

[FORM OF SALES TAX AGENT AUTHORIZATION LETTER]

SALES TAX AGENT AUTHORIZATION LETTER

EXPIRATION DATE: April 1, 2014

**ELIGIBLE LOCATION FOR CAPITAL IMPROVEMENTS
AND FACILITY PERSONALTY:**

1734 Bathgate Avenue, Bronx, New York

November 18, 2013

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency
(2013 Krinos Foods LLC Project)

Ladies and Gentlemen:

The New York City Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. Pursuant to the Letter of Authorization of Sales Tax Exemption attached here to as Exhibit A (the "Sales Tax Letter"), issued pursuant to a certain Agency Lease Agreement, dated as of April 1, 2013 (the "Lease Agreement"), between the Agency and 1734 Bathgate Ave LLC, a limited liability company organized and existing under the laws of the State of New York (the "Company"), the Agency has authorized each of the Company and the Sublessee (as defined below) to act as its agent for the acquisition, construction, and equipping of a warehousing, distribution, and manufacturing facility (the "Facility"), consisting of an approximately 98,600 square foot, one story facility and parking area, on an approximately 108,560 square foot parcel of land located at 1734 Bathgate Avenue, Bronx, New York, all for use by the Company and its permitted sublessee (as referred to below) and its affiliates in their operations as an importer, manufacturer, and distributor of frozen, refrigerated and dry foods and beverages (the "Project"), for use and occupancy by Krinos Foods LLC, a limited liability company organized and existing under the laws of the State of New York (the "Sublessee").

2. Upon the Company's or the Sublessee's request, the Agency has appointed **Gamut Consulting, Inc.** (the "Agent"), pursuant to this Sales Tax Agent Authorization Letter (the "Sales Tax Agent Authorization Letter") to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax in accordance with the terms, provisions of this Sales Tax Agent Authorization Letter and the Sales Tax Letter, which is deemed incorporated herein by reference.

3. The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which to be completed by Agent and the Company). Pursuant to the exemptions from sales and use taxes available to the Agent under this Sales Tax Agent Authorization Letter and the Sales Tax Letter, the Agent shall avail itself of such exemptions when purchasing eligible materials and services in

connection with the Project and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

4. The Agent acknowledges that the executed Form ST-60 shall not serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of the executed Form ST-60 to any person required to collect sales 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 TAX LAW. IN ADDITION, THE USE BY AN AGENT, PROJECT OPERATOR, 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 TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

5. The Agent agrees to comply with the terms and conditions of the Sales Tax Letter, including but not limited to Section 875(1) and (3) of the General Municipal Law, attached hereto as Exhibit B, as such provisions may be amended from time to time. The Agent must retain for at least six (6) years from the date of expiration of this Sales Tax Agent Authorization Letter copies of (a) its contract with the Company to provide services in connection with the Project, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency and shall make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

6. In order to assist the Company in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent covenants and agrees that it shall file semi-annually with the Company (no later than January 15th and July 15th of each calendar year in which it has claimed sales and use tax exemptions in connection with the Project) a written statement of all sales and use tax exemptions claimed by such Agent for the preceding six-month period (ending on the later of June 30th or December 31st) in connection with the Project and the Facility by completing and submitting to the Company the **Sales Tax Registry** attached hereto as Exhibit C. If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity, and shall immediately and without demand return to the Company or the Agency its copy of the Sales Tax Agent Authorization Letter and the Sales Tax Letter.

7. The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in this Sales Tax Agent Authorization Letter and the Sales Tax Letter, it shall pay any and all applicable New York State sales and use taxes, and no portion

thereof shall be charged or billed to the Agency or to the Company directly or indirectly, the intent of the Sales Tax Agent Authorization Letter being that neither the Agency nor the Company shall be liable for any of the sales or use taxes described above. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

8. The Agent represents and warrants that, except as otherwise disclosed to the Agency, none of the Agent, the Principals of the Agent, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the Agent:

- a) is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or The City of New York (the "City"), unless such default or breach has been waived in writing by the Agency or the City, as the case may be;
- b) has been convicted of a felony and/or any crime involving moral turpitude in the preceding ten (10) years;
- c) has received written notice of default in the payment to the City of any taxes, sewer rents or water charges in excess of \$5,000 that has not been cured or satisfied, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum; or
- d) has, at any time in the three (3) preceding years, owned any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.

As used herein, the following capitalized terms shall have the respective meanings set forth below:

"City" shall mean The City of New York.

"Control" or "Controls" shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

"Entity" shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

"Governing Body" shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

"Person" shall mean an individual or any Entity.

9. By execution of this Sales Tax Agent Authorization Letter, the Agent agrees to accept the terms hereof and represent and warrant to the Agency that the use of this Sales Tax Agent Authorization Letter and the Sales Tax Letter by the Agent is strictly for the purposes stated herein and in the Sales Tax Letter.

10. The Agent acknowledges and a that this Sales Tax Agent Authorization Letter will terminate expire on the date (the "Termination Date") that is the earlier of (i) the Expiration Date referred to above, and (ii) the expiration or termination of the Sales Tax Letter. Upon the Termination Date, the agency relationship between the Agency and the Agent shall terminate, and the Agent shall surrender this Sales Tax Agent Authorization Letter to the Agency for cancellation.


11. Notwithstanding any contrary provisions in the Lease Agreement, ten (10) days prior to the Expiration Date of this Sales Tax Agent Authorization Letter the Agent shall surrender this letter to the Agency for renewal or cancellation. The Agent may continue to use a facsimile copy of this Sales Tax Agent Authorization Letter until its stated Expiration Date. Within ten (10) days of receipt of this Sales Tax Agent Authorization Letter, the Agency shall provide such annual renewal of the letter to the Agent if and to the extent it is required to renew the Sales Tax Letter under the Lease Agreement.

The signature of a representative of the Agent where indicated below will indicate that the Agent accepted the terms hereof.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**

By:


Name:
Title:


Howard Spider
Compliance Officer

ACCEPTED AND AGREED TO BY:

GAMUT CONSULTING, INC.

By:


Name: Mitchell D. Newman
Title: PRESIDENT

State of New York
County of Suffolk

This instrument was acknowledged before me
on 19 day of Nov., 2013 by ELISA SPADA


Notary Public's Signature
My Commission Expires 11/21/17

ELISA SPADA
NOTARY PUBLIC STATE OF NEW YORK
NO. 01SP6137227
QUALIFIED IN NASSAU COUNTY
MY COMMISSION EXPIRES 11/21/17

**EXHIBIT A
TO
SALES TAX AGENT AUTHORIZATION LETTER**

LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION [ATTACHED]

LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION**EXPIRATION DATE: April 1, 2014****ELIGIBLE LOCATION FOR CAPITAL IMPROVEMENTS
AND FACILITY PERSONALTY:
1734 BATHGATE AVENUE, BRONX, NEW YORK**

April 30, 2013

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency
(2013 Krinos Foods LLC Project)

Ladies and Gentlemen:

The New York City Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. 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 any New York State or New York City sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.

2. Pursuant to a resolution adopted by the Agency on January 8, 2013, and a certain Agency Lease Agreement, dated as of April 1, 2013 (the "Lease Agreement"), between the Agency and 1734 Bathgate Ave LLC, a limited liability company organized and existing under the laws of the State of New York (the "Company"), the Agency has authorized the Company to act as its agent for the acquisition, construction and equipping of a warehousing, distribution and manufacturing facility (the "Facility"), consisting of an approximately 98,600 square foot, one-story facility and parking area, on an approximately 108,560 square foot parcel of land, located at 1734 Bathgate Avenue, Bronx, New York, all for the use by the Sublessee (as referred to below) and its affiliates in their operations as an importer, manufacturer and distributor of frozen, refrigerated and dry foods and beverages (the "Project"), for use and occupancy by Krinos Foods LLC, a limited liability company organized and existing under the laws of the State of New York (the "Sublessee").

3. In connection with such resolution, the Lease Agreement and this Letter of Authorization for Sales Tax Exemption and pursuant to the authority therein and herein granted, the Agency authorizes the Company to act as its agent in connection with the acquisition, construction and equipping of the Project and authorizes the Company to use this Letter of Authorization for Sales Tax Exemption as its agent only for the purpose of (a) purchasing or

leasing materials, equipment, machinery, goods and supplies and (b) purchasing certain services, solely in connection with the Project, and subject to the scope and limitations described in Annex A attached hereto. Subject to the provisions of this letter, this agency appointment includes the power of the Company to delegate from time to time such agency appointment, directly or indirectly, in whole or in part, to agents, subagents, contractors, subcontractors, materialmen, suppliers and vendors of the Company and for such parties in turn to delegate, in whole or in part and from time to time, to such other parties as the Company chooses provided that any such delegation is limited to the acquisition, construction and equipping of the Project and any such activities are effected in compliance with the Letter of Authorization for Sales Tax Exemption (each party so designated, hereinafter an "Agent").

4. If the Company, or an Agent appointed directly or indirectly by the Company, intends to appoint an Agent to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax pursuant to authority of this Letter of Authorization for Sales Tax Exemption, the Company shall, and shall require and cause each such Agent, to comply with the required procedures set forth on Annex B hereto with respect to the filing by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60"), a form of which is attached as Addendum A to Annex B.

5. The Company covenants and agrees to comply, and to cause each of its contractors, subcontractors, Agents, persons or entities to comply (including the Sublessee), with the obligations, terms and conditions of Section 875, subdivisions (I) and (3) of Article 18-A of the General Municipal Law, attached hereto as Annex C, as such provisions may be amended from time to time.

6. As agent for the Agency, the Company agrees that each contract, agreement, invoice, bill or purchase order entered into by the Company or by an Agent, as agent for the Agency for the acquisition, construction and equipping of the Project, shall include language in substantially the following form:

~~"This [contract, agreement, invoice, bill or purchase order] is being entered into by 1734 Bathgate Ave LLC, a limited liability company organized and existing under the laws of the State of New York [or _____] (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency") in connection with a certain project of the Agency for the Agent and for Krinos Foods LLC, a limited liability company organized and existing under the laws of the State of New York (the "Sublessee") being the acquisition, construction and equipping of a warehousing, distribution and manufacturing facility (the "Facility"), consisting of an approximately 98,600 square foot, one-story facility and parking area, on an approximately 108,560 square foot parcel of land, located at 1734 Bathgate Avenue, Bronx, New York, all for the use by the Sublessee and its affiliates in their operations as an importer, manufacturer and distributor of frozen, refrigerated and dry foods~~

and beverages (the "Project"). The [purchase, lease, rental, use] of the [materials, machinery, equipment, goods, services and supplies] which are the subject of this [contract, agreement, invoice, bill or purchase order], which has been entered into with or presented to *[insert name and address of vendor (the "Vendor")]* shall be exempt from the sales and use tax levied by the State of New York and The City of New York subject to and in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of the Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption.

The [Sublessee or Agent] has provided the Vendor with a copy of an executed New York State Department of Finance Form ST-60 "IDA Appointment of Project or Agent" to evidence that the Agency has appointed the Agent as its agent. The Vendor must retain in its records a copy of the Letter of Authorization for Sales Tax Exemption, the completed Form ST-60 and the [contract, agreement, invoice, bill or purchase order] as evidence that the Vendor is not required to collect sales or use tax in connection with this [contract, agreement, invoice, bill or purchase order].

This [contract, agreement, invoice, bill or purchase order] is nonrecourse to the Agency, and the Agency shall not be directly or indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever, and the Agent shall be the sole party liable hereunder. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the Vendor hereby acknowledges and agrees to the terms and conditions set forth in this paragraph."

7. The Agency shall have no liability or performance obligations under any contract, agreement, invoice, bill or purchase order entered into by the Company or any Agent as agent for the Agency hereunder. 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, and the Company or, as applicable, any Agent, shall be the sole party liable thereunder.

8. By execution by the Company of its acceptance of the terms of this Letter of Authorization for Sales Tax Exemption, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of this Letter of Authorization for Sales Tax Exemption by the Company or by any Agent is strictly for the purposes above stated.

9. Accordingly, until the earlier of (i) the Expiration Date referred to above, (ii) the completion of the Project as provided in Section 3.3 of the Lease Agreement, (iii) the termination of the Lease Agreement, or (iv) the receipt by the Company of notice from the

Agency of the termination of this Letter of Authorization for Sales Tax Exemption (in each case as so terminated, the "Termination Date"), all Vendors are hereby authorized to rely on this Letter of Authorization for Sales Tax Exemption (or on a photocopy or fax of this Letter of Authorization for Sales Tax Exemption) as evidence that purchases of the Project property, to the extent effected by the Company or by an Agent as agent for the Agency, are exempt from all New York State and New York City sales and use taxes. Upon the Termination Date, the agency appointed by the Agency of the Company and each Agent shall terminate, and (i) the Company shall immediately notify each Agent in writing of such termination; (ii) the Company shall surrender, and cause each Agent to surrender, this Letter of Authorization for Sales Tax Exemption (including any copy or facsimile hereof) to the Agency for cancellation; and (iii) the Company shall cause each Agent to perform all of its obligations as set forth in Annex B and in the Agency Agreement referred to therein.


10. Notwithstanding any contrary provisions in the Lease Agreement, ten (10) days prior to the Expiration Date of this Letter of Authorization for Sales Tax Exemption, the Company shall surrender, and cause each Agent to surrender, this letter to the Agency for renewal. The Company and any Agent may continue to use a facsimile copy of this Letter of Authorization for Sales Tax Exemption until its stated Expiration Date. Within ten (10) days of receipt of this Letter of Authorization for Sales Tax Exemption, the Agency shall provide such annual renewal of the letter to the Company if and to the extent required under the Lease Agreement.

11. The Agency further appoints the Sublessee its agent for purposes of using the Facility.

The signature of a representative of the Company and the Sublessee where indicated below will indicate that the Company and the Sublessee have accepted the terms hereof.

**NEW YORK CITY INDUSTRIAL
DEVELOPMENT AGENCY**


By: _____


Jeffrey T. Lee
Executive Director

ACCEPTED AND AGREED TO BY:

1734 BATHGATE AVE LLC

By: _____


Eric Moscahlaidis
President and Member

KRINOS FOODS LLC

by its sole member Krinos Holdings, Inc.

By: _____


Eric Moscahlaidis
President

Annex A

The Company and each Agent appointed directly or indirectly by the Agency in connection with the Project shall be entitled to claim an exemption from sales or use tax levied by the State of New York and The City of New York in connection with the following transactions:

(i) **Capital Improvements.** With respect to capital improvements to the Facility Realty (as defined in the Lease Agreement):

(a) purchases of materials, goods, machinery, equipment and supplies that are incorporated into and made an integral component part of the Facility Realty;

(b) purchases of materials, goods, machinery, equipment and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility Realty (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and

(c) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility Realty.

(ii) **Personal Property.**

Racking	\$1,400,000
Refridgeration/Freezers (panels, compressors, etc)	\$1,800,000
Fork lifts/pallet jacks	\$175,000
Food Processing Equipment	\$250,000
<i>Processing equipment</i>	
<i>QC testing equipment</i>	
<i>Cleaning equipment (hoses/pumps)</i>	
<i>Air vents</i>	
<i>Air curtains</i>	
<i>Case sealers</i>	
<i>Scales</i>	
Office Equipment	\$125,000
<i>Office furniture</i>	
<i>Office equipment</i>	
<i>Computers</i>	
<i>Printers</i>	
Employee kitchen equipment	\$30,000
<i>Employee kitchen furniture</i>	
<i>Tables</i>	
<i>Chairs</i>	
<i>Oven</i>	
<i>Hood</i>	
<i>Dishwasher</i>	

Refridgerator
Microwave
Emergency generator \$200,000

Purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property must have a useful life of one year or more, may include mainframe computers (and peripherals), personal computers, telecommunications equipment, business machines and software, but shall exclude vehicles of any sort (including watercraft and rolling stock), fine art, plants (whether potted or landscaped), objects d'art and other similar decorative items, ordinary office supplies such as pencils, paper clips and paper, and any cost of utilities, cleaning service or supplies or other costs of operation.

(iii) **Services.** With respect to the eligible items identified in (i)(a) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean, with respect to any of the above categories of property having a useful life of one year or more, the replacement of parts (but excluding materials or substances that are consumed in the operation of machinery and equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed) or the making of repairs, but shall not include maintenance of the type as shall constitute janitorial services.

Annex B

Form ST-60--Required Procedures

Introduction. Section 874(9) of Article 18-A of the General Municipal Law and New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") require that within thirty (30) days of the date that the Agency or its agent directly or indirectly appoint a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity. Certain capitalized terms used in this exhibit shall have the meanings ascribed thereto in the Letter of Authorization for Sales Tax Exemption.

Required Procedures. In order to comply with the foregoing law and other Agency requirements, the Company must, and must ensure that its Agents, comply with the following procedures. Failure to follow such procedures may result in the loss of sales and use tax exemptions derived from the use of the Letter of Authorization for Sales Tax Exemption in connection with the Project.

1. **Agency Agreement.** Prior to submitting to the Agency a completed Form ST-60 with respect to a proposed Agent, the Company, or its Agents, as applicable, must enter into an Agency Agreement with such Agent that describes the work to be performed and/or the materials to be provided by such Agent pursuant to a contract (the "Agent's Contract") entered into in connection with the Project. The Agency Agreement (which may be incorporated in the Agent's Contract) shall include the following provisions substantially in the form below (instructions are in *italics*):

- "a) The Agent is hereby appointed as an agent of the Agency in connection with the materials to be provided by such Agent pursuant to a contract between Agent and *[identify Company or Company Agent]* _____ dated _____, 20__ (the "Agent's Contract") for the purposes described in, and subject to the conditions and limitations set forth in, ~~the Letter of Authorization for Sales Tax Exemption attached as Exhibit A~~ *[attach Letter of Authorization for Sales Tax Exemption from the Agency to the Company]*.
- b) Pursuant to the exemptions from sales and use taxes available to the Agent under the Letter of Authorization for Sales Tax Exemption, the Agent shall avail itself, on behalf of the Company, of such exemptions when purchasing eligible materials in connection with the Contract and shall not include such taxes in its Contract price, bid or reimbursable costs, as the case may be.
- c) The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which to be completed by Agent and the Company and is

attached to the Letter of Authorization for Sales Tax Exemption as Addendum A to Annex B).

- d) Agent shall provide a copy of the executed Form ST-60 to each vendor to whom it presents the Letter of Authorization for Sales Tax Exemption in order to effect a sales tax exempt purchase. All such purchases shall be made in compliance with the terms, provisions and conditions of the Letter of Authorization for Sales Tax Exemption.
- e) The Agent must retain for at least six (6) years from the date of expiration of its Contract copies of (a) the Agency Agreement, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency and to make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of the Agency Agreement.
- f) In order to assist the Company in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by Project Operator of Industrial Development Agency/Authority" ("Form ST-340"), the Agent covenants and agrees that it shall file annually with the Company (no later than January 15th following each calendar year in which it has claimed sales and use tax exemptions in connection with the Project) a written statement of all sales and use tax exemptions claimed by such Agent for the preceding calendar year in connection with the Project and the Facility. If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity, and shall immediately and without demand return to the Company or the Agency its copy of the Letter of Authorization for Sales Tax Exemption issued to the Company by the Agency that is in the Agent's possession or in the possession of any agent of such Agent.
- g) The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in the Letter of Authorization for Sales Tax Exemption, it shall pay any and all applicable New York State sales and use taxes, and no portion thereof shall be charged or billed to the Agency or to the Company directly or indirectly, the intent of the Agency Agreement being that neither the Agency nor the Company shall be liable for any of the sales or use taxes described above. This provision shall survive the expiration or termination of the Agency Agreement.
- h) The Agent represents and warrants that, except as otherwise disclosed to the Agency, none of the Agent, the Principals of the Agent, or any Person that

directly or indirectly Controls, is Controlled by, or is under common Control with the Agent:

- i. is in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the Agency or The City of New York (the "City"), unless such default or breach has been waived in writing by the Agency or the City, as the case may be;
- ii. has been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;
- iii. has been convicted of a felony in the past ten (10) years;
- iv. has received formal written notice from a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or
- v. has received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

"Control" or "Controls" shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

"Entity" shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

"Governing Body" shall mean, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

"Person" shall mean an individual or any Entity.

- i) The appointment of the Agent as agent of the Agency shall expire at the earlier of (i) the expiration of the Agent's Contract, or (ii) the Expiration Date of the Letter of Authorization for Sales Tax Exemption, unless renewed; provided, however, that the expiration or termination of the Company's status as agent of the Agency shall result in the immediate termination of the Agent's status as an agent of the Agency.
- j) The Agency shall be a third party beneficiary of the Agency Agreement."

- k) The Agent covenants and agrees to comply, and to cause each of its contractors, subcontractors, agents, persons or entities to comply, with the obligations, terms and conditions of Section 875, subdivisions (1) and (3) of Article 18-A of the General Municipal Law, attached hereto as Annex A [incorporating Annex C to the Sales Tax Letter in its entirety, as such provisions may be amended from time to time.”

2. Complete and Submit Form ST-60 to the Agency. Following the execution and delivery of an Agency Agreement, the Company must submit to the Agency a Form ST-60 completed with the information required in each of the shaded areas shown on the example form attached hereto as Addendum A.

The Agency requires the Company to submit Form ST-60 electronically. Please download Form ST-60 via the internet by typing www.tax.state.ny.us/pdf/2002/fillin/st/st60_702_fill_in.pdf into the address bar of your internet browser and saving the “fill-in” PDF of the form (using adobe acrobat). The downloaded form may then be completed electronically, saved and transmitted to the Agency.

Upon completion of the form by the Agent, the Company must submit the form to the Agency by emailing it to Compliance@nycedc.com.

The appointment of such Agent as an agent for the Agency shall be effective upon execution of the completed Form ST-60 by the Agency. The Agency will insert the date on which the Agent is appointed on the date when the Form ST-60 is executed by the Agency. The determination whether or not to approve the appointment of an Agent by executing the Form ST-60 shall be made by the Agency, in its sole discretion. If executed, a completed copy of Form ST-60 shall be sent to the Company within five (5) business days following such execution. The Company shall provide a copy of such executed Form ST-60 to the Agent within five (5) business days after receipt thereof by the Company.

Addendum A

FORM ST-60



IDA Appointment of Project Operator or Agent For Sales Tax Purposes

ST-60

(4/13)

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

For IDA use only

Name of IDA		IDA project number (use OSC numbering system for projects after 1998)	
Street address		Telephone number ()	
City		State	ZIP code
Name of IDA project operator or agent	Mark an X in the box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or social security number	
Street address	Telephone number ()	Primary operator or agent? <input type="checkbox"/> Yes <input type="checkbox"/> No	
City	State	ZIP code	
Name of project	Purpose of project (see instructions)		
Street address of project site			
City		State	ZIP code
Description of goods and services intended to be exempted from New York State and local sales and use taxes			

Date project operator or agent appointed (mm/dd/yy)	Date project operator or agent status ends (mm/dd/yy)	Mark an X in the box if this is an extension to an original project: <input type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax:		Estimated value of New York State and local sales and use tax exemption provided:

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
Signature	Date
	Telephone number ()

Instructions

Filing requirements

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

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

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

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

Purpose of project

For Purpose of project, enter one of the following:

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

Mailing instructions

Mail completed form to:

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

Privacy notification

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

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

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

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

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

Need help?

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

Sales Tax Information Center: (518) 485-2889
To order forms and publications: (518) 457-5431

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

Annex C

**SPECIAL PROVISIONS RELATING TO STATE SALES TAX SAVINGS
General Municipal Law Article 18-A, Section 875, Subdivisions (1) and (3)**

“Section 875. Special provisions applicable to State sales and compensating use taxes and certain types of facilities.

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

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

(B) The IDA shall recover, recapture, receive, or otherwise obtain from an agent, project operator or other person or entity State sales and use exemptions benefits taken or purported to be taken by any such person to which the person is not entitled or which are in excess of the amounts authorized or which are for property or services not authorized or taken in cases where such agent or project operator, or other person or entity failed to comply with a material term or condition to use property or services in the manner required by the person’s agreement with the IDA. Such agent or project operator, or other person or entity shall cooperate with the IDA in its efforts to recover, recapture, receive, or otherwise obtain such State sales and use exemptions benefits and shall promptly pay over any such amounts to the IDA that it requests. ~~The failure to pay over such amounts to the IDA shall be grounds for the Commissioner to assess and determine State sales and use taxes due from the person under Article twenty-eight of the tax law, together with any relevant penalties and interest due on such amounts.~~

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

(D) An IDA shall prepare an annual compliance report detailing its terms and conditions described in paragraph (A) of this subdivision and its activities and efforts to recover,

recapture, receive, or otherwise obtain State sales and use exemptions benefits described in paragraph (B) of this subdivision, together with such other information as the Commissioner and the Commissioner of Economic Development may require. The report required by this subdivision shall be filed with the Commissioner, the Director of the Division of the Budget, the Commissioner of Economic Development, the State Comptroller, the governing body of the municipality for whose benefit the IDA was created, and may be included with the annual financial statement required by paragraph (B) of subdivision one of Section eight hundred fifty-nine of this Title. Such report required by this subdivision shall be filed regardless of whether the IDA is required to file such financial statement described by such paragraph (B) of subdivision one of Section eight hundred fifty-nine. The failure to file or substantially complete the report required by this subdivision shall be deemed to be the failure to file or substantially complete the statement required by such paragraph (b) of subdivision one of such Section eight hundred fifty-nine, and the consequences shall be the same as provided in paragraph (e) of subdivision one of such Section eight hundred fifty-nine.

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

**EXHIBIT B
TO
SALES TAX AGENT AUTHORIZATION LETTER**

**SPECIAL PROVISIONS RELATING TO STATE SALES TAX SAVINGS
General Municipal Law, Section 875(1) and (3)**

“Section 875. Special provisions applicable to State sales and compensating use taxes and certain types of facilities.

1. For purposes of this Section: “State sales and use taxes” means sales and compensating use taxes and fees imposed by Article twenty-eight or twenty-eight-A of the tax law but excluding such taxes imposed in a City by Section eleven hundred seven or eleven hundred eight of such Article twenty-eight. “IDA” means an industrial development agency established by this Article or an industrial development authority created by the public authorities law. “Commissioner” means the Commissioner of taxation and finance. ...

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

(B) The IDA shall recover, recapture, receive, or otherwise obtain from an agent, project operator or other person or entity State sales and use exemptions benefits taken or purported to be taken by any such person to which the person is not entitled or which are in excess of the amounts authorized or which are for property or services not authorized or taken in cases where such agent or project operator, or other person or entity failed to comply with a material term or condition to use property or services in the manner required by the person’s agreement with the IDA. Such agent or project operator, or other person or entity shall cooperate with the IDA in its efforts to recover, recapture, receive, or otherwise obtain such State sales and use exemptions benefits and shall promptly pay over any such amounts to the IDA that it requests. The failure to pay over such amounts to the IDA shall be grounds for the Commissioner to assess and determine State sales and use taxes due from the person under article twenty-eight of the tax law, together with any relevant penalties and interest due on such amounts.

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

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

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

**EXHIBIT C
TO
SALES TAX AGENT AUTHORIZATION LETTER**

Sales Tax Registry

Please Complete: **REPORTED PERIOD:** _____, 201__ to _____, 201__

Description of Item (incl. Serial #,if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings

TOTAL SALES TAX SAVINGS REALIZED DURING THE REPORTED PERIOD:	
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Certification: I, the undersigned, an authorized officer or principal owner of the Lessee, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Sales Tax Savings realized by the Lessee below and its principals, affiliates, tenants, subtenants, contractors, subcontractors and any other person or entity pursuant to the LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION issued to the Lessee by New York City Industrial Development Agency. This form and information provided pursuant hereto may be disclosed to the New York City Economic Development Corporation ("NYCEDC"), and may be disclosed by NYCEDC in connection with the administration of the programs by NYCEDC; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Company Name: Gamut Consulting, Inc.
Signature By: _____
Name (print): _____
Title: _____
Date: _____