

# NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY

## Memorandum

**To:** Agency Staff  
**From:** Members of the Agency  
**Date:** March 4, 2017  
**Re:** Uniform Criteria for Processing/Evaluation of Projects

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The following are the Agency's guidelines for the review, processing, evaluation and selection of potential project applications from initial contact to closing of the transaction. The following apply to all categories of potential projects. The following are intended to provide overall guidance but are by no means exhaustive or all inclusive and, except as set forth below, may not be applicable to all matters:

1. Initial Contact
  - The Executive Director or other designated staff member ("Agency Contact") shall make a written record of the initial contact including time, date and method of contact, name of applicant, address, type of enterprise and applicant point of contact.
  - Agency Contact provides Pre-Application Questionnaire to the potential applicant and schedules a meeting to review the applicant's response.
  - Logs of initial contacts shall be distributed to the members periodically.
2. Meeting with Agency Contact

- Applicant should bring documentation of and/or be prepared to discuss: (i) location of proposed project, (ii) nature of proposed project, (iii) location of existing facilities of the applicant, (iv) proposals for job retention/creation, (v) likely community impacts and reaction, and (vi) requested types and amounts of financial assistance.
- If the Agency Contact determines that the proposed project is viable, the applicant is invited to appear before the Transactions Committee and the Executive Director provides the appropriate form of Application for Financial Assistance to the applicant. The Applicant is asked to complete the Application (to the extent possible) and to deliver it to the Agency in draft form. Payment of the Agency's expense deposit is not normally required at this stage.
- General Counsel to the Agency will generally participate in the initial meeting with the applicant.

### 3. Presentation to Transactions Committee

- Prior to presentation, the Agency Contact provides the pre-application questionnaire response (if applicable), the draft Application for Financial Assistance from the applicant, and any other relevant materials to the Transactions Committee. Incomplete draft Applications will not be considered by the Transactions Committee.
- Transactions Committee shall consist of at least one (1) member of the Agency, the Executive Director and such other members and persons as the members of the Agency shall appoint. The Committee's function shall be advisory in nature and all final decisionmaking shall remain with the members of the Agency.
- Applicant informally presents the proposed project to the Transactions Committee and receives feedback as to the anticipated financial assistance package, either at the end of the proposal or shortly thereafter. Transactions Committee authorizes the Agency Contact to further negotiate the terms of the financial assistance package and to initiate the SEQR and public notice(s) process upon receipt of a completed and executed Application for Financial Assistance.
- Agency Contact, at the direction of the Transactions Committee, advises the applicant that the Agency will authorize the applicant

to file the completed and executed Application for processing if made within 30 days following the date of the presentation.

- Agency Contact provides a form of Preliminary Agreement to the Applicant which may be signed at the conclusion of the Transactions Committee meeting but shall be signed in no event later than the submission of the formal Application by the Applicant. The Preliminary Agreement constitutes an agreement by the Applicant to pay or reimburse the Agency for its expenses in connection with the processing, review and evaluation of the Application. A copy of the form of Preliminary Agreement is attached to this memo.

#### 4. Application to the Agency

- Applicant submits completed and executed Application for Financial Assistance, including Environmental Assessment Form and other required exhibits. Incomplete Applications will not be considered by the Agency.
- Applicant deposits with the Agency: (i) \$1,000 application fee, (ii) \$3,500 expense deposit for bond counsel fees, (iii) \$2,500 expense deposit for cost/benefit analysis, and (iv) \$500 expense deposit for real property tax valuation analysis. In the event that the transaction does not close, the Agency shall use the expense deposits to defray the costs of the applicable professionals and return any balance to the applicant. In the event that the transaction closes, such expense deposits shall be credited at closing against the final invoices delivered by the applicable professionals.
- Agency staff obtains background check releases from the Applicant, its affiliates and principals as deemed appropriate by Agency staff, and orders or causes to be ordered appropriate searches and background checks, including, without limitation, bankruptcy, tax lien, judgment and OFAC searches as applicable.
- Agency staff reviews financial statements and data (e.g., past earnings and projected cash flows, as applicable) received from the Applicant to assess the strength of the Applicant.
- Bond Counsel reviews the Application and provides due diligence memo (if required).

#### 5. Public Hearing

- Agency Contact schedules and conducts public hearing (if required).
  - Agency Contact is authorized to hold such public hearing on behalf of the Agency and is directed to mail notices to the affected tax jurisdictions and publish public notices in a newspaper of general circulation in the County of Nassau, all as required by applicable law.
  - Agency Contact prepares report of public hearing and delivers report to the members. Alternatively, the Agency Contact is authorized to have a stenographer take minutes of the public hearing.
6. Financial Assistance “Deviation Notice” (if required)
- Agency Contact is authorized to issue “deviation notice” consistent with guidance from the Transactions Committee.
  - Agency Contact provides acknowledgment of and, if desired, responds to all correspondence received from affected tax jurisdictions.
7. SEQR Review Process
- Initiated by Bond Counsel upon receipt of Environmental Assessment Form from applicant.
  - Additional documentation supplied as necessary.
  - Bond Counsel drafts appropriate findings/resolution.
8. Cost-Benefit Analysis/Real Property Tax Valuation Analysis
- Ordered upon receipt of the Application and shall be distributed to all members of the Agency.
  - The Agency will perform or cause to be performed a written cost/benefit analysis with respect to each proposed project. The cost-benefit analysis or documentation prepared by the Agency’s staff in support thereof shall, at a minimum, identify: (a) the extent to which a proposed project will create or retain permanent, private sector jobs, (b) the estimated value of any tax exemptions to be provided, (c) the amount of private sector investment generated or likely to be generated by the proposed project, (d) the likelihood of accomplishing the proposed project in a timely fashion, (e) the extent to which the proposed project will provide additional

sources of revenue for municipalities and school districts, and (f) any other public benefits that might occur as a result of the proposed project.

- Generally, the Agency will obtain such analysis from an independent, third-party consultant engaged by the Agency, unless the size or type of the proposed project does not warrant the expense of such a third-party analysis, in which event the Agency's staff shall perform the cost/benefit analysis for the Agency.
- In the sole discretion of the Agency, a cost/benefit analysis will not be obtained from an independent, third-party consultant if such analysis is cost prohibitive given the contemplated financial assistance or is otherwise not warranted or beneficial under the particular circumstances.

9. Bond Counsel prepares transaction documents

- Bond Counsel/General Counsel obtains "public approval" of tax-exempt bonds from County Executive (if applicable).
- If required for the transaction, the Executive Director assigns title work to a title company from the Agency's then-applicable approved list of title companies (the "Title Companies") and Bond Counsel contacts the Title Company or the Applicant to order the title report; provided, however, that the cost thereof shall be borne by the Applicant. Assignments to the Title Companies will be made on a sequential basis in a manner designed to give full opportunity to all Title Companies to provide the required services; provided, however, that the Executive Director shall have the authority to assign title for a project to a particular Title Company in his discretion if the circumstances warrant. Circumstances that may warrant assignment of a matter to a particular Title Company may include, but are not limited to, complexity of the transaction, special title issues and prior experience/involvement of the Title Company with respect to the subject property. In addition, the Executive Director shall have discretion to allow the Applicant to select a title company if circumstances warrant. In any instance that a title company is selected other than on a sequential basis, the Executive Director shall first document such selection in a memorandum explaining the reasons therefor, which memorandum shall be included in the project file and a copy of which shall be provided to the Agency's Finance Committee.

- Bond Counsel/ Administrative Director obtains volume cap from State (if required).
- Bond Counsel attempts to obtain bond issuance charge and Commissioner of Health charge waivers (no longer likely to be granted).
- Bond Counsel/General Counsel forwards draft PILOT documents to County Attorney.
- Bond Counsel/General Counsel/Executive Director negotiate and revise applicable documents.

10. Inducement/ Approving/ Bond Resolution

- The Executive Director prepares, prior to the Agency meeting, the requisite internal forms and summaries, including, without limitation, a Staff Review of Application (in substantially the form attached hereto as Exhibit A), which should be delivered to the members of the Agency at least one (1) week in advance of the Agency meeting.
- Agency Contact prepares notice of Agency meeting and agenda for Agency meeting; Agency contact posts notice as required by Open Meetings Law, posts notice on Agency website and e-mails notice to major television, radio and newspaper outlets as well as local community papers (to the extent applicable).
- Includes approval of “deviation” from uniform tax exemption policy (if applicable).
- Closing documents may not be in final form, but all major issues should be resolved.

11. Closing

- General Counsel and Bond Counsel deliver requisite opinions.
- The Applicant’s counsel shall deliver customary opinions in connection with the transaction, including, but not limited to, zoning and land use (where applicable) and compliance with applicable law.
- Bond Counsel delivers 412-a notice to County Assessor and tax jurisdictions.
- Bond Counsel delivers ST-60 to New York State Department of Taxation and Finance.

- Bond Counsel makes applicable filings with the Internal Revenue Service.

\*\* The members of the Agency may waive or deviate from any of the foregoing procedures in their discretion if the circumstances warrant such waiver or deviation. \*\*

Notwithstanding the foregoing, the members of the Agency have adopted the following uniform criteria for the evaluation and selection of all categories of Projects for which Financial Assistance shall be granted and staff and counsel to the Agency are directed to undertake or obtain the following, as applicable, prior to presenting any proposed Project for approval by the members of the Agency:

1. an assessment by the Agency of all material information included in connection with an Application for Financial Assistance as shall be necessary to afford the members of the Agency a reasonable basis for their decision to provide Financial Assistance for such proposed Project;
2. a written cost-benefit analysis as set forth above;
3. a statement in writing by the applicant that, as of the date of the Application, the proposed Project is in substantial compliance with all provisions of Article 18-A of the General Municipal Law, including, but not limited to, the provisions of Section 859-a and Section 862(1) thereof; and
4. if the proposed Project involves the removal or abandonment of a facility or plant within the State, the Agency's staff shall notify the chief executive officer(s) of the municipality or municipalities in which such removed or abandoned facility or plant was located.

EXHIBIT A

**STAFF REVIEW OF APPLICATION**

**Date:** \_\_\_\_\_

**PROJECT:** \_\_\_\_\_

**I. APPLICANT INFORMATION**

Applicant: \_\_\_\_\_

Applicant  
Address: \_\_\_\_\_

Direct  
Parents: \_\_\_\_\_

Principals: \_\_\_\_\_

**II. PROJECT DESCRIPTION**

Project: The Project consists of:  
\_\_\_\_\_.

See Appendix A for a location map and photograph of each site comprising the Project Facility.

Timeline: Renovation/Construction Start: Within \_\_\_\_\_.

Renovation/Construction Completion: \_\_\_\_\_ (the “Scheduled Completion Date”).

Financing: \_\_\_\_\_.

**III. PROJECT TEAM**

Attorneys: \_\_\_\_\_.

Engineer: \_\_\_\_\_.

Architect: \_\_\_\_\_.

General Contractor: \_\_\_\_\_.

**IV. DATA SUMMARY**

Job Covenant: The Applicant will \_\_\_\_\_ [indicate number of permanent full-time equivalent jobs to be retained/created including timeframe, estimated salary and fringe benefit averages or ranges for categories of jobs and an estimate of the number of jobs that would be filled from within the Labor Market Area].

Capital Investment: Total Budget -- \$  
Land/Building Acquisition – \$  
Construction/Reconstruction/Renovation – \$  
Site Work - \$  
Infrastructure Work - \$  
Furniture/Fixture/Equipment Acquisition - \$  
Soft Costs – \$

Estimated Value of Requested Benefits: Mortgage Recording Tax - \$  
Sales/Use Tax - \$ (estimated maximum)  
Interest savings - \$  
Real Property Tax -

Property Tax Comparison: Estimated otherwise applicable taxes -- \$

**Total Estimated PILOT Payments:**

**Total Estimated Taxes:**

**Net Benefit to Company: \$**

In Year \_\_, the Project Facility would revert to taxable status and the Applicant is responsible to pay property taxes based on the fully taxable assessed value of the Project Facility and then effective tax rates.

Pursuant to PILOT Agreement, the Applicant cannot change its PILOT obligations during the PILOT period by challenging its assessment.

Other New Revenue to Local Taxing Jurisdictions: \_\_\_\_\_

Miscellaneous Public Benefits: \_\_\_\_\_

**V. ESTIMATED ECONOMIC IMPACT ANALYSIS**

See Camoin Associates economic impact report attached as Appendix B. The figures and job numbers in this Section V are all “net new” per the Camoin report.

Projected Direct & Indirect Permanent Jobs Retained & Created:	
Projected Annual Earnings from Direct & Indirect Permanent Jobs Retained & Created:	
Projected Annual Spending from Permanent Jobs Retained & Created:	
Projected Annual Local Sales Tax Revenue from Created & Retained Annual Spending:	
Direct & Indirect Construction-Phase Jobs (job-years):	
Construct-Phase Earnings:	
Construct-Phase Spending:	
Local Sales Tax Revenue from Construction-Phase Spending	
Projected Economic Benefit (from Projected Created & Retained Permanent Jobs and Construction-Phase Spending) (construction period and ___ year permanent period)	
Projected Net Fiscal Tax Benefit (\$_____ per annum sales tax revenue for 5 years (i.e., projected period of new permanent jobs) from operations, plus \$_____ sales tax revenue for construction-phase, less \$_____ property tax revenue lost over __ years)	

**VI. ENVIRONMENTAL IMPACT ANALYSIS**

Based on the Environmental Assessment Form (“EAF”) completed by the Applicant and the analysis of the EAF undertaken by the Agency’s transaction counsel, the Agency has concluded that the Project is \_\_\_\_\_ under SEQRA [and that the Project will not have a significant adverse impact on the environment. The Agency will take only a leasehold interest in the Project Facility and will require indemnification with respect to environmental matters from the Applicant.]

Environmental Benefits: \_\_\_\_\_.

**VII. COMMUNITY ANALYSIS**

Public Hearing: The Director of Business Development conducted a public hearing on \_\_\_\_\_ at \_\_\_\_\_. The Minutes of the Public Hearing are attached as Appendix C.

Other Support/  
Opposition to Project: \_\_\_\_\_.

New Infrastructure Required: \_\_\_\_\_.

Impact on Local Services: \_\_\_\_\_.

Impact on Local Business: \_\_\_\_\_.  
(including existing and proposed businesses and development projects)

Retail Impact: \_\_\_\_\_.

Added Revenue: \_\_\_\_\_.

Money Spent in Community: \_\_\_\_\_.

Unique Needs: \_\_\_\_\_.

**VIII. PROJECT / APPLICANT ANALYSIS**

Project Team: The Applicant's project team is led by \_\_\_\_\_. Staff has determined that \_\_\_\_\_ and the other principals of the Applicant have more than adequate experience in operating \_\_\_\_\_.

Likelihood of Project Being Completed in a Timely Manner: \_\_\_\_\_.

Financial Analysis: The Applicant submitted its \_\_\_\_\_ financial statements and Staff is of the opinion that the Applicant is adequately capitalized to comply with its responsibilities under the Agency's documents.

Prior Relationship with IDA: None identified.

Conflicts: None identified.

Project Specific  
Evaluation Criteria: [See UTEP for criteria applicable to project and address here]

Recapture Provisions: \_\_\_\_\_.

Legal/Regulatory Issues: \_\_\_\_\_.

The Applicant has made statements in the Application that: (i) the provisions of Section 862(1) of the General Municipal Law will not be violated if the Financial Assistance is provided for the proposed project, (ii) the owner, occupant or operator receiving financial assistance is in substantial compliance with applicable federal, state and local tax, worker protection and environmental laws, rules and regulations, (iii) the proposed project is in substantial compliance with all provisions of Article 18-a of the General Municipal Law, including, without limitation, the provisions of Section 859-a and Section 862(1) thereof, and (iv) [there is a likelihood that the proposed project would not be undertaken but for the financial assistance provided by the Agency]. Furthermore, the Applicant has acknowledged in the Application that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any financial assistance and the recapture of all or a portion of any tax exemptions claimed by reason of the Agency's involvement with respect to the proposed project.

[If the Project involves the removal or abandonment of a facility or plant within the State, staff has notified the chief executive officer(s) of the municipality or municipalities in which such removed or abandoned facility or plant was located.]

Background Check: Staff obtained credit checks from Castlebranch with respect to the Applicant and the Principals. No substantive negative issues were noted by the Chief Financial Officer.

## IX. RECOMMENDATION

1. [Staff has concluded that there is a likelihood that the proposed project would not be undertaken but for the financial assistance provided by the Agency.] OR [If the

proposed project could be undertaken without the financial assistance provided by the Agency, the proposed should be undertaken by the Agency because \_\_\_\_\_.]

2. [Staff has reviewed and assessed all material information included in connection with the Application for Financial Assistance and has concluded that there is a reasonable basis for the Agency to provide financial assistance for the proposed project.]