



FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

PROJECT APPLICATION

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Fulton County NY

POSITIVE



FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY'S FEE SCHEDULE

I. IDA FEES:

A. APPLICATION FEE:

- Application Fee : \$1,000
- Application Fee shall be paid to IDA upon submission of Project Application.
- Application Fee is Non-Refundable.

B. ADMINISTRATIVE FEE:

1. Straight Lease Projects:

- Administrative Fee : .75% of the total Project cost
- Administrative Fee shall be paid to IDA prior to execution of lease documents.

2. Bond Projects:

- Administrative Fee : 1%
- Administrative Fee shall be paid to IDA prior to or at the bond closing.

C. PAYMENT IN LIEU OF TAX AGREEMENT (PILOT) FEE:

- Administrative Fee : \$400/year.
- This Administrative Fee shall be invoiced by the IDA on or around January 1 of each year and shall be paid to the Agency by January 31st of each year a PILOT is in effect.

D. SUBLEASE FEE:

- Annual Compliance Fee for all subleases and sublessees is \$500.
- Annual Compliance Fee is payable by January 15th of each year of sublease.

E. EARLY LEASE TERMINATION FEE:

- If a Project Sponsor or Applicant requests an early termination of a Lease or PILOT Agreement, the Project Sponsor or Applicant shall be responsible for issuing a payment to the Agency of \$1,000/year for each year the Lease or PILOT Agreement were in effect, as well as the Agency's legal and other costs.

II. IDA COUNSEL FEES:

A. STRAIGHT LEASE PROJECTS:

- Applicant shall pay for all costs incurred by IDA Counsel in preparing Lease documents.
- IDA Counsel shall submit invoice to IDA who shall submit invoice to Applicant.
- Applicant shall issue payment to IDA prior to closing.

B. BOND PROJECTS:

1. IDA Counsel Fee:

- 1% up to \$600,000.00 with minimum of \$4,500.00
- 1/2 of 1% for the amount between \$600,000.00 to \$1,500,000.00
- 1/4 of 1% for the amount between \$1,500,000.00 to \$3,000,000
- 1/8 of 1% for all in excess of \$3,000,000.00

2. In the event a transaction does not close, the Applicant shall pay all IDA's Counsel Fees for the time and disbursements expended and on the project.
3. Applicant shall receive invoice directly from IDA Counsel and submit within thirty (30) days of receipt of an invoice a payment directly to the IDA Counsel. The Applicant shall at the same time it issues a payment, forward a copy of the check issued and invoice to the Fulton County IDA.

III. IDA BOND COUNSEL FEE FOR BOND PROJECTS:

- A. Applicant is responsible for payment of fees and disbursements of Bond Counsel. Bond Counsel shall be selected by the IDA.
- B. IDA shall submit invoice to Applicant for Bond Counsel Fee.
- C. Applicant shall submit to the IDA, prior to closing, a payment for Bond Counsel's cost.

IV. IDA LOT SALE FEES:

- A. If a Project Sponsor or Applicant desires to purchase land from the IDA, the following lot sale fees shall apply:

Location

- Crossroads Industrial Park : \$20,000/acre
- Crossroads Business Park : \$25,000/acre for all land not bordering S. Kingsboro Ave. Ext.
- Crossroads Business Park : \$40,000/acre for all land bordering S. Kingsboro Ave. Ext.
- Johnstown Industrial Park : \$20,000/acre
- Tryon Technology Park : \$27,500/acre

- B. Applicant shall be responsible for payment of all IDA Counsel costs. IDA shall submit invoices to Applicant for IDA Counsel costs. Applicant shall submit payment to IDA prior to closing on the lot sale.

V. NEW YORK STATE BOND ISSUANCE FEE:

- A. Part X of Chapter 85 of the 2002 Laws of the State of New York established IDA bond issuance fees:

Principal Amount of Bonds	Percentage Fee
\$1,000,000 or less	.168%
\$1,000,000 - \$5,000,000	.336%
\$5,000,001 - \$10,000,000	.504%
\$10,000,001 – \$20,000,000	.672%
More than \$20,000,000	.84%

- B. Applicant shall be responsible for paying all applicable State Bond Issuance Fees to New York State.

Adopted: 12/87
 Revised: 5/89
 Revised: 2/90
 Revised: 6/90
 Revised: 2/95
 Revised: 12/99
 Revised: 6/00
 Revised: 9/08
 Revised 12/17
 Revised 1/18
 Revised 4/14/20

Name : _____
 Title : _____
 Signature : _____
 Date : _____

SECTION 1: APPLICANT

1. Applicant:

Company Name : _____
Applicant Address : _____
Phone : _____
Website : _____
Fax : _____
E-mail : _____
Federal ID# : _____

List of stockholders, members, or partners of Applicant: _____

Will a Real Estate Holding Company be utilized to own the Project property/facility?
 Yes No

What is the name of the Real Estate Holding Company: _____

2. Individual Completing Application:

Name: _____
Title: _____
Address: _____
Phone: _____ Fax: _____
E-Mail: _____

3. Company Contact (if different from individual completing application):

Name: _____
Title: _____
Address: _____
Phone: _____ Fax: _____
E-Mail: _____

4. **Business Organization (check appropriate category):**

Corporation	<input type="checkbox"/>	Partnership	<input type="checkbox"/>
Public Corporation	<input type="checkbox"/>	Joint Venture	<input type="checkbox"/>
Sole Proprietorship	<input type="checkbox"/>	Limited Liability Company	<input type="checkbox"/>
Other	<input type="checkbox"/>	Please Specify: _____	

Year Established: _____

State in which Organization was established: _____

5. **Officers:**

	<u>Name</u>
President	: _____
Vice President	: _____
Secretary	: _____
Treasurer	: _____

6. **Stockholders:**

	<u>Name</u>	<u>% Holding</u>
	_____	_____
	_____	_____
	_____	_____

Is Company publicly held? Yes No

7. **Legal Counsel:**

Name	:	_____
Company	:	_____
Address	:	_____
Phone	:	_____
Fax	:	_____
E-Mail	:	_____

8. **Bank References:**

<u>Name</u>	<u>Bank</u>	<u>Address</u>	<u>Phone #</u>
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9. **Litigation:**

Is Company currently involved in any litigation or proceeding which could have any effect on the Company's financial solvency?

Yes No

If yes, please describe _____

10. **Identify the assistance being requested of the Agency (select all that apply):**

- | | | |
|-------------------------------------|-----------------------------|--------------------------|
| 1. Exemption from Sales Tax | <input type="checkbox"/> s | <input type="checkbox"/> |
| 2. Exemption from Mortgage Tax | <input type="checkbox"/> s | <input type="checkbox"/> |
| 3. Exemption from Real Property Tax | <input type="checkbox"/> es | <input type="checkbox"/> |
| 4. Tax Exempt Financing | <input type="checkbox"/> s | <input type="checkbox"/> |

SECTION 2: PROJECT OWNERSHIP

1. Project Owner:

Name : _____
Address : _____

Contact Person : _____
Phone # : _____
Fax # : _____
E-Mail : _____
Federal ID# : _____

2. Will Project Owner be:

Existing Company
 Subsidiary
 New Company
 Other _____

3. Will Project be leased or subleased:

	<u>Leased</u>		<u>Subleased (if applicable)</u>	
A. Land	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
B. Building	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No

4. Describe all leasehold relationships:

5. Information on Lessee:

Name of Lessee : _____
Address : _____

Contact Person : _____
Phone : _____
Fax : _____
E-Mail : _____
Federal Employer ID# : _____

6. Information on Sublessee:

Name of Sublessee : _____
Address : _____
Contact Person : _____
Phone : _____
Fax : _____
E-Mail : _____
Federal Employer ID# : _____

SECTION 3: PROJECT LOCATION

1. If you are an existing business, please identify the Municipality or Municipalities where your current operations are located:

Municipality: _____ State: _____
County: _____

2. Will the Proposed Project be located within the Municipality identified above?

Yes No

- a. If Yes, in which Municipality will the proposed project be located: _____
b. If No, in which Municipality will the proposed project be located: _____

3. If the Proposed Project is located in a different Municipality than the Municipality in which current operations are being undertaken, is it expected that any of the facilities in any other Municipality will be closed or be subject to reduced activity?

Yes No

- a. If Yes, is the project reasonably necessary to prevent the project occupant from moving out of New York State?

Yes No

- b. If yes, please explain and identify out of state locations investigated, type of assistance offered and provide supporting documentation, if available.

4. Will the completion of the Project result in the removal of an industrial or manufacturing plant of the project occupant from one area of New York State to another area of the state OR in the abandonment of one or more plants or facilities of the project occupant located within New York State.

Yes No

If yes, please identify the location of the plant or project occupant _____

5. What are the current total combined real estate taxes on the proposed Project Site? \$_____/year

a. If available, please include a copy of current tax bills.

6. What are the current assessed valuations on the proposed Project Site:

a. Land : \$ _____
b. Building : \$ _____
c. Total : \$ _____

7. Are real property taxes current? Yes No If no, please explain

SECTION 4: PROJECT DESCRIPTION

1. **Project Name:** _____

2. **Project Address:** _____

3. **School District:** _____

4. **Lot Description:**

1. Section/Block/Number: _____
2. Lot Size: _____ acres
3. Attach copy of survey map prepared by NYS Licensed Surveyor.

5. **Current legal owner of lot:** _____

6. **Current zoning of lot:** _____

7. **New Building Description:**

1. Gross square foot of floor space : _____
2. Number of stories : _____
3. Building height : _____
4. Exterior finishes : _____

8. Provide narrative and purpose of the project (new build, renovations, and/or equipment purchases). Identify specific uses occurring within the project. Describe all tenants and end uses: (This information is critical in determining project eligibility): _____

9. Describe the reason why the Fulton County Industrial Development Agency's (Agency) Financial Assistance is necessary and the effect the Project will have on the Applicant's business or operations. Focus on competitiveness issues, project shortfalls, etc.... Your eligibility determination will be based in part on your answer (attach additional pages if necessary): _____

10. Please confirm by checking the box, below, if there is likelihood that the Project would not be undertaken but for the Financial Assistance provided by the Agency?

Yes No

11. If the Project could be undertaken without Financial Assistance provided by the Agency, then provide a statement in the space provided below indicating why the Project should be undertaken by the Agency:

12. If the Applicant is unable to obtain Financial Assistance for the Project, what will be the impact on the Applicant and County/City/Town/Village?

13. Will customers personally visit the Project site for either of the following economic activities?

Retail Sales: Yes No

Services: Yes No

If Yes is checked to either economic activity indicated above, the Retail Questionnaire contained in Section 5 of the Application must be completed.

For purposes of this question, the term "retail sales" means (i) sales by a registered vendor under Article 28 of the Tax Law of the State of New York (the "Tax Law") primarily engaged in the retail sale of tangible personal property (as defined in Section 1101(b)(4)(i) of the Tax Law), or (ii) sales of a service to customers who personally visit the Project.

14. **Select Project Type for all end users at Project Site.** (Please check any and all end users as identified below.)

Industrial	<input type="checkbox"/>	Office	<input type="checkbox"/>
Acquisition of Existing Facility	<input type="checkbox"/>	Retail	<input type="checkbox"/>
Housing	<input type="checkbox"/>	Mixed Use	<input type="checkbox"/>
Equipment Purchase	<input type="checkbox"/>	Facility for Aging	<input type="checkbox"/>
Multi-Tenant	<input type="checkbox"/>	Civic Facility	<input type="checkbox"/>
Commercial	<input type="checkbox"/>	Other _____	<input type="checkbox"/>

15. **Estimated Project Costs:**

1. Land and/or Building Acquisition: \$ _____

A. Land : _____ Acres

B. Building : _____ Sq. Ft.

2. New Building Construction: _____ square feet \$ _____

3. New Building Addition(s): _____ square feet \$ _____

4. Existing Building Renovations: _____ square feet \$ _____

5. Infrastructure: Water, Sewer, Storm \$ _____

6. Infrastructure: Gas and Electric \$ _____

7. Manufacturing Equipment: \$ _____

8. Non-Manufacturing Equipment (furniture, fixtures, etc.): \$ _____

9. Soft Costs: (professional services etc.): \$ _____

10. Other, Specify: _____ \$ _____

TOTAL ESTIMATED PROJECT COST: \$ _____

Have any of the above project costs been paid or incurred as of the date of this Application?

Yes No

If Yes, describe what costs: _____

16. **Project Materials to be Purchased Locally:**

Total Estimated Cost for Materials: \$ _____

Est. % to be purchased in Fulton County: _____%

17. **Sources of Funding:**

1. Private:

- a. Bank Financing: \$ _____
 - b. Equity (excluding equity that is attributed to grants/tax credits) \$ _____
 - c. Tax Exempt Bond Issuance (if applicable) \$ _____
 - d. Taxable Bond Issuance (if applicable) \$ _____
 - e. Other: _____ \$ _____
-
- Total Private Investment:** \$ _____

2. Public:

- a. Public Sources (Include sum total of all state and Federal grants and tax credits) \$ _____
- Identify each state and federal grant/credit:
- | | | |
|--|----|--|
| | \$ | |
| | \$ | |
| | \$ | |
- b. Other: _____
-
- Total Public Investment:** \$ _____

Total Investment: \$ _____

[NOTE: In Section 7, Agency staff will calculate the percentage of Project Costs financed from Public Sector sources based upon Sources of Funds for Project Costs as depicted above.]

18. **Breakdown of Uses in Proposed Facility:**

- a. For the proposed facility, please indicate the square footage for each of the uses outlined below (*If company is paying for FFE for tenants, please include in cost breakdown):

	Square Footage	Cost	% of Total Cost of Project
Manufacturing/Processing			
Warehouse			
Research & Development			
Commercial			
Retail			
Office			
Other: _____			
Housing			
Total:			\$ _____

19. Project refinancing: estimated amount
(for refinancing of existing debt only)

\$ _____

20. Agency Benefits Being Requested:

a. Uniform Tax Exemption Policy:

- Benefits are provided to projects in accordance with the Agency's Uniform Tax Exemption Policy (UTEP).
- A copy of the UTEP is attached as Appendix A.

b. Real Property Tax Exemptions:

1. Is the Project requesting real property tax exemptions under a PILOT per the Agency's UTEP?

Yes No

2. Is the Project utilizing a real property tax exemption benefit other than the Agency's PILOT benefit:

Yes No

If yes, please describe: _____

3. Agency PILOT Benefit: Agency staff will indicate the amount of PILOT Benefit based on estimated Project Costs as contained herein, anticipated tax rates and assessed valuation, including the annual PILOT Benefit abatement amount for each year of the PILOT benefit year and the sum total of PILOT Benefit abatement amount for the term of the PILOT as depicted in Section VII of the Application.

4. Identify and describe if the Project will utilize a real property tax exemption benefit other than the Agency's PILOT benefit: _____

c. Sales and Use Tax Exemptions:

1. Identify the total costs for goods and services that would be subject to State and local Sales and Use Tax. Said amount to benefit from the Agency's sales and use tax exemption benefit.

Total Cost of Goods and Services
subject to sales and uses taxes: \$ _____

2. Estimated State and local Sales and Use Tax Benefit

Total Cost of Goods and Services
subject to sales and uses taxes: \$ _____
Sales Tax _____ x 8%
Total Sales and Use Tax Exemptions: \$ _____

[Note that the estimate provided above will be provided to the New York State Department of Taxation and Finance. The Applicant acknowledges that the transaction documents may include a covenant by the Applicant to undertake the total amount of investment as proposed within this Application, and that the estimate, above, represents the maximum amount of sales and use tax benefit that the Agency may authorize with respect to this Application. The Agency may utilize the estimate, above, as well as the proposed total Project Costs as contained within this Application, to determine the Financial Assistance that will be offered.]

d. **Mortgage Recording Tax Exemption Benefit:**

1. Identify the amount of a mortgage that would be subject to mortgage recording tax:

Total Mortgage Amount (include sum total of construction/
 permanent/bridge financing): \$ _____
Mortgage Recording Tax in Fulton County x1% _____
 Total Mortgage Recording Tax Exemption \$ _____

e. **Summary of Benefits:**

1. Real Property Tax Exemption : \$ _____
 2. Sales and Use Tax Exemption : \$ _____
 3. Mortgage Recording Tax Exemption : \$ _____
Total Benefits : \$ _____

21. **Employment Plan (Specific to the proposed project location):**

	Current # of jobs at proposed project location or to be relocated at project location	IF FINANCIAL ASSISTANCE IS GRANTED – project the number of FTE and PTE jobs to be RETAINED	IF FINANCIAL ASSISTANCE IS GRANTED – project the number of FTE and PTE jobs to be CREATED upon TWO Years after Project completion	Estimate number of residents of the Labor Market Area in which the Project is located that will fill the FTE and PTE jobs to be created upon TWO Years after Project Completion**
Full time (FTE)				
Part Time (PTE)				
Total ***				

** For purposes of this question, please estimate the number of FTE and PTE jobs that will be filled, as indicated in the third column, by residents of the Labor Market Area, in the fourth column. The Labor Market Area include the Fulton and Montgomery Counties as well as the following Areas: _____

*** By statue, Agency staff must project the number of FTE jobs that would be retained and created if the request for Financial Assistance is granted. Agency staff will project such jobs over the TWO Year time period following Project completion. Agency staff converts PTE jobs into FTE jobs by dividing the number of PTE jobs by two (2).

22. Salary and Fringe Benefits for Jobs to be Retained and Created:

Category of Jobs to be Retained and Created	Average Annual Salary Hourly Rate for New Job Created	Average Salary or Range of Salary for Jobs Retained	Average Fringe Benefits for New Jobs Created	Average Fringe Benefits for Jobs Retained
Management				
Professional				
Administrative				
Production				
Independent Contractor				
Other				

23. Construction Jobs:

1. Estimate the number of construction jobs that will be filled by workers from:

- a. Fulton County : _____
- b. Montgomery County : _____
- c. Outside of Fulton and Montgomery Counties : _____

Total Estimated # of Construction Jobs : _____

SECTION 5: RETAIL QUESTIONNAIRE

To ensure compliance with Section 862 of the New York General Municipal Law, the Agency requires additional information if the proposed Project is one where customers personally visit the Project site to undertake either a retail sale transaction or to purchase services.

Please answer the following:

1. Will any portion of the project (including that portion of the cost to be financed from equity or other sources) consist of facilities or property that are or will be primarily used in making sales of goods or services to customers who personally visit the project site?

Yes No If the answer is yes, please continue. If no, proceed to section V.

For purposes of Question A, the term "retail sales" means (i) sales by a registered vendor under Article 28 of the Tax Law of the State of New York (the "Tax Law") primarily engaged in the retail sale of tangible personal property (as defined in Section 1101(b)(4)(i) of the Tax Law), or (ii) sales of a service to customers who personally visit the Project.

2. What percentage of the cost of the Project will be expended on such facilities or property primarily used in making sales of goods or services to customers who personally visit the project? _____%. **If the answer is less than 33% do not complete the remainder of the Retail Determination and proceed to Section 6.**

If the answer to 1 is Yes AND the answer to Question 2 is greater than 33.33%, indicate which of the following questions below apply to the project:

- a. Will the project be operated by a not-for-profit corporation Yes No
- b. Is the Project location or facility likely to attract a significant number of visitors from outside the Region in which the project will be located.

Yes No

If yes, please provide a third party market analysis or other documentation supporting your response.

- c. Is the predominant purpose of the project to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the municipality within which the proposed project would be located because of a lack of reasonably accessible retail trade facilities offering such goods or services?

Yes No

If yes, please provide a third party market analysis or other documentation supporting your response.

- d. Will the project preserve permanent, private sector jobs or increase the overall number of permanent, private sector jobs in the State of New York?

Yes No

If yes, explain _____

- e. Is the project located in a Highly Distressed Area? Yes No

SECTION 6: INTER-MUNICIPAL MOVE DETERMINATION

1. The Agency is required by state law to make a determination that, if completion of a Project benefitting from the Agency Financial Assistance results in the removal of an industrial or manufacturing plant of the project occupant from one area of New York State to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, Agency Financial Assistance is required to prevent the project occupant from relocating out of the state, or is reasonably necessary to preserve the project occupant's competitive position in its respective industry.

Will the Project result in the removal of an industrial or manufacturing plant of the Project occupant from one area of New York State to another area of the State?

Yes No

Will the Project result in the abandonment of one or more plants or facilities of the Project occupant located within the state?

Yes No

2. If Yes to either question, explain how, notwithstanding the aforementioned closing or activity reduction, the Agency's Financial Assistance is required to prevent the Project from relocating out of the State, or is reasonably necessary to preserve the Project occupant's competitive position in its respective industry:

3. Does the Project involve relocation or consolidation of a project occupant from another municipality?

Within New York State Yes No

Within Fulton County Yes No

If Yes to either question, please, explain: _____

SECTION 7: ESTIMATE OF REAL PROPERTY TAX EXEMPTIONS AND PERCENTAGE OF PROJECT COST FINANCED FROM PUBLIC SECTOR SOURCES

This Section of the Project Application will be:

1. Completed by Agency Staff based upon information contained with the Application, and
2. Provided to the Applicant for ultimate inclusion as part of this completed Application.

IDA PILOT Benefit: Agency staff will indicate the amount of PILOT Benefit based on estimated Project Costs as contained herein and anticipated tax rates and assessed valuation, including the annual PILOT Benefit abatement amount for each year of the PILOT benefit year and the sum total of PILOT Benefit abatement amount for the term of the PILOT as depicted below.

Percentage of Project Costs financed from Public Sector sources: Agency staff will calculate the percentage of Project Costs financed from Public Sector sources based upon Sources of Funds for Project Costs as depicted above in Section IV (13) of the Project Application.

1. PILOT Estimate Table Worksheet:

Estimated Dollar Value of New Construction and Renovation Costs	Estimated New Assessed Value of Property Subject to IDA*	County Tax Rate/\$1000 of Assessed Valuation	Local Tax Rate (Town/City/Village)/\$1000 of Assessed Valuation	School Tax Rate/\$1000 of Assessed Valuation
\$	\$	\$	\$	\$

*Apply equalization rate to value

PILOT Year	% Exemption	Estimated County PILOT Amount	Estimated Local PILOT Amount	Estimated School PILOT Amount	Total Estimated PILOT Amount	Estimated Full Tax Payment w/o PILOT	Estimated Net Exemption
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
TOTAL IDA PILOT BENEFIT							

*** Estimates provided are based on current property tax rates and assessment value (current as of date of application submission) and have been calculated by IDA staff.

2. Percentage of Project Costs financed from Public Sector Table Worksheet:

Total Project Cost	Estimated Value of PILOT	Estimated Value of Sales Tax Incentive	Estimated Value of Mortgage Tax Incentive	Total of Other Public Incentives (Tax Credits, Grants, ESD Incentives, etc.)
\$	\$	\$	\$	\$

Total PILOT/Sales Tax/Mortgage Tax/Other
Total Project Cost = _____% **Financed from Public Sector**

SECTION 8: PROJECT REVIEW CRITERIA AND ANNUAL MONITORING

1. The Agency shall review Project Applications and utilize the following specific criteria for evaluating and determining whether to provide benefits to a proposed project:
 - A. Will the project create or retain jobs?
 - B. What are the wages to be paid for the new jobs being created and the existing jobs being retained?
 - C. What is the total private sector investment?
 - D. How much local labor will be utilized during construction?
 - E. How much will property values and property tax revenues increase for local taxing jurisdictions?

2. The Agency shall require the Applicant to annually submit information to the Agency to allow the Agency to monitor the performance of the Applicant. The Agency shall annually monitor, at a minimum, the following information:
 - A. Number of new jobs created and retained.
 - B. Private sector investment.

SECTION 9: REPRESENTATIONS, CERTIFICATIONS AND INDEMNIFICATION

This Section of the Application can only be completed upon the Applicant receiving, and must be completed after the Applicant received, IDA State confirmation that Section I through Section V of the Application are complete.

_____ (name of CEO or other authorized representative of Applicant) confirms and says that he/she is the _____ (title) of _____ (Name of corporation or other entity) named in the attached Application (the "Applicant"), that he/she has read the foregoing Application and knows the contents thereof, and hereby represents, understands, and otherwise agrees with the Agency and as follows:

- A. Job Listings: In accordance with Section 858-b(2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the "DOL") and with the administrative entity (collectively with the DOL, the "JTPA Entities") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA") in which the Project is located.
- B. First Consideration for Employment: In accordance with Section 858-b(2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, where practicable, the Applicant will first consider persons eligible to participate in JTPA programs who shall be referred by the JTPA Entities for new employment opportunities created as a result of the Project.
- C. Annual Sales Tax Filings: In accordance with Section 874(8) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any sales tax exemptions as part of the Financial Assistance from the Agency, in accordance with Section 874(8) of the General Municipal Law, the Applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the Applicant and all consultants or subcontractors retained by the Applicant. Copies of all filings shall be provided to the Agency.
- D. Employment Reports: The Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, the Applicant agrees to file, or cause to be filed, with the Agency, at least annually or as otherwise required by the Agency, reports regarding the number of people employed at the project site, salary levels, contractor utilization and such other information (collectively, "Employment Reports") that may be required from time to time on such appropriate forms as designated by the Agency. Failure to provide Employment Reports within 30 days of an Agency request shall be an Event of Default under the PILOT Agreement between the Agency and Applicant and, if applicable, an Event of Default under the Agent Agreement between the Agency and Applicant. In addition, a Notice of Failure to provide the Agency with an Employment Report may be reported to Agency board members, said report being an agenda item subject to the Open Meetings Law.

- E. The Applicant acknowledges that certain environmental representations will be required at closing. The Applicant shall provide with this Representation, Certification and Indemnification Form copies of any known environmental reports, including any existing Phase I Environmental Site Assessment Report(s) and/or Phase II Environmental Investigation. The Agency may require the Company and/or owner of the premises to prepare and submit an environmental assessment and audit report, including but not necessarily limited to, a Phase I Environmental Site Assessment Report and a Phase II Environmental Investigation, with respect to the Premises at the sole cost and expense of the owner and/or the Applicant. All environmental assessment and audit reports shall be completed in accordance with ASTM Standard Practice E1527-05, and shall be conformed over to the Agency so that the Agency is authorized to use and rely on the reports. The Agency, however, does not adopt, ratify, confirm or assume any representation made within reports required herein.
- F. The Applicant and/or the owner, and their successors and assigns, hereby release, defend and indemnify the Agency from any and all suits, cause of action, litigation, damages, losses, liabilities, obligations, penalties, claims, demands, judgments, costs, disbursements, fees or expenses of any kind or nature whatsoever (including, without limitation, attorneys', consultants' and experts' fees) which may at any time be imposed upon, incurred by or asserted or awarded against the Agency, resulting from or arising out of any inquiries and/or environmental assessments, investigations and audits performed on behalf of the Applicant and/or the owner pursuant hereto, including the scope, level of detail, contents or accuracy of any environmental assessment, audit, inspection or investigation report completed hereunder and/or the selection of the environmental consultant, engineer or other qualified person to perform such assessments, investigations, and audits.
- G. Hold Harmless Provision: The Applicant acknowledges and agrees that the Applicant shall be and is responsible for all costs of the Agency incurred in connection with any actions required to be taken by the Agency in furtherance of the Application including the Agency's costs of general counsel and/or the Agency's bond/transaction counsel whether or not the Application, the proposed Project it describes, the attendant negotiations, or the issue of bonds or other transaction or agreement are ultimately ever carried to successful conclusion and agrees that the Agency shall not be liable for and agrees to indemnify, defend, and hold the Agency harmless from and against any and all liability arising from or expense incurred by: (i) the Agency's examination and processing of, and action pursuant to or upon, the Application, regardless of whether or not the Application or the proposed Project described herein or the tax exemptions and other assistance requested herein are favorably acted upon by the Agency; (ii) the Agency's acquisition, construction and/or installation of the proposed Project described herein; and (iii) any further action taken by the Agency with respect to the proposed Project including, without limiting the generality of the foregoing, all causes of action and attorney's fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. Applicant hereby understands and agrees, in accordance with Section 875(3) of the New York General Municipal Law and the policies of the Agency that any New York State and local sales and use tax exemption claimed by the Applicant and approved by the Agency, any mortgage recording tax exemption claimed by the Applicant and approved by the Agency, and/or any real property tax abatement claimed by the Applicant and approved by the Agency, in connection with the Project, may be subject to recapture and/or termination by the Agency under such terms and conditions as will be established by the Agency and set forth in transaction documents to be entered into by and between the Agency and the Applicant. The Applicant further represents and warrants that the information contained in this Application, including without limitation information regarding the amount of the New York State and local sales and use tax exemption benefit, the amount of the mortgage recording tax exemption benefit, and the amount of the real property tax abatement, if and as applicable, to the best of the Applicant's knowledge, is true, accurate and complete.
- H. This obligation includes an obligation to submit an Agency Fee Payment to the Agency in accordance with the Agency Fee Policy effective as of the date of this Application.

- I. By executing and submitting this Application, the Applicant covenants and agrees to pay the following fees to the Agency and the Agency's general counsel and/or the Agency's bond/transaction counsel, the same to be paid at the times indicated:
- (i) A non-refundable \$_____ application and publication fee (the "Application Fee");
 - (ii) A \$_____ expense deposit for the Agency's Counsel Fee Deposit.
 - (iii) Unless otherwise agreed to by the Agency, an amount equal to _____ percent (___%) of the total project costs.
 - (iv) All fees, costs and expenses incurred by the Agency for (1) legal services, including but not limited to those provided by the Agency's general counsel and/or the Agency's bond/transaction counsel, thus note that the Applicant is entitled to receive a written estimate of fees and costs of the Agency's general counsel and the Agency's bond/transaction counsel; and (2) other consultants retained by the Agency in connection with the proposed project, with all such charges to be paid by the Applicant at the closing.
- J. If the Applicant fails to conclude or consummate the necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable proper or requested action, or withdraws, abandons, cancels, or neglects the Application, or if the Applicant is unable to find buyers willing to purchase the bond issue requested, or if the Applicant is unable to facilitate the sale/leaseback or lease/leaseback transaction, the, upon the presentation of an invoice, Applicant shall pay to the Agency, its agents, or assigns all actual costs incurred by the Agency in furtherance of the Application, up to that date and time, including but not necessarily limited to, fees of the Agency's general counsel and/or the Agency's bond/transaction counsel.
- K. The Applicant acknowledges and agrees that all payment liabilities to the Agency and the Agency's general counsel and/or the Agency's bond and/or transaction counsel as expressed in Sections H and I are obligations that are not dependent on final documentation of the transaction contemplated by this Application.
- L. The cost incurred by the Agency and paid by the Applicant, the Agency's general counsel and/or bond/transaction counsel fees and the processing fees, may be considered as a cost of the Project and included in the financing of costs of the proposed Project, except as limited by the applicable provisions of the Internal Revenue Code with respect to tax-exempt bond financing.
- M. The Applicant acknowledges that the Agency is subject to New York State's Freedom of Information Law (FOIL). **Applicant understands that all Project information and records related to this application are potentially subject to disclosure under FOIL subject to limited statutory exclusions.**
- N. The Applicant acknowledges that it has been provided with a copy of the Agency's Policy for Termination of Agency Benefits and Recapture of Agency Benefits Previously Granted (the "Termination and Recapture Policy). The Applicant covenants and agrees that it fully understands that the Termination and Recapture Policy is applicable to the Project that is the subject of this Application, and that the Agency will implement the Termination and Recapture Policy if and when it is so required to do so. The Applicant further covenants and agrees that its Project is potentially subject to termination of Agency financial assistance and/or recapture of Agency financial assistance so provided and/or previously granted.

- O. The Applicant understands and agrees that the provision of Section 862(1) of the New York General Municipal Law, as provided below, will not be violated if Financial Assistance is provided for the proposed Project:

§ 862. Restrictions on funds of the agency. (1) no funds of the agency shall be used in respect of any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

- P. The Applicant confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the proposed Project is in substantial compliance with applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.
- Q. The Applicant confirms and acknowledges that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any Financial Assistance and the reimbursement of an amount equal to all or part of any tax exemption claimed by reason of the Agency's involvement the Project.
- R. The Applicant confirms and hereby acknowledges that as of the date of this Application, the Applicant is in substantial compliance with all provisions of Article 18-A of the New York General Municipal Law, including, but not limited to, the provision of Section 859-a and Section 862(1) of the New York General Municipal Law.
- S. The Applicant and the individual executing this Application on behalf of Applicant acknowledge that the Agency and its counsel will rely on the representations and covenants made in this Application when acting hereon and hereby represents that the statements made herein do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein not misleading.

STATE OF NEW YORK)
COUNTY OF FULTON)

_____, BEING FIRST DULY SWORN, DEPOSES AND SAYS:

- 1. That I am the _____(Corporate Office) of _____
(Applicant) and that I am duly authorized on behalf of the Applicant to bind the Applicant.

- 2. That I have read the attached Application, I know the contents thereof, and that to the best of my knowledge and belief, this Application and the contents of this Application are true, accurate and complete.

(Signature of Officer)

Subscribed and affirmed to me under penalties of perjury
this ___ day of _____, 20___.

(Notary Public)

APPENDIX A

**FULTON COUNTY INDUSTRIAL
DEVELOPMENT
AGENCY**

UNIFORM TAX EXEMPTION POLICY

Originally Adopted	:	February 1994
Revised	:	April 20, 1999
Revised	:	August 23, 2012
Revised	:	June 7, 2016
Revised	:	April 9, 2019
Revised	:	January 14, 2020
Revised	:	July 14, 2020

SECTION 1: PURPOSE AND AUTHORITY:

Pursuant to Section 874(4)(a) of Title One of Article 18-A of General Municipal Law (the “Act”), the Fulton County Industrial Development Agency is required to establish a Uniform Tax Exemption Policy applicable to the provision of any financial assistance of more than one hundred thousand dollars (\$100,000) to any project.

SECTION 2: DEFINITIONS:

“**Administrative Fee**” shall mean a charge imposed by the Agency to an Applicant for the administration of Project.

“**Affected Tax Jurisdiction**” means, with respect to a particular project, the City, Town, Village, County or School District in which a Project is located and will fail to receive real property tax payments that would otherwise be due with respect to such Project due to a Tax Exemption obtained by reason of involvement of the Agency in such Project. This does not include special taxing jurisdictions.

“**Agency**” or “**IDA**” shall mean the Fulton County Industrial Development Agency.

“**Agency Fee**” shall mean the normal charges imposed by the Agency to an Applicant or a Project occupant to compensate the Agency for the Agency’s participation in the Project. The term “Agency Fee” shall include not only the Agency’s normal Administrative Fee, but also may include:

- (a) Reimbursement of the Agency’s expenses, including but not limited to legal fees and publication fees.
- (b) Rent imposed by the Agency for use of the property of the Agency, and
- (c) Other similar charges imposed by the Agency.

“**Applicant**” shall mean an applicant for financial assistance.

“**County**” shall mean the County of Fulton.

“**PILOT**” or “**Payment in Lieu of Tax Agreement**” shall mean a written agreement between the Agency AND Applicant whereby the Applicant shall make payments to Affected Tax Jurisdictions.

“**PILOT**” or “**Payment in Lieu of Tax**” shall mean any payment made to any Affected Tax Jurisdiction equal to all or a portion of the real property taxes or other taxes which would have been levied by or on behalf of an Affected Tax Jurisdiction with respect to a project but for the tax exemption obtained by reason of the involvement of the Agency in such project. Such term shall not include Agency fees.

“**Project**” shall mean an activity which is undertaken by the Agency for the benefit of an Applicant which either (1) has been or will be financed by the issuance by the Agency of bonds, notes or other evidences of indebtedness with respect thereto, or (2) is a straight lease transaction (as defined under Section 845(15) of the Act) which the Agency has determined to undertake, or (3) lease – lease back projects, or (4) sales tax only projects.

“**Project Operator**” or “**Agent**” shall mean the developer and/or beneficial user of a Project Facility as designated by the Agency.

“**Tax Exemption**” shall mean any financial assistance granted to a Project which is based upon all or a portion of the taxes which would otherwise be levied and assessed against a Project but for the involvement of the Agency, including but not limited to sales tax, mortgage recording tax and real property tax exemptions.

SECTION 3: GENERAL PROVISIONS:

a. General Policies:

1. The Agency may grant tax exemptions as hereinafter set forth to any Project which has been or will be:
 - (a) Assisted by the Agency pursuant to a straight lease transaction (as defined under Section 845(15) of the Act).
 - (b) Financed by the issuance of Agency bonds, notes or other evidences of indebtedness with respect thereto or
2. In order to receive any tax exemptions, the Agency will have the right, in its sole discretion and in accordance with applicable provisions of the New York State General Municipal Law, to determine whether a project is a qualified project. When evaluating whether a project is qualified for financial assistance, in addition to the applicable laws of New York State, the IDA will consider project factors such as:
 - (a) The nature of the project (e.g. manufacturing, commercial, tourism, high tech, etc.).
 - (b) The nature of the property before the project begins (e.g. vacant land, vacant building, brownfield site, blight, adaptive reuse, etc.).
 - (c) The economic condition of the area at the time of application and the economic multiplying effect the project will have on the community.
 - (d) The extent to which the project will create or retain permanent, private sector jobs, the number of jobs to be created/retained, and the level of wages paid.
 - (e) The estimated value of tax exemptions to be provided.
 - (f) The economic impact of the project and the proposed tax exemptions on affected taxing jurisdictions.
 - (g) The impact of the project on existing businesses in the community.
 - (h) The amount of private investment generated by the project.
 - (i) The effect of the project on the environment.
 - (j) The extent to which the project will require additional services including but not limited to infrastructure, roads, transportation, education, fire protection, police protection, etc.
 - (k) The extent to which the project will provide a benefit (economic or otherwise) to the municipality in which the project is located.
 - (l) The extent to which the project will provide additional sources of revenue for municipalities and school districts in which the project is located.
 - (m) The extent to which the project enhances the quality of life of people in the community (recreation, removal of blight, brownfield redevelopment).
3. No real property tax exemptions shall be granted to a Project that would result in the relocation of an industrial or manufacturing facility from one area of New York State to another, unless the relocation, closure or abandonment is, as determined by the Agency, necessary to enable the Project to maintain its competitive position within its industry.

4. Subject to the prior written approval by the IDA, tax exemptions may be transferable by the Project Operator only if the transferee of the Project retains the same or similar use of the Project within the same parameters of the original Project Operator.

b. Deviation Policy

1. The Agency reserves the right to deviate from any provision in this Uniform Tax Exemption Policy in special circumstances. In determining whether special circumstances exist to justify a deviation, the Agency may consider factors, which include but not be limited to the following:
 - a. The magnitude and/or importance of any permanent private sector job creation and/or retention of existing jobs related to the Project;
 - b. The impact of the Project on existing and proposed businesses and/or economic development projects;
 - c. The amount of private sector investment generated or likely to be generated by the Project;
 - d. Demonstrated public support/opposition for the Project;
 - e. The estimated value of the tax exemptions requested; and
 - f. The extent to which the proposed Project will provide needed services and/or revenues to Affected Tax Jurisdictions.
 - g. Other factors outlined in Section 874(4)(a) of the Act.
2. If the Agency is going to deviate from any provision of the Uniform Tax Exemption Policy, the Agency shall adopt a resolution that:
 - a. Identifies the deviation provided.
 - b. Identifies the reasons for the deviation.
 - c. Identifies such terms and conditions as the Agency shall deem just and proper.

c. Application:

1. No request for a tax exemption shall be considered by the Agency unless a Project Application, which includes an Application for Tax Exemption, is filed with the Agency on the forms prescribed by the Agency.
2. Such Application shall contain the information requested by the Agency, including a description of the proposed Project and of each tax exemption sought with respect to the Project, the estimated value of each tax exemption sought with respect to the Project, the proposed financial assistance being sought with respect to the Project, the estimated date of completion of the Project, and whether such financial assistance is consistent with this Policy.

SECTION 4: REAL PROPERTY TAX EXEMPTION:

a. General:

1. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, property owned by or under the jurisdiction, supervision or control of the Agency is exempt from real estate taxes, but not exempt from special assessments and special ad valorem levies.

2. It is the general policy of the Agency that, notwithstanding the foregoing, the Project Operator of every non-governmental Project shall be required to enter into a Payment In Lieu of Tax Agreement (“PILOT”) with the Agency, either separately or as part of the Project documents. Such PILOT Agreement shall require payment of PILOT payments in accordance with the provisions set forth in this Policy.
3. The project documents shall provide that, if the Agency and the Applicant and/or Project Operator have entered into a PILOT Agreement, the terms of the PILOT Agreement shall control the amount of PILOT payments until the expiration or sooner termination of such PILOT Agreement.

b. Filing Requirements:

1. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law as amended, no real property tax exemption shall be effective until a New York State Department of Taxation and Finance, Division of Equalization and Assessment Form EA-412-a (an “Exemption Form”) is filed with the assessor of each Affected Tax Jurisdiction.
2. The Agency will not file an Exemption Form with respect to the Project until a PILOT Agreement is executed and the Project documents stipulate that the Applicant and/or the Project Operator shall be required to make PILOT payments in such amounts as would result from taxes being levied on the Project by the Affected Taxing Jurisdictions as if the Project were not owned by or under the jurisdiction, supervision or control of the Agency.
3. Once an Exemption Form is filed with a particular Affected Tax Jurisdiction, the real property tax exemption for such project does not take effect until:
 - a) The next taxable status date for such Affected Tax Jurisdiction occurs subsequent to such filing.
 - b) An assessment roll for such Taxing Jurisdiction is finalized subsequent to such tax status date.
 - c) Such assessment roll becomes the basis for the preparation of a tax roll for such Affected Tax Jurisdiction, and
 - d) The tax year to which such tax roll relates commences.

c. Property Assessments:

1. It is the general policy of the Agency to have the City, Town or Village Assessor establish the assessed value of a Project owned by or under the jurisdiction, supervision or control of the Agency.
2. Commencing in the first taxable year after execution of the PILOT, the Assessor for the Affected Taxing Jurisdiction in which the Project is located shall assess the Project Facility in the same manner and using the same valuation method as other similar properties in the general area of the Project Facility.
3. The Project Operator shall be entitled to prompt written notice of the initial Assessed Value and of any change in the Assessed Value. If the Project Operator is dissatisfied with the amount of the Assessed Value of the Project Facility as initially established or as changed, the Project Operator shall have the right to contest the Assessed Value of the Project Facility made for the purposes of determining any payments due under the PILOT Agreement and to seek a refund of any such payments made.
4. The Project Operator’s challenge to the Assessed Value of the Project Facility and its determination to seek a refund of any payments made hereunder shall be made in accordance with New York Real Property Tax Law.

d. Payment in Lieu of Tax (PILOT) Agreement:

1. The Agency shall make available to Project Operators or Applicants a PILOT Agreement modeled after Section 485-b of the New York State’s Real Property Tax Law as shown below:

Tax Fiscal Year	Percentage of Exemption
1	50%
2	45%
3	40%
4	35%
5	30%
6	25%
7	20%
8	15%
9	10%
10	5%
11 and thereafter	0%

2. The Agency may grant enhanced Real Property Tax Exemptions on a case-by-case basis for projects expected to have significant economic impacts, in accordance with the Deviation Policy set forth herein
3. If a Project Operator or Applicant incurs a default, under the terms of a PILOT Agreement, the Project Operator shall be responsible to:
 - a) Reimburse all of the Agency’s legal costs to pursue remedying the default.
 - b) Pay the Agency a \$1,000 fee for each default.
4. If a Project Operator or Applicant requests an early termination of a PILOT Agreement with the Agency, the Project Operator or Agent shall be responsible for issuing a payment to the Agency of \$1,000/year for each year the PILOT Agreement was in effect as well as the Agency’s legal and other fees associated with processing a request for early termination..

e. Special District Taxes:

1. The Agency is not exempt from special assessment and special ad valorem levies. As a result, these amounts are not subject to tax exemptions by reason of ownership of the Project by the Agency.
2. The Project Operator shall be responsible for the payment of all special district taxes ad valorem levies imposed by all Affected Taxing Jurisdictions.

f. PILOT Payments:

1. Unless otherwise determined by resolution of the Agency, all PILOT payments payable to an Affected Tax Jurisdiction shall be paid directly to the Affected Tax Jurisdiction by the Project Operator/Agent within thirty (30) calendar days of the receipt of a PILOT invoice.
2. The Project Operator/Agent shall, upon submitting all PILOT payments to affected taxing jurisdictions, submit a copy of said payments along with the invoice from the affected taxing jurisdiction to the Agency.

3. If a PILOT payment is not received by an Affected Taxing Jurisdiction within thirty (30) calendar days of the receipt of a PILOT invoice, a late fee penalty of 2% per month shall be paid to the Affected Tax Jurisdictions for each month a payment is not made.

g. Reporting Requirements:

1. If the Agency grants a real estate tax exemption under this Section, the Project Operator/Agent shall be required to annually file, or cause to be filed, with both New York State or the Agency, reports regarding the number of people employed at the project site, the annual and/or hourly salary for all full and part-time employees and provide other information as may be required by New York State or the Agency.
2. The Agency shall annually send the Project Operator/Agent a report to complete and return requesting information for the Agency to utilize to monitor the project for compliance with all project requirements. The Project Operator/Agent shall complete and return this Annual Report within the timeframe stipulated by the Agency.

h. Enforcement:

1. An Affected Tax Jurisdiction which has not received a PILOT payment due to it under a PILOT Agreement may exercise its remedies under Section 874(6) of the Act or such other available remedies.
2. In addition, such Affected Tax Jurisdiction may petition the Agency to exercise whatever remedies that the Agency may have under the Project documents to enforce payment. If such Affected Tax Jurisdiction indemnifies the Agency and agrees to pay the Agency's costs incurred in connection therewith, the Agency may take action to enforce the PILOT Agreement.
3. If the Agency's approval of a particular Project is predicated upon achievement by the Project Operator/Agent of certain minimum goals, i.e. creating and/or maintaining certain minimum employment levels, the PILOT Agreement may provide for the reduction or elimination of PILOT benefits, if, in the sole judgment of the Agency, the Project has failed to fulfill such minimum requirements.
4. If the Applicant or Project Operator after reasonable notice, fails to comply with Project reporting required by the Agency including, but not limited to, annual verification of proper insurance coverage, employment reporting as required under the Act, the Agency may in its sole judgment terminate the PILOT Agreement and make no real estate tax exemption available.

i. Real Property Appraisals:

1. Since the policy of the Agency is to base the value of a Project for payment in lieu of tax purposes on a valuation of such Project performed by the local Assessor, normally a separate real property appraisal is not required. However, the Agency may require the submission of a real property appraisal if,
 - (i) The assessor of any particular Affected Tax Jurisdiction requires one, or
 - (ii) If the valuation of the Project for payment in lieu of tax purposes is based on a value determined by the Project Operator, rather than by an assessor for a Taxing Jurisdiction or by the Agency.

2. If the Agency requires the submission of a real property appraisal, such appraisal shall be prepared by an independent MAI certified appraiser acceptable to the Agency.
3. The Project Operator shall be responsible for paying for the cost of hiring said appraiser.

j. Recapturing Real Property Tax Exemptions:

1. Basis to Pursue Recapturing Benefits:

1. It shall be the policy of the Agency to consider recapturing benefits (Financial Assistance) for a project if any of the following conditions apply:
 - 1) Sale or closure of the facility and departure of the company from the County of Fulton (Notwithstanding any of the terms set forth herein, this occurrence shall result in the immediate termination of Financial Assistance).
 - 2) Significant change in the use of the facility and/or the business activities of the company.
 - 3) Significant employment reductions not reflective of the company's (normal) business cycle and/or local and national economic conditions.
 - 4) Failure to comply with any periodic and/or annual reporting requirements of the Agency, State or Federal governmental agency.
 - 5) Failure to meet or comply with specified Material Factors, as determined by the Agency at the time of the acceptance of the project for Financial Assistance and as set forth in the Inducement Resolution and/or Preliminary/Project Agreement. Material Factors may include but not be limited to the following (each project is not required to include all of the Material Factors listed below, as Material Factors are determined on a project-to-project basis)
 - a) Create or Retain Jobs
If the company meets 85% of its projection, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored by annual reporting by the company to the Agency.
 - b) Private Sector Investment
If the company meets 85% of its total project cost, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored by the completion of an affidavit from the company to the Agency at the time of the project completion detailing the total project cost.
 - c) Local Labor Construction
If the company meets 85% of its estimated usage of local labor forces, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored on a one time basis by the completion of an affidavit from the company to the Agency at the time of the project completion detailing the

usage of local labor forces.

d) Wage Rates

If the company meets 85% of its projection, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored by annual reporting by the company to the Agency.

e) Increased Property Value

If the company meets 85% of its projected increased total assessed value at the time of projection completion, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored on a one time basis by a review of the assessed value of the project facility upon completion of the project.

f) Increased Revenue to Local Taxing Jurisdictions

If the company meets 85% of its projected increased revenues, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored on by annual reporting by the company to the Agency of consisting of data relative to the revenues generated by the project.

[NOTE: Each project will not be required to include all the Material Factors listed above. The Agency shall determine for each project what Material Factors shall apply to each project.]

- 6) For a project that failed to comply with a material 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.

2. Recapturing Real Property Tax Benefits:

- a. For companies receiving real property tax abatements, the Agency's schedule for recapturing real property tax benefits shall be (applicable to the real property tax abatements) as follows:

Years 1-5 of PILOT: 100% of the real property tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 6-7 of PILOT: 75% of the real property tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 8-9 of PILOT: 50% of the real property tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Year 10 of PILOT: 25% of the real property tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 11+ of PILOT: 0% of the real property tax exemptions granted shall be repaid to the affected taxing jurisdictions.

- b. The recapture shall be applicable to the time periods above are from the effective date of the PILOT Agreement.
- c. Any real property tax exemptions recovered, recaptured, received or otherwise obtained shall be payable to the appropriate taxing jurisdictions, unless otherwise agreed to in writing by the taxing jurisdiction.

3. Recapture Procedures:

- a. In the event that the Agency determines that there exists a basis for recapture as set forth in paragraph j(1) herein, the Agency shall notify the company, in writing, that the Agency has determined that a basis exists for recapture. The company shall be given a reasonable timeframe within which to remedy the violation, such timeframe being commensurate to the violation.
- b. The company shall provide information and a written explanation as to why the violation has occurred or the Material factor has not been achieved, as the case may be.
- c. If requested by the Agency, the company shall make a presentation to the Agency concerning this default.
- d. Thereafter, the Agency may pursue recapturing pursuant to this Recapture Policy. Imposition of any recapture is at the sole discretion of the Agency and is reviewed/considered on a case by case basis.
- e. In lieu of imposing the above recapture penalties and for good cause shown by the company, the Agency, at its sole discretion, may make a determination to:
 - 1) Discontinue the Financial Assistance in its entirety, per the provisions set forth the in the Lease Agreement;
 - 2) Suspend the Financial Assistance for a specific stated period of time in order for the company to correct or comply with the material term or Material Factor being breached;
 - 3) In the case of real property taxes exemptions, modify the PILOT Agreement to decrease the exemption and increase the payments due for the remaining term of the PILOT Agreement.

SECTION 5: SALES TAX EXEMPTION:

a. General:

- 1. New York State law provides that purchases of tangible personal property by the Agency or by an agent of the Agency and purchases of tangible personal property by a contractor for incorporation into or improving, maintaining, servicing or repairing real property of the Agency are exempt from sales taxes.
- 2. Purchases of construction materials and project related equipment during initial construction and equipping of the Project Facility shall be made as agent for the Agency and are therefore afforded full exemption from all sales taxes.
- 3. A Project Operator/Agent's failure to complete the Project or close on a bond issuance within a timeframe set forth by the Agency or as such timeframe may be extended by the approval of the Agency, may require the repayment of all sales tax previously exempted. In the event that

there be such a failure, the Agency may notify the New York State Department of Taxation and Finance of sales tax due.

b. Tax Exemption Period:

1. The Agency and Project Operator/Agent shall enter into a Sales Tax Exemption Agreement which shall include an expiration date to act as the Project Operator/Agent for the Agency, which shall be based upon the estimated completion date plus six (6) months to allow for possible delays and equipping.
2. Extension of the expiration date shall require formal approval of the Agency.

c. Percentage of Exemption:

1. The sales tax exemption shall be equal to one hundred percent (100%) of the sales taxes that would have been levied if the Project were not exempt by reason of the Agency's involvement in the Project.

d. Confirmation Letter:

1. The granting of a sales tax exemption by the Agency shall be confirmed by the execution by an authorized officer of the Agency of a Confirmation Letter by the Agency.
2. Each Confirmation Letter shall describe the scope and term of the sales tax exemption granted.

e. Required Filings:

1. The New York State Department of Taxation and Finance requires that proper forms and supporting materials be filed with a vendor to establish a purchaser's entitlement to a sales tax exemption.
2. It shall be the responsibility of the Project Operator/Agent to ensure that all required documentation shall be filed with each vendor to obtain any sales and use tax exemptions authorized by the Agency.

f. Required Reports and Records:

1. Pursuant to Section 874(9) of the Act, the Agency is required to file Form ST-60 with the New York State Department of Taxation and Finance within thirty (30) days of the date that the Agency designates a Project Operator/Agent to act as agent of the Agency.
2. Pursuant to Section 874(8) of the Act, the Project Operator/Agent shall be required to annually file with the New York State Department of Taxation and Finance Form ST-340 identifying the value of all sales and use tax exemptions claimed under the Act by the Project Operator/Agent, subcontractors and consultants thereof.
3. The Project Operator/Agent shall, concurrently upon filing Form ST-340 with the State, also file a copy with the Agency.
4. At the end of the Tax Exemption Period, the Project Operator/Agent shall prepare and submit to the Agency a report identifying:
 - a. All of the expenditures incurred on the project for which sales tax exemption benefits were received during the Tax Exemption Period.
 - b. The total sales tax exemption benefits accrued during the Tax Exemption Period.This report shall be filed with the Agency within 30 days of the end of the Tax Exemption Period.

g. Approving Resolutions and Project Documents:

1. All Agency approving resolutions and project documents shall include:
 - a. All provisions of Section 5 of this Uniform Tax Exemption Policy.
 - b. A statement stipulating that, as a Project Operator/Agent appointed by the IDA, it shall cooperate with the Agency when the Agency seeks to recapture sales tax benefits.
 - c. A statement stipulating that if a Project Operator/Agent fails to cooperate with the Agency, the Agency shall commence a legal action/proceeding to recapture unauthorized sales tax exemption benefits.
 - d. A statement stipulating to a Project Operator/Agent that:
 - 1) They shall be required to annually file with both the NYS Department of Taxation and Finance and the Agency a copy of Form ST-340 “Annual Report of Sales and Use Tax Exemptions Claimed by an Agent/Project Operator of an IDA.”
 - 2) Form ST-340 shall be filed with both the NYS Department of Taxation and Finance and Agency by February 28th of each year.
 - 3) They will be required to file with the Agency, within 30 days of the end of the Tax Exemption Period, a report summarizing all expenditures incurred on the project for which sales tax exemption benefits were received and the total amount of sales tax benefits received during the Tax Exemption Period.
 - e. A statement stipulating to a Project Operator/Agent that their failure to file Form ST-340 by February 28th of each year could result in:
 - 1) The Project Operator/Agent losing their authority to act as an Agent/Operator of the Agency.
 - 2) The Project Operator/Agent losing sales tax benefits in subsequent years.

h. Recapturing Sales Tax Exemptions:

1. Pursuant to Section 875 of the Act, the Agency shall recapture unauthorized New York State and local sales and use tax benefits whenever the benefits were:
 - Not entitled or authorized to be taken;
 - In excess of the amounts authorized;
 - For unauthorized property or services; or
 - For property or services not used according to the terms of the project agreement with the Agency.
2. When the Agency determines that unauthorized sales tax exemption benefits were taken, the Agency shall notify the Project Operator/Agent, in writing, that:
 - a. Unauthorized sales tax benefits were taken by the Project Operator/Agent.
 - b. Identify the amount of unauthorized sales tax exemption benefits taken that is being recaptured.
 - c. Identify the date when the amount of unauthorized benefits shall be repaid to the Agency.
 - d. The consequences for not repaying the unauthorized sales tax benefits.
3. The failure by a Project Operator/Agent to repay the Agency the unauthorized sales tax exemption benefits received shall be grounds for the New York State Tax Commissioner to assess and determine State sales and use taxes due from the Project Operator/Agent under article twenty-eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

4. When the Agency recovers or recaptures unauthorized or excessive sales tax exemptions, the Agency shall, within thirty (30) days, remit said sales tax to the Commissioner of the NYS Department of Taxation and Finance using Form ST-65 IDA Report of Recaptured Sales and Use Tax Benefits.
5. The Agency shall:
 - a. Keep records of the New York State and local sales tax exemptions provided to each project, with such records available to the New York State Tax Commissioner upon request.
 - b. Report within thirty (30) days of providing any financial assistance in the form of a sales and use tax exemption, the project, the estimated amount of the exemption and other information as may be required by the New York State Tax Commissioner (Form ST-60).
 - c. The Agency shall file an annual report Form ST-62 with the New York State Tax Commissioner detailing its terms and conditions and its activities in recapturing any unauthorized New York State sales and use tax exemptions.

SECTION 6: MORTGAGE RECORDING TAX EXEMPTION:

1. Mortgages executed by industrial development agencies in furtherance of their lawful activities are exempt from payment of the New York State Mortgage Recording Tax pursuant to General Municipal Law Section 874.
2. The general policy of the Agency shall be to impose no mortgage recording taxes on projects involving mortgages.

SECTION 7: REAL ESTATE TRANSFER TAX EXEMPTION:

1. Article 31 of the Tax Law provides for the imposition of a tax upon certain real estate transfers. Section 1405(b)(2) of the Tax Law provides that transfers into the Agency are exempt from such tax, and the New York State Department of Taxation and Finance has ruled that transfers of property by the Agency back to the same entity which transferred such property to the Agency are exempt from such tax.
2. The general policy of the Agency is to impose no tax upon any real estate transfers to or from the Agency.

SECTION 8: COMMERCIAL SOLAR POLICY:

1. It shall be the policy of the IDA to offer certain incentives for commercial solar projects that provide renewable energy to residential, commercial and industrial customers.
2. The types of solar projects eligible to receive incentives include:
 - a. Community distributed solar/shared solar.
 - b. Off-site solar generation projects that have a wholesale Power Purchase Agreement with 1 or more users.
 - c. Solar and energy storage facilities
 - d. Projects that are 10 megawatts or less.
3. This policy shall offer two (2) incentives to eligible solar projects:
 - a. Sales Tax Exemptions to be offered in accordance with this UTEP.
 - b. Mortgage Recording Tax Exemption to be offered in accordance with this UTEP.

4. Real Property Tax Policy:

a. Background:

1. New York State's Real Property Tax Law Section 487, adopted in 1977 and amended on April 12, 2019, provides a 15-year real property tax exemption for solar, wind and farm waste energy systems.
2. These energy generating systems are classified as capital improvements to real property.
3. Section 487 was intended to encourage the construction of these energy systems.
4. Section 487 affords local governments the opportunity to "opt out" of this real property tax exemption.
5. By opting out, these energy projects would be required to pay property taxes to the local governments that opt out.

b. Fulton County Board of Supervisors' Local Law 3 of 2019:

1. In September 2019, the Fulton County Board of Supervisors adopted Local Law 3 of 2019 titled "Opting out of Section 487 of NYS Real Property Tax Law Exemptions for Solar Energy System, Wind Energy System and Farm Waste Energy System Projects."
2. As a result, no real property exemption under Section 487 shall be applicable to Fulton County taxes with respect to solar or wind energy systems and farm waste energy systems.

c. IDA Policy:

1. It shall be the policy of the IDA to also not grant real property tax exemptions to solar or wind energy system and farm waste to energy system projects.

SECTION 9: REVIEW OF POLICY:

1. The Agency shall on a regular and ongoing basis review this Uniform Tax Exemption Policy to determine relevance, compliance with law, effectiveness, and shall adopt any modifications or changes that it shall deem appropriate.
2. In addition, the Executive Director shall continually review this Uniform Tax Exemption Policy and evaluate the internal control structure established to ensure compliance with the tax exemption policy. The Executive Director shall submit recommended changes to the Agency for approval.

SECTION 10: FEES:

1. All Project Operators and Applicants shall be responsible for paying to the Agency all fees as identified and described in the Agency's Fee Schedule, a copy of which is attached hereto and made a part of this Policy.
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SCHEDULE OF ALL AFFECTED TAX JURISDICTIONS

(All Towns, Villages, Cities and School Districts with taxing jurisdiction over property located in Fulton County, together with the County of Fulton, but not including special taxing districts)

2020 - FULTON COUNTY

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