

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (hereinafter, the "Agreement"), effective as of March 18, 2019 by and between the **COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency"), a public benefit corporation of the State of New York having an address of 5 Warren Street, Glens Falls, New York 12801 and **SANDY HILL VISION, LLC** (the "Company"), a limited liability company organized and existing under the laws of the State of New York, with an address of 116 Oak Street, Hudson Falls, New York 12839.

WITNESSETH:

WHEREAS, the Agency was created by Chapter 862 of the Laws of 1971 of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, Sandy Hill Vision, LLC, a limited liability company established pursuant to the laws of the State of New York, having an address of 116 Oak Street, Hudson Falls, New York 12839, (the "Company") has requested that the Agency provide financial assistance in the form of a mortgage tax exemption and sales tax abatements regarding a project (the "Project") to consist of: (i) the acquisition by the Agency of a leasehold interest in certain real property located at 214-216 Main Street, Village of Hudson Falls, Town of Kingsbury, County of Washington, State of New York (the "Land", being more particularly described as tax parcel number 154.14-1-1); (ii) the planning, design, construction, operation and maintenance by the Company of an approximately 2,100 square foot restaurant, administrative office space, a community arts center including a 4,400 square foot performance space and 13 studio art spaces (collectively, the "Improvements"); (iii) the acquisition of and installation in and around the Land and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the "Equipment" and, collectively with, the Land and the Improvements, the "Facility"); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the "Straight Lease Transaction"), all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the "Act"), as amended; and

WHEREAS, on March 12, 2019, the Agency conducted a public hearing pursuant to the Act prior to taking official action relating to the Project; and

WHEREAS, on March 18, 2019, by Resolution No. 19-02, the Agency adopted a resolution approving the undertaking of the Project, appointing Sandy Hill Vision, LLC, agent of the Agency for the purpose of constructing and equipping the Project Facility and authorized the execution and delivery of closing documents by and between the parties (collectively referred to as the "Approval and Closing Resolution"); and

WHEREAS, by the Approval and Closing Resolution, the Agency has conferred on the Company in connection with the Project certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from all New York State and local sales and use taxes 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) an exemption benefit from mortgage recording tax (collectively, the sales and use tax exemption benefit and the mortgage recording tax benefit are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, it has been estimated and confirmed by the Company as included within its Application for Financial Assistance that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$500,000.00 and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$35,000.00, unless otherwise approved by the Agency and (ii) that the mortgage recording tax exemption amount shall be approximately \$5,500.00; and

WHEREAS, the Company proposes to lease the Facility to the Agency, and the Agency desires to rent the Facility from the Company pursuant to the terms of a certain Company Underlying Lease Agreement dated as of April 5, 2019 (the "Underlying Lease Agreement"), by and between the Company and the Agency; and

WHEREAS, the Agency proposes to sublease the Facility to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions set forth in a certain Lease Agreement dated as of April 5, 2019 (the "Lease Agreement"); and

WHEREAS, in order to define the obligations of the Company regarding its ability to utilize the Agency's sales and use tax exemption benefit as agent of the Agency to acquire, construct, renovate and equip the Facility and to undertake the Project, the Agency and the Company entered into an Agent Agreement, dated as of March 18, 2019 (the "Agent Agreement"), by and between the Agency and the Company; and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Approval and Closing Resolutions and the Agent Agreement, that the Company provide assurances with respect to the terms and conditions herein set forth; and

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

WHEREAS, no Financial Assistance shall be provided to the Company prior to the effective date of this 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:

1. Purpose of Project. It is understood and agreed by the parties hereto that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to, and that the Agency is entering into the Underlying Lease Agreement, Lease Agreement and Agent Agreement in order to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of the Project facility to advance job opportunities, health, general prosperity and economic welfare of the people of the Counties of Warren and Washington and to otherwise accomplish the public purpose of the Act.

2. PILOT Agreement. Not Applicable.

3. Termination, Modification and/or Recapture of Agency Financial Assistance. It is understood and agreed by the Parties hereto that the Agency is entering into the Underlying Lease Agreement, the Lease Agreement, and the Agent Agreement in order to provide Financial Assistance to the Company for the Facility and to accomplish the public purposes of the Act. The Company hereby makes the following representations and covenants in order to induce the Agency to proceed with the Project Facility:

(a) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Inducement and Closing Resolution, the Company covenants and agrees that it may be subject to a Recapture event (as hereinafter defined) resulting in the potential recapture of any and all Financial Assistance, as described below and in accordance with the provisions of the Recapture Policy of the Agency, as it may be amended, if the Company receives, or its subagents receives any Financial Assistance from the Agency, and it is determined by the Agency that:

i. Closure of the facility and departure of the company from the Counties of Warren or Washington (Notwithstanding any of the terms set forth herein, this occurrence shall result in the immediate termination of Financial Assistance) or sale of the facility without the prior approval of the Agency; or

ii. Significant change in the use of the facility and/or the business activities of the company; or

iii. Significant employment reductions not reflective of the company's (normal) business cycle and/or local and national economic conditions; or

iv. Failure to comply with any periodic and/or annual reporting requirements of the Agency, State or Federal governmental agency; or

v. For a project that failed to comply with a significant term or condition to use property or services in the manner required by any and all provisions of the agreements that the company has entered into with the Agency; or

vi. Failure to meet or comply with the Material Terms, as determined by the Agency at the time of the acceptance of the project for Financial Assistance and as set forth in the authorizing resolutions; all as further defined below, being additional purposes to be achieved by the Agency with respect to its determination to provide Financial Assistance to the Project and required by the Agency to be complied with and

adhered to, as evidenced by submission, as so required by the Agency, of written confirmation certifying and confirming on an annual basis beginning in the first year in which Financial Assistance confirming:

(1) Investment Commitment - that the total investment actually made with respect to the Project at the Project's construction completion date equals or exceeds \$600,000.00 (which represents the product of 80% multiplied by \$750,000.00 being the total project cost as stated in the Company's application for Financial Assistance); and

(2) Employment Commitment - that there are at least four (4) full time equivalent ("FTE") employees located at, or to be located at, the Facility as stated in the Company's application for Financial Assistance (the "Baseline FTE"); and

- the number of current FTE employees in the then current year at the Facility; and
- that the Company has maintained and created FTE employment at the Facility equal to a number that represents approximately the product of 80% multiplied by the Baseline FTE as stated in the Company's application for Financial Assistance; and

(b) Project Assessment Reporting Commitment – that the Company shall provide, annually, to the Agency, certain information to confirm that the Project is achieving the investment, job retention, job creation, and other objectives of the Project.

In order to accomplish 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, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (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. Exhibit B contains the form of annual certification as so required as discussed above as well as additional Project assessment information that the Agency requires, on an annual basis, to be submitted to the Agency by the Company.

The findings made by the Agency with respect to Section 3 and/or failure to provide the written confirmation as required by Section 3 with respect to the thresholds and requirements as identified in this Section 3, and/or failure to meet the thresholds and requirements as identified in this Section 3, may potentially be determined by the Agency, in accordance with the Agency's "Recapture Policy", to constitute a failure to comply with Section 875(3) of the New York General Municipal Law, and/or a failure to comply with a material term or condition to use property or services or Agency Financial Assistance in the manner approved by the Agency in connection with the Project, and/or a failure to comply with the Agency's policies and Approval

and Closing Resolution (collectively, findings and determinations made as described herein with respect to this Section 3 and/or the failure under this Section 3 to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in this Section 3 are hereby defined as a "Recapture Event"). If the Agency makes a Recapture Event determination, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s). The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the New York State and local sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

(b) In accordance with the Approval and Closing Resolution the Company further: (i) covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$500,000.00, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 3 of this Project Agreement, cannot exceed \$35,000.00, unless otherwise increased by the approval of the Agency.

(c) The Company acknowledges and understands that a Recapture Event determination made with respect to Section 3 of this Project Agreement will, in addition, immediately result in the loss and forfeiture of the Company's right and ability to obtain any and all future Financial Assistance with respect to the Project.

4. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Agreement to the Agency regardless of any investigation made by the Agency.

5. Notices. All notices, certificates and other communications under this Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by Federal Express, addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Counties of Warren and Washington
Industrial Development Agency
5 Warren Street
Glens Falls, New York 12801
Attention: Chairman

With Copy to:

FitzGerald Morris Baker Firth P.C.
P.O. Box 2017
68 Warren Street
Glens Falls, NY 12801-2017
Attention: Kara I. Lais, Esq.

To the Company:

Sandy Hill Vision, LLC.
116 Oak Street
Hudson Falls, New York 12839
Attention: William L. Nikas, Esq.

6. Amendments. No amendment, change, modification, alteration or termination of this Agreement shall be made except in writing upon the written consent of the Company and the Agency.

7. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.

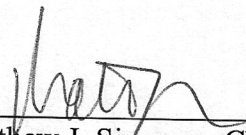
8. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State, without regard or reference to its conflict of laws principles.


9. Section Headings. The headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Agreement.

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

COUNTIES OF WARREN AND
WASHINGTON INDUSTRIAL
DEVELOPMENT AGENCY

SANDY HILL VISION, LLC

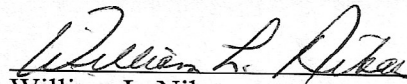
By: 
Matthew J. Simpson, Chairman

By: 
William L. Nikas, Authorized Representative

STATE OF NEW YORK)
COUNTY OF WARREN) ss.:

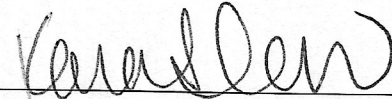
William L. Nikas, being first duly sworn, deposes and says:

1. That I am an authorized representative of Sandy Hill Vision, LLC and that I am duly authorized on behalf of the Company to bind the Company and to execute this Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.



William L. Nikas

Subscribed and affirmed to me under penalties of perjury
this 5th day of April, 2019.



(Notary Public)

Kara I. Lais
Notary Public, State of New York
Saratoga County
#02LA6105701
Commission Expires February 17, 2020

SCHEDULE A

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SCHEDULE A

214-216 Main Street
Town of Kingsbury
Village of Hudson Falls
State of New York
Section 154.14 Block 1 Lot 1
PARCEL # 6465

Description - 931A101371 Masonic Temple Assoc.; 214-116 Main Street, 632, 64 x 131 Irr., 154.14-01-01.000 (Reference is made to the 1980 Town Tax Roll of the Town of Kingsbury, on line numbered 4, page numbered 246).

A more modern description of the above premises is as follows:

COMMENCING at a point where the southerly bounds of Locust Street meets the easterly bounds of Main Street; running thence South $45^{\circ} 20'$ East along the southerly bounds of Locust Street for a distance of 131 feet to a point for a corner; running thence South $43^{\circ} 35'$ West for a distance of 65 feet to a point for a corner; running thence North 45° West for a distance of 130 feet to an iron bar in the easterly bounds of Main Street; running thence North $43^{\circ} 35'$ East along the easterly bounds of Main Street for a distance of 64 feet to the point and place of beginning. Said premises are depicted on a certain "Map of Divisions of Masonic Temple Lot, 1921, Hudson Falls, N.Y. (Sub-Divisions 2, 3 & 4), by James McCarty" filed in the Washington County Clerk's Office on March 6, 1922 as Map No. 83, to which reference is hereby made.

SCHEDULE B

FORM OF ANNUAL EMPLOYMENT AND SALARY AND FRINGE BENEFITS AND
RELATED PROJECT INFORMATION CERTIFICATION LETTER

Date

Re: New Project Verification

Dear:

The Counties of Warren and Washington Industrial Development Agency (the "Agency") is currently providing assistance in connection with your project in the Town of Kingsbury.

The Agency is required to file an annual report with the New York State Comptroller providing information on its activities, and the activities of projects that are assisted by the Agency. In order for the Agency to compile that report, it is necessary that we obtain information relating to assistance provided and benefits derived from all entities that receive such assistance. Failure by the Agency to file the report information required by New York State could result in the Agency losing its ability to provide future assistance or the entity suffering claw-back provisions and forfeiting benefits previously received. Therefore, it is important that this information be provided in an accurate and timely manner.

Attached please find a questionnaire to be completed and returned to the IDA by _____. If you have any questions regarding the required information, please do not hesitate to call our office.

We appreciate your assistance in this matter. A self-addressed stamped envelope is enclosed for your convenience.

Very truly yours,

Company name and address:

Project Name:

Company contact:

Contact phone number:

(Please correct any information above)

Financing Information

Has the Agency provided project financing assistance through issuance of a bond or note)

Yes No

If financing assistance was provided, please provide:

- Original principal balance of bond or note issued _____
- Outstanding principal balance of such bond or note at December 31, 20____
- Principal paid during 20____
- Outstanding principal balance of such bond or note at December 31, 20____

Interest rate on mortgage as of December 31, 20____

Final maturity date of the bond or note _____

Is the Company a not-for-profit? _____

Sales Tax Abatement Information

Did your company receive Sales Tax Abatement on your Project during 20____

Yes No

If so, please provide the amount of sales tax savings received _____

(A copy of the ST-340 sales tax report submitted to New York State for the reporting period is required to be attached with this report)

Mortgage Recording Tax Information

Did your company receive Mortgage Tax Abatement on your Project during 20____

Yes No

(NOTE: Only be applicable the year that a mortgage was placed upon the project)

The amount of the mortgage recording tax that was abated during 20____

Job Information

Number of full time equivalent employees (“FTE”) existing jobs by category and average Hourly wage for each **before IDA status**

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Current number of FTE employees for 20__ by category and average hourly wage.

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Number of FTE jobs **created** during 20__ as a result of the assistance received through the IDA by category and average hourly wage.

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Number of FTE jobs retained during 20__ by category and average hourly wage.

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Total annual payroll for 20__ _____

A copy of the NYS 45 form for the project location is required to be submitted with this report. If the NYS 45 form is not available for the specific project location or the form does not accurately reflect the full time jobs created an internal report verifying the total jobs by employment category as outlined above at the location is required with this submission.

Number of FTE construction jobs created during 20__ _____

Number of FTE construction jobs during 20__ _____

20__ Capital Investment

Real Estate	_____
Construction	_____
Machinery and Equipment	_____
Other Taxable Expenses	_____
Other Non-Taxable Expenses	_____
Total Capital Investment	_____

I certify that to the best of my knowledge and belief all of the information on this form is correct. I also understand that failure to report completely and accurately may result in enforcement of provisions of my agreement, including but not limited to voidance of the agreement and potential claw back of benefits.

Signed: _____
(authorized company representative)

Date: _____