New York State sales or use tax savings from such applicant, any agent or other person or entity, the Agency shall, within thirty days of coming into possession of such amount, remit it to the Commissioner, together with such information and report that the Commissioner deems necessary to administer payment over of such amount. The Agency shall join the Commissioner as a party in any action or proceeding that the Agency commences to recover, recapture, obtain, or otherwise seek the return of, New York State sales or use tax savings from such applicant, any other agent, person or entity.

(ii) In accordance with General Municipal Law Section 875(3)(d), the Agency shall prepare an annual compliance report detailing its terms and conditions described in General Municipal Law Section 875(3)(a) and its activities and efforts to recover, recapture, receive, or otherwise obtain State sales or user tax savings described in General Municipal Law Section 875(3)(b), together with such other information as the Commissioner and the New York State Commissioner of Economic Development may require. Such report shall be filed with the Commissioner, the Director of the Division of the Budget of The State of New York, the New York State Commissioner of Economic Development, the New York State Comptroller, the Council of the City of New York, and may be included with the annual financial statement required by General Municipal Law Section 859(1)(b). Such report shall be filed regardless of whether the Agency is required to file such financial statement described by General Municipal Law Section 859(1)(b). The failure to file or substantially complete such report shall be deemed to be the failure to file or substantially complete the statement required by such General Municipal Law Section 859(1)(b), and the consequences shall be the same as provided in General Municipal Law Section 859(1)(e).

The foregoing requirements of Section 4 and Section 5 of this resolution shall apply to any amounts of New York State sales or use tax savings that the Agency recovers, recaptures, receives, or otherwise obtains, regardless of whether the Agency, any applicant, or any agent or other person or entity acting on behalf of such applicant characterizes such benefits recovered, recaptured, received, or otherwise obtained, as a penalty or liquidated or contract damages or otherwise. The foregoing requirements shall also apply to any interest or penalty that the Agency imposes on any such amounts or that are imposed on such amounts by operation of law or by judicial order or otherwise. Any such amounts or payments that the Agency recovers, recaptures, receives, or otherwise obtains, together with any interest or penalties thereon, shall be deemed to be New York State sales or use taxes and the Agency shall receive any such amounts or payments, whether as a result of court action or otherwise, as trustee for and on account of New York State.

Section 5. The officers of the Agency are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to execute and deliver any and all agreements, papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and the Agency Documents.

Section 6. The Agency recognizes that due to the nature of the Program it may become necessary that certain of the terms approved hereby may require modifications which will not affect the intent and substance of the authorizations and approvals by the Agency herein. In addition, the Agency recognizes that in order to implement the Program, authority to make the following approvals, findings and actions shall be delegated to each of the Chairman, Executive Director, Deputy Executive Director and General Counsel of Agency so that any of the foregoing officers may exercise such authority: (i) the approval of qualified applicants to the Program; (ii) the approval of additional areas of need for the Program within the City for the Program; (iii) the approval of modifications to the terms approved hereby and Program requirements for individual projects which do not affect the intent and substance of this Resolution; (iv) the confirmation that each project to be approved is a Type II action (as defined in 6 CRR-NY 617.5) that will not have significant adverse impacts upon environment or is statutorily exempt from review under the State Environmental Quality Review Act; (v) the approval of findings required to be made by the

Agency with respect to the approval of certain retail projects under Section 862, Title 1, Article 18-A of the General Municipal Law; and (vi) the authority to execute the Agency Documents required in connection with the provision of sales tax exemption benefits described herein to approved applicants.

Section 7. This Resolution shall take effect immediately.

ADOPTED: September 18, 2018