

# ***AGENCY POLICY MANUAL***

## ***CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY***

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## *PREAMBLE*

This Policy Manual of the City of Albany Industrial Development Agency reflects an effort by the members and staff of the Agency to accomplish two goals: (1) to reorganize the administrative procedures of the Agency, (2) to respond to requirements contained in Chapters 356 and 357 of the Laws of 1993 (the “IDA Reform Legislation”), and (3) to respond to requirements contained in Chapter 766 of the Laws of 2005 and Chapter 506 of the Laws of 2009 (collectively, the Public Authorities Accountability Act”).

The Policy Manual is organized into three major sub-parts: (1) Organization of the Agency, (2) Internal Policies and (3) Project-Specific Policies and Procedures and is designed to assist the members and the staff of the Agency in setting forth various legal requirements applicable to the operations of the Agency. The staff recognize that legal requirements imposed on the Agency by federal and state law are not static and that this Policy Manual will change to reflect changes in law.

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AGENCY POLICY MANUAL

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PART 1  
ENABLING ACT

GENERAL MUNICIPAL LAW  
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## **General Municipal Law**

### **ARTICLE 18-A**

#### **INDUSTRIAL DEVELOPMENT**

##### **TITLE 1**

##### **AGENCIES, ORGANIZATION AND POWERS (Sections 850-888)**

**Section 850. Short title.** This chapter may be cited as the "New York State Industrial Development Agency Act."

**§ 852. Policy and purposes of article.** It is hereby declared to be the policy of this state to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation, economically sound commerce and industry and economically sound projects identified and called for to implement a state heritage area management plan as provided in title G of the parks, recreation and historic preservation law through governmental action for the purpose of preventing unemployment and economic deterioration by the creation of industrial development agencies which are hereby declared to be governmental agencies and instrumentalities and to grant to such industrial development agencies the rights and powers provided in this article.

It is hereby further declared to be the policy of this state to protect and promote the health of the inhabitants of this state by the conservation, protection and improvement of the natural and cultural or historic resources and environment and to control land, sewer, water, air, noise or general environmental pollution derived from the operation of industrial, manufacturing, warehousing, commercial, recreation, horse racing facilities, railroad facilities, automobile racing facilities and research facilities and to grant such industrial development agencies the rights and powers provided by this article with respect to industrial pollution control facilities.

It is hereby further declared to be the policy of this state to protect and promote the health of the inhabitants of this state and to increase trade through promoting the development of facilities to provide recreation for the citizens of the state and to attract tourists from other states.

The use of all such rights and powers is a public purpose essential to the public interest, and for which public funds may be expended.

**§ 854. Definitions.** As used in this act, unless the context otherwise requires:

(1) "Agency"--shall mean an Industrial Development Agency created pursuant to this act.

(2) "Bonds"--shall mean the bonds, notes, interim certificates and other obligations issued by the agency pursuant to this act.

(3) "Municipality"--shall mean any county, city, village, town or Indian reservation in the state.

(4) "Project" - shall mean any land, any building or other improvement, and all real and personal properties located within the state of New York and within or outside or partially within and partially outside the municipality for whose benefit the agency was created, including, but not limited to, machinery, equipment and other

facilities deemed necessary or desirable in connection therewith, or incidental thereto, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes or other economically sound purposes identified and called for to implement a state designated urban cultural park management plan as provided in title G of the parks, recreation and historic preservation law and which may include or mean an industrial pollution control facility, a recreation facility, educational or cultural facility, a horse racing facility, a railroad facility or an automobile racing facility, provided, however, no agency shall use its funds or provide financial assistance in respect of any project wholly or partially outside the municipality for whose benefit the agency was created without the prior consent thereto by the governing body or bodies of all the other municipalities in which a part or parts of the project is, or is to be, located, and such portion of the project located outside such municipality for whose benefit the agency was created shall be contiguous with the portion of the project inside such municipality.

(5) "Governing body"--shall mean the board or body in which the general legislative powers of the municipality are vested.

(6) "Mortgage"--shall mean a mortgage or other security device.

(7) "Revenues"--shall mean all rents, revenues, fees, charges and other sources of income derived by the agency from the leasing, sale or other disposition of a project or projects.

(8) "Industrial pollution control facility"--shall mean any equipment, improvement, structure or facility or any land and any building, structure, facility or other improvement thereon, or any combination thereof, and all real and personal property deemed necessary therewith, which if within any city are not of a character or nature then or formerly furnished or supplied by the city, having to do with or the end purpose of which is the control, abatement or prevention of land, sewer, water, air, noise or general environmental pollution deriving from the operation of industrial, manufacturing, warehousing, commercial, recreation and research facilities, including, but not limited to any air pollution control facility, noise abatement facility, water management facility, waste water collecting system, waste water treatment works, sewage treatment works system, sewage treatment system or solid waste disposal facility or site.

(9) "Recreation facility"--shall mean any facility for the use of the general public as spectators or participants in recreation activities, including but not limited to skiing, golfing, swimming, tennis, ice skating or ice hockey facilities, together with all buildings, structures, machinery, equipment, facilities and appurtenances thereto which the agency may deem necessary, useful or desirable in connection with the construction, improvement or operation of any such facility, including overnight accommodations and other facilities incidental thereto and facilities that may permit the use of recreation facilities by the general public as participants in recreation activities, but shall not include facilities for automobile or horse racing or other similar activities.

(10) "Horse racing facility"--shall mean any facility for the use of the general public for purpose of conducting pari-mutuel wagering, licensed by the state racing and wagering board, as of January first, nineteen hundred seventy-seven, except non-profit racing associations, including buildings, structures, machinery, equipment, facilities and appurtenances thereto, the construction, reconstruction, acquisition and/or improvement of which shall have been approved by the state racing

and wagering board, and which the agency may deem necessary, useful or desirable in connection with the construction, improvement or operation of such racing facility.

(11) "Railroad facility"--shall mean, but shall not be limited to, railroad rights-of-way, beds, bridges, viaducts, tracks, switches and rolling stock and any other attendant structure, equipment, facility or property necessary or appropriate to railroading conducted in conjunction with industrial, commercial, manufacturing, recreational or warehousing operations; provided, however, that (i) no agency shall itself operate a railroad facility for freight or passenger service, but may lease or otherwise make such facility available to an operator, subject to an agreement for the maintenance and operation of such facility for freight or passenger service, provided that passenger service does not constitute the primary purpose of the railroad facility; (ii) prior to undertaking any project involving acquisition, construction, reconstruction, improvement, maintenance, equipping or furnishing of a railroad facility, an agency shall submit its plans for the proposed project to the commissioner of transportation; the commissioner shall, within sixty days of his receipt of the proposal, submit an analysis of the financial and operational feasibility of the proposed project, along with any recommendations for modification for improving the project's viability, to the agency, the governor, the commissioner of commerce, the temporary president of the senate, the speaker of the assembly and the governing body of the municipality in which the agency is located; and (iii) no agency shall enter into any contract for the acquisition, construction, reconstruction, improvement, maintenance, equipping or furnishing of a railroad facility until fifteen days after the submission of the analysis and recommendations of the commissioner of transportation, or seventy-five days after submission of the agency's plan to the commissioner, whichever is earlier.

(12) "Educational or cultural facility"--shall mean any facility identified and called for to implement a state designated heritage area management plan as provided in title G of the parks, recreation and historic preservation law that is open to the public at large as participants in educational and cultural activities including but not limited to theaters, museums, exhibitions and festival and interpretive facilities, together with buildings, structures, machinery, equipment, facilities and appurtenances thereto which the agency may deem necessary, useful or desirable in connection with the construction, improvement or operation of any such facility, including overnight accommodations and other facilities incidental thereto and facilities that may permit the use of educational or cultural facilities by the general public.

(14) "Financial assistance" - shall mean the proceeds of bonds issued by an agency, straight-leases, or exemptions from taxation claimed by a project occupant as a result of an agency taking title, possession or control (by lease, license or otherwise) to the property or equipment of such project occupant or of such project occupant acting as an agent of an agency.

(15) "Straight-lease transaction" - shall mean a transaction in which an agency takes title, possession or control (by lease, license or otherwise) to the property or equipment of a project occupant, entitling such property or equipment to be exempt from taxation according to the provisions of section eight hundred seventy-four of this article, and no financial assistance in the form of the proceeds of bonds issued by the agency is provided to the project occupant.



(16) "Affected tax jurisdiction" - shall mean any municipality or school district, in which a project is located, which will fail to receive real property tax payments, or other tax payments which would otherwise be due, except for the tax exempt status of an agency involved in a project.

(17) "Payments in lieu of taxes" - shall mean any payment made to an agency, or affected tax jurisdiction equal to the amount, or a portion of, real property taxes, or other taxes, which would have been levied by or on behalf of an affected tax jurisdiction if the project was not tax exempt by reason of agency involvement.

(18) "Highly distressed area" - shall mean (a) a census tract or tracts or block numbering areas or areas or such census tract or block numbering area contiguous thereto which, according to the most recent census data available, has:

(i) a poverty rate of at least twenty percent for the year to which the data relates or at least twenty percent of households receiving public assistance; and

(ii) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates; or

(b) a city, town, village or county within a city with a population of one million or more for which: (i) the ratio of the full value property wealth, as determined by the comptroller for the year nineteen hundred ninety, per resident to the statewide average full value property wealth per resident; and (ii) the ratio of the income per resident; as shown in the nineteen hundred ninety census to the statewide average income per resident; are each fifty-five percent or less of the statewide average; or

(c) an area which was designated an empire zone pursuant to article eighteen-B of this chapter.

(19) "Continuing care retirement community" - shall mean any facility that has been granted a certificate of authority pursuant to article forty-six or forty-six-A of the public health law and is established to provide, pursuant to continuing care retirement contracts approved pursuant to article forty-six of the public health law, or fee-for-service continuing care contracts approved pursuant to article forty-six-A of the public health law, a comprehensive, cohesive living arrangement for the elderly, and certified by the commissioner of health, that (i) has been approved for the issuance of industrial development agency bonds by the continuing care retirement community council pursuant to section forty-six hundred four-a of the public health law except that paragraphs b and g of subdivision two of section forty-six hundred four-a of the public health law shall not apply to a continuing care retirement community granted a certificate of authority pursuant to article forty-six-A of the public health law and (ii) is a not-for-profit corporation as defined in section one hundred two of the not-for-profit corporation law that is (a) eligible for tax-exempt financing under section forty-six hundred four-a of the public health law and this chapter and (b) is exempt from taxation pursuant to section 501(c)(3) of the federal internal revenue code; except that "continuing care retirement community" shall not include a facility granted a certificate of authority upon application of a state or local government applicant.

(20) "Automobile racing facility" shall mean any closed-course motorsports complex and its ancillary grounds that has at least fifty thousand fixed seats for race patrons and hosts at least one NASCAR Sprint Cup series race and at least two other nationally recognized racing events each calendar year.

**§ 856. Organization of industrial development agencies.** 1. (a) Upon the establishment of an industrial development agency by special act of the legislature, the governing body of the municipality for whose benefit such agency is established shall file within six months after the effective date of the special act of the legislature establishing such agency or before the first day of July, nineteen hundred sixty-nine, whichever date shall be later, in the office of the secretary of state, a certificate setting forth: (1) the date of passage of the special act establishing the agency; (2) the name of the agency; (3) the names of the members and their terms of office, specifying which member is the chairman; and (4) facts establishing the need for the establishment of an agency in such municipality.

(b) Every such agency shall be perpetual in duration, except that if (1) such certificate is not filed with the secretary of state within six months after the effective date of the special act of the legislature establishing such agency or before the first day of July, nineteen hundred sixty-nine, whichever date shall be later, or if (2) at the expiration of ten years subsequent to the effective date of the special act, there shall be outstanding no bonds or other obligations theretofore issued by such agency or by the municipality for or in behalf of the agency, then the corporate existence of such agency shall thereupon terminate and it shall thereupon be deemed to be and shall be dissolved.

(c) On or before March first of each year, the secretary of state shall prepare a list of agencies which failed to file a certificate in accordance with provisions of paragraph (a) of this subdivision within the preceding calendar year and transmit a copy of such list to the state comptroller and the commissioner of the department of economic development. On or before March first of each year the commissioner of the department of economic development shall prepare a list of agencies which have dissolved pursuant to paragraph (b) of this subdivision or have ceased to exist pursuant to section eight hundred eighty-two of this chapter and shall transmit a copy of such list to the state comptroller.

2. An agency shall be a corporate governmental agency, constituting a public benefit corporation. Except as otherwise provided by special act of the legislature, an agency shall consist of not less than three nor more than seven members who shall be appointed by the governing body of each municipality and who shall serve at the pleasure of the appointing authority. Such members may include representatives of local government, school boards, organized labor and business. A member shall continue to hold office until his successor is appointed and has qualified. The governing body of each municipality shall designate the first chairman and file with the secretary of state a certificate of appointment or reappointment of any member. Such members shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties.

3. A majority of the members of an agency shall constitute a quorum.

4. Any one or more of the members of an agency may be an official or an employee of the municipality. In the event that an official or an employee of the municipality shall be appointed as a member of the agency, acceptance or retention of such appointment shall not be deemed a forfeiture of his municipal office or employment, or incompatible therewith or affect his tenure or compensation in any way. The term of office of a member of an agency who is an official or an employee of the municipality when appointed as a member thereof by special act of the

legislature creating the industrial development agency shall terminate at the expiration of the term of his municipal office.

**§ 858. Purposes and powers of the agency.** The purposes of the agency shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities including industrial pollution control facilities, educational or cultural facilities, railroad facilities, horse racing facilities, automobile racing facilities and continuing care retirement communities, provided, however, that, of agencies governed by this article, only agencies created for the benefit of a county and the agency created for the benefit of the city of New York shall be authorized to provide financial assistance in any respect to a continuing care retirement community, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the state of New York and to improve their recreation opportunities, prosperity and standard of living; and to carry out the aforesaid purposes, each agency shall have the following powers:

- (1) To sue and be sued;
- (2) To have a seal and alter the same at pleasure;
- (3) To acquire, hold and dispose of personal property for its corporate purposes;
- (4) To acquire by purchase, grant, lease, gift, pursuant to the provisions of the eminent domain procedure law, or otherwise and to use, real property or rights or easements therein necessary for its corporate purposes in compliance with the local zoning and planning regulations and shall take into consideration regional and local comprehensive land use plans and state designated heritage area management plans, and to sell, convey, mortgage, lease, pledge, exchange or otherwise dispose of any such property in such manner as the agency shall determine. In the case of railroad facilities, however, the phrase to use real property or rights or easements therein shall not be interpreted to include operation by the agency of rail service upon or in conjunction with such facilities.
- (5) To make by-laws for the management and regulation of its affairs and, subject to agreements with its bondholders, for the regulation of the use of a project or projects.
- (6) With the consent of the municipality, to use agents, employees and facilities of the municipality, paying the municipality its agreed proportion of the compensation or costs;
- (7) To appoint officers, agents and employees, to prescribe their qualifications and to fix their compensation and to pay the same out of funds of the agency;
- (8) (a) To appoint an attorney, who may be the counsel of the municipality, and to fix the attorney's compensation for services which shall be payable to the attorney, and to retain and employ private consultants for professional and technical assistance and advice;  
(b) An attorney acting as bond counsel for a project must file with the agency a written statement in which the attorney identifies each party to the transaction which such attorney represents. If bond counsel provides any legal services to parties other than the agency the written statement must describe the nature of legal services provided by such bond counsel to all parties to the transaction, including the nature of the services provided to the agency.
- (9) To make contracts and leases, and to execute all instruments necessary or convenient to or with any person, firm, partnership or

corporation, either public or private; provided, however, that any extension of an existing contract, lease or other agreement entered into by an agency with respect to a project shall be guided by the provisions of this article;

(10) To acquire, construct, reconstruct, lease, improve, maintain, equip or furnish one or more projects;

(11) To accept gifts, grants, loans, or contributions from, and enter into contracts or other transactions with, the United States and the state or any agency of either of them, any municipality, any public or private corporation or any other legal entity, and to use any such gifts, grants, loans or contributions for any of its corporate purposes;

(12) To borrow money and to issue bonds and to provide for the rights of the holders thereof;

(13) To grant options to renew any lease with respect to any project or projects and to grant options to buy any project at such price as the agency may deem desirable;

(14) To designate the depositories of its money either within or without the state;

(15) To enter into agreements requiring payments in lieu of taxes. Such agreements shall be in writing and in addition to other terms shall contain: the amount due annually to each affected tax jurisdiction (or a formula by which the amount due can be calculated), the name and address of the person, office or agency to which payment shall be delivered, the date on which payment shall be made, and the date on which payment shall be considered delinquent if not paid. Unless otherwise agreed by the affected tax jurisdictions, any such agreement shall provide that payments in lieu of taxes shall be allocated among affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt due to the status of the agency involved in the project. A copy of any such agreement shall be delivered to each affected tax jurisdiction within fifteen days of signing the agreement. In the absence of any such written agreement, payments in lieu of taxes made by an agency shall be allocated in the same proportions as they had been prior to January first, nineteen hundred ninety-three for so long as the agency's activities render a project non-taxable by affected tax jurisdictions;

(16) To establish and re-establish its fiscal year; and

(17) To do all things necessary or convenient to carry out its purposes and exercise the powers expressly given in this title.

**§ 858-a. Compensation, procurement and investment.** 1. The compensation of an officer or full-time employee of the agency (but not including part-time employees or consultants, including accountants, attorneys and bond counsel to the agency) shall not be contingent on the granting of financial assistance by an agency.

2. The provisions of section one hundred four-b of this chapter shall be applicable to the procurement of goods and services paid for by an agency for its own use and account.

3. The provisions of sections ten and eleven of this chapter shall be applicable to deposits and investments of funds for an agency's own use and account.

**§ 858-b. Equal employment opportunities.** 1. Each agency shall ensure that all employees and applicants for employment are afforded equal employment opportunity without discrimination.

2. Except as is otherwise provided by collective bargaining contracts

or agreements, new employment opportunities created as a result of projects of the agency shall be listed with the New York state department of labor community services division, and with the administrative entity of the service delivery area created by the federal job training partnership act (P.L. No. 97-300) in which the project is located. Except as is otherwise provided by collective bargaining contracts or agreements, sponsors of projects shall agree, where practicable, to first consider persons eligible to participate in the federal job training partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the community services division of the department of labor for such new employment opportunities

**§ 859. Financial records.** 1. (a) Each agency shall maintain books and records in such form as may be prescribed by the state comptroller.

(b) Within ninety days following the close of its fiscal year, each agency or authority shall prepare a financial statement for that fiscal year in such form as may be prescribed by the state comptroller. Such statement shall be audited within such ninety day period by an independent certified public accountant in accordance with government accounting standards established by the United States general accounting office. The audited financial statement shall include supplemental schedules listing all straight-lease transactions and bonds and notes issued, outstanding or retired during the applicable accounting period whether or not such bonds, notes or transactions are considered obligations of the agency. For each issue of bonds or notes such schedules shall provide the name of each project financed with proceeds of each issue, and whether the project occupant is a not-for-profit corporation, the name and address of each owner of each project, the estimated amount of tax exemptions authorized for each project, the purpose for which each bond or note was issued, date of issue, interest rate at issuance and if variable the range of interest rates applicable, maturity date, federal tax status of each issue, and an estimate of the number of jobs created and retained by each project. For each straight-lease transaction, such schedules shall provide the name of each project, and whether the project occupant is a not-for-profit corporation, the name and address of each owner of each project, the estimated amount of tax exemptions authorized for each project, the purpose for which each transaction was made, the method of financial assistance utilized by the project, other than the tax exemptions claimed by the project and an estimate of the number of jobs created and retained by each project.

(c) Within thirty days after completion, a copy of the audited financial statement shall be transmitted to the commissioner of the department of economic development, the state comptroller and the governing body of the municipality for whose benefit the agency was created.

(d) An agency with no bonds or notes issued or outstanding and no projects during the applicable accounting period may apply to the state comptroller for a waiver of the required audited financial statement. Application shall be made on such form as the comptroller may prescribe.

(e) If an agency or authority shall fail to file or substantially complete, as determined by the state comptroller, the financial statement required by this section, the state comptroller shall provide notice to the agency or authority. The notice shall state the following:

(i) that the failure to file a financial statement as required is a violation of this section, or in the case of an insufficient financial

statement, the manner in which the financial statement submitted is deficient;

(ii) that the agency or authority has thirty days to comply with this section or provide an adequate written explanation to the comptroller of the agency's or authority's reasons for the inability to comply; and

(iii) that the agency's or authority's failure to provide either the required financial statement or an adequate explanation will result in the notification of the chief executive officer of the municipality for whose benefit the agency or authority was created of the agency's noncompliance with this section. Where such agency or authority has failed to file the required statement, the comptroller shall additionally notify the agency or authority that continued failure to file the required statement may result in loss of the agency's or authority's authority to provide exemptions from state taxes.

(iv) If an agency or authority after thirty days has failed to file the required statement or the explanation in the manner required by subparagraph (i) of this paragraph, or provides an insufficient explanation, the comptroller shall notify the chief executive officer of the municipality for whose benefit the agency or authority was created and the agency of the agency's or authority's noncompliance with this section. Such notice from the state comptroller shall further delineate in what respect the agency or authority has failed to comply with this section. If the agency or authority has failed to file the required statement, the notice shall additionally state that continued failure to file the required statement may result in loss of the agency's or authority's authority to provide exemptions from state taxes.

(v) If, thirty days after notification of the chief executive officer of the municipality for whose benefit the agency or authority was created of the agency's or authority's noncompliance, the agency or authority fails to file the required statement, the comptroller shall notify the chief executive officer of the municipality for whose benefit that agency or authority was created and the agency or authority that if such report is not provided within sixty days, that the agency or authority will no longer be authorized to provide exemptions from state taxes.

(vi) If, sixty days after the notification required by subparagraph (v) of this paragraph, the comptroller has not received the required statement, the agency or authority shall not offer financial assistance which provides exemptions from state taxes until such financial statement is filed and the comptroller shall so notify the agency or authority and the chief executive officer of the municipality for whose benefit the agency was created. Provided, however, that nothing contained in this paragraph shall be deemed to modify the terms of any existing agreements.

(f) Within thirty days after completion, a copy of an audited financial statement which contains transactions of or bonds or notes of civic facilities as defined in paragraph (b) of subdivision thirteen of section eight hundred fifty-four of this article, shall be transmitted by the agency to the commissioner of health, the chair of the senate finance committee, the chair of the assembly ways and means committee, the chair of the senate health committee and the chair of the assembly health committee.

2. On or before September first of each year, the commissioner of the department of economic development shall prepare and submit to the governor, speaker of the assembly, majority leader of the senate, and the state comptroller, a report setting forth a summary of the significant trends in operations and financing by agencies and

authorities; departures from acceptable practices by agencies and authorities; a compilation by type of the bonds and notes outstanding; a compilation of all outstanding straight-lease transactions; an estimate of the total number of jobs created and retained by agency or authority projects; and any other information which in the opinion of the commissioner bears upon the discharge of the statutory functions of agencies and authorities.

3. On or before April first, nineteen hundred ninety-six, the commissioner shall submit to the director of the division of the budget, the temporary president of the senate, the speaker of the assembly, the chairman of the senate finance committee, the chairman of the assembly ways and means committee, the chairman of the senate local government committee, the chairman of the senate committee on commerce, economic development and small business, the chairman of the assembly committee on commerce, industry and economic development, the chairman of the assembly local governments committee and the chairman of the assembly real property taxation committee an evaluation of the activities of industrial development agencies and authorities in the state prepared by an entity independent of the department. Such evaluation shall identify the effect of agencies and authorities on: (a) job creation and retention in the state, including the types of jobs created and retained; (b) the value of tax exemptions provided by such agencies and authorities; (c) the value of payments received in lieu of taxes received by municipalities and school districts as a result of projects sponsored by such entities; (d) a summary of the types of projects that received financial assistance; (e) a summary of the types of financial assistance provided by the agencies and authorities; (f) a summary of criteria for evaluation of projects used by agencies and authorities; (g) a summary of tax exemption policies of agencies and authorities; and (h) such other factors as may be relevant to an assessment of the performance of such agencies and authorities in creating and retaining job opportunities for residents of the state. Such evaluation shall also assess the process by which agencies and authorities grant exemptions from state taxes and make recommendations for the most efficient and effective procedures for the use of such exemptions. Such evaluation shall further include any recommendations for changes in laws governing the operations of industrial development agencies and authorities which would enhance the creation and retention of jobs in the state.

**§ 859-a. Additional prerequisites to the provisions of financial assistance.** Prior to providing any financial assistance of more than one hundred thousand dollars to any project, the agency must comply with the following prerequisites:

1. The agency must adopt a resolution describing the project and the financial assistance that the agency is contemplating with respect to such project. Such assistance shall be consistent with the uniform tax exemption policy adopted by the agency pursuant to subdivision four of section eight hundred seventy-four of this chapter, unless the agency has followed the procedures for deviation from such policy specified in paragraph (b) of such subdivision.

2. The agency must hold a public hearing with respect to the project and the proposed financial assistance being contemplated by the agency. Said public hearing shall be held in a city, town or village where the project proposes to locate. At said public hearing, interested parties shall be provided reasonable opportunity, both orally and in writing, to present their views with respect to the project.

3. The agency must give at least ten days published notice of said

public hearing and shall, at the same time, provide notice of such hearing to the chief executive officer of each affected tax jurisdiction within which the project is located. The notice of hearing must state the time and place of the hearing, contain a general, functional description of the project, describe the prospective location of the project, identify the initial owner, operator or manager of the project and generally describe the financial assistance contemplated by the agency with respect to the project.

**§ 859-b. Special procedure for the provision of financial assistance to continuing care retirement communities.** 1. Any applicant for financing of a continuing care retirement community shall present a completed application for a certificate of authority and documentation establishing the continuing care retirement community council's approval of that application, pursuant to article forty-six of the public health law.

2. If requested by the agency, the applicant shall present an analysis dealing with any of the issues identified in paragraph (a) of subdivision four of section eight hundred seventy-four of this article.

3. Applicants shall present the financial feasibility study, including a financial forecast and market study, and the analysis of economic costs and benefits required by article forty-six of the public health law.

4. Any information presented by the applicant pursuant to subdivisions one, two and three of this section shall be made available at the time required for published notice of the public hearing required by section eight hundred fifty-nine-a of this article. The agency shall make such information available during regular office hours in at least two locations, at least one of which shall be in the city, town or village within which the proposed project is located. Such notice shall include a statement indicating the location and times of availability of the information required by this section.

5. The industrial development agency may require the applicant to provide any additional information which it requires in order to meet the purposes of this article.

**§ 860. Moneys of the agency.** The agency shall have power to contract with the holders of any of its bonds or notes as to the custody, collection, securing, investment and payment of any moneys of the agency or any moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes and to carry out any such contract. Moneys held in trust or otherwise for the payment of bonds or notes or in any way to secure bonds or notes and deposits of such moneys may be secured in the same manner as moneys of the agency, and all banks and trust companies are authorized to give such security for such deposits.

**§ 861. Notification of budget.** Each agency shall mail or deliver to the chief executive officer and the governing body of the municipality for whose benefit the agency was established and make available for public inspection and comment its proposed budget for the forthcoming fiscal year, no later than twenty business days before adoption. At such time, the agency shall file its proposed budget with the clerk of the municipality for whose benefit the agency was established. Such proposed budget shall contain detailed estimates in writing of the amount of revenues to be received and expenditures to be made during the forthcoming fiscal year. Following its<sup>11</sup> consideration of the comments



received, the agency may revise its budget accordingly and shall file the revised budget with the clerk of the municipality.

**§ 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.

(2) (a) Except as provided in paragraph (b) of this subdivision, no financial assistance of the agency shall be provided in respect of any project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost. For the purposes of this article, "retail sales" shall mean: (i) sales by a registered vendor under article twenty-eight of the tax law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or (ii) sales of a service to such customers. Except, however, that tourism destination projects shall not be prohibited by this subdivision. For the purpose of this paragraph, "tourism destination" shall mean a location or facility which is likely to attract a significant number of visitors from outside the economic development region as established by section two hundred thirty of the economic development law, in which the project is located.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, financial assistance may, however, be provided to a project where facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services constitute more than one-third of the total project cost, where: (i) the predominant purpose of the project would be to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the city, town, or village within which the proposed project would be located because of a lack of reasonably accessible retail trade facilities offering such goods or services; or (ii) the project is located in a highly distressed area.

(c) With respect to projects authorized pursuant to paragraph (b) of this subdivision, no project shall be approved unless the agency shall find after the public hearing required by section eight hundred fifty-nine-a of this title that undertaking the project will serve the public purposes of this article by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the state. Where the agency makes such a finding, prior to providing financial assistance to the project by the agency, the chief executive officer of the municipality for whose benefit the agency was created shall confirm the proposed action of the agency.

**§ 862-a. Additional restrictions on funds of the agency in connection with continuing care retirement communities.** No resolution authorizing the issuance of bonds, notes or other obligations of the agency, or for

providing financial assistance in any respect, for any continuing care retirement community project shall be adopted unless and until the project has received a certificate of authorization pursuant to section forty-six hundred four-a of the public health law, and unless the project will serve the public purposes of this article by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the state.

**§ 864. Bonds of the agency.** (1) The agency shall have the power and is hereby authorized from time to time to issue negotiable bonds for any of its corporate purposes without limitation as to amount. The agency shall have power from time to time and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and may issue bonds partly to refund bonds then outstanding and partly for any other purpose hereinabove described. The refunding bonds may be exchanged for the bonds to be refunded, with such cash adjustments as may be agreed, or may be sold and the proceeds applied to the purchase or redemption of the bonds to be refunded. Except as may otherwise be expressly provided by the agency, the bonds of every issue shall be special obligations of the agency payable solely from revenues derived from the leasing, sale or other disposition of a project, subject only to any agreements with the holders of particular bonds pledging any particular moneys or revenues. Whether or not the bonds are of such form and character as to be negotiable instruments under article eight of the uniform commercial code, the bonds shall be, and are hereby made, negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the bonds for registration.

(2) The bonds shall be authorized by resolution of the agency and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, either within or without the state, and be subject to such terms of redemption as such resolution or resolutions may provide. The bonds may be sold at public or private sale at such price or prices as the agency shall determine.

(3) Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds thereby authorized, as to:

(a) pledging all or any part of the revenues derived from the leasing, sale or other disposition of a project or projects to secure the payment of the bonds, subject to such agreements with bondholders as may then exist;

(b) the rentals, fees, and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;

(c) the setting aside of reserves or sinking funds, and the regulation and disposition thereof;

(d) limitations on the right of the agency to restrict and regulate the use of a project;

(e) limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or any issue of the bonds;

(f) the terms upon which additional bonds may be issued and secured;

the refunding of outstanding or other bonds;

(g) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(h) vesting in a trustee or trustees such property, rights, powers and duties in trust as the agency may determine which may include any or all the rights, powers and duties of the trustees appointed by the bondholders and limiting or abrogating the right of the bondholders to appoint a trustee or limiting the rights, duties and powers of trustee;

(i) any other matters, of like or different character, which in any way affect the security or protection of the bonds.

**§ 866. Notes of the agency.** The agency shall have power from time to time to issue notes and from time to time to issue renewal notes (herein referred to as notes) maturing not later than five years from their respective original dates for any purpose or purposes for which bonds may be issued, whenever the agency shall determine that payment thereof can be made in full from any moneys or revenues which the agency expects to receive from any source. The agency may secure the notes in the same manner and with the same effect as herein provided for bonds. The notes shall be issued in the same manner as bonds. The agency shall have power to make contracts for the future sale from time to time of the notes, by which the purchasers shall be committed to purchase the notes from time to time on terms and conditions stated in such contracts, and the agency shall have power to pay such consideration as it shall deem proper for such commitments. In case of default on its notes or violation of any of the obligations of the agency to the noteholders, the noteholders shall have all the remedies provided herein for bondholders. Such notes shall be as fully negotiable as the bonds of the agency.

**§ 868. Agreements of the municipality and state.** The municipality is authorized to, and the state does hereby, pledge to and agree with the holders of the bonds or notes that neither the municipality nor the state, respectively, will limit or alter the rights, hereby vested in the agency to acquire, construct, reconstruct, improve, maintain, equip and furnish the project or projects, to establish and collect rentals, fees and other charges and to fulfill the terms of any agreements made with the holders of the bonds or notes nor in any way impair the rights and remedies of the bondholders or noteholders until the bonds or notes, together with interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the bondholders or noteholders are fully met and discharged.

**§ 870. State and municipality not liable on bonds or notes.** The bonds or notes and other obligations of the authority shall not be a debt of the state or of the municipality, and neither the state nor the municipality shall be liable thereon, nor shall they be payable out of any funds other than those of the agency.

**§ 872. Bonds and notes as legal investment.** The bonds and notes are hereby made securities in which all public officers and bodies of this state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan

associations, investment companies and other persons carrying on a banking business, and all other persons whatsoever except as hereinafter provided, who are now or may hereafter be authorized to invest in bonds or notes or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. The bonds or notes are also hereby made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

**§ 874. Tax exemptions.** (1) It is hereby determined that the creation of the agency and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state of New York and is a public purpose, and the agency shall be regarded as performing a governmental function in the exercise of the powers conferred upon it by this title and shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities.

(2) Any bonds or notes issued pursuant to this title, together with the income therefrom, as well as the property of the agency, shall be exempt from taxation, except for transfer and estate taxes.

(3) Payments in lieu of taxes received by the agency shall be remitted to each affected tax jurisdiction within thirty days of receipt.

(4) (a) The agency shall establish a uniform tax exemption policy, with input from affected tax jurisdictions, which shall be applicable to the provision of financial assistance pursuant to section eight hundred fifty-nine-a of this chapter and shall provide guidelines for the claiming of real property, mortgage recording, and sales tax exemptions. Such guidelines shall include, but not be limited to: period of exemption; percentage of exemption; types of projects for which exemptions can be claimed; procedures for payments in lieu of taxes and instances in which real property appraisals are to be performed as a part of an application for tax exemption; in addition, agencies shall in adopting such policy consider such issues as: the extent to which a project will create or retain permanent, private sector jobs; the estimated value of any tax exemptions to be provided; whether affected tax jurisdictions shall be reimbursed by the project occupant if a project does not fulfill the purposes for which an exemption was provided; the impact of a proposed project on existing and proposed businesses and economic development projects in the vicinity; the amount of private sector investment generated or likely to be generated by the proposed project; the demonstrated public support for the proposed project; the likelihood of accomplishing the proposed project in a timely fashion; the effect of the proposed project upon the environment; the extent to which the proposed project will require the provision of additional services, including, but not limited to additional educational, transportation, police, emergency medical or fire services; and the extent to which the proposed project will provide additional sources of revenue for municipalities and school districts.

(b) The agency shall establish a procedure for deviation from the uniform tax exemption policy required pursuant to this subdivision. The agency shall set forth in writing the reasons for deviation from such policy, and shall further notify the affected local taxing jurisdictions of the proposed deviation from such policy and the reasons therefor.

(5) Payments in lieu of taxes which are delinquent under the agreement or which an agency fails to remit pursuant to subdivision three of this

section, shall be subject to a late payment penalty of five percent of the amount due which shall be paid by the project occupant (where taxes are delinquent because of the occupant's failure to make the required payment) or the agency (because of the agency's failure to remit pursuant to subdivision three of this section) to the affected tax jurisdiction at the time the payment in lieu of taxes is paid. For each month, or part thereof, that the payment in lieu of taxes is delinquent beyond the first month, interest shall accrue to and be paid to the affected tax jurisdiction on the total amount due plus a late payment penalty in the amount of one percent per month until the payment is made.

(6) An affected tax jurisdiction which has not received a payment in lieu of taxes due to it under an agreement may commence legal action in any court of competent jurisdiction directly against any person, firm, corporation, organization or agency which is obligated to make payments in lieu of taxes under an agreement and has failed to do so. In such an action, the affected tax jurisdiction shall be entitled to recover the amount due, the late payment penalty, interest, expenses, costs and disbursements together with the reasonable attorneys' fees necessary to prosecute such action. Nothing herein shall be construed as providing an affected tax jurisdiction with the right to sue and recover from an agency which has not received payments in lieu of taxes from a project occupant.

(7) Any refinancing of a project shall be subject to the provisions of section eight hundred fifty-nine-a of this chapter, except where such refinancing was previously approved pursuant to such section.

(8) Agents of an agency and project operators shall annually file a statement with the state department of taxation and finance, on a form and in such a manner as is prescribed by the commissioner of taxation and finance, of the value of all sales and use tax exemptions claimed by such agents or agents of such agents or project operators, including, but not limited to, consultants or subcontractors of such agents or project operators, under the authority granted pursuant to this section. The penalty for failure to file such statement shall be the removal of authority to act as an agent of an agency or a project operator.

(9) (a) Within thirty days of the date that the agency designates a project operator or other person to act as agent of the agency for purposes of providing financial assistance consisting of any sales and compensating use tax exemption to such person, the agency shall file a statement with the department of taxation and finance relating thereto, on a form and in such manner as is prescribed by the commissioner of taxation and finance, identifying each such agent so named by the agency, setting forth the taxpayer identification number of each such agent, giving a brief description of the property and/or services intended to be exempted from such taxes as a result of such appointment as agent, indicating the agency's rough estimate of the value of the property and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

(b) Within thirty days of the date that the agency's designation described in paragraph (a) of this subdivision has been amended, terminated, been revoked, or become invalid or ineffective for any reason, the agency shall file a statement with the department of taxation and finance relating thereto, on a form and in such manner as is prescribed by the commissioner of taxation and finance, identifying each such agent so named by the agency in the original designation and setting forth the taxpayer identification number and other identifying

information of each such agent, the date as of which the original designation was amended, terminated, revoked, or became invalid or ineffective and the reason therefor, together with a copy of the original designation.

- § 875. Special provisions applicable to state sales and compensating use taxes and certain types of facilities.** 1. For purposes of this section: "state sales and use taxes" means sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight. "IDA" means an industrial development agency established by this article or an industrial development authority created by the public authorities law. "Commissioner" means the commissioner of taxation and finance.
2. An IDA shall keep records of the amount of state and local sales and use tax exemption benefits provided to each project and each agent or project operator and shall make such records available to the commissioner upon request. Such IDA shall also, within thirty days of providing financial assistance to a project that includes any amount of state sales and use tax exemption benefits, report to the commissioner the amount of such benefits for such project, the project to which they are being provided, together with such other information and such specificity and detail as the commissioner may prescribe. This report may be made in conjunction with the statement required by subdivision nine of section eight hundred seventy-four of this title or it may be made as a separate report, at the discretion of the commissioner. An IDA that fails to make such records available to the commissioner or to file such reports shall be prohibited from providing state sales and use tax exemption benefits for any project unless and until such IDA comes into compliance with all such requirements.
3. (a) An IDA shall include within its resolutions and project documents establishing any project or appointing an agent or project operator for any project the terms and conditions in this subdivision, and every agent, project operator or other person or entity that shall enjoy state sales and use tax exemption benefits provided by an IDA shall agree to such terms as a condition precedent to receiving or benefiting from such state sales and use exemptions benefits.
- (b) The IDA shall recover, recapture, receive, or otherwise obtain from an agent, project operator or other person or entity state sales and use exemptions benefits taken or purported to be taken by any such person to which the person is not entitled or which are in excess of the amounts authorized or which are for property or services not authorized or taken in cases where such agent or project operator, or other person or entity failed to comply with a material term or condition to use property or services in the manner required by the person's agreement with the IDA. Such agent or project operator, or other person or entity shall cooperate with the IDA in its efforts to recover, recapture, receive, or otherwise obtain such state sales and use exemptions benefits and shall promptly pay over any such amounts to the IDA that it requests. The failure to pay over such amounts to the IDA shall be grounds for the commissioner to assess and determine state sales and use taxes due from the person under article twenty-eight of the tax law, together with any relevant penalties and interest due on such amounts.
- (c) If an IDA recovers, recaptures, receives, or otherwise obtains, any amount of state sales and use tax exemption benefits from an agent, project operator or other person or entity, the IDA shall, within thirty days of coming into possession of<sup>17</sup> such amount, remit it to the

commissioner, together with such information and report that the commissioner deems necessary to administer payment over of such amount. An IDA shall join the commissioner as a party in any action or proceeding that the IDA commences to recover, recapture, obtain, or otherwise seek the return of, state sales and use tax exemption benefits from an agent, project operator or other person or entity.

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

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

4. The commissioner shall deposit and dispose of any amount of any payments or moneys received from or paid over by an IDA or from or by any person or entity, or received pursuant to an action or proceeding commenced by an IDA, together with any interest or penalties thereon, pursuant to subdivision three of this section, as state sales and use taxes in accord with the provisions of article twenty-eight of the tax law. The amount of any such payments or moneys, together with any interest or penalties thereon, shall be attributed to the taxes imposed by sections eleven hundred five and eleven hundred ten, on the one hand, and section eleven hundred nine of the tax law, on the other hand, or to any like taxes or fees imposed by such article, based on the proportion that the rates of such taxes or fees bear to each other, unless there is evidence to show that only one or the other of such taxes or fees was imposed or received or paid over.

5. The statement that an IDA is required by subdivision nine of

section eight hundred seventy-four of this article to file with the commissioner shall not be considered an exemption or other certificate or document under article twenty-eight or twenty-nine of the tax law. The IDA shall not represent to any agent, project operator, or other person or entity that a copy of such statement may serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of such statement to any person required to collect sales or use taxes as the basis to make any purchase exempt from tax. No such person required to collect sales or use taxes may accept such a statement in lieu of collecting any tax required to be collected. The civil and criminal penalties for misuse of a copy of such statement as an exemption certificate or document or for failure to pay or collect tax shall be as provided in the tax law. In addition, the use by an IDA or agent, project operator, or other person or entity of such statement, or the IDA's recommendation of the use or tendering of such statement, as such an exemption certificate or document shall be deemed to be, under articles twenty-eight and thirty-seven of the tax law, the issuance of a false or fraudulent exemption certificate or document with intent to evade tax.

6. The commissioner is hereby authorized to audit the records, actions, and proceedings of an IDA and of its agents and project operators to ensure that the IDA and its agents and project operators comply with all the requirements of this section. Any information the commissioner finds in the course of such audit may be used by the commissioner to assess and determine state and local taxes of the IDA's agent or project operator.

7. In addition to any other reporting or filing requirements an IDA has under this article or other law, an IDA shall also report and make available on the internet, without charge, copies of its resolutions and agreements appointing an agent or project operator or otherwise related to any project it establishes. It shall also provide, without charge, copies of all such reports and information to a person who asks for it in writing or in person. The IDA may, at the request of its agent or project operator delete from any such copies posted on the internet or provided to a person described in the prior sentence portions of its records that are specifically exempted from disclosure under article six of the public officers law.

8. In consultation with the commissioner of economic development, the commissioner of taxation and finance is hereby authorized to adopt rules and regulations and to issue publications and other guidance implementing the provisions of this section and of the other sections of this article relating to any state or local tax or fee, or exemption or exclusion therefrom, that the commissioner administers and that may be affected by any provision of this article, and any such rules and regulations of the commissioner shall have the same force and effect with respect to such taxes and fees, or amounts measured in respect of them, as if they had been adopted by the commissioner pursuant to the authority of the tax law.

9. To the extent that a provision of this section conflicts with a provision of any other section of this article, the provisions of this section shall control.

**§ 876. Tax contract by the state.** The state covenants with the purchasers and with all subsequent holders and transferees of bonds or notes issued by the agency pursuant to this title, in consideration of the acceptance of and payment for the bonds or notes, that the bonds and notes of the agency issued pursuant<sup>19</sup> to this title and the income



therefrom, and all moneys, funds and revenues pledged to pay or secure the payment of such bonds or notes shall at all times be free from taxation except for estate taxes and taxes on transfers by or in contemplation of death.

**§ 878. Remedies of bondholders and noteholders.** (1) In the event that the agency shall default in the payment of principal or of interest on any issue of the bonds or notes after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the agency shall fail or refuse to comply with the provisions of this title, or shall default in any agreement made with the holders of any issue of the bonds or notes, the holders of twenty-five per centum in aggregate principal amount of the bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such bonds for the purposes herein provided.

(2) Such trustee may, and upon written request of the holders of twenty-five per centum in principal amount of such bonds or notes, then outstanding shall, in his or its own name:

(a) by suit, action or special proceeding enforce all rights of the bondholders or noteholders, including the right to require the agency to collect revenues adequate to carry out any agreement as to, or pledge of, such revenues, and to require the agency to carry out any other agreements with the holders of such bonds or notes and to perform its duties under this title;

(b) bring suit upon such bonds or notes;

(c) by action or special proceeding, require the authority to account as if it were the trustee of an express trust for the holders of such bonds or notes;

(d) by action or special proceeding, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds or notes;

(e) declare all such bonds or notes due and payable, and if all defaults shall be made good then with the consent of the holders of twenty-five per centum of the principal amount of such bonds or notes then outstanding, to annul such declaration and its consequences.

(3) The supreme court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of bondholders or noteholders. The venue of any such suit, action or proceeding shall be laid in the county in which the project or projects are located.

(4) Before declaring the principal of all such bonds due and payable, the trustee shall first give thirty days' notice in writing to the agency.

(5) Any such trustee, whether or not the issue of bonds represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of a project, the revenues of which are pledged for the security of the bonds of such issue, and such receiver may enter and take possession of such part or parts of the project and, subject to any pledge or agreement with bondholders or noteholders, shall take possession of all moneys and other property derived from or applicable to the acquisition, construction, operation, maintenance and reconstruction of such part or parts of the project and proceed with the acquisition of any necessary real property in connection with the project that the agency has covenanted to construct, and with any construction which the agency is

under obligation to do and to operate, maintain and reconstruct such part or parts of the project and collect and receive all revenues thereafter arising therefrom subject to any pledge thereof or agreement with bondholders or noteholders relating thereto and perform the public duties and carry out the agreements and obligations of the agency under the direction of the court. In any suit, action or proceeding by the trustee, the fee, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the court shall be a first charge on any revenues derived from such project.

(6) Such trustee shall, in addition to the foregoing, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

**§ 880. Actions against the agency.** (1) In an action against the agency founded upon tort, the complaint shall contain an allegation that at least thirty days have elapsed since the demand, claim or claims upon which the action is founded were presented to a member of the agency and to its secretary or to its chief executive officer, and that the agency has neglected or refused to make an adjustment or payment thereof for thirty days after the presentment.

(2) In a case founded upon tort, a notice of claim shall be required as a condition precedent to the commencement of an action or special proceeding against the agency or an officer, appointee or employee thereof, and the provisions of section fifty-e of this chapter shall govern the giving of such notice. No action shall be commenced more than one year and ninety days after the cause of action therefor shall have accrued.

**§ 882. Termination of the agency.** Whenever all of the bonds or notes issued by the agency shall have been redeemed or cancelled, and all straight-lease transactions have been terminated, the agency shall cease to exist and all rights, titles, and interest and all obligations and liabilities thereof vested in or possessed by the agency shall thereupon vest in and be possessed by the municipality.

**§ 883. Conflicts of interest.** All members, officers, and employees of an agency or industrial development authority established by this chapter or created by the public authorities law shall be subject to the provisions of article eighteen of this chapter.

**§ 884. Public bidding.** The provisions of any law relating to the requirement of public bidding with respect to the construction of public facilities or projects shall not be applicable to the acquisition, construction, reconstruction, improvement, maintenance, equipping and furnishing of projects authorized by this act.

**§ 886. Title not affected if in part unconstitutional or ineffective.** If any section, clause or provision of this title shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective, it shall be valid and effective and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

**§ 888. Inconsistent provisions in other acts superseded.** Insofar as the provisions of this title are inconsistent with the provisions of any other act, general or special, or of any local laws of the municipality, the provisions of this title shall be controlling except in cases of inconsistency with the Indian law.

## PART 2

### SPECIAL ACT CREATING THE AGENCY

SECTION 201. SPECIAL ACT. A copy of Chapter 325 of the Laws of 1974 is attached hereto.

## CHAPTER 325

AN ACT to amend the general municipal law, in relation to creating and establishing the city of Albany industrial development agency, and providing for its functions, powers and duties

Became a law May 13, 1974, with the approval of the Governor. Passed on Home Rule request pursuant to Article IX, section 2(b) (2) of the Constitution by a majority vote, three-fifths being present

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

Section 1. The general municipal law is hereby amended by inserting in title two of article eighteen-A, a new section, to be section nine hundred three-a, to read as follows:

*§ 903-a. City of Albany industrial development agency. For the benefit of the city of Albany and the inhabitants thereof, an industrial development agency, to be known as the CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter. It shall constitute a body corporate and politic, and be perpetual in duration. It shall have the powers and duties now or hereafter conferred by title one of article eighteen-A of this chapter upon industrial development agencies and provided that the exercise of the powers by such agency with respect to the acquisition of real property whether by purchase, condemnation or otherwise, shall be limited to the corporate limits of the city of Albany, and such agency shall take into consideration the local zoning and planning regulations as well as the regional and local comprehensive land use plans. It shall be organized in a manner prescribed by and be subject to the provisions of title one of article eighteen-A of this chapter. Its members shall be appointed by the governing body of the city of Albany. The agency, its members, officers and employees and its operations and activities shall in all respects be governed by the provisions of title one of article eighteen-A of this chapter.*

§ 2. This act shall take effect immediately.

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

## PART 3

### BY-LAWS OF AGENCY

SECTION 301. PURPOSE AND AUTHORITY. The purpose of this Part is to establish such procedures relating to the making of By-Laws of the City of Albany Industrial Development Agency (the “Agency”) as necessary for the implementation of Section 858(5) of Title One of Article 18-A of the General Municipal Law (the “Act”). Section 858(5) of the Act provides as follows:

“(5) To make by-laws for the management and regulation of its affairs and, subject to agreements with its bondholders, for the regulation of the use of a project or projects.”

SECTION 302. BY-LAWS. A copy of the By-Laws of the Agency is attached hereto as Appendix 3A.

SECTION 303. AMENDMENT OF BY-LAWS. The By-Laws of the Agency may be amended only with the approval of at least a majority of all of the members of the Agency at a regular or a special meeting, but no such amendment shall be adopted unless at least seven (7) days written notice thereof has been previously given to all members of the Agency.

APPENDIX 3A  
BY-LAWS  
OF  
CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

Approved March 17, 2016

Pursuant to the authority contained in Section 858, Title 1 of Article 18-A of the General Municipal Law, as set out in Chapter 1030 of the Laws of 1969, and Section 903-a of the General Municipal Law, as set out in Chapter 325 of the Laws of 1974 of the State of New York, the City of Albany Industrial Development Agency hereby approves the following by-laws for the regulation of its activities:

ARTICLE I

NAME SEAL

Section 1. Name. The name of the Agency shall be “City of Albany Industrial Development Agency”.

Section 2. Seal. The seal of the Agency shall be in a design circular in form bearing the words and dates as follows:

CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY, NEW YORK

CORPORATE SEAL

1974

Section 3. Office of Agency. The office of the Agency shall be in the City of Albany, New York.

Section 4. Execution of Instruments. Except as otherwise provided in these bylaws, instruments and documents of the Agency may be signed or countersigned, executed, verified or acknowledged by such officer or officers or other person or persons as the Agency may designate by resolution.

ARTICLE II

MEMBERS OF THE BOARD; OFFICERS  
AND BOARD COMMITTEES

Section 1. Appointment Of Members; Qualifications Thereof. (A) Pursuant to Article 18-a of the General Municipal Law of the State of New York (the “Act”), the members of the Agency

(each, a “Member”) are appointed by, and serve at the pleasure of the Common Council. Each Member must be a resident of the City of Albany. A public officer or employee may be appointed as a Member of the Agency without forfeiture of any other public office or employment. The Agency shall consist of seven (7) Members.

(B) Except for Members who serve as Members by virtue of holding a civil office of the State, the majority of the remaining Members appointed after January 13, 2006 shall be “Independent Members”.

(C) For purposes of these bylaws, the term “Independent Member” means a Member who: (1) is not, and in the past two (2) years has not been, employed by the Agency (or an “Affiliate” of the Agency) in an executive capacity; (2) is not, and in the past two (2) years has not been, employed by an entity that received remuneration valued at more than fifteen thousand (\$15,000) for goods and services provided to the Agency or received any other form of financial assistance valued at more than fifteen thousand (\$15,000) from the Agency; (3) is not a relative of an executive officer or employee in an executive position of the Agency (or an “Affiliate” of the Agency); and (4) is not, and in the past two (2) years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the Agency (or an “Affiliate” of the Agency).

(D) For purposes of these bylaws, the term “Affiliate” means a corporate body having substantially the same ownership or control as the Agency.

(E) For purposes of these bylaws, the term “Relative” means an individual’s spouse, child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of the individual or of the individual’s spouse.

Section 2. Responsibilities of Members; Training Requirement. (A) The Members of the Agency constitute the governing body of the Agency (the “Board”), and shall have and shall responsibly exercise all of the powers prescribed by the Act and other applicable law, including but not limited to Chapter 766 of the 2005 Laws of the State of New York (the “PAAA”).

(B) The Board shall appoint a Chief Executive Officer and a Chief Financial Officer of the Agency, neither of whom shall be a Member of the Agency.

(C) Every annual financial report of the Agency must be approved by the Board.

(D) The Members of the Agency shall: (1) execute direct oversight of the Chief Executive Officer of the Agency and the Chief Financial Officer of the Agency in the effective and ethical management of the Agency; and (2) understand, review and monitor the implementation of fundamental financial and management controls and operational decisions of the Agency.

(E) The Board shall not, directly or indirectly, including through a subsidiary, extend or maintain credit or arrange for the extension of credit, or renew an extension of credit, in the



form of a personal loan to or for any officer, Member or employee (or equivalent thereof) of the Agency.

(F) Members of the Agency shall file annual financial disclosure statements with the Albany County Board of Ethics.

(G) Individuals newly appointed to the Board of the Agency must participate in state approved training regarding their legal, fiduciary, financial and ethical responsibilities within one (1) year of appointment to such Board. Existing Members shall participate in such continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance.

Section 3. Officers of the Board. (A) The officers of the Agency shall be a Chair, Vice Chair, Secretary, Assistant Secretary, Treasurer, Assistant Treasurer and such other officers as it may determine who shall have such duties, powers and functions as hereinafter provided, all of whom shall be elected by the Members of the Agency, except the original Chair, who shall be appointed by the Common Council. Such officers shall be elected at the annual meeting of the Agency in each fiscal year.

(B) Each officer of the Agency shall hold office for one (1) year and each Member shall continue to hold office until his/her successor is appointed or elected and qualifies in his/her stead. If the term of an Agency Member should terminate, his/her term of office as an officer shall also terminate and at the regular meeting next succeeding such termination the Members of the Agency shall elect from among their number a successor who shall serve until the next annual meeting of the Agency.

(C) Each Member shall continue to hold office as a Member until his/her successor is appointed or elected and qualifies in his/her stead.

Section 4. Chair. The Chair shall be a Member of the Agency and preside at all meetings of the Agency. He/she shall sign and execute on behalf of the Agency all contracts, notes, bonds, trust indentures or other evidences of indebtedness when so authorized by the Agency, and shall perform such other duties as may be prescribed for him by law or by the Agency. The Chair shall submit to the Agency such recommendations and information as he/she may consider proper concerning the business, affairs and policies of the Agency.

Section 5. Secretary. The Secretary shall be a Member of the Agency and, in coordination with the Chief Executive Officer, shall record all the votes and record the minutes of the Agency in a journal to be kept for such purpose; attend to the serving of notices of all meetings when required; keep in safe custody the seal of the Agency and shall have power to affix such seal to all papers or other documents as may be required; attend to such correspondence as may be assigned; and perform all the duties as the Agency may designate.

Section 6. Treasurer. The Treasurer shall be a Member of the Agency and, in coordination with the Chief Financial Officer, shall have the care and custody of all funds and securities of the

Agency and shall deposit the same forthwith in the name of the Agency in such bank or banks in the State of New York as the Agency may designate.

The Treasurer shall have charge of the treasury and custody of receipts, deposits and disbursements of all Agency moneys. He/she shall keep full and accurate and separate accounts of the various funds and moneys in his/her custody. The Treasurer, in coordination with the Agency's chief financial officer, shall render to the Agency at each regular meeting an account of the financial transactions and the current financial condition of the Agency. The Treasurer shall at a reasonable time exhibit his/her books and accounts to any Member of the Agency upon application at the office of the Agency during business hours and render a full financial report at the annual meeting of the Agency if so required. He/she shall have such other powers and duties as are conferred upon him by any special or general law.

Section 7. Vice Chair, Assistant Secretary, Assistant Treasurer. The Vice Chair shall be a Member of the Agency and perform all duties of the Chair in the absence of the Chair. The Assistant Secretary shall perform all duties of the Secretary in the absence of the Secretary. The Assistant Treasurer shall perform all duties of the Treasurer in the absence of the Treasurer. The Assistant Secretary and the Assistant Treasurer need not be Members of the Agency.

Section 8. Additional Duties. The officers of the Agency shall perform such other duties and functions as may from time to time be required by the Agency, by the by-laws of the Agency, or by the rules and regulations of the Agency.

Section 9. Removal, Resignation, Salary, etc. Any officer elected or appointed by the Agency may be removed by the Agency with or without cause. In the event of the death, resignation or removal of an officer, the Agency in its discretion may elect a successor to fill the unexpired term at the next regular meeting of the Agency. All officers who are Members of the Agency shall serve without compensation.

Section 10. Governance Committee. (A) The Chair shall appoint a Governance Committee, to be comprised of not less than three (3) Independent Members, who shall constitute a majority on the committee, and who shall possess the necessary skills to understand the duties and functions of the Governance Committee; provided, however, that in the event that a board has less than three (3) Independent Members, the board may appoint non-Independent Members to the Governance Committee, provided that the Independent Members must constitute a majority of the Members of the Governance Committee.

(B) The Governance Committee shall: (1) keep the board informed of current best governance practices; (2) review corporate governance trends; (3) recommend updates to the Agency's corporate governance principles; (4) advise appointing authorities on the skills and experiences required of potential board Members, (5) examine ethical and conflict of interest issues, (6) perform board self-evaluations and (7) recommend by-laws which include rules and procedures for conduct of board business, and (8) advise the Board on the skills and experiences required of potential Members of the Board.

Section 11. Audit Committee. (A) The Chair shall appoint an Audit Committee, to be comprised of not less than three (3) Independent Members, who shall constitute a majority on the committee, and who shall possess the necessary skills to understand the duties and functions of the Audit Committee; provided, however, that in the event that a board has less than three (3) Independent Members, the board may appoint non-Independent Members to the Audit Committee, provided that the Independent Members must constitute a majority of the Members of the Audit Committee.

(B) Members of the Audit Committee shall be familiar with corporate financial and accounting practices.

(C) The Audit Committee shall ensure that the Agency arranges for the timely preparation and appropriate filing of the annual budget, the annual financial statements, the annual financial reports and the annual financial audit required by Article 18-A of the General Municipal Law.

(D) The Audit Committee shall recommend to the Board the hiring of a certified independent public accounting firm for the Agency, establish the compensation to be paid to the accounting firm, and provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purpose. The Audit Committee shall not recommend the hiring of a certified independent public accounting firm to provide audit services to the Agency if the Chief Executive Officer, comptroller, Chief Financial Officer, chief accounting officer, or any other person serving in an equivalent position for the Agency was employed by that certified independent public accounting firm and participated in any capacity in the audit of the Agency during the one year period preceding the date of the initiation of the audit.

(E) If the lead (or coordinating) audit partner (having primary responsibility for the audit) of the certified independent public accounting firm proposing to provide an annual independent audit for the Agency, or the audit partner responsible for reviewing the audit, has performed audit services for the Agency in each of the five (5) previous fiscal years of the Agency, the Audit Committee shall prohibit such certified independent public accounting firm from providing an annual independent audit for the Agency.

(F) The Audit Committee shall require that each certified independent public accounting firm that performs for the Agency an audit required by law shall timely report to the Audit Committee: (1) all critical accounting policies and practices to be used; (2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the Agency, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the certified independent public accounting firm; and (3) other material written communications between the certified independent public accounting firm and the management of the Agency, such as the management letter along with management's response or plan of corrective action, material corrections identified or schedule of unadjusted differences, where applicable.

(G) The Audit Committee shall prohibit the certified independent public accounting firm providing an annual independent audit for the Agency from performing any non-audit services

to the Agency contemporaneously with the audit, unless receiving previous written approval by the Audit Committee, including: (1) bookkeeping or other services related to the accounting records or financial statements of the Agency; (2) financial information systems design and implementation; (3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (4) actuarial services; (5) internal audit outsourcing services; (6) management functions, (7) broker or dealer, investment advisor, or investment banking services; and (8) legal services and expert services unrelated to the audit.

Section 11A. Finance Committee. (A) The Chair shall appoint a Finance Committee, to be comprised of not less than three (3) Independent Members, who shall constitute a majority on the committee, and who shall possess the necessary skills to understand the duties and functions of the Finance Committee; provided, however, that in the event that a board has less than three (3) Independent Members, the board may appoint non-Independent Members to the Finance Committee, provided that the Independent Members must constitute a majority of the Members of the Finance Committee.

(B) The Finance Committee shall be responsible for the following:

(i) Reviewing proposals for the issuance of debt by the Agency and its subsidiaries and to make recommendations concerning those proposals to the Members;

(ii) Making recommendations to the Members concerning the level of debt and nature of debt issued by the Agency;

(iii) Making recommendations concerning the appointment and compensation of bond counsel, investment advisors and underwriting firms used by the Agency, and to oversee the work performed by these individuals and firms on behalf of the Agency;

(iv) Meeting with and requesting information from Agency staff, independent auditors and advisors or outside counsel, as necessary to perform the duties of the committee.

(v) Annually reviewing the Agency's financing guidelines and making recommendations to the Members concerning criteria that should govern its financings;

(vi) Reporting annually to the Members how it has discharged its duties and met its responsibilities as outlined in the charter adopted by the committee; and

(vii) Conducting an annual self-evaluation of its performance, including its effectiveness and compliance with the charter and request the Member's approval for proposed changes.

(viii) Reviewing and filing the annual budget of the Agency.

Section 12. Additional Personnel. The Agency may appoint such other officers and employees as the Agency may require for the performance of its duties, and fix and determine their

qualifications, duties and compensation. The Agency may also appoint Counsel, and may retain and employ private consultants for professional and technical assistance and advice.

Section 13. Bonding of Officers. The Chair, the Treasurer, and such other officers as the Agency may require, shall execute bonds conditioned upon the faithful performance of the duties of their offices, the amount and sufficiency of which shall be specified by the Agency and the premiums thereof shall be paid by the Agency.

### ARTICLE III

#### GENERAL PROVISIONS

Section 1. Fiscal Year. The fiscal year of the Agency shall begin on the 1st day of January.

Section 2. Annual Meetings. The annual meeting of the Agency shall be held on the third Thursday at 12:15 P.M. in January at the regular meeting place of the Agency. In the event such day shall fall on a legal holiday, the annual meeting may be scheduled to any other time or place at the will of a majority of the Members of the Agency.

Section 3. Regular Meetings. Regular meetings of the Agency shall take place monthly, on the third Thursday at 12:15 P.M. Regular meetings may be adjourned to any other time or place at the will of a majority of the Members of the Agency present and voting at such meeting.

Section 4. Special Meetings. The Chair of the Agency may, when he/she deems it desirable, and shall, upon the written request of two (2) Members of the Agency, call a special meeting of the Agency for the purpose of transacting any business designated in the notice of such meeting. Pursuant to the Public Officers Law, notice of such special meeting shall be given to the news media.

Section 5. Executive Sessions. When determined by the Agency that any matter pending before it is confidential in nature, it may, upon its own motion, establish an executive session in accordance with the NYS Open Meetings Law and exclude non-members from such sessions.

Section 6. Quorum. At all meetings of the Agency, a majority of the Members of the Agency shall constitute a quorum and the vote of a majority of the Members of the Agency shall be deemed the act of the Agency. A majority of the Members present whether or not a quorum is present may adjourn any meeting to another time and place.

Section 7. Order of Business. The order of business at regular meetings will be:

- (a) Roll call (Determination of quorum)
- (b) Reading of minutes of previous meeting
- (c) Approval of minutes of previous meeting
- (d) Report of Chief Financial Officer
- (e) Unfinished business
- (f) New business

- (g) Other
- (h) Adjournment

Section 8. Committees. The Chair, Vice Chair and Members of all committees shall be appointed by the Chair of the Agency who shall be an ex officio Member of each committee. A quorum of any committee shall consist of a majority of Members of that committee. The Chief Executive Officer shall attend all committee meetings, if requested and make such reports and recommendations as he/she deems necessary and advisable.

Section 9. Execution of Instruments. All Agency instruments and documents shall be signed or countersigned, executed, verified or acknowledged by such officer or official or other person or persons as provided in these by-laws or as the Agency may from time to time designate.

Section 10. Voting. (A) The voting on all questions coming before the Agency shall be by roll call, except as otherwise directed by the Chair, and the yeas and nays for the voting on all questions coming before the Agency shall be entered on the minutes of such meeting, except in the case of appointments when the vote may be by ballot.

(B) All resolutions of the Agency shall be passed by a majority of the Members of the Agency. In order to vote on a resolution, a Member of the Agency must be present at a meeting of the Board either in person or via videoconference.

## ARTICLE IV

### EXECUTIVE OFFICERS AND EMPLOYEES

Section 1. Chief Executive Officer. (A) The Chief Executive Officer shall be appointed by the Board, and shall be the chief executive officer of the Agency.

(B) The Chief Executive Officer shall have general supervision over the administration of the business and affairs of the Agency, subject to the direction of the Board. Whenever possible, the Chief Executive Officer shall attend each meeting of the Board, and shall submit such recommendations and information to the Board as the Chief Executive Officer may consider proper concerning the business, affairs and policies of the Agency.

(C) The Chief Executive Officer shall be charged with the management of all projects of the Agency.

(D) The Chief Executive Officer shall receive compensation for such services in a manner to be set by resolution of the Agency.

(E) The Chief Executive Officer shall also act as the Assistant Secretary of the Agency.

(F) The Chief Executive Officer shall also serve as the Contracting Officer of the Agency, and, as such, be responsible for (1) the disposition of property of the Agency, and (2) the Agency's compliance with the Agency's property use and disposition guidelines.

(G) Every annual financial report of the Agency must be certified in writing by the Chief Executive Officer that based on the Chief Executive Officer's knowledge (1) the information provided therein is accurate, correct and does not contain any untrue statement of material fact; (2) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and (3) fairly presents in all material respects the financial condition and results of operations of the Agency as of, and for, the periods presented in the financial statements.

Section 2. Chief Financial Officer. (A) The Chief Financial Officer shall be appointed by the Board, and shall be the chief financial officer of the Agency.

(B) The Chief Financial Officer, in coordination with the Treasurer, shall have the care and custody of all funds of the Agency and shall deposit the same in the name of the Agency in such bank or banks as the Board may select or, if the Board have not so selected a bank or banks, which the Chief Financial Officer selects.

(C) The Chief Financial Officer shall keep regular books of accounts showing receipts and expenditures, and shall render to the Audit Committee at each regular meeting thereof an account of such transactions and also of the financial condition of the Agency.

(D) The Chief Financial Officer shall give such bond for the faithful performance of his/her duties as the Agency may determine.

(E) The Chief Financial Officer shall also act as the Assistant Treasurer of the Agency.

(F) The Chief Financial Officer shall also serve as an Investment Officer of the Agency under the Agency's Investment Policy.

(G) Every annual financial report of the Agency must be certified in writing by the Chief Financial Officer that based on the Chief Financial Officer's knowledge (1) the information provided therein is accurate, correct and does not contain any untrue statement of material fact; (2) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and (3) fairly presents in all material respects the financial condition and results of operations of the Agency as of, and for, the periods presented in the financial statements.

Section 3. Additional Personnel. The Agency may from time to time employ such personnel as it deems necessary to exercise its statutory powers, duties and functions. The selection and compensation of all personnel shall be determined by the Agency.

Section 4. Financial Disclosure. Officers and employees of the Agency shall file annual financial disclosure statements with the Albany County Board of Ethics.

## ARTICLE V

## INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Right of Indemnification. Each Member and officer of the Agency, whether or not then in office, and any person whose testator or intestate was such a Member or officer, shall be indemnified by the Agency for the defense of, or in connection with, any threatened, pending or completed actions or proceedings and appeals therein, whether civil, criminal, administrative or investigative, in accordance with and to the fullest extent permitted by the Section 18 of the Public Officers Law of the State of New York or other applicable law, as such law now exists or may hereafter be adopted or amended; provided, however, that the Agency shall provide indemnification in connection with an action or proceeding (or part thereof) initiated by such a Member or officer only if such action or proceeding (or part thereof) was authorized by the Board.

Section 2. Advancement of Expenses. (A) Expenses incurred by a Member or officer in connection with any action or proceeding as to which indemnification may be given under Section 1 of this Article V may be paid by the corporation in advance of the final disposition of such action or proceeding upon (1) the receipt of an undertaking by or on behalf of such Member or officer to repay such advancement in case such Member or officer is ultimately found not to be entitled to indemnification as authorized by this Article V and (2) approval by the Board.

(B) To the extent permitted by law, the Board shall not be required to find that the Member or officer has met the applicable standard of conduct provided by law for indemnification in connection with such action or proceeding before the Agency makes any advance payment of expenses hereunder.

Section 3. Availability and Interpretation. To the extent permitted under applicable law, the rights of indemnification and to the advancement of expenses provided in this Article V (A) shall be available with respect to events occurring prior to the adoption of this Article V, (B) shall continue to exist after any rescission or restrictive amendment of this Article V with respect to events occurring prior to such rescission or amendment, (C) shall be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding or, at the sole discretion of the Member or officer (or, if applicable, at the sole discretion of the testator or intestate of such Member or officer seeking such rights), on the basis of applicable law in effect at the time such rights are claimed and (D) shall be in the nature of contract rights that may be enforced in any court of competent jurisdiction as if the Agency and the Member or officer for whom such rights are sought were parties to a separate written agreement.

Section 4. Other Rights. The rights of indemnification and to the advancement of expenses provided in this Article V shall not be deemed exclusive of any other rights to which any Member or officer of the Agency or other person may now or hereafter be otherwise entitled, whether contained in these by-laws, a resolution of the Board or an agreement providing for such indemnification, the creation of such other rights being hereby expressly authorized. Without limiting the generality of the foregoing, the rights of indemnification and to the advancement of expenses provided in this Article V shall not be deemed exclusive of any rights, pursuant to statute or otherwise, of any Member or officer of the Agency or other person in any action or proceeding



to have assessed or allowed in his or her favor, against the Agency or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof.

Section 5. Severability. If this Article V or any part hereof shall be held unenforceable in any respect by a court of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it enforceable, and the remainder of this Article V shall remain fully enforceable. Any payments made pursuant to this Article V shall be made only out of funds legally available therefor.

## ARTICLE VI

### AMENDMENTS

Section 1. Amendments to By-Laws. The by-laws of the Agency shall be amended only with the approval of at least a majority of all the Members of the Agency at a regular or special meeting, but no such amendment shall be adopted unless at least seven (7) days written notice thereof has been previously given to all Members of the Agency.

## ARTICLE VII

### MISCELLANEOUS

Section 1. Interpretation. In these By-Laws, words of masculine gender shall mean and include correlative words of the feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa.

## PART 4

### DEPOSITS AND INVESTMENTS OF AGENCY FUNDS

SECTION 401. PURPOSE AND AUTHORITY. (A) Agency Funds. The purpose of this Part is to implement Section 858-a(3) of Title One of Article 18-A of the General Municipal Law (the “Act”), which provides that the provisions of Sections 10 and 11 of the General Municipal Law shall be applicable to deposits and investments made by City of Albany Industrial Development Agency (the “Agency”) of funds for the use and account of the Agency (“Agency Funds”).

(B) Non-Agency Funds. The provisions of this Part 4 shall not apply to funds derived from the sale of bonds, notes or other obligations issued to fund a particular project for the benefit of a particular applicant, or any other funds of the Agency which are not Agency Funds.

SECTION 402. DEPOSITS OF AGENCY FUNDS. (A) Designation of Depositories. The Agency shall by resolution or resolutions of the members of the Agency designate one or more banks or trust companies (each, a “Depository”) for the deposit of Agency Funds received by the treasurer or any other officer of the Agency authorized by law or the by-laws of the Agency to make deposits. Such resolution or resolutions shall specify the maximum amount that may be kept on deposit at any time in each Depository. Such designations and amounts may be changed at any time by a further resolution of the members of the Agency.

(B) Security. All Agency Funds in excess of the amount insured under the provisions of the Federal Deposit Insurance Act as now or hereinafter amended shall be secured in accordance with the provisions of Section 10(3) of the General Municipal Law. Generally, Section 10(3) of the General Municipal Law provides that Agency Funds may be secured by (1) a pledge of “eligible securities” (as defined in Section 10(1) of the General Municipal Law), together with a security agreement and custodial agreement meeting the requirements of Section 10(3)(a) of the General Municipal Law, or (2) an “eligible surety bond” or an “eligible letter of credit” (as such quoted terms are defined in Section 10(1) of the General Municipal Law) securing 100% of such Agency Funds.

SECTION 403. INVESTMENTS OF AGENCY FUNDS. (A) Investment Policy. It is the general policy of the Agency that Agency Funds not required for immediate expenditure shall be invested as described in subsection (C) below. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the safety of the principal as well as the probable income to be derived.

(B) Designation of Investment Officers. The treasurer and any other officer or employee of the Agency so authorized by the by-laws of the Agency or by resolution of the members of the Agency (each, an “Investment Officer”) are authorized to temporarily invest Agency Funds not required for immediate expenditure. Any designation of an Investment Officer made by resolutions of the members of the Agency may be changed at any time by a further resolution of the members of the Agency.

(C) Types of Investments. Except as otherwise provided by resolution of the members of the Agency, an Investment Officer may invest Agency Funds in any obligation described in Section 11(2) and Section 11(3) of the General Municipal Law. Generally, Sections 11(2) and 11(3) of the General Municipal Law permit the following types of investments:

(1) special time deposits in, or certificates of deposit issued by, any bank or trust company located and authorized to do business in the State of New York, provided that such deposit account or certificate of deposit is secured in the same manner as is provided for securing deposits of Agency Funds by Section 10(3) of the General Municipal Law;

(2) obligations of, or obligations where the payment of principal and interest are guaranteed by, the United States of America;

(3) obligations of the State of New York; and

(4) with the approval of the State Comptroller, tax anticipation notes and revenue anticipation notes issued by any municipality or school district or district corporation organized under the laws of the State of New York.

(D) Custodians. The Agency may, by resolution of the members of the Agency, authorize the Investment Officers to turn over the physical safekeeping and evidences of the investments made pursuant to subsection (C) of this Section (“Agency Investments”) to any entity authorized pursuant to Section 11(4) of the General Municipal Law to act as a custodian of Agency Investments, but only upon compliance with the requirements of Section 11(4) of the General Municipal Law. Generally, Section 11(4) of the General Municipal Law allows the following types of entities to act as custodians of Agency Investments:

(1) any bank or trust company incorporated in the State of New York;

(2) any national bank located in the State of New York; and

(3) any private banker duly authorized by the New York State Superintendent of Banks to engage in business in New York State which maintains a permanent capital of not less than one million dollars in New York State.

(E) Commingling. Any Agency Funds invested pursuant to this Section may be commingled for investment purposes upon compliance with the requirements of Section 11(6) of

the General Municipal Law. Generally, Section 11(6) of the General Municipal Law allows commingling of Agency Investments so long as (1) such investment is payable or redeemable at the option of the Agency within such time as the proceeds are needed by the Agency, (2) the separate identity of such funds are maintained at all times, and (3) income received on such commingled monies is credited on a pro rata basis to the fund or account from which the monies were invested.

(F) Proper Records. The treasurer of the Agency shall maintain (or cause the Investment Officers to maintain) a proper record of all books, notes, securities or other evidences of indebtedness held by or for the Agency for purposes of investment. Such record shall at least (where applicable) (1) identify the security, (2) the fund for which held, (3) the place where kept, (4) the date of sale or other disposition, and (5) the amount received from such sale or other disposition.

(G) Sample Resolution. Attached hereto as Appendix 4A is a sample form of resolution naming Depositories and Investment Officers pursuant to this Part and restricting the types of investments in which an Investment Officer may invest Agency Funds.

SECTION 404. INTERNAL CONTROLS. (A) Periodic Reviews. To the maximum extent possible, the Chief Executive Officer of the Agency shall prepare and submit to the treasurer reports showing the amount of Agency Funds on deposit in each Depository and the general nature of the investment of such Agency Funds. Such reports shall be prepared within thirty (30) days of the end of each fiscal quarter. The treasurer shall in turn present such reports at the next regularly scheduled meeting of the Agency following the completion of such report.

(B) Annual Report. Within thirty (30) days of the end of each fiscal year, the Chief Executive Officer of the Agency shall prepare and submit to the treasurer of the Agency an annual investment report (the “Annual Investment Report”) showing the deposits and investments of Agency Funds as of the beginning of such fiscal year, a summary of the changes in such amounts during such fiscal year, a summary of the earnings thereon during such fiscal year, and the balance thereof as of the end of such fiscal year. The treasurer of the Agency shall then present said report to the members of the Agency within ninety (90) days following the end of the fiscal year.

(C) Annual Audit. The Annual Investment Report shall be audited by the Agency’s independent certified public accountant as part of the Agency’s annual general audit required pursuant to Section 859 of the Act.

(D) Annual Review. The members of the Agency shall review the Annual Investment Report and the annual audit and this Part, and shall make any amendments to this Part necessary to achieve the purposes of this Part.

APPENDIX 4A

SAMPLE RESOLUTION NAMING DEPOSITORIES  
AND INVESTMENT OFFICERS  
AND RESTRICTING TYPES OF INVESTMENTS  
RESOLUTION NAMING DEPOSITORIES  
AND INVESTMENT OFFICERS  
AND RESTRICTING TYPES OF INVESTMENTS

WHEREAS, City of Albany Industrial Development Agency (the “Agency”) is a public benefit corporation of the State of New York duly established pursuant to Title One of Article 18-A of the General Municipal Law of the State of New York (the “Enabling Act”) and Chapter 325 of the 1974 Laws of the State of New York, as amended (collectively with the Enabling Act, the “Act”); and

WHEREAS, pursuant to Section 858-a(3) of the Act, the provisions of Section 10 and Section 11 of the General Municipal Law apply to the deposit and investment of funds for the Agency’s own use and account (“Agency Funds”); and

WHEREAS, Part 4 of the Rules and Regulations of the Agency, constituting a policy regarding the deposit and investment of Agency Funds (the “Deposit and Investment Policy”), was adopted by the members of the Agency on \_\_\_\_\_; and

WHEREAS, the members of the Agency now desire to determine certain matters required to be determined pursuant to the Deposit and Investment Policy;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

SECTION 1. Pursuant to the Deposit and Investment Policy, the Agency hereby (A) designates the following banks and/or trust companies as depositories (each, a “Depository”) for the deposit of Agency Funds received by the Agency, and (B) determines that the maximum amount that may be kept on deposit in each such depository is the amount set forth opposite the name of such depository in the following table:

<u>INSTITUTION</u>	<u>MAXIMUM AMOUNT TO BE ON DEPOSIT</u>
_____	\$ _____
_____	\$ _____

SECTION 2. Pursuant to the Deposit and Investment Policy, the following officers of the Agency (each, an “Investment Officer”) are authorized to temporarily invest Agency Funds not required for immediate expenditure:

<u>NAME</u>	<u>OFFICE</u>
_____	_____
_____	_____
_____	_____

SECTION 3. Unless otherwise determined by resolution of the members of the Agency, Agency Funds shall be kept in insured certificates of deposit, insured money market accounts or other accounts of a Depository which are insured by the Federal Deposit Insurance Corporation, and no Agency Funds shall be deposited in an account if such deposit would cause such account to exceed the maximum insured limit.

SECTION 4. This resolution shall take effect immediately, and shall remain in effect, as modified, amended, supplemented by subsequent resolutions of the members of the Agency, until the same may be rescinded by subsequent resolutions of the members of the Agency.

PART 5  
PROCUREMENT POLICY

SECTION 501. PURPOSE AND AUTHORITY. The purpose of this Part is to outline the procurement policy of City of Albany Industrial Development Agency (the “Agency”) as set forth by the procurement policy resolution (the “Resolution”) adopted by the Agency on February 24, 1995 pursuant to Section 858-a(2) of Title One of Article 18-A of the General Municipal Law (the “Act”).

SECTION 502. SECURING GOODS AND SERVICES. All goods and services will be secured by use of written requests for proposals, written quotations, verbal quotations, or any other method that assures that goods will be purchased at the lowest price and that unfair preference will be avoided, except in the following circumstances: purchases costing less than \$500; goods purchased from agencies for the blind or severely handicapped pursuant to Section 175-b of the State Finance Law; goods purchased from correctional institutions pursuant to Section 186 of the Correction Law; purchases under State contracts pursuant to Section 104 of the General Municipal Law; purchases under county contracts pursuant to Section 103(3) of the General Municipal Law; or purchases pursuant to Section 504 of this policy.

SECTION 503. METHOD OF PURCHASE.

(A) General. The following method of purchase will be used when required by this policy in order to achieve the highest savings:

<u>Estimated Amount of Purchase Contract<sup>1</sup></u>	<u>Method</u>
\$500-\$2,999	2 verbal quotations
\$3,000 and above	3 written/fax quotations or written request for proposals

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<sup>1/</sup> Purchase Contract refers to contracts for the purchase of equipment.

<u>Estimated Amount of Public Works Contract<sup>2</sup></u>	<u>Method</u>
\$500-\$2,999	2 verbal quotations
\$3,000-\$4,999	2 written/fax quotations
\$5,000 and above	3 written/fax quotations or written request for proposals

(B) Number of Proposals or Quotations. A good faith effort shall be made to obtain the required number of proposals or quotations. If the Agency is unable to obtain the required number of proposals or quotations, the Agency will document the attempt made at obtaining the proposals. So long as a good faith attempt is made to obtain proposals, the failure to obtain the proposals will not be a bar to the procurement.

(C) Documentation. (1) Documentation is required of each action taken in connection with each procurement.

(2) Documentation and an explanation is required whenever a contract is awarded to other than the lowest responsible offeror. This documentation will include an explanation of how the reward will achieve savings or how the offeror was not responsible. A determination that the offeror is not responsible shall be made by the Agency and may not be challenged under any circumstances.

SECTION 504. CIRCUMSTANCES WHERE SOLICITATION OF ALTERNATIVE PROPOSALS AND QUOTATIONS NOT IN BEST INTEREST. Pursuant to General Municipal Law Section 104-b(2)(f), the procurement policy may contain circumstances when, or types of procurements for which, in the sole discretion of the members of the Agency, the solicitation of alternative proposals or quotations will not be in the best interest of the Agency. In the following circumstances, it may not be in the best interests of the Agency to solicit quotations or document the basis for not accepting the lowest bid:

(A) Professional Services. Professional services or services requiring special or technical skill, training or expertise. The individual, company or firm must be chosen based on accountability, reliability, responsibility, skill, conflict of interests, reputation, education and training, judgement, integrity, continuity of service and moral worth. Furthermore, certain professional services to be provided to the Agency, e.g., legal and accounting services, impact liability issues of the Agency and its members, including securities liability in circumstances where the Agency is issuing bonds. These qualifications and the concerns of the Agency regarding its liability and the liability of its members are not necessarily found or addressed in the individual, company or firm that offers the lowest price and the nature of these services are such that they do not readily lend themselves to competitive procurement procedures.

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<sup>2/</sup> Public Works Contract refers to contracts for services.



In determining whether a service fits into this category, the Agency shall take into consideration the following guidelines: (a) whether the services are subject to State licensing or testing requirements; (b) whether substantial formal education or training is a necessary prerequisite to the performance of the services; and (c) whether the services require a personal relationship between the individual and Agency members. Professional or technical services shall include but not be limited to the following: services of an attorney (including bond counsel); services of a physician; technical services of an engineer engaged to prepare plans, maps and estimates; securing insurance coverage and/or services of an insurance broker; services of a certified public accountant; investment management services; printing services involving extensive writing, editing or art work; management of municipally owned property; real estate brokerage services; appraisers; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of pre-packaged software.

(B) Emergency Purchases. Emergency purchases pursuant to Section 103(4) of the General Municipal Law. Due to the nature of this exception, these goods or services must be purchased immediately and a delay in order to seek alternate proposals may threaten the life, health, safety or welfare of the public. This section does not preclude alternate proposals if time permits.

(C) Purchases of Secondhand Goods. Purchases of surplus and second-hand goods from any source. It is difficult to try to compare prices of used goods and a lower price may indicate an older product.

(D) Goods or Services Under \$500. The time and documentation required to purchase through this policy may be more costly than the item itself and would therefore not be in the best interests of the taxpayer. In addition, it is not likely that such de minimis contracts would be awarded based on unfair preference.

(E) Special Findings. In the event the Agency determines that the solicitation of alternative proposals or quotations is not in the best interests of the Agency, the Agency must make such determination by resolution duly adopted and entered into the minutes of the Agency. Such resolution should include any findings described in this Section 504 supporting such determination.

**SECTION 505. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN.** (A) All Agency documents soliciting bids or proposals for Agency contracts shall contain or make reference to the following provisions:

1. The Agency will not discriminate against employees or applicants for employment because of race, color, religion, sex, national origin, sexual orientation, gender, age, disability, or marital or domestic partner status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For purposes of this Section, affirmative action shall mean recruitment, employment, job assignment,

promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation; and

2. The Agency shall state, in all solicitations or advertisements for employees, that, in the performance of the Agency contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, color, religion, sex, national origin, sexual orientation, gender, age, disability, or marital or domestic partner status.

(B) Any contract awarded by the Agency will include the provisions of Section 505 (A) hereof in any subcontract, in such a manner that the provisions will be binding upon each subcontractor as to work in connection with the Agency contract.

(C) The provisions of this Section 505 shall not be binding upon contractors or subcontractors in the performance of work or the provision of services or any other activity that are unrelated, separate or distinct from the Agency contract as expressed by its terms.

(D) In the implementation of this Section 505, the Agency shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this Section. The Agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such law and if such duplication or conflict exists, the Agency shall waive the applicability of this Section 505 to the extent of such duplication or conflict.

(E) The Agency shall ensure that “certified businesses” (as defined in Section 310 of the Executive Law of the State of New York) shall be given the opportunity for meaningful participation in the performance of Agency contracts and to identify those Agency contracts for which certified businesses may best bid to actively and affirmatively promote and assist their participation in the performance of Agency contracts so as to facilitate the award of a fair share of Agency contracts to such businesses.

SECTION 506. POLICY REVIEW. This policy will be reviewed annually.

PART 6  
ANNUAL BUDGET

SECTION 601. PURPOSE AND AUTHORITY. The purpose of this Part is to implement (A) Section 2801(2) of the Public Authorities Law and (B) Section 861 of the General Municipal Law, which sets forth a requirement that City of Albany Industrial Development Agency (the “Agency”) prepare and make available its proposed budget for each fiscal year.

SECTION 602. BUDGET PREPARATION. (A) Tentative Budget. The Chief Executive Officer of the Agency shall annually prepare a tentative budget for the forthcoming fiscal year. The Chief Executive Officer of the Agency shall deliver such tentative budget to the Treasurer, at least one hundred and twenty (120) days prior to the expiration of the then-current fiscal year.

(B) Form of Budget. The tentative budget shall be in writing and shall contain detailed estimates of the amount of revenues to be received and expenditures to be made during the forthcoming fiscal year. Attached hereto as Appendix 6A is a sample format for a budget for the Agency.

(C) Distribution. The tentative budget shall be distributed to the members of the Agency at least ninety (90) days prior to the expiration of the then-current fiscal year.

(D) Proposed Budget. The Chief Executive Officer of the Agency shall endeavor to schedule a meeting of the members of the Agency for the purpose of discussing the tentative budget at least seventy – five (75) days prior to the expiration of the current fiscal year. At such meeting the Treasurer shall report on such budget. If such a meeting cannot for some reason be scheduled, then the Chief Executive Officer of the Agency shall poll the individual members of the Agency to obtain their comments on the tentative budget. Once the Chief Executive Officer has made any revisions to the proposed budget necessary to reflect the input from the members of the Agency, and such revisions have been reviewed by the Treasurer, the tentative budget shall become the proposed budget.

(E) Distribution of Proposed Budget. Once the proposed budget is prepared, the Chief Executive Officer of the Agency shall make the proposed budget available for public inspection and comment as follows:

(1) One copy of the proposed budget shall be mailed or delivered to the Mayor of the City of Albany, accompanied by a letter in substantially the form of Appendix 6B

(the "Enclosure Letter") and a public notice in substantially the form of Appendix 6C (the "Public Notice");

(2) One copy of the proposed budget shall be mailed or delivered to the President of the Common Council of the City of Albany, accompanied by the Enclosure Letter and the Public Notice;

(3) One copy of the Public Notice will be posted on a prominent bulletin board located at City Hall, Albany, New York; and

(4) One copy shall be placed on file in the office of the Agency and made available for public inspection during normal business hours.

(F) Adoption of Budget. After waiting at least ten (10) days after the mailing or delivery of the proposed budget described in Subsection (E)(1) and (2) above, the members of the Agency shall consider the adoption of a budget for the forthcoming fiscal year.

(G) Filing of Budget. Upon adoption by the Agency of a budget, the Chief Executive Officer of the Agency shall file not more than ninety (90) days and not less than sixty (60) days prior to the commencement of its fiscal year the budget to the following: (1) the Mayor, (2) the Treasurer of the City of Albany, (3) the President of the Common Council, (4) the City Clerk and (5) the Authority Budget Office.

(H) Revisions to Budget. If the Agency revises the budget at any time after the filing thereof with the City Clerk, the Chief Executive Officer of the Agency shall promptly file such revised budget with the City Clerk.

**SECTION 603. REPORTS ON BUDGET.** The Treasurer shall provide at each meeting of the Agency a financial report, including a discussion of the status of the Agency's financial operations under its budget. The Chief Executive Officer shall assist the Treasurer in making such financial report.

APPENDIX 6A

SAMPLE FORM OF BUDGET

CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY  
PROPOSED BUDGET FOR THE FISCAL YEAR COMMENCING

**[SEE ABO PARIS FORM]**

APPENDIX 6B

FORM OF ENCLOSURE LETTER

[LETTERHEAD OF CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY]

\_\_\_\_\_, \_\_\_\_\_

Hon. \_\_\_\_\_  
Mayor of the City of Albany  
City Hall  
Eagle Street  
Albany, New York 12207

Hon. \_\_\_\_\_  
President of the Common Council  
City Hall  
Eagle Street  
Albany, New York 12207

RE: City of Albany Industrial Development Agency  
Proposed Budget

Gentlemen:

Pursuant to the requirements of Section 861 of Title One of Article 18-A of the General Municipal Law (the "Act"), enclosed herewith please find a copy of the following:

1. The proposed budget of City of Albany Industrial Development Agency (the "Agency") for the fiscal year commencing \_\_\_\_\_, \_\_\_\_; and
2. A public notice relating to same.

Pursuant to the provisions of the Act, to allow for a period of public comment, this budget will not be adopted until at least twenty (20) business days subsequent to the date of this letter. Any comments on this proposed budget should be made in writing, addressed to the Chief Executive Officer of the Agency at \_\_\_\_\_, \_\_\_\_\_, Albany, New York \_\_\_\_\_.

If you have any questions regarding the foregoing, please do not hesitate to contact me.

Very truly yours,

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
Title: \_\_\_\_\_



## APPENDIX 6C

### SAMPLE PUBLIC NOTICE REGARDING PROPOSED BUDGET

PUBLIC NOTICE REGARDING PROPOSED BUDGET

PLEASE TAKE NOTICE that, pursuant to Section 861 of the General Municipal Law, City of Albany Industrial Development Agency has prepared a proposed budget for the fiscal year commencing \_\_\_\_\_, \_\_\_\_\_, and that copies of said proposed budget are on file at the office of the Agency, located at \_\_\_\_\_ Albany, New York \_\_\_\_\_. Further information regarding the proposed budget may be obtained by contacting the Chief Executive Officer of the Agency at the above office.

Any written comments received by the Agency relative to the proposed budget prior to \_\_\_\_\_, \_\_\_\_\_ will be considered by the Agency prior to the adoption by the Agency of its budget for the forthcoming fiscal year.

Dated: \_\_\_\_\_, \_\_\_\_\_

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_

Title: \_\_\_\_\_

## PART 7

### BOND COUNSEL APPOINTMENT RESPONSIBILITIES AND DISCLOSURE

SECTION 701. PURPOSE AND AUTHORITY. The purpose of this Part is to establish such procedures relating to selection and duties of bond counsel as are deemed by City of Albany Industrial Development Agency (the “Agency”) as necessary for the implementation of Section 858(8)(b) of Title One of Article 18-A of the General Municipal Law (the “Act”) and Article 6 of the Public Officers Law (the “FOI Law”).

SECTION 702. BOND COUNSEL APPOINTMENT. (A) General. The Agency shall appoint a law firm to act as bond counsel to the Agency.

(B) Appointment. The appointment of a law firm to act as bond counsel to the Agency shall be by resolution adopted by the members of the Agency.

(C) Timing. The Agency shall make such appointment at the organizational meeting of the Agency, or at such other time as determined by resolution of the Agency.

(D) Period of Appointment. The law firm shall be appointed to act as bond counsel to the Agency on an annual basis. Any law firm appointed as bond counsel to the Agency may continue to act as bond counsel to the Agency for a period ending on the later of: (1) the date of completion of the next appointment process, or (2) the closing of all transactions for which the law firm was appointed to act as bond counsel to the Agency.

SECTION 703. BOND COUNSEL RESPONSIBILITIES. (A) General. The law firm acting as bond counsel to the Agency must deliver a retainer letter to the Agency describing its responsibilities with respect to the transaction and stating that it is representing the Agency as bond counsel to the transaction. The law firm must further deliver a letter indicating its agreement to comply with the procedures of the Agency described in this Policy Manual.

(B) Resolutions and Documents. For the purpose of ensuring uniformity of Agency documentation, all resolutions and documents relating to transactions shall substantially follow the precedent resolutions and documents of the Agency. Bond counsel shall, in preparing any resolutions and documents on behalf of the Agency, produce such resolutions and agreements in a form designed to show any changes and modifications to the Agency precedent resolutions and documents.

(C) Billing. Bond counsel must coordinate with the Agency staff the billing of all matters handled by the bond counsel on behalf of the Agency. The bond counsel will submit all bills of the bond counsel to the applicant, with a copy to the Agency.

SECTION 704. DISCLOSURE STATEMENT. (A) General. Any attorney seeking to be appointed as bond counsel for a project must file with the Agency a written statement (a “Disclosure Statement”) in which the attorney (1) identifies each party to the transaction which such attorney and his firm represents and (2) affirms that attached to such Disclosure Statement is a true and correct copy of the engagement letter or other summary of the method by which such attorney expects to charge for legal services. Each Disclosure Statement shall be substantially in the form of Appendix 7A to this Part.

(B) Additional Disclosures. If bond counsel provides any legal services to parties other than the Agency, the Disclosure Statement must describe the nature of legal services provided by such bond counsel (including such attorney and his firm) to all parties to the transaction, including the nature of the services provided to the Agency.

(C) Time of Filing. A Disclosure Statement is timely filed if executed and delivered no later than the closing date for the transaction.

SECTION 705. FINANCIAL DISCLOSURE. Since case law has determined that the legal fees of bond counsel are a public record, each Disclosure Statement filed pursuant to Section 704(C) of this Part shall be accompanied by a copy of the engagement letter or other summary of the method by which such attorney expects to charge for bond counsel services.

APPENDIX 7A  
FORM OF DISCLOSURE STATEMENT

BOND COUNSEL DISCLOSURE STATEMENT

SCHEDULE A

LIST OF PARTIES REPRESENTED

DESCRIPTION OF THE NATURE  
OF SERVICES PROVIDED TO  
EACH SUCH PARTY

PARTIES REPRESENTED

(IF REQUIRED)

## PART 8

### FINANCIAL RECORDS; ANNUAL FINANCIAL STATEMENTS; FILINGS WITH THE NEW YORK STATE COMPTROLLER

SECTION 801. PURPOSE AND AUTHORITY. The purpose of this Part is to implement Section 859 of Title One of Article 18-A of the General Municipal Law (the “Act”) and Section 2800 of the Public Authority Law (the “PAL”), which sets forth certain requirements that City of Albany Industrial Development Agency (the “Agency”) must follow with regard to maintenance of financial records, the preparation of annual financial statements and reports, and the filing of such annual financial statements and reports.

SECTION 802. FINANCIAL RECORDS. (A) Records regarding Agency Funds. The Agency shall maintain financial books and records in which full and correct entries shall be made of all business and financial affairs of the Agency relating to all funds for the use and account of the Agency (“Agency Funds”).

(B) Records regarding Non-Agency Funds. Financial books and records relating to funds held by a project occupant and/or project beneficiary and/or bondholder and/or trustee or other fiduciary serving on behalf of bondholders (each, a “Third Party”) need not be maintained by the Agency. However, the Agency shall endeavor to negotiate a clause in the project documents executed by such Third Party, whereby such Third Party agrees to provide such information to the Agency and/or its duly authorized agents as is necessary to enable the Agency to make any reports required by law and/or governmental regulation.

SECTION 803. ANNUAL FINANCIAL STATEMENT. (A) General. Within ninety (90) days following the close of each fiscal year of the Agency, the Agency shall prepare or cause to be prepared a financial statement for such fiscal year in such form as is prescribed by the New York State Comptroller (the “Comptroller”) or the Authority Budget Office, such financial statement to include supplemental schedules containing certain additional information required by the Comptroller.

(1) The financial statement shall include an annual report as required by Section 2800 of the Public Authority Law.

(2) The Audit Committee of the Agency will hold such meetings as are necessary to provide for the completion and review of the financial statement and annual report.

(3) Such financial statement shall be approved by the members of the Agency and certified by the Chief Executive Officer and Chief Financial Officer of the Agency, and executed by the Treasurer of the Agency.

(B) Contract with Independent Certified Public Accountant. (1) Pursuant to the Act, such annual financial statement must be audited within ninety (90) days following the close of such fiscal year of the Agency by an independent certified public accountant (an "Accountant") in accordance with generally accepted accounting principles established by the United States General Accounting Office. To implement this requirement, the Agency shall, in accordance with the Agency's procurement guidelines, select and contract with an Accountant at least thirty (30) days prior to the end of such fiscal year. Such contract with the Accountant shall require that such Accountant prepare and audit such annual financial statement, together with all supplemental schedules required by the Act and the PAL, and ensure that the same are filed with the Comptroller not later than ninety (90) days following the close of such fiscal year.

(2) The selection and replacement by the Agency of an accounting firm (and lead partners of such accounting firm) shall comply with the provisions of Section 2802(4) of the PAL.

(C) Filings. The Act prescribes certain penalties for (1) failure to file the annual financial statement with the Comptroller or (2) failure to substantially complete such annual financial statement, as determined by the Comptroller. The Chief Executive Officer of the Agency shall ensure that the annual financial statement is substantially completed and is filed with the Comptroller within the ninety (90) day period required by the Act and the PAL. Within thirty (30) days after completion of the annual financial statement, the Agency and/or the Accountant shall send a copy of such statement to following: (a) the Mayor, (b) the Treasurer of the City of Albany, (c) the President of the Common Council, (d) the Authority Budget Office, (e) the Commissioner of Empire State Development, and (f) the Comptroller.

(D) Failure to File. In the event that the Agency shall receive a notice from the Comptroller that the Agency has either failed to file an annual financial statement, or that the Comptroller has determined that a filed annual financial statement was deficient, the Chief Executive Officer of the Agency shall take steps to immediately prepare and file such annual financial statement or to remedy the deficiency.



## PART 9

### EQUAL EMPLOYMENT OPPORTUNITIES

SECTION 901. PURPOSE AND AUTHORITY. The purpose of this Part is to establish procedures for the implementation of Section 858-b of Title One of Article 18-A of the General Municipal Law (the “Act”).

SECTION 902. AGENCY EMPLOYMENT. It is the policy of the City of Albany Industrial Development Agency (the “Agency”) to ensure that all employees and applicants for employment are afforded equal employment opportunity without discrimination. Accordingly, it is the policy of the Agency to prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, gender, age, disability, or marital or domestic partner status in all aspects of its personnel policies, programs, practices and operations in accordance with Title VII of the Civil Rights Act of 1964, the Human Rights Law of the State of New York and with Article I, Chapter 48 of the City Code, entitled “Office of Equal Employment Opportunity and Affirmative Action Program”.

SECTION 903. PROJECT EMPLOYMENT OPPORTUNITIES. It is the policy of the Agency that every individual within its boundaries is afforded an equal opportunity to participate fully in the life of the City, free from violation of basic civil and human rights, and to prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, gender, age, disability, or marital or domestic partner status. Accordingly, it is the policy of the Agency to encourage sponsors of projects to endeavor to comply with the provisions of Article I, Chapter 48 of the City Code, entitled “Office of Equal Employment Opportunity and Affirmative Action Program”, which prohibits such discrimination. Notwithstanding the foregoing, it is expressly understood that project sponsors shall not be directly subject to the provisions of Affirmative Action Ordinance.

(A) Listing Requirement. Except as otherwise provided by collective bargaining contracts or agreements, sponsors of projects shall list new employment opportunities which are created as a result of projects of the Agency with the Community Services Division of the New York State Department of Labor, the City Office of Equal Employment Opportunity, and with the administrative entity of the Albany, Rensselaer and Schenectady Service Delivery Area (or successor entity) created by the Federal Job Training Partnership Act (P.L. No. 97-300) where the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)), or current federal statute.

(B) First Consideration Requirement. Pursuant to the Act, except as otherwise provided by collective bargaining contracts or agreements, sponsors of projects must agree, where practicable, to first consider persons eligible to participate in the Federal Job Training Partnership programs who are referred by the Department of Human Resources or by the Community Services Division of the Department of Labor for such new employment opportunities.

(C) Guidelines for Access to Employment Opportunities. The listing and first consideration requirements of Section 858-b of the Act are substantially the same as the requirements contained in the private activity bond volume allocation act (the "Allocation Act") enacted annually, except that such new requirements apply to every project undertaken by the Agency. The Allocation Act requires that new employment opportunities shall be listed with the New York State Department of Labor and with the one-stop career center established pursuant to the federal Workforce Investment Act (Pub. L. No. 105-220) serving the locality in which the employment opportunities are being created. Such listing shall be in a manner and form prescribed by the commissioner. All issuers shall further require that for any new employment opportunities created in connection with an industrial or manufacturing project financed through the issuance of qualified small issue bonds by such issuer, industrial or manufacturing firms shall first consider persons eligible to participate in Workforce Investment Act (Pub. L. No. 105-220) programs who shall be referred to the industrial or manufacturing firm by one-stop centers in local workforce investment areas or by the New York State Department of Labor.

## PART 10

### CONFLICTS OF INTEREST

SECTION 1001. PURPOSE AND AUTHORITY. The purpose of this Part is to implement Section 883 of Title One of Article 18-A of the General Municipal Law (the “Act”), which provides that Article 18 of the General Municipal Law (the “Conflict of Interest Law”) applies to all members, officers and employees of City of Albany Industrial Development Agency (the “Agency”).

SECTION 1002. DEFINITIONS. The definitions contained in Section 800 of the Conflict of Interest Law apply to this Part.

SECTION 1003. CONFLICTS OF INTEREST. (A) General Rule. Except as authorized by Section 802 of the Conflict of Interest Law:

(1) No member, officer or employee of the Agency shall have an interest in any contract with the Agency when such member, officer or employee, either individually or as a member of a board, has the power or duty to:

(a) negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder;

(b) audit bills or claims under the contract; or

(c) appoint an officer or employee who has any of the powers or duties set forth above.

(2) No chief fiscal officer, treasurer, or his or her deputy or employee, of the Agency shall have an interest in a bank or trust company that is designated as a depository, paying agent, registration agent or for investment of funds of the Agency.

(B) Disclosure. Except as provided in subsection (C) below, any member, officer or employee of the Agency who has, will have, or later acquires an interest in any actual or proposed contract with the Agency shall publicly disclose the nature and extent of such interest in writing to the members of the Agency as soon as he or she has knowledge of such actual or prospective interest. Such written disclosure shall be set forth in and made part of the official record of the proceedings of the Agency. Once disclosure has been made with respect to an interest in a contract with a particular person, firm, corporation or association, no further disclosures are required by

such member, officer or employee with respect to additional contracts with the same party during the remainder of the fiscal year.

(C) Disclosure Not Required. Pursuant to Section 803(2) of the Conflict of Interest Law, the disclosure required in subsection (B) above is not required in the case of an interest in a contract described in Section 802(2) of the Conflict of Interest Law.

(D) Penalties for Violations. Pursuant to Section 805 of the Conflict of Interest Law, any officer or employee of the Agency who willfully and knowingly violates the foregoing provisions of the Conflict of Interest Law, may be guilty of a misdemeanor. Furthermore, pursuant to Section 804 of the Conflict of Interest Law, any contract that is willfully entered into by or with the Agency in which there is an interest prohibited by the Conflict of Interest Law shall be null, void and wholly unenforceable.

SECTION 1004. PROHIBITED ACTIONS. (A) General. Pursuant to Section 805-a of the Conflict of Interest Law, no member, officer or employee of the Agency shall:

(1) either directly or indirectly, solicit, accept or receive any gift having a value of seventy-five dollars (\$75.00) or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended as a reward for any official action on his or her part, or that it was intended to or could reasonably be expected to influence him or her in the performance of his or her official duties;

(2) disclose confidential information acquired in the course of his or her official duties or use such information to further his or her personal interests;

(3) receive or enter into any express or implied agreement for compensation for services to be rendered in relation to any matter before the Agency; or

(4) receive or enter into any express or implied agreement for compensation for service to be rendered in relation to any matter before the Agency whereby his or her compensation is to be dependent or contingent upon any action by such Agency with respect to that matter; provided, however, that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

(B) Penalty for Violation. Pursuant to Section 805-a of the Conflict of Interest Law, any person who shall knowingly and intentionally violate the Conflict of Interest Law may be fined, suspended or removed from office or employment in the manner provided by law.

SECTION 1005. POSTING. The Chief Executive Officer of the Agency shall have a copy of the Conflict of Interest Law and of this Part posted in the office of the Agency in a place which is conspicuous to the officers, members and employees of the Agency.

SECTION 1006. MISCELLANEOUS PROVISIONS. (A) Financial Disclosure. Pursuant to Section 810(3) of the Conflict of Interest Law, members, officers and employees of the Agency are deemed to be officers or employees of the City of Albany for purposes of Sections 811, 812 and 813 of the Conflict of Interest Law (said sections deal generally with financial disclosure).

(B) Compensation. Pursuant to Section 858-a(1) of the Act, the compensation of an officer or full-time employee of the Agency (but not including part-time employees or consultants, including accountants, attorneys and bond counsel to the Agency) shall not be contingent on the granting of financial assistance by the Agency.

## PART 11

### INTERACTION WITH OTHER AGENCIES

SECTION 1101. PURPOSE AND AUTHORITY. The purpose of this Part is to establish such procedures relating to the interaction and coordination by the City of Albany Industrial Development Agency (the “Agency”) with other City agencies and departments.

SECTION 1102. DISTRIBUTION OF APPLICATIONS FOR FINANCIAL ASSISTANCE. The Chief Executive Officer of the Agency shall distribute a copy of Applications for Financial Assistance received by the Agency to the following officials and departments:

- (A) Office of the Mayor.
- (B) Department of Assessment and Taxation.
- (C) Office of the Treasurer.
- (D) Department of Development and Planning.
- (E) Department of Law.
- (F) Any other agency, office or department deemed appropriate by the Agency.

SECTION 1103. SUBMISSIONS TO THE COMMON COUNCIL. Pursuant to Article XXXVI, Section 42-288(C) of the Code of the City of Albany, the Chief Executive Officer of the Agency shall submit to the Common Council agendas and minutes of meetings and an annual report of the Agency’s activities.

SECTION 1104. DISTRIBUTION OF PILOT AGREEMENTS. The Agency shall deliver a copy of any PILOT Agreement to the Treasurer of the City of Albany at the same time the Agency sends such PILOT Agreement to the affected taxing jurisdiction pursuant to Section 858(15) of the General Municipal Law.

## PART 12

### STRUCTURE OF AGENCY BOARD

SECTION 1201. PURPOSE AND AUTHORITY. The purpose of this Part is to establish such procedures relating to the organization of the membership of the City of Albany Industrial Development Agency (the “Agency”) as necessary for the implementation of Section 856 of Title One of Article 18-A of the General Municipal Law (the “Act”), Section 903-a of the Act and the By-Laws of the Agency.

#### SECTION 1202. ORGANIZATION.

(A) Appointment of Members. The members of the Agency shall be appointed by the Common Council of the City of Albany. The members serve at the pleasure of the Common Council. Upon appointment to the Agency, counsel to the Agency must file a Certificate of Appointment with the Secretary of State. A form copy of a Certificate of Appointment is attached hereto as Appendix 12A.

(B) Oath of Office. Each new member of the Agency must take and file an oath of office. An oath of office may be administered by the Mayor or the City Clerk. The oath of office must be filed in the office of the Clerk of the City of Albany, New York.

(C) Number of Members. The Agency shall consist of not less than three or more than seven members.

(D) Qualifications. Each member must be at least 18 years of age, a resident of the City of Albany and otherwise comply with the applicable requirements of the New York Public Officers Law.

(E) Representation. Members of the Agency may include, but not be limited to, representatives of local government, the school board, organized labor and business.

(F) Term of Membership. Each member of the Agency shall serve for the term specified in the resolution adopted by the Common Council appointing such member. In any event, each member of the Agency shall serve at the pleasure of the Common Council.

(G) Officers. The officers of the Agency shall be a Chair, Vice Chair, Secretary, Assistant Secretary, Treasurer, Assistant Treasurer and such other officers as provided by the By-

Laws of the Agency. All requirements regarding the election, duties, tenure of office and other matters involving the officers of the Agency shall be as set forth in the By-Laws of the Agency.



APPENDIX 12A

(Sample Certificate of Appointment of Member to be filed with Secretary of State pursuant to New York State Industrial Development Agency Act. File with Miscellaneous Records Bureau, Department of State, 162 Washington Avenue, Albany, New York 12225.)

CERTIFICATE  
OF  
APPOINTMENT  
AS MEMBER OF  
CITY OF ALBANY  
INDUSTRIAL DEVELOPMENT AGENCY  
FOR FILING  
WITH  
SECRETARY OF STATE

This is to certify that

---

has been appointed as a

MEMBER

of the CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY which has been duly established by Chapter 325 of the Laws of 1974.

THE COMMON COUNCIL OF THE CITY OF ALBANY, NEW YORK

BY: \_\_\_\_\_  
CLERK

(SEAL)

## PART 13

### ACCESS TO AGENCY RECORDS

SECTION 1301. PURPOSE AND SCOPE. Article 6 of the Public Officers Law (the “Freedom of Information Law”) contains various provisions providing that, with certain exceptions, records maintained by state and local governmental entities are available for public inspection. The purpose of this Part is to set forth procedures to implement the Freedom of Information Law as it applies to records maintained by City of Albany Industrial Development Agency (the “Agency”).

SECTION 1302. DEFINITIONS. All words and terms used herein and defined in the Freedom of Information Law shall have the meanings assigned to them in the Act, unless otherwise defined herein or unless the context or use indicates another meaning or intent. The following words and terms used herein shall have the respective meanings set forth below, unless the context or use indicates another meaning or intent:

“Privacy Law” shall mean the personal privacy protection act, being Article 6-A of the Public Officers Law.

SECTION 1303. GENERAL RULE. (A) Maintenance of Records. The Agency shall maintain:

- (1) a record of the final vote of each member of every Agency proceeding;
- (2) a record setting forth the name, public office address, title and salary of every officer or employee of the Agency;
- (3) a current list, by subject matter, of all records in the possession of the Agency, sufficiently detailed to permit identification of the category of the record sought, whether or not available pursuant to the Freedom of Information Law. This list shall be updated not less than twice per year.

(B) Access to Records. The Agency shall, in accordance with this Part and the regulations of the Committee on Public Access to Records (21 NYCRR Part 1401), furnish to the public the records required by the Freedom of Information Law.

(C) Maintenance of Web Site. The Agency shall, in accordance with this Part and Section 2800 of the Public Authority Law, maintain a web site for the posting of agendas, meeting

minutes, policies and other materials required by Section 2800 of the Public Authority Law and other applicable law.

(D) No Requirement to Prepare Records. Except as otherwise provided in subsection (A) of this section, nothing in this Part shall be construed to require the Agency to prepare any record not possessed or maintained by the Agency.

SECTION 1304. RECORDS ACCESS OFFICER. (A) Designation of Records Access Officer. The Chief Executive Officer of the Agency, or in his absence, the Secretary of the Agency shall be the records access officer of the Agency. The business address of the records access officer of the Agency is Capitalize Albany, 21 Lodge Street, Albany, New York 12207. The designation of the records access officer shall not be construed to prohibit Agency personnel who have in the past been authorized to make records or information available to the public from continuing to do so.

(B) Duties of Records Access Officer. It shall be the duty of the records access officer to respond to public requests for access to the records. The records access officer will assure that Agency personnel:

- (1) maintain the up-to-date subject matter list required by Section 87(3)(c) of the Public Officers Law;
- (2) assist a person inquiring in identifying requested records, if necessary;
- (3) upon locating the requested records, take one of the following actions pursuant to the procedures set forth herein:
  - (a) make records available for inspection; or
  - (b) deny access to the records in whole or in part and explain in writing the reasons for such action pursuant to Section 1306 herein;
- (4) upon payment or offer to pay the fees set forth in Section 1308 herein:
  - (a) make a copy available; or
  - (b) permit the person inquiring to copy such records; and
  - (c) upon request, certify that a record is a true copy;
- (5) upon failure to locate records, certify that:
  - (a) the Agency is not the custodian for such records; or
  - (b) the records of which the Agency is a custodian cannot be found after diligent search.

SECTION 1305. INSPECTION OF PUBLIC RECORDS. (A) Location. The location where records shall be available for public inspection and copying is: Capitalize Albany, 21 Lodge Street, Albany, New York 12207.

(B) Requests for Public Access to Records. Requests for public access to records of the Agency shall be accepted by the Agency during all hours that the Agency is regularly open for business. Except for State holidays, or during weather or other emergencies, these hours are 9:00 a.m. to 12:00 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday. Unless such requirement is waived by the Agency, each request for access to records of the Agency shall be in writing. A sample for of request for Agency records is attached hereto as Appendix 13A. Such request shall reasonably describe the record or records sought. Whenever possible, a person requesting records should supply information regarding dates, file designations or other information that may help to describe the records sought. The records access officer, in his discretion, may waive compliance with any formality required herein.

(C) Response to Requests. The Agency shall respond to any written request reasonably describing the record or records sought within five (5) business days after receipt. If the Agency does not provide or deny access to the record sought within five (5) business days after receipt of a written request it shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied, including, where appropriate, a statement that access to the record will be determined in accordance with Section 89(5) of the Public Officers Law relative to trade secrets. Failure of the Agency to grant or deny access to records within ten (10) business days after the date of acknowledgment of receipt of a request may be construed as a denial of access and may be appealed as provided in Section 1306 herein.

(D) Hours for Public Inspection. Once the Agency has located the requested records, such records shall be open to the public at the offices of the Agency during all hours that the Agency is regularly open for business. Except on State holidays, or during weather or other emergencies, these hours are 9:00 a.m. to 12:00 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday.

(E) Hours for Copying. Records may be copied during regular business hours on all business days to the extent possible in view of priority copying requirements involving regular Agency responsibilities.

SECTION 1306. DENIAL OF ACCESS TO RECORDS. (A) General Rule. If the records access officer shall decide to deny access to any particular records such denial of access shall be in writing, stating the reason for denial and advising of the right to appeal to the counsel. Failure of the Agency to respond to a request within five (5) business days after receipt, as required by Section 1305 herein, shall be deemed a denial of access to the records. The records access officer may deny access to records or portions thereof that:

(1) are exempted from disclosure by the Privacy Law or any other State or Federal statute or judicial decision;

(2) if disclosed, would constitute an unwarranted invasion of personal privacy pursuant to Section 89(2) of the Freedom of Information Law;

(3) if disclosed, would impair present or imminent contract awards or collective bargaining negotiations;

(4) are trade secrets or are maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise;

(5) are compiled for law enforcement purposes and which, if disclosed, would interfere with law enforcement investigations or otherwise come within the exemptions of Section 87(2)(e) of the Freedom of Information Law;

(6) are interagency or intra-agency materials which are not:

- (a) statistical or factual tabulations or data;
- (b) instructions to staff that affect the public; or
- (c) final agency policy or determinations; or
- (d) external audits; or

(7) are computer access codes; or

(8) are otherwise exempt pursuant to Section 87(2) of the Freedom of Information Law.

(B) Right to Appeal Denial. Except as provided in Section 89(5) of the Public Officers Law relative to trade secrets, any person denied access to records may appeal within thirty (30) days after receipt of notice of the denial. If the denial is by mail, the 30-day period shall commence to run on the fifth day following the mailing of notice of denial. The General Counsel of the Agency shall act as appeals officer (the "Agency Appeals Officer") to determine appeals regarding denial of access to records under the Freedom of Information Law.

(C) Time for Decision of Appeal. The Agency Appeals Officer shall within ten (10) business days of the receipt of an appeal, decide such appeal in the manner described in subsection (D) below. The time for deciding an appeal shall commence upon receipt of a written appeal, identifying:

(1) the date and identification of a request for records, together with a copy of such request;

(2) the date of denial of access, together with a copy of such denial;

(3) the records that were denied; and

(4) the name and return address of the appellant.

(D) Decision on Appeal. The Agency Appeals Officer shall inform the appellant and the Committee on Public Access to records of his determination, in writing, within ten (10) business days after receipt of an appeal. The appeals officer shall either:

- (1) fully explain the reasons for further denial and inform the person inquiring that the denial is subject to court review as provided for in article 78 of the Civil Practice Law and Rules; or
- (2) provide access to the record sought.

SECTION 1307. TRADE SECRETS. (A) Requests for Exception from Disclosure. A person who submits any information to the Agency may, at the time of submission, request that the Agency except such information from disclosure under section 87(2)(d) of the Freedom of Information Law. Where the request itself contains information which is disclosed would defeat the purpose for which the exception is sought, such information shall also be excepted from disclosure. The request for an exception shall be in writing and state the reasons why the information should be excepted from disclosure. The person requesting an exception from disclosure herein shall in all proceedings have the burden of proving that the record falls within the provisions of such exception.

(B) Treatment of Records Pending Decision. Information submitted pursuant to paragraph (A) of this section shall be excepted from disclosure and be maintained by the Agency's Chief Executive Officer in a locked drawer, apart from all other records, until fifteen (15) days after the entitlement to such exception has been finally adversely determined or such further time as ordered by a court of competent jurisdiction.

(C) Determination on Request for Exception. On the initiative of the Agency at any time, or upon the request of any person for a record excepted from disclosure herein, the Agency shall:

- (1) inform the person who requested the exception of the Agency's intention to determine whether such exception should be granted or continued;
- (2) permit the person who requested the exception, within ten (10) business days after receipt of notification from the Agency, to submit a written statement of the necessity for the granting or continuation of such exception;
- (3) within seven (7) business days after receipt of such written statement, or within seven (7) business days after the expiration of the period prescribed for submission of such statement, issue a written determination granting, continuing or terminating such exception and stating the reasons therefor. Copies of such determination shall be served upon the person, if any, requesting the record, the person who requested the exception, and the Committee on Public Access to Records.

(D) Appeal. A denial of an exception from disclosure under subsection (C) of this section may be appealed by the person submitting the information and a denial of access to the record may be appeals by the person requesting this record in accordance with the following:

(1) within seven (7) business days after receipt of written notice denying the request, the person may file with the Agency Appeals Officer a written appeal from the determination.

(2) The Agency Appeals Officer shall determine the appeal within ten (10) business days after receipt of the appeal. Written notice of the determination containing the reasons therefor shall be served upon the person, if any, requesting the record, the person who requested the exception and the Committee on Public Access to Records.

(E) Article 78. A proceeding to review an adverse determination pursuant to subsection (D) of this section may be commenced pursuant to Article 78 of the Civil Practice Law and Rules, and must be commenced within fifteen (15) days after the service of the written notice containing the adverse determination.

(F) Consent. Nothing in this section shall be construed to deny any person access, pursuant to this section or the Freedom of Information Law, to the record or part excepted from disclosure upon the written consent of the person who had requested the exception.

SECTION 1308. FEES. (A) Inspection. There shall be no fee charged for an inspection of records or a search for records pursuant to this section.

(B) Copies. The Chief Executive Officer of the Agency may provide copies of records without charging a fee. However, as a general rule, the Agency will charge a fee of 25 cents per page for copies of records. In the case of records not capable of being copied on regular Agency facilities, the Agency may, at the option of the person inquiring:

(1) prepare a transcript, in which case there will be a charge for the clerical time involved, in addition to the fee set forth herein; or

(2) reproduce the records using available commercial facilities, in which case the fee will be the actual cost to the Agency.

All such fees must be paid in cash to the Records Access Officer prior to the preparation of any copies.

## APPENDIX 13A

### SAMPLE APPLICATION FOR REQUESTING ACCESS TO AGENCY RECORDS



APPLICATION FOR PUBLIC ACCESS TO RECORDS

Records Access Officer  
City of Albany Industrial Development Agency  
21 Lodge Street  
Albany, New York 12207

I hereby apply to inspect the following record:

Signature

Date

Representing

Mailing address

---

For Agency Use Only

☐ Approved

☐ Denied (for the reason(s) checked below)

- ☐ Confidential Disclosure    ☐ Part of Investigatory Files  
☐ Unwarranted Invasion of Personal Privacy  
☐ Record of Which This Agency is Legal Custodian Cannot be Found  
☐ Exempted by Statute Other Than the Freedom of Information Act  
☐ Other (specify)\_\_\_\_\_

Signature

Date

\_\_\_\_\_  
Title

---

NOTICE:    You have a right to appeal a denial of this application to the Chair of the Agency, City of Albany Industrial Development Agency, 21 Lodge Street, Albany, New York 12207, who must fully explain the reasons for such denial in writing ten (10) days of receipt of an appeal.

I HEREBY APPEAL:

Signature

Date

## PART 14

### OPEN MEETINGS LAW

SECTION 1401. PURPOSE AND AUTHORITY. Pursuant to the Open Meetings Law, being Article 7 of the Public Officers Law (the “Open Meetings Law”), every meeting of a public body must be open to the general public, with certain limited exceptions. The purpose of this Part is to establish procedures for the implementation of the Open Meetings Law.

SECTION 1402. DEFINITIONS. Except as otherwise provided herein, the definitions contained in Section 102 of the Open Meetings Law apply to this Part. As used in this Part:

(A) “Meeting” mean the official convening of the Agency or any committee or other body consisting of Agency members (or consisting of members of the general public formally created by the Agency to advise the Agency or conduct business on behalf of the Agency) for the purpose of conducting public business.

(B) “Executive Session” means that portion of a meeting not open to the general public.

SECTION 1403. CONDUCT OF MEETINGS. (A) Open Meetings. In compliance with the Open Meetings Law, every meeting shall be open to the general public, except that an executive session may be called and business conducted thereat in accordance with subsection (B) hereof.

(B) Executive Sessions. Upon a majority vote of the Agency, or the members of the committee or other body thereof, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a meeting may be conducted as an executive session for the purposes specified in Section 105 of the Open Meetings Law. The Agency or the members of the subcommittee or other body may permit any person to attend an executive session.

(C) Public Participation. The Agency member or other person presiding over a meeting may permit public participation upon such terms as he shall deem just and proper.

(D) Recording Devices. Use of sonic recording devices at Agency meetings is permitted, subject to reasonable conditions.

SECTION 1404. PUBLIC NOTICE. (A) Notice. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in the main office of the Agency at least seventy-two (72) hours before such

meeting. Public notice of the time and place of every other meeting shall be given in the same manner as soon as possible prior thereto. The foregoing notice provisions shall not be construed to require publication of a legal notice or any other notice. A sample notice of meeting is attached hereto as Appendix 14A.

(B) Proof of Notice. On the date when the notice is given as aforesaid, the Chief Executive Officer of the Agency shall cause a certificate or affidavit regarding the giving of such notice to be prepared, and shall cause a copy of said certificate and of the notice of such meeting to be placed in the minute books of the Agency. A sample certificate regarding the giving of notice is attached hereto as Appendix 14B.

SECTION 1405. WEB SITE. (A) Maintenance. The Agency shall maintain a web site.

(B) Materials to be Posted. The Agency shall post agendas, minutes, policies and other material required by applicable New York law on the web site of the Agency.

SECTION 1406. MINUTES. (A) Open Meetings. Minutes shall be taken at all open meetings, which shall consist, at a minimum, of a record or summary of all motions, proposal, resolutions and any other matters formally voted upon, and the votes thereon.

(B) Executive Sessions. Minutes shall be taken at executive sessions of any action taken by formal vote, which shall consist, at a minimum, of a record summary of the final determination of such action, and the date and vote thereon. Such minutes need not include any matter not required to be made public by Article 6 of the Public Officers Law (the "Freedom of Information Law") and Part 13 (Access To Agency Records) of the rules and regulations of the Agency.

(C) Minute Books. A copy of the minutes for each meeting or executive session shall be kept by the Chief Executive Officer of the Agency in the minute books of the Agency in the principal office at the Agency.

(D) Date of Availability. Minutes of meetings shall be available to the public in accordance with the Freedom of Information Law and Part 13 (Access to Agency Records) of the rules and regulations of the Agency within two weeks of the date of the meeting. Minutes taken at executive sessions shall be available to the public within one week from the date of the executive session.

SECTION 1407. EXEMPTIONS. No provision herein shall extend to any matter made confidential by federal or state law.

APPENDIX 14A

SAMPLE NOTICE OF MEETING

[LETTERHEAD OF CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY]

M E M O R A N D U M

TO: AGENCY MEMBERS

FROM: Chief Executive Officer

RE: MEETING ANNOUNCEMENT

DATE: \_\_\_\_\_, 20\_\_

The next regular meeting of the City of Albany Industrial Development Agency will be held on \_\_\_\_\_, 20\_\_, \_\_o'clock \_\_m., local time, at \_\_\_\_\_ located at \_\_\_\_\_ in the City of Albany, New York.

I look forward to seeing you then.

ED:sec

cc: [newspapers]  
[radio stations]

APPENDIX 14B

SAMPLE PROOF OF NOTICE

[LETTERHEAD OF THE CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY]

CERTIFICATE REGARDING MAILING AND POSTING  
OF NOTICE OF MEETING

The undersigned Chief Executive Officer of City of Albany Industrial Development Agency (the "Agency") hereby certifies as follows:

1. That on \_\_\_\_\_, 20\_\_, I mailed a notice of a meeting of the Agency to be held on \_\_\_\_\_, 20\_\_, at \_\_ o'clock \_\_.m., local time at \_\_\_\_\_ located at \_\_\_\_\_ in the City of Albany, New York to the following individuals and organizations.

- A. Members of the Agency
- B. [newspapers]
- C. [radio stations]

2. That further, on \_\_\_\_\_, 20\_\_, I posted a copy of said notice of meeting on the bulletin board located in the main office of the Agency in Room \_\_\_\_ at City Hall, Albany, New York.

Dated: \_\_\_\_\_, 20\_\_

Signed:\_\_\_\_\_

Witness:\_\_\_\_\_



## PART 15

### CONDUCT AND NOTIFICATION OF PUBLIC HEARINGS

SECTION 1501. PURPOSE AND AUTHORITY. The purpose of this Part is to implement Sections 859-a(2) and 859-a(3) of Title One of Article 18-A of the General Municipal Law (the “Act”), which sets forth certain requirements regarding the holding of public hearings and the notification of such hearings by City of Albany Industrial Development Agency (the “Agency”).

SECTION 1502. DEFINITIONS. All words and terms used herein and defined in the Act shall have the meanings assigned to them under the Act, unless otherwise defined herein or unless the context or use indicates another meaning or intent.

SECTION 1503. PUBLIC HEARINGS. (A) General. Prior to the granting of any financial assistance of more than one hundred thousand dollars to any project, the Agency shall hold a public hearing with respect to the project and the proposed financial assistance being contemplated by the Agency.

(B) Time and Location. Except as specifically provided by the Agency, the public hearings shall be scheduled to occur prior to the beginning of the regular meetings of the Agency. The public hearings shall be held at the offices of the Agency located at 21 Lodge Street, Albany, New York.

(C) Publication of Notice. (1) The notice of such hearing shall be published in the Albany Times Union, or equivalent newspaper having general circulation in the City of Albany, prior to the proposed hearing date in accordance with applicable state and federal laws.

(2) Except as hereinafter provided, Bond Counsel to the Agency shall arrange for the publication of the notice of public hearing following the adoption by the Agency of a resolution authorizing the publication of such notice. Agency staff may direct Agency Bond Counsel to arrange for the publication of the notice of public hearing prior to adoption by the Agency of a resolution authorizing the publication of such notice upon the satisfaction of the following conditions: (a) Agency staff sends members of the Agency a copy of the proposed notice of public hearing at least three (3) business days prior to the proposed date of submission to the newspaper, and (b) Agency staff receives no objection to the submission of such notice from the members of the Agency at least one (1) business day prior to the proposed date of submission to the newspaper.

(3) Bond Counsel shall be responsible for obtaining copies of the affidavit of publication and delivering same to the Agency at the public hearing.

(4) The notice of the hearing shall also be posted on the web site of the Agency.

(D) Responsibility for Preparation, Publication and Mailing. Bond Counsel shall be responsible for preparing and forwarding the notice of the public hearing to the Albany Times Union, or equivalent newspaper having general circulation in the City of Albany. Bond Counsel shall be responsible for preparing the letter of notification to the affected taxing jurisdictions and causing such letter to be mailed to the affected taxing jurisdictions in accordance with the Act. A copy of the form of the letter to be prepared by Bond Counsel is attached hereto as Appendix 15G. Bond Counsel shall be responsible for reviewing the form of such letter with the staff of the Agency and then mailing the letter to the affected taxing jurisdictions. Bond Counsel shall be responsible for delivering copies of the letter and affidavits of mailing to the Agency.

(E) Form of Notice. The form of notice for the following types of projects are attached hereto:

- (1) Appendix 15A: Taxable bonds;
- (2) Appendix 15B: Tax-Exempt 501(c)(3) bonds;
- (3) Appendix 15C: Tax-Exempt manufacturing bonds; and
- (4) Appendix 15D: Straight Lease Transactions.

(F) Transcript. A transcript of the public hearing will be prepared by a stenographer and made available to the members of the Agency and the Mayor of the City of Albany (in cases involving the issuance of bonds). Any written comments received by the Agency shall be made part of the transcript. The scheduling of a stenographer for the public hearing shall be the responsibility of Bond Counsel. The cost of the stenographer and preparing the transcript shall be paid by the applicant and the applicant shall provide a copy of the transcript to the Agency.

SECTION 1504. CONDUCT OF PUBLIC HEARINGS. Any public hearing of the Agency held pursuant to this Part of the Rules and Regulations of the Agency shall be conducted as follows:

(A) The public hearing shall be opened by an officer or staff member of the Agency (hereinafter referred to as the "Hearing Officer"), and unless the Hearing Officer shall determine otherwise, the public hearing shall follow the form of public hearing script attached as Appendix 15E for a project involving tax exempt bonds and Appendix 15F for a project involving a straight lease transaction.

(B) The applicant and/or Bond Counsel shall provide to the Hearing Officer a copy of the affidavit of publication of the public hearing notice.

(C) The Hearing Officer shall read the public notice and indicate the publication in which it was published and when it was published. At the discretion of the Hearing Officer, the

Hearing Officer may waive reading of the complete public notice. In any event, the public notice shall be entered into the record of the public hearing.

(D) The Hearing Officer shall indicate that the purpose of the public hearing is to provide interested parties an opportunity to present their views with respect to the project, both in writing and orally.

(E) The Hearing Officer shall indicate for the public record whether the Agency had received any written comments regarding the project. If so, the Hearing Officer shall accept such written comments and enter such comments into public record.

(F) Any person wishing to make a public comment may sign-in on the appropriate sign-in sheet that will be distributed by Agency staff. The Hearing Officer will then call on the individuals listed on the sign-in sheet in the order in which they appear on the sheet. Please wait to be recognized, once recognized, please stand and state your name, address, and affiliation for the record.

(G) The Hearing Officer, in his discretion, may limit each interested party wishing to speak at the public hearing to five minutes in which to express his or her views.

(H) Comments must relate to the purpose of the public hearing.

(I) The public hearing will not be a question and answer period. However, any person who would like to have a question answered may ask the question at the public hearing in writing or orally and the Agency will post responses to the questions on its website within ten (10) business days of the hearing.

(J) Members of the Board, speakers, and audience members must observe proper decorum. Any statement made during the public hearing shall not involve personal, impertinent, or slanderous attacks on individuals.

(K) The use of profane, vulgar, inflammatory, threatening, abusive, or disparaging language or racial or ethnic slurs directed at any other individual shall not be tolerated.

(L) Banners, flyers, or other signs are not permitted in the public hearing.

(M) Distribution of flyers is not permitted in the public hearing.

(N) Any individual who disregards the directives of the Hearing Officer in enforcing the rules or who generally conducts himself or herself in a boisterous or inappropriate manner while addressing the Board and/or is disruptive will be barred from further participation and forfeit their opportunity to address the Board.

SECTION 1505. NOTIFICATION OF AFFECTED TAX JURISDICTIONS.  
(A) General. The Agency shall notify the County Executive of Albany County, the Mayor of the

City of Albany and the Superintendent of the Albany City School District of any public hearing held pursuant to this Part.

(B) Form of Notification. The form of the notification to such affected tax jurisdictions is attached hereto as Appendix 15G.

APPENDIX 15A

FORM OF NOTICE OF PUBLIC HEARING  
FOR PROJECT INVOLVING TAXABLE BONDS

NOTICE OF PUBLIC HEARING  
ON PROPOSED PROJECT  
AND FINANCIAL ASSISTANCE  
RELATING THERETO

Notice is hereby given that a public hearing pursuant to Section 859-a(2) of the General Municipal Law of the State of New York (the "Act") will be held by the City of Albany Industrial Development Agency (the "Agency") on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ o'clock \_\_.m., local time, at \_\_\_\_\_ in the [City, Village, Town] of \_\_\_\_\_, Albany County, New York, in connection with the following matters:

[**THE COMPANY**] (the "Company") has requested that the Agency consider undertaking a project (the "Project") consisting of [**PROJECT DESCRIPTION**] (being collectively referred to as the "Project Facility"); (B) the financing of all or a portion of the costs of the foregoing by the issuance of its industrial development revenue bonds in one or more issues or series in an aggregate principal amount sufficient to pay the cost of undertaking the Project, together with necessary incidental costs in connection therewith, presently estimated to be approximately \$\_\_\_\_\_ (the "Bonds"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency.

The Agency is considering whether (A) to undertake the Project, (B) to finance the Project by issuing, from time to time, the Bonds, (C) to use the proceeds of the Bonds to pay the cost of undertaking the Project together with incidental costs in connection therewith, and (D) to provide certain exemptions from taxation with respect to the Project, including (1) exemption from mortgage recording taxes with respect to any documents recorded by the Agency with respect to the Project in the office of the County Clerk of Albany County, New York or elsewhere, (2) exemption from sales taxes relating to the acquisition, construction and installation of the Project Facility, (3) exemption from deed transfer taxes and real estate transfer gains taxes on real estate transfers to and from the Agency with respect to the Project, and (4) exemption from real estate taxes (but not including special assessments and special ad valorem levies), subject to the obligation of the Company to make payments in lieu of taxes with respect to the Project Facility.

If the issuance of the Bonds is approved, (A) interest on the Bonds will not be excluded from gross income for federal income tax purposes, (B) the Project Facility will be acquired, constructed and installed by the Agency and will be sold by the Agency to the Company or its designee pursuant to a project agreement (the "Agreement") requiring that the Company or its designee make payments equal to debt service on the Bonds and make certain other payments and (C) the Bonds will be a special obligation of the Agency payable solely out of certain of the proceeds of the Agreement and certain other assets of the Agency pledged to the repayment of the Bonds. THE BONDS SHALL NOT BE A DEBT OF THE STATE OF NEW YORK OR THE CITY OF ALBANY, NEW YORK, AND NEITHER THE STATE OF NEW YORK NOR THE CITY OF ALBANY, NEW YORK SHALL BE LIABLE THEREON.

The Agency, by resolution adopted on \_\_\_\_\_, 20\_\_, determined pursuant to Article 8 of the Environmental Conservation Law (the “SEQR Act”) that the Project is an “unlisted action” and will not have a “significant effect on the environment” pursuant to the SEQR Act and, therefore, that no environmental impact statement is required to be prepared with respect to the Project.

The Agency will at said time and place hear all persons with views on either the location and nature of the proposed Project or the financial assistance being contemplated by the Agency in connection with the proposed Project.

Dated: \_\_\_\_\_, 20\_\_.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
(Vice) Chair

APPENDIX 15B

FORM OF NOTICE OF PUBLIC HEARING  
FOR PROJECT INVOLVING TAX-EXEMPT 501(c)(3) BONDS



NOTICE OF PUBLIC HEARING  
ON PROPOSED PROJECT  
AND FINANCIAL ASSISTANCE  
RELATING THERETO

Notice is hereby given that a public hearing pursuant to Section 859-a(2) of the General Municipal Law of the State of New York (the “Act”) and Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”) will be held by City of Albany Industrial Development Agency (the “Agency”) on \_\_\_\_\_, the \_\_\_\_ day of, \_\_\_\_\_ 20\_\_ at \_\_\_\_\_ o’clock \_\_.m., local time, at \_\_\_\_\_ in the [City, Village, Town] of \_\_\_\_\_, Albany County, New York, in connection with the following matters:

[**THE COMPANY**] (the “Company”) has requested that the Agency consider undertaking a project (the “Project”) consisting of [**PROJECT DESCRIPTION** (being collectively referred to as the “Project Facility”)]; (B) the financing of all or a portion of the costs of the foregoing by the issuance of its civic facility revenue bonds in one or more issues or series in an aggregate principal amount sufficient to pay the cost of undertaking the Project, together with necessary incidental costs in connection therewith, presently estimated to be approximately \$\_\_\_\_\_(the “Bonds”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency.

The Agency is considering whether (A) to undertake the Project, (B) to finance the Project by issuing, from time to time, the Bonds, (C) to use the proceeds of the Bonds to pay the costs of undertaking the Project, together with incidental costs in connection therewith, and (D) to provide certain exemptions from taxation with respect to the Project, including (1) exemption from mortgage recording taxes with respect to any documents recorded by the Agency with respect to the Project in the office of the County Clerk of Albany County, New York or elsewhere, and (2) exemption from deed transfer taxes and real estate transfer gains taxes on any real estate transfers to and from the Agency with respect to the Project.

If the issuance of the Bonds is approved, (A) interest on the Bonds will be excluded from gross income for federal income tax purposes pursuant to Section 145 of the Internal Revenue Code of 1986, as amended, (B) the Project Facility will be acquired, constructed and installed by the Agency and will be leased (with an obligation to purchase) or sold by the Agency to the Company or its designee pursuant to a project agreement (the “Agreement”) requiring that the Company or its designee make payments equal to debt service on the Bonds and make certain other payments and (C) the Bonds will be a special obligation of the Agency payable solely out of certain of the proceeds of the Agreement and certain other assets of the Agency pledged to the repayment of the Bonds. THE BONDS SHALL NOT BE A DEBT OF THE STATE OF NEW YORK OR THE CITY OF ALBANY, NEW YORK, AND NEITHER THE STATE OF NEW YORK NOR THE CITY OF ALBANY, NEW YORK SHALL BE LIABLE THEREON.

The Agency, by resolution adopted on \_\_\_\_\_, 20\_\_, determined pursuant to Article 8 of the Environmental Conservation Law (the “SEQR Act”) that the Project constitutes an “unlisted action” and will not have a “significant effect on the environment” pursuant to the SEQR Act and,

therefore, that no environmental impact statement is required to be prepared with respect to the Project.

The Agency will at said time and place hear all persons with views on either the location and nature of the proposed Project or the financial assistance being contemplated by the Agency in connection with the proposed Project.

Dated:\_\_\_\_\_.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

\_\_\_\_\_  
By:(Vice) Chair

APPENDIX 15C

FORM OF NOTICE OF PUBLIC HEARING  
FOR PROJECT INVOLVING TAX-EXEMPT MANUFACTURING BONDS

NOTICE OF PUBLIC HEARING  
ON PROPOSED PROJECT  
AND FINANCIAL ASSISTANCE  
RELATING THERETO

Notice is hereby given that a public hearing pursuant to Section 859-a(2) of the General Municipal Law of the State of New York (the "Act") and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code") will be held by City of Albany Industrial Development Agency (the "Agency") on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_o'clock \_\_.m., local time, at \_\_\_\_\_ in the [City, Village or Town] of \_\_\_\_\_ Albany County, New York, in connection with the following matters:

[**THE COMPANY**] (the "Company") has requested that the Agency consider undertaking a project (the "Project") consisting of [**PROJECT DESCRIPTION** (being collectively referred to as the "Project Facility")]; (B) the financing of all or a portion of the costs of the foregoing by the issuance of its industrial development revenue bonds in one or more issues or series in an aggregate principal amount sufficient to pay the cost of undertaking the Project, together with necessary incidental costs in connection therewith, presently estimated to be approximately \$ (the "Bonds"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency.

The Agency is considering whether (A) to undertake the Project, (B) to finance the Project by issuing, from time to time, the Bonds, (C) to use the proceeds of the Bonds to pay the cost of undertaking the Project, together with incidental costs in connection therewith, and (D) to provide certain exemptions from taxation with respect to the Project, including (1) exemption from mortgage recording taxes with respect to any documents recorded by the Agency with respect to the Project in the office of the County Clerk of Albany County, New York or elsewhere, (2) exemption from sales taxes relating to the acquisition, construction and installation of the Project Facility, (3) exemption from deed transfer taxes and real estate transfer gains taxes on any real estate transfers to and from the Agency with respect to the Project, and (4) exemption from real estate taxes (but not including special assessments and special ad valorem levies), subject to the obligation of the Company to make payments in lieu of taxes with respect to the Project.

If the issuance of the Bonds is approved, (A) interest on the Bonds will be excluded from gross income for federal income tax purposes pursuant to Section 144(a) of the Internal Revenue Code of 1986, as amended, (B) the Project Facility will be acquired, constructed and installed by the Agency and will be sold by the Agency to the Company or its designee pursuant to a project agreement (the "Agreement") requiring that the Company or its designee make payments equal to debt service on the Bonds and make certain other payments and (C) the Bonds will be a special obligation of the Agency payable solely out of certain of the proceeds of the Agreement and certain other assets of the Agency pledged to the repayment of the Bonds. **THE BONDS SHALL NOT BE A DEBT OF THE STATE OF NEW YORK OR THE CITY OF ALBANY, NEW YORK, AND NEITHER THE STATE OF NEW YORK NOR THE CITY OF ALBANY, NEW YORK SHALL BE LIABLE THEREON.**

The Agency, by resolution adopted on \_\_\_\_\_, 20\_\_, determined pursuant to Article 8 of the Environmental Conservation Law (the “SEQR Act”) that the Project is an “unlisted action” and will not have a “significant effect on the environment” pursuant to the SEQR Act and, therefore, that no environmental impact statement is required to be prepared with respect to the Project.

The Agency will at said time and place hear all persons with views on either the location and nature of the proposed Project or the financial assistance being contemplated by the Agency in connection with the proposed Project.

Dated:\_\_\_\_\_.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

\_\_\_\_\_  
By:(Vice) Chair

APPENDIX 15D

FORM OF NOTICE OF PUBLIC HEARING  
FOR PROJECT INVOLVING A STRAIGHT LEASE TRANSACTION

NOTICE OF PUBLIC HEARING  
ON PROPOSED PROJECT  
AND FINANCIAL ASSISTANCE  
RELATING THERETO

Notice is hereby given that a public hearing pursuant to Section 859-a(2) of the General Municipal Law of the State of New York (the “Act”) will be held by City of Albany Industrial Development Agency (the “Agency”) on \_\_\_\_\_, the \_\_\_\_ day of, \_\_\_\_\_ 20\_\_ at \_\_\_\_\_ o’clock \_\_.m., local time, at \_\_\_\_\_ in the [City, Village, Town] of \_\_\_\_\_, Albany County, New York, in connection with the following matters:

[**The Company**] (the “Company”), has presented an application (the “Application”) to the Agency, a copy of which Application is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project consisting of the following: (A) [**ProjectDescription**]; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency.

The Agency is considering whether (A) to undertake the Project, and (B) to provide certain exemptions from taxation with respect to the Project, including (1) exemption from mortgage recording taxes with respect to any documents, if any, recorded by the Agency with respect to the Project in the office of the County Clerk of Albany County, New York or elsewhere, (2) exemption from deed transfer taxes on any real estate transfers, if any, with respect to the Project, (3) exemption from sales taxes relating to the acquisition, construction, renovation and installation of the Project Facility, and (4) in the event that the Project Facility would be subject to real property taxation if owned by the Company but shall be deemed exempt from real property taxation due to the involvement of the Agency therewith, exemption from real property taxes (but not including special assessments and special ad valorem levies), if any, with respect to the Project Facility, subject to the obligation of the Company to make payments in lieu of taxes with respect to the Project Facility. If any portion of the Financial Assistance to be granted by the Agency with respect to the Project is not consistent with the Agency’s uniform tax exemption policy, the Agency will follow the procedures for deviation from such policy set forth in Section 874(4) of the Act prior to granting such portion of the Financial Assistance.

If the Agency determines to proceed with the Project, the Project Facility will be acquired, constructed, reconstructed and installed by the Agency and will be leased (with an obligation to purchase) or sold by the Agency to the Company or its designee pursuant to a project agreement (the “Agreement”) requiring that the Company or its designee make certain payments to the Agency.

The Agency has not yet made a determination pursuant to Article 8 of the Environmental Conservation Law (the “SEQR Act”) regarding the potential environmental impact of the Project.

The Agency will at said time and place hear all persons with views on either the location and nature of the proposed Project, or the Financial Assistance being contemplated by the Agency in connection with the proposed Project. A copy of the Application filed by the Company with the Agency with respect to the Project, including an analysis of the costs and benefits of the Project, is available for public inspection during business hours at the offices of the Agency. A transcript or summary report of the hearing will be made available to the members of the Agency.

Additional information can be obtained from, and written comments may be addressed to: \_\_\_\_\_, Chief Executive Officer, City of Albany Industrial Development Agency, 21 Lodge Street, Albany, New York 12207; Telephone: 518-434-2532 ext. \_\_\_\_.

Dated: \_\_\_\_\_, 20\_\_.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
(Vice) Chair



APPENDIX 15E

FORM OF PUBLIC HEARING SCRIPT FOR  
PROJECT INVOLVING TAX-EXEMPT BONDS

**PUBLIC HEARING PURSUANT TO  
SECTION 859-a OF  
THE GENERAL MUNICIPAL LAW  
AND  
SECTION 147(f) OF  
THE INTERNAL REVENUE CODE**

<b>Issuer</b>	City of Albany Industrial Development Agency (the “Agency”)
<b>Project Name:</b>	_____ Project
<b>Project Beneficiary:</b>	_____ (the “Company”)
<b>Project Location:</b>	City of Albany, Albany County, New York
<b>Hearing Date:</b>	_____, 20__
<b>Hearing Time:</b>	__:__ o’clock, __.m.
<b>Hearing Location:</b>	_____

**Opening Remarks**

Good afternoon.

My name is \_\_\_\_\_, and I am the Chair of the City of Albany Industrial Development Agency (the “Issuer”) in connection with the project which is the subject of this public hearing.

Today we are holding this Public Hearing to allow citizens to make a statement, for the record, relating to the involvement of the Agency with a project (the “Proposed Project”) for the benefit of \_\_\_\_\_, a [state of incorporation] [type of entity] (the “Company”).

I will now ask \_\_\_\_\_, the Chief Executive Officer of the Agency, to make certain preliminary remarks with respect to the Project and to then start the public hearing.

**Introductory Comments by Chief Executive Officer**

Good Afternoon.

The Proposed Project is located at [Project Address] and consists of [Summary Description].

Copies of the notice of this Public Hearing are available on the table.

Now, unless there is any objection, I am going to suggest waiving the full reading of the notice of this Public Hearing, and instead request that the full text of the notice of this Public Hearing be inserted into the record of this Public Hearing.

I will also note that general information on the Agency’s general authority and public purpose are contained in a separate statement and it will be entered into the record.

## Remarks by the Company

**[If a representative of the Company is present at the Public Hearing.]** I will now introduce \_\_\_\_\_, who is appearing on behalf of the Company, who will describe the Proposed Project in further detail.

## Open Public Hearing to the Floor for Comments

I will now open this Public Hearing for public comment at \_\_:\_\_ o'clock, \_\_m.

By way of operating rules, if you wish to make a public comment, please sign-in on the appropriate sign-in sheet that has been distributed by Agency staff. I will then call on the individuals listed on the sign-in sheet in the order in which they appear on the sheet. Please wait to be recognized, once recognized, please stand and state your name, address, and affiliation for the record.

**[Unless there are a large number of citizens present who wish to comment, this paragraph may be skipped.]** Please keep your comments to five (5) minutes so that all those present today may have a chance to comment for the record. If your comments mirror those of someone who has already spoken, you may so indicate and then relinquish the podium to another speaker so that all views represented at this hearing may be heard.

When everyone has had the opportunity to speak, I will conclude this Public Hearing. As indicated above, a record of this Public Hearing will be prepared and reviewed by the members of the Issuer in connection with the Issuer's consideration of the Proposed Project. Also as indicated above, a copy of the record of this Public Hearing will be presented to the Mayor of the City of Albany, New York.

Again, the purpose of this Public Hearing is to solicit public comment. We are not here to answer questions. However, we will in the course of this Public Hearing consider questions if we have the information to answer the questions and there is sufficient time to consider such questions.

I will now refer to the sign-in sheet to identify individuals who wish to comment on either on the nature and location of the Project Facility or the proposed Financial Assistance being contemplated by the Issuer with respect to the Proposed Project, including but not limited to the issuance of the Obligations for the purpose of assisting in financing the Proposed Project.

For the record, please state your name and indicate your comments on either the Proposed Project or the Financial Assistance contemplated by the Issuer with respect to the Proposed Project.

## Written Comments

The notice of this Public Hearing indicated that written comments could be addressed to: \_\_\_\_\_, the Chief Executive Officer of the Issuer. No written comments have been received by the Issuer prior to this Public Hearing.

### **Formal closure of the public hearing**

**[After ascertaining that there is no one else present who wishes to comment and ascertaining that at least 15 minutes has passed after the scheduled time for the hearing].**

So, if there are no further comments, I will now close this Public Hearing at \_\_: \_\_ o'clock, \_\_.m.

Thank you all for attending.

## GENERAL INFORMATION

### **Legal Authorization and Powers of the Issuer**

The provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York as amended, and Chapter 325 of the 1974 Laws of the State of New York, as amended, codified as Section 903-a of said General Municipal Law (collectively, the “Act”), authorize the Issuer to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining and equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others.

### **Purpose of this Public Hearing**

Pursuant to Section 859-a(2) of the General Municipal Law of the State of New York (the “Act”), prior to the Issuer providing any “financial assistance” (as defined in the Act) of more than \$100,000 to any project, the Issuer, among other things, must hold a public hearing pursuant to Section 859-a of the Act with respect to said project. Since the proposed “financial assistance” to be provided by the Issuer with respect to the Proposed Project may exceed \$100,000, then prior to providing any “financial assistance” (as defined in the Act) of more than \$100,000 to the Proposed Project, the Issuer must hold a public hearing on the nature and location of the Project Facility and the proposed “financial assistance” to be provided by the Issuer with respect to the Proposed Project.

Pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), if any portion of the Obligations is intended to be issued as federally tax-exempt obligations (the interest on which will be excludable from the gross income of the holders thereof for federal income tax purposes), then prior to issuing such portion of the Obligations, (A) the Issuer must hold a public hearing on the nature and location of the Project Facility and the issuance of the Obligations, and (B) thereafter the Mayor of the City of Albany, New York must approve the issuance of the Obligations.

After consideration of the Application received from the Company, the members of the Issuer adopted a resolution on \_\_\_\_\_, 20\_\_ (the “Preliminary Inducement Resolution”) authorizing, among other things, the \_\_\_\_\_ of the Issuer to conduct this Public Hearing with respect to the Proposed Project pursuant to Section 147(f) of the Code.

The Chief Executive Officer of the Agency caused notice of this Public Hearing to be (A) mailed on \_\_\_\_\_, 20\_\_ to the chief executive officers of the City of Albany, Albany County, and the Albany City School District and (B) published on \_\_\_\_\_, 20\_\_ in The Albany Times Union, a newspaper of general circulation available to the residents of Albany, New York. In addition, the Chief Executive Officer of the Agency caused notice of this Public Hearing to be posted on \_\_\_\_\_, 20\_\_ (A) on a public bulletin board located at the City Hall Rotunda located at 24 Eagle Street, in the City of Albany, Albany County, New York, and (B) the Agency’s website.

The comments received today at this Public Hearing will be presented to the members of the Issuer at or prior to the meeting at which the members of the Issuer will consider whether to approve the undertaking of the Project by the Issuer, the granting by the Issuer of any “financial assistance” in excess of \$100,000 with respect to the Project, and the issuance of the Obligations by the Issuer.

The comments received today at this Public Hearing will also be presented to the Mayor of the City of Albany, New York.

APPENDIX 15F

FORM OF PUBLIC HEARING SCRIPT FOR  
PROJECT INVOLVING A STRAIGHT LEASE TRANSACTION

**PUBLIC HEARING PURSUANT TO  
SECTION 859-a OF  
THE GENERAL MUNICIPAL LAW**

<b>Agency</b>	City of Albany Industrial Development Agency (the “Agency”)
<b>Project Name:</b>	_____ Project
<b>Project Beneficiary:</b>	_____ (the “Company”)
<b>Project Location:</b>	City of Albany, Albany County, New York
<b>Hearing Date:</b>	_____, 20__
<b>Hearing Time:</b>	__:__ o’clock, __.m.
<b>Hearing Location:</b>	_____

**Opening Remarks**

Good afternoon.

My name is \_\_\_\_\_, and I am the Chair of City of Albany Industrial Development Agency (the “Agency”) in connection with the project which is the subject of this public hearing.

Today we are holding this Public Hearing to allow citizens to make a statement, for the record, relating to the involvement of the Agency with a project (the “Proposed Project”) for the benefit of \_\_\_\_\_, a [state of incorporation] [type of entity] (the “Company”).

I will now ask \_\_\_\_\_, the Chief Executive Officer of the Agency, to make certain preliminary remarks with respect to the Project and to then start the public hearing.

**Introductory Comments by Chief Executive Officer**

Good Afternoon.

The Proposed Project is located at [Project Address] and consists of [Summary Description].

Copies of the notice of this Public Hearing are available on the table.

Now, unless there is any objection, I am going to suggest waiving the full reading of the notice of this Public Hearing, and instead request that the full text of the notice of this Public Hearing be inserted into the record of this Public Hearing.

I will also note that general information on the Agency’s general authority and public purpose are contained in a separate statement and it will be entered into the record.



## **Remarks by the Company**

Before we start the public hearing, I would first like to introduce the project applicant and ask him to make a brief presentation with respect to the proposed Project.

## **Open Public Hearing to the Floor for Comments**

I will now open this Public Hearing for public comment at 12:\_\_\_ o'clock, p.m.

By way of operating rules, if you wish to make a public comment, please sign-in on the appropriate sign-in sheet that has been distributed by Agency staff. I will then call on the individuals listed on the sign-in sheet in the order in which they appear on the sheet. Please wait to be recognized, once recognized, please stand and state your name, address, and affiliation for the record.

**[Unless there are a large number of citizens present who wish to comment, this paragraph may be skipped.]** Please keep your comments to five (5) minutes so that all those present today may have a chance to comment for the record. If your comments mirror those of someone who has already spoken, you may so indicate and then relinquish the podium to another speaker so that all views represented at this hearing may be heard.

When everyone has had the opportunity to speak, I will conclude this Public Hearing. A record of this Public Hearing will be prepared and reviewed by the members of the Agency in connection with the Agency's consideration of the Proposed Project.

Again, the purpose of this Public Hearing is to solicit public comment. We are not here to answer questions. However, we will in the course of this Public Hearing consider questions if we have the information to answer the questions and there is sufficient time to consider such questions.

I will now refer to the sign-in sheet to identify individuals who wish to comment on either on the nature and location of the Project Facility or the proposed Financial Assistance being contemplated by the Issuer with respect to the Proposed Project, including but not limited to the issuance of the Obligations for the purpose of assisting in financing the Proposed Project.

For the record, please state your name and indicate your comments on either the Proposed Project or the proposed "financial assistance" being contemplated by the Agency with respect to the Proposed Project.

## **Written Comments**

The notice of this Public Hearing indicated that written comments could be addressed to: Sarah Reginelli, the Chief Executive Officer of the Agency. [No] written comments have been received by the Agency prior to this Public Hearing.

### **Formal closure of the public hearing**

**[After ascertaining that there is no one else present who wishes to comment and ascertaining that at least 15 minutes has passed after the scheduled time for the hearing].**

So, if there are no further comments, I will now close this Public Hearing at \_\_: \_\_ o'clock, \_\_.m.

Thank you for attending.

## GENERAL INFORMATION

### **Legal Authorization and Powers of the Agency**

The provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York as amended, and Chapter 325 of the 1974 Laws of the State of New York, as amended, codified as Section 903-a of said General Municipal Law (collectively, the “Act”), authorize the Agency to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining and equipping and furnishing of manufacturing, warehousing, research, commercial and industrial facilities, among others.

### **Purpose of this Public Hearing**

Pursuant to Section 859-a(2) of the General Municipal Law of the State of New York (the “Act”), prior to the Agency providing any “financial assistance” (as defined in the Act) of more than \$100,000 to any project, the Agency, among other things, must hold a public hearing pursuant to Section 859-a of the Act with respect to said project. Since the proposed “financial assistance” to be provided by the Agency with respect to the Proposed Project may exceed \$100,000, then prior to providing any “financial assistance” (as defined in the Act) of more than \$100,000 to the Proposed Project, the Agency must hold a public hearing on the nature and location of the Project Facility and the proposed “financial assistance” to be provided by the Agency with respect to the Proposed Project.

After consideration of the Application received from the Company, the members of the Agency adopted a resolution on \_\_\_\_\_, 20\_\_ (the “Public Hearing Resolution”) authorizing the \_\_\_\_\_ of the Agency to conduct this Public Hearing with respect to the Proposed Project pursuant to Section 859-a(2) of the Act.

The Chief Executive Officer of the Agency caused notice of this Public Hearing to be (A) mailed on \_\_\_\_\_, 20\_\_ to the chief executive officers of the City of Albany, Albany County, and the Albany City School District and (B) published on \_\_\_\_\_, 20\_\_ in The Albany Times Union, a newspaper of general circulation available to the residents of Albany, New York. In addition, the Chief Executive Officer of the Agency caused notice of this Public Hearing to be posted on \_\_\_\_\_, 20\_\_ (A) on a public bulletin board located at the City Hall Rotunda located at 24 Eagle Street, in the City of Albany, Albany County, New York, and (B) the Agency’s website.

The comments received today at this Public Hearing will be presented to the members of the Agency at or prior to the meeting at which the members of the Agency will consider whether to approve the undertaking of the Project by the Agency and the granting by the Agency of any “financial assistance” in excess of \$100,000 with respect to the Project.

APPENDIX 15G

FORM OF LETTER OF NOTIFICATION TO  
AFFECTED TAX JURISDICTIONS

[LETTERHEAD OF CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY]

\_\_\_\_\_, 20\_\_

County Executive  
County Office Building  
112 State Street  
Albany, New York 12207,

Mayor  
City Hall  
Eagle Street  
Albany, New York 12207,

Superintendent  
City School District of Albany  
Academy Park  
Albany, New York 12207

RE: CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY  
PROPOSED [**PROJECT NAME**] PROJECT

Gentlemen:

Pursuant to Section 859-a(3) of the New York General Municipal Law (the “Act”), City of Albany Industrial Development Agency (the “Agency”) hereby informs you that the Agency has received an application (the “Application”) from [**THE COMPANY**] (the “Company”) for financial assistance in connection with a project (the “Project”) consisting of (A) (1) [**PROJECT DESCRIPTION**] (being collectively referred to as the “Project Facility”); (B) the financing of all or a portion of the costs of the foregoing by the issuance of its civic facility revenue bonds in one or more issues or series in an aggregate principal amount sufficient to pay the cost of undertaking the Project, together with necessary incidental costs in connection therewith, presently estimated to be approximately \$\_\_\_\_\_(the “Bonds”) and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency.

The financial assistance being contemplated includes exemptions from mortgage recording taxes, sales taxes and real estate taxes. The amount of the exemptions from mortgage recording taxes and sales taxes is being determined by the Agency. Pursuant to the Agency’s Uniform Tax-Exemption Policy, the Company will be exempt from paying mortgage recording taxes and sales taxes with respect to the Project. The Company will not receive any exemption from the payment of real property taxes because in accordance with the Agency’s Uniform Tax-Exemption Policy the Company is not provided with any abatement of real property taxes except as otherwise provided by New York law.

Enclosed is a notice of a public hearing to be held by the Agency relating to the proposed Project. The financial assistance being contemplated by the Agency in connection with the Project is described in said notice of hearing.

If you have any questions regarding the foregoing, please do not hesitate to contact me.

Very truly yours,

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
(Vice) Chair

Enclosure

PART 16

PUBLIC AUTHORITIES  
ACCOUNTABILITY ACT POLICIES

SECTION 1601. PURPOSE AND SCOPE. The Public Authorities Accountability Act of 2005 (chapter 766 of the laws of 2005), as amended (the “PAA Act”) contains provisions imposing various requirements on industrial development agencies. The purpose of this Part is to set forth the policies and procedures adopted by the City of Albany Industrial Development Agency (the “Agency”) to implement the PAA Act.

SECTION 1602. ORGANIZATION. This part is organized into two sections: administrative policies and administrative procedures.

SECTION 1603. ADMINISTRATIVE POLICIES. (A) List of Policies. The administrative policies adopted by the Agency to comply with the PAA Act are described as follows:

- (1) Code of Ethics Policy (A);
- (2) Compensation Policy (B);
- (3) Whistle Blower Policy (C);
- (4) Policy for Travel of Agency Members (D);
- (5) Real Property Acquisition Policy (E);
- (6) Property Disposition Policy (F);
- (7) Indemnification of Officers and Trustees Policy (G);
- (8) Audit Committee Charter (H);
- (9) Finance Committee Charter (I);
- (10) Governance Committee Charter (J);
- (11) Mission Statement (K); and

(12) Statement of Intent Regarding Debt (L).

(B) Review of Policies. The Governance Committee of the Agency shall, at least annually, review the administrative policies described in Section 1603(A) above and any other administrative policies of the Agency. The Governance Committee shall report to the members of the Agency on its review of such administrative policies and its recommendations on any modifications to such administrative policies at the annual meeting of the Agency.

(C) Copies of Policies. Copies of each of the administrative policies are attached as Schedule A –Schedule L.

(D) Existing Policies. The Agency has previously adopted the following policies that are also required under the PAA Act:

- (1) Investment Policy; and
- (2) Procurement Policy.

SECTION 1604. ADMINISTRATIVE PROCEDURES. (A) List of Administrative Procedures. The administrative procedures to be followed by the Agency to comply with the PAA Act are described as follows:

- (1) Create and maintain a web site;
- (2) Create, adopt and file an annual budget;
- (3) Prepare and file an annual report;
- (4) Review of annual independent audit by Audit Committee;
- (5) Review of Agency procedures by Governance Committee;
- (6) Board members must be independent and cannot hold certain positions;
- (7) Board members must attend training sessions;
- (8) Prepare and publish real property lists;
- (9) Create inventory controls;
- (10) Board members must file annual financial disclosure forms and acknowledgement of fiduciary duties and responsibilities forms; and
- (11) Prohibit insider loans.



(B) Review of Procedures. The Governance Committee of the Agency shall, at least annually, review the administrative procedures described in Section 1603(B) above and any other administrative procedures of the Agency. The Governance Committee shall report to the members of the Agency on its review of such administrative procedures and its recommendations on any modifications to such administrative procedures at the annual meeting of the Agency.

## SCHEDULE A

### CODE OF ETHICS POLICY

1. Generally. This Code of Ethics applies to both the members and the employees of City of Albany Industrial Development Agency (the “Agency”). The purpose of this Code of Ethics is to promote honest and ethical conduct and compliance with the law.

2. Definitions. For purposes of this section, unless the context specifically indicates otherwise:

(a) “Agency” shall mean the City of Albany Industrial Development Agency.

(b) “employee” shall mean any employee of the City of Albany Industrial Development Agency.

3. Rule With Respect to Conflicts of Interest. No member or employee of the Agency should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

4. Standards.

(a) No member or employee of the Agency should accept other employment which will impair his independence of judgment in the exercise of his official duties.

(b) No member or employee of the Agency should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

(c) No member or employee of the Agency should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

(d) No member or employee of the Agency should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

(e) No member or employee of the Agency should engage in any transaction as representative or agent of the Agency with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

(f) A member or employee of the Agency should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly

enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

(g) A member or employee of the Agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

(h) A member or employee of the Agency should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

(i) No member or employee of the Agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the Agency.

(j) If any officer or employee of the Agency shall have a financial interest, direct or indirect, having a value of ten thousand dollars (\$10,000) or more in any activity which is subject to receiving benefits from the Agency, he should file with the members of the Agency a written statement that he has such a financial interest in such activity which statement shall be open to public inspection.

5. Violations. In addition to any penalty contained in any other provision of law any such member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law.

## SCHEDULE B

### COMPENSATION POLICY

1. Generally. Members of the City of Albany Industrial Development Agency shall serve without compensation, except that members may be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their regular duties as specified in Section 858 of the Act.

2. Reimbursement. Members may be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their regular duties as specified in Section 858 of the Act. Members may not be compensated for rendering services to the Agency in any capacity other than member unless such other compensation is reasonable and is allowable under the provisions of Section 858 of the Act.

## SCHEDULE C

### WHISTLE BLOWER POLICY

1. Definitions. For purposes of this section, unless the context specifically indicates otherwise:

(a) “Employee” means an individual who performs services for and under the control and direction of an employer for wages or other remuneration.

(b) “Employer” means any person, firm, partnership, institution, corporation, or association that employs one or more employees.

(c) “Law, rule or regulation” includes any duly enacted statute or ordinance or any rule or regulation promulgated pursuant to any federal, state or local statute or ordinance.

(d) “Public body” includes the following:

(i) the United States Congress, any state legislature, or any popularly-elected local governmental body, or any member or employee thereof;

(ii) any federal, state, or local judiciary, or any member or employee thereof; or any grand or petit jury;

(iii) any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof;

or

(iv) any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer.

(e) “Retaliatory personnel action” means the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

(f) “Supervisor” means any individual with an employer's organization who has the authority to direct and control the work performance of the affected employee; or who has managerial authority to take corrective action regarding the violation of the law, rule or regulation of which the employee complains.

2. Prohibitions. An employer shall not take any retaliatory personnel action against an employee because such employee does any of the following:

(a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety;

(b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or

(c) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

3. Application. The protection against retaliatory personnel action provided by paragraph (a) of subdivision two of this section pertaining to disclosure to a public body shall not apply to an employee who makes such disclosure to a public body unless the employee has brought the activity, policy or practice in violation of law, rule or regulation to the attention of a supervisor of the employer and has afforded such employer a reasonable opportunity to correct such activity, policy or practice.

4. Violation; Remedy.

(a) An employee who has been the subject of a retaliatory personnel action in violation of this section may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within one (1) year after the alleged retaliatory personnel action was taken.

(b) Any action authorized by this section may be brought in the county in which the alleged retaliatory personnel action occurred, in the county in which the complainant resides, or in the county in which the employer has its principal place of business.

(c) It shall be a defense to any action brought pursuant to this section that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this section. It shall also be a defense that the individual was an independent contractor.

5. Relief in any action brought pursuant to subdivision four of this section, the court may order relief as follows:

(a) an injunction to restrain continued violation of this section;

(b) the reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position;

(c) the reinstatement of full fringe benefits and seniority rights;

(d) the compensation for lost wages, benefits and other remuneration; and

(e) the payment by the employer of reasonable costs, disbursements, and attorney's fees.

6. Employer Relief. A court, in its discretion, may also order that reasonable attorneys' fees and court costs and disbursements be awarded to an employer if the court determines that an action brought by an employee under this section was without basis in law or in fact.

7. Existing Rights. Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract; except that the institution of an action in accordance with this section shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, law, rule or regulation or under the common law.

## SCHEDULE D

### POLICY FOR TRAVEL OF AGENCY MEMBERS

1. Generally. It is the policy of the Agency that uniform procedures will be followed for the authorization and expenditure of funds for travel associated with Agency's business.

(a) Expenses incurred by the Agency Board members, to be reimbursed from the Agency's funds, must be approved in advance by the Board Chair. The Chair will advise the Chief Executive Officer of all requests received.

(b) All requests for reimbursement for the Chair must be approved by the members of the Agency.

(c) The Chair will inform the Chief Executive Officer or his/her designee of all Board Member pre-approved expenses.

(d) The Chief Executive Officer or his/her designee will assist the Board member, if desired, with arrangements for travel and the accompanying reimbursement procedures.



## SCHEDULE E

### REAL PROPERTY ACQUISITION POLICY

#### SECTION 1. DEFINITIONS.

(A) “Acquire” or “acquisition” shall mean acquisition of title or any other beneficial interest in personal or real property in accordance with the applicable provisions of Article 18-A of the New York State General Municipal Law.

(B) “Contracting officer” shall mean the officer or employee of the City of Albany Industrial Development Agency (hereinafter, the “Agency”) who shall be appointed by resolution to be responsible for the acquisition of property.

(C) “Property” shall mean personal property in excess of five thousand dollars (\$5,000.00) in value, and real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

#### SECTION 2. DUTIES.

(A) The Agency shall maintain adequate inventory controls and accountability systems for all property owned by the Agency and under its control.

(B) The Agency shall prepare, not less frequently than annually, a report listing all real property owned in fee by the Agency. Such report shall consist of a list and full description of all real and personal property acquired of during such period. The report shall contain the price paid by the Agency and the name of the seller for all such property acquired by the Agency during such period.

#### SECTION 3. ACQUISITION OF PROPERTY.

(A) Supervision and Direction. Except as otherwise provided herein, the duly appointed contracting officer (the “Contracting Officer”) shall have supervision and direction over the acquisition of property of the Agency. The Agency shall have the right to acquire its property for any valid corporate purpose.

(B) Appraisal Report. An independent appraiser shall be hired to provide an opinion of fair market value before the Agency shall make an offer with respect to the acquisition of the property. The appraiser should have a professional affiliation with a national appraisal organization and must not have an interest in the property (or be retained as an agent to sell the property). The appraisal report shall be in form and substance satisfactory to the Agency and shall be included in the record of the transaction.

Notwithstanding the foregoing, the preparation of an appraisal report shall not be required where the Agency is acquiring the property pursuant to a donation, or if the valuation of the property is uncomplicated and the fair market value is determined to be less than twenty-five thousand dollars (\$25,000).

(C) Method of Acquisition.

(1) Voluntary Acquisition: Unless otherwise permitted by applicable law, the Agency shall acquire property for not more than its fair market value by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Agency and/or contracting officer deems proper. The Agency may execute such documents for the acquisition of title or other interest in property and take such other action as it deems necessary or proper to acquire such property under the provisions of this section. Provided, however, the Agency may acquire property for more than its fair market value, as described in an appraisal report reviewed by the Agency, upon a finding by the Agency pursuant to resolution of the Agency that the acquisition of such property at such price is necessary for the Agency to (x) further its corporate purpose, and/or (y) avoid the expense and delay of condemnation.

(2) Condemnation: Unless otherwise prohibited by applicable law, the Agency may acquire property by condemnation. The Agency shall initiate any condemnation proceedings by resolution of the Agency and such resolution shall include findings and determinations made by the Agency in connection with the decision by the Agency to initiate such condemnation proceeding. Such findings and determinations may include the following: that the owner of the property has not responded to a reasonable offer for the acquisition of the property, that the Agency has negotiated for a reasonable amount of time with the owner of the property, and that the property is necessary to further the corporate purposes of the Agency.

(D) Validity of Deed, Bill of Sale, Lease, or Other Instrument. A deed, bill of sale, lease, or other instrument executed by or on behalf of the seller of the property and accepted by the Agency, purporting to transfer title or any other interest in property of the seller to the Agency in accordance herewith shall be conclusive evidence of compliance with the provisions of these guidelines and all applicable law insofar as concerns title or other interest of any bona fide grantor or transferor who has received valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to closing.

(E) Insurance. The Agency must ensure that all insurable real and personal property under its control is insured against physical loss or damage.

## SCHEDULE F

### PROPERTY DISPOSITION POLICY

#### SECTION 1. DEFINITIONS.

(A) “Contracting officer” shall mean the officer or employee of the City of Albany Industrial Development Agency (hereinafter, the “Agency”) who shall be appointed by resolution to be responsible for the disposition of property.

(B) “Dispose” or “disposal” shall mean transfer of title or any other beneficial interest in personal or real property in accordance with section 2897 of the New York State Public Authorities Law.

(C) “Property” shall mean personal property with a fair market value in excess of five thousand dollars (\$5,000.00) real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

#### SECTION 2. DUTIES.

(A) The Agency shall:

(i) maintain adequate inventory controls and accountability systems for all property owned by the Agency and under its control;

(ii) periodically inventory such property to determine which property shall be disposed of;

(iii) produce a written report of such property in accordance with subsection B herewith; and

(iv) transfer or dispose of such property as promptly and practicably as possible in accordance with Section 3 below.

(B) The Agency shall:

(i) publish, not less frequently than annually, a report listing all real property owned in fee by the Agency. Such report shall include a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the Agency and the name of the purchaser for all such property sold by the Agency during such period; and

(ii) shall deliver copies of such report to the Comptroller of the State of New York, the Director of the Budget of State of New York, the Commissioner of the New York

State Office of General Services, and the New York State Legislature (via distribution to the Majority Leader of the Senate and the Speaker of the Assembly).

### SECTION 3. TRANSFER OR DISPOSITION OF PROPERTY.

(A) Supervision and Direction. Except as otherwise provided herein, the duly appointed contracting officer (the "Contracting Officer") shall have supervision and direction over the disposition and sale of property of the Agency. The Agency shall have the right to dispose of its property for any valid corporate purpose.

(B) Custody and Control. The custody and control of Agency property, pending its disposition, and the disposal of such property, shall be performed by the Agency or by the Commissioner of General Services when so authorized under this section.

(C) Method of Disposition. Unless otherwise permitted, the Agency shall dispose of property for not less than its fair market value by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Agency and/or Contracting Officer deems proper. The Agency may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of this section. Provided, however, except in compliance with all applicable law, no disposition of real property, any interest in real property, or any other property which because of its unique nature is not subject to fair market pricing shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction.

(D) Sales by the Commissioner of General Services (the "Commissioner"). When the Agency shall have deemed that transfer of property by the Commissioner will be advantageous to the State of New York, the Agency may enter into an agreement with the Commissioner pursuant to which the Commissioner may dispose of property of the Agency under terms and conditions agreed to by the Agency and the Commissioner. In disposing of any such property, the Commissioner shall be bound by the terms hereof and references to the contracting officer shall be deemed to refer to such Commissioner.

(E) Validity of Deed, Bill of Sale, Lease, or Other Instrument. A deed, bill of sale, lease, or other instrument executed by or on behalf of the Agency, purporting to transfer title or any other interest in property of the Agency in accordance herewith shall be conclusive evidence of compliance with the provisions of these guidelines and all applicable law insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to closing.

(F) Bids for Disposal; Advertising; Procedure; Disposal by Negotiation; Explanatory Statement.

(i) Except as permitted by all applicable law, all disposals or contracts for disposal of property made or authorized by the Agency shall be made after publicly advertising for bids except as provided in subsection (iii).

(ii) Whenever public advertising for bids is required under subsection (i) of this Section F:

(a) the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property proposed for disposition;

(b) all bids shall be publicly disclosed at the time and place stated in the advertisement; and

(c) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Agency, price and other factors considered; provided, that all bids may be rejected at the Agency's discretion.

(iii) Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to subsections (i) and (ii) of this Section F but subject to obtaining such competition as is feasible under the circumstances, if:

(a) the personal property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value, or if the personal property is to be sold in such quantity that, if it were disposed of by bid, would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation

(b) the fair market value of the property does not exceed fifteen thousand dollars (\$15,000.00);

(c) bid prices after advertising therefore are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;

(d) the disposal will be to the state or any political subdivision or public benefit corporation, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation; or

(e) such action is otherwise authorized by law.

(G) Transfer of Property for Less than Fair Market Value. (i) The Agency may dispose of its property for less than fair market value under the following circumstances:

(1) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;

(2) the purpose of the transfer is within the purpose, mission or governing statute of the public authority; or

(3) in the event the Agency seeks to transfer an asset for less than its fair market value to other than a governmental entity, which disposal would not be consistent with the Agency's mission, purpose or governing statutes, such authority shall provide written notification thereof to the governor, the speaker of the assembly, and the temporary president of the senate, and such proposed transfer shall be subject to denial by the governor, the senate, or the assembly.

(ii) In the event that the Agency intends to carry out a disposition of its property at a price that is less than the property's fair market value, the following steps must be taken prior to the disposition:

(1) the Agency's members must be provided with the following:

(a) a full description of the asset;

(b) an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the members;

(c) a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated as are required by the transfer;

(d) a statement of the value to be received compared to the fair market value;

(e) the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (d) of this paragraph, a statement of the value to the private party; and

(f) the names of other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.

(2) Before approving the disposal of any property for less than fair market value, the members shall consider the information described in the immediately preceding paragraph (1) above and make a written determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.

H. Explanatory Statement. (i) If the Agency disposes of its property through a method other than competitive bidding, and any of the statements that follow in subsection (ii) of this Section H apply to the disposition, the Agency must prepare and deliver an explanatory statement that complies with the notice requirements set forth in Section 2897 of the New York State Public Authorities Law.

(ii) (a) the disposal involves any personal property which has an estimated fair market value in excess of fifteen thousand dollars (\$15,000.00);

(b) the disposal involves any real property that has an estimated fair market value in excess of one hundred thousand dollars (\$100,000.00), except that any real property disposed of by lease or exchange shall only be subject to clauses (c) through (4) of this subparagraph;

(c) the disposal involves any real property disposed of by lease if the estimated annual rent over the term of the lease is in excess of fifteen thousand dollars (\$15,000).

(d) the disposal involves any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

(iii) Each such statement shall be transmitted to the persons entitled to receive copies of the report required under all applicable law not less than ninety (90) days in advance of such disposal and a copy thereof shall be preserved in the files of the Agency making such disposal.

This Policy is subject to modification and amendment at the discretion of the Agency and shall be filed annually with all local and state agencies as required under all applicable law.

## SCHEDULE G

### INDEMNIFICATION OF OFFICERS AND TRUSTEES

The Agency shall indemnify every Agency member and officer against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her as a consequence of his or her being made a party to or being threatened to be made a party to any threatened, pending or contemplated civil or administrative action, suit or proceeding, by reason of his or her being or having been a member or officer of the Agency, except in such cases where he or she is adjudged guilty of willful and wanton misconduct or gross negligence in the performance of his or her duties or adjudged to have not acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interest of the Agency and its members. If a member or officer claims reimbursement or indemnification hereunder based upon settlement of a matter, he or she shall be indemnified only if the Board (with any member seeking reimbursement abstaining) approves such settlement and reimbursement as being in the best interests of the Agency and, if a majority of the members request it, such approval is based on an opinion of independent counsel supporting the propriety of such indemnification and reimbursement. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights such member or officer may have. The Board shall notify all members that it has approved an indemnification payment at least ten (10) days prior to making such payment.



## SCHEDULE H

### AUDIT COMMITTEE CHARTER

#### **Purpose**

Pursuant to the Agency's by-laws, the purpose of the Audit Committee shall be to (1) assure that the Agency's board fulfills its responsibilities for the Agency's internal and external audit process, the financial reporting process and the system of risk assessment and internal controls over financial reporting; and (2) provide an avenue of communication between management, the independent auditors, the internal auditors, and the board of directors.

#### **Powers of the Audit Committee**

It shall be the responsibility of the Audit Committee to:

Appoint, compensate, and oversee the work of any public accounting firm employed by the Agency.

Conduct or authorize investigations into any matters within its scope of responsibility.

Seek any information it requires from Agency employees, all of whom should be directed by the board to cooperate with committee requests.

Meet with Agency staff, independent auditors or outside counsel, as necessary.

Retain, at the Agency's expense, such outside counsel, experts and other advisors as the Audit Committee may deem appropriate.

The Agency board will ensure that the Audit Committee has sufficient resources to carry out its duties.

#### **Composition of Committee and Selection of Members**

The Audit Committee shall be established as set forth in and pursuant to the Agency's by-laws. The Audit Committee shall consist of at least three members of the board of directors who are independent of Agency operations. The Agency's board will appoint the Audit Committee members and the Audit Committee chair.

Audit committee members shall be prohibited from being an employee of the Agency or an immediate family member of an employee of the Agency. In addition, Audit Committee members shall not engage in any private business transactions with the Agency or receive compensation from any private entity that has material business relationships with the Agency, or be an immediate family member of an individual that engages in private business transactions with

the Agency or receives compensation from an entity that has material business relationships with the Agency.

Ideally, all members on the Audit Committee shall possess or obtain a basic understanding of governmental financial reporting and auditing.

The Audit Committee shall have access to the services of at least *one financial expert*; whose name shall be disclosed in the annual report of the Agency.

The Audit Committee's financial expert should have (1) an understanding of generally accepted accounting principles and financial statements; (2) experience in preparing or auditing financial statements of comparable entities; (3) experience in applying such principles in connection with the accounting for estimates, accruals and reserves; (4) experience with internal accounting controls and, (5) an understanding of Audit Committee functions.

### **Meetings**

The Audit Committee will meet a minimum of twice a year, with the expectation that additional meetings may be required to adequately fulfill all the obligations and duties outlined in the charter.

Members of the Audit Committee are expected to attend each committee meeting, in person or via videoconference. The Audit Committee may invite other individuals, such as members of management, auditors or other technical experts to attend meetings and provide pertinent information, as necessary. A majority of the committee members present or participating through videoconference shall constitute a quorum.

Meeting agendas will be prepared for every meeting and provided to the Audit Committee members along with briefing materials five (5) calendar days before the scheduled Audit Committee meeting. The Audit Committee will act only on the affirmative vote of a majority of the members at a meeting. Minutes of these meetings will be recorded.

The Audit Committee will meet with the Agency's independent auditor at least annually to discuss the financial statements of the Agency.

Minutes of the committee's meeting shall be prepared and filed in the records of the Agency and posted to the Agency's webpage.

Meetings of the committee are open to the public, and the committee shall be governed by the rules regarding public meetings set forth in the applicable provisions of the Public Authorities Law and Article 7 of the Public Officers Law that relate to public notice and the conduct of executive session.

## **Responsibilities**

The Audit Committee shall have responsibilities related to: (a) the independent auditor and annual financial statements; (b) the Agency's internal auditors; (c) oversight of management's internal controls, compliance and risk assessment practices; (d) special investigations and whistleblower policies; and (e) miscellaneous issues related to the financial practices of the Agency.

### **A. Independent Auditors and Financial Statements**

The Audit Committee shall:

Appoint, compensate and oversee independent auditors retained by the Agency and pre-approve all audit services provided by the independent auditor.

Establish procedures for the engagement of the independent auditor to provide permitted audit services. The Agency's independent auditor shall be prohibited from providing non-audit services unless having received previous written approval from the Audit Committee. Non-audit services include tasks that directly support the Agency's operations, such as bookkeeping or other services related to the accounting records or financial statements of the Agency, financial information systems design and implementation, appraisal or valuation services, actuarial services, investment banking services, and other tasks that may involve performing management functions or making management decisions.

Review and approve the Agency's audited financial statements, associated management letter, report on internal controls and all other auditor communications.

Review significant accounting and reporting issues, including complex or unusual transactions and management decisions, and recent professional and regulatory pronouncements, and understand their impact on the financial statements.

Meet with the independent audit firm on a regular basis to discuss any significant issues that may have surfaced during the course of the audit.

Review and discuss any significant risks reported in the independent audit findings and recommendations and assess the responsiveness and timeliness of management's follow-up activities pertaining to the same.

### **B. Internal Auditors**

The Agency may, in its absolute discretion and by resolution of the members, create and establish an internal audit procedure. In the event such an internal audit procedure is created, the Audit Committee shall:

Review with management and the internal audit director, the charter, activities, staffing and organizational structure of the internal audit function. The Audit Committee shall have authority over the appointment, dismissal, compensation and performance reviews of the internal audit director.

Ensure that the internal audit function is organizationally independent from Agency operations.

Review the reports of internal auditors, and have authority to review and approve the annual internal audit plan.

Review the results of internal audits and approve procedures for implementing accepted recommendations of the internal auditor.

### **C. Internal Controls, Compliance and Risk Assessment**

The Audit Committee shall:

Review management's assessment of the effectiveness of the Agency's internal controls and review the report on internal controls by the independent auditor as a part of the financial audit engagement.

### **D. Special Investigations**

The Audit Committee shall:

Ensure that the Agency has an appropriate confidential mechanism for individuals to report suspected fraudulent activities, allegations of corruption, fraud, criminal activity, conflicts of interest or abuse by the directors, officers, or employees of the Agency or any persons having business dealings with the Agency or breaches of internal control.

Develop procedures for the receipt, retention, investigation and/or referral of complaints concerning accounting, internal controls and auditing to the appropriate body.

Request and oversee special investigations as needed and/or refer specific issues to the appropriate body for further investigation (for example, issues may be referred to the State Inspector General or, other investigatory organization.)

Review all reports delivered to it by the Inspector General and serve as a point of contact with the Inspector General.

### **E. Other Responsibilities of the Audit Committee**

The Audit Committee shall:

Present annually to the Agency's board a report of how it has discharged its duties and met its responsibilities as outlined in the charter.

Obtain any information and training needed to enhance the committee members' understanding of the role of internal audits and the independent auditor, the risk management process, internal controls and a certain level of familiarity in financial reporting standards and processes.

Review the committee's charter annually, reassess its adequacy, and recommend any proposed changes to the board of the Agency. The Audit Committee charter will be updated as applicable laws, regulations, accounting and auditing standards change.

Conduct an annual self-evaluation of its performance, including its effectiveness and compliance with the charter and request the board approval for proposed changes.

SCHEDULE I  
FINANCE COMMITTEE CHARTER

**Purpose**

Pursuant to the Agency's bylaws, the purpose of the Finance Committee is to oversee the Agency's debt and debt practices and to recommend policies concerning the Agency's issuance and management of debt.

**Duties of the Finance Committee**

It shall be the responsibility of the Finance Committee to:

- Review proposals for the issuance of debt by the Agency and its subsidiaries and to make recommendations concerning those proposals to the board.
- Make recommendations to the board concerning the level of debt and nature of debt issued by the Agency.
- Reviewing and filing the annual budget of the Agency.
- Make recommendations concerning the appointment and compensation of bond counsel, investment advisors and underwriting firms used by the Agency, and to oversee the work performed by these individuals and firms on behalf of the Agency.
- Meet with and request information from Agency staff, independent auditors and advisors or outside counsel, as necessary to perform the duties of the committee.
- Retain, at the Agency's expense, such outside counsel, experts and other advisors as the Finance Committee may deem appropriate. The Agency board will ensure that the Finance Committee has the sufficient resources to carry out its duties.
- Review proposals relating to the repayment of debt or other long-term financing arrangements by the Agency and its subsidiaries.
- Annually review the Agency's financing guidelines contained in Schedule L of the Agency's Policy Manual and make recommendations to the board concerning criteria that should govern its financings. These should include security provisions required for a bond financing undertaking, specific requirements of credit enhancements or additional guarantees used, such as a pledge of revenues, financial covenants or debt service reserves.
- Report annually to the Agency's board how it has discharged its duties and met its responsibilities as outlined in the charter.

- Conduct an annual self-evaluation of its performance, including its effectiveness and compliance with the charter and request the board approval for proposed changes.

### **Composition of Committee and Selection of Members**

The Finance Committee shall consist of not less than three independent members of the board of directors, who shall constitute a majority on the committee. If the board has less than three independent members, non-independent members may be appointed to the committee provided that the independent members constitute a majority of the committee. The Agency's board shall appoint the Finance Committee members and the Finance Committee chair. Members shall serve on the committee at the discretion of the board. Members appointed to the committee shall have the background necessary to perform its duties.

### **Meetings**

The Finance Committee shall meet at such times as deemed advisable by the chair, but not less than twice a year. The committee must meet prior to any debt issuance planned to be undertaken by the Agency.

Members of the Finance Committee are expected to attend each committee meeting, in person or via videoconference. The Finance Committee may invite other individuals, such as members of management, auditors or other technical experts to attend meetings and provide pertinent information, as necessary. A majority of the committee members present or participating through videoconference shall constitute a quorum.

Meeting agendas shall be prepared prior to every meeting and provided to Finance Committee members along with briefing materials five (5) calendar days before the scheduled Finance Committee meeting. The Finance Committee may act only on the affirmative vote of a majority of the members. Minutes of these meetings shall be recorded.

Minutes of the committee's meeting shall be prepared and filed in the records of the Agency and posted to the Agency's webpage.

Meetings of the committee are open to the public, and the committee shall be governed by the rules regarding public meetings set forth in the applicable provisions of the Public Authorities Law and Article 7 of the Public Officers Law that relate to public notice and the conduct of executive session.

### **Review the Agency's Annual Budget**

The Finance Committee shall:

- Review the Agency's proposed annual operating budget as presented by Agency management for the upcoming fiscal year.

- Recommend the annual budget to the board for approval after incorporating necessary amendments.
- Monitor and report to the board on the Agency's compliance with its adopted budget during the fiscal year (actual versus estimated budget) on a monthly/quarterly basis.

### **Oversee the Agency's Investments**

The Finance Committee shall:

- Annually review the Agency's investment policy and evaluate allocation of assets.
- Review and recommend to the board approval of the Agency's annual investment report.
- Annually review the Agency's audit of investments as provided by independent auditors.
- Recommend to the board the selection of investment advisors.

### **Assess the Agency's Capital Requirements and Capital Plan**

The Finance Committee shall:

- Assess the financial requirements of the Agency's capital plans. The assessment is to include current and future capital needs, a justification of why such capital expenditure is required and an explanation of funding sources for capital projects such as grants, issuance of debt or specified pay-as-you-go resources.
- Review the financial aspects of major proposed transactions, significant expenditures, new programs and services, as well as proposals to discontinue programs or services and making action recommendations to the board.

### **Review Financial and Procurement Thresholds**

The Finance Committee shall:

- Review and make recommendations to the board regarding any proposed procurements submitted to the committee by the Agency's procurement officer.
- Review and recommend changes to the thresholds for procuring goods and services in the Agency's procurement policy.
- Review and recommend changes to the Agency's uniform tax exemption policy that includes general provisions for entering into payment-in-lieu-of-taxes (PILOT) agreements and allowing tax exemptions.
- Review and recommend changes to the Agency's fee schedules.



- Review the scope and terms of the Agency's insurance policies and liability coverage on an annual basis.

SCHEDULE J  
GOVERNANCE COMMITTEE CHARTER

**Purpose**

Pursuant to the Agency's by-laws, the purpose of the Governance Committee is to assist the Board by:

Keeping the Board informed of current best practices in corporate governance;

Reviewing corporate governance trends for their applicability to the Agency.

Updating the Agency's corporate governance principles and governance practices;  
and

Advising those responsible for appointing directors to the Board on the skills, qualities and professional or educational experiences necessary to be effective Board members.

**Powers of the Governance Committee**

The Board of Directors has delegated to the Governance Committee the power and authority necessary to discharge its duties, including the right to:

Meet with and obtain any information it may require from Agency staff.

Obtain advice and assistance from in-house or outside counsel, accounting and other advisors as the committee deems necessary.

Retain, at the Agency's expense, such outside counsel, experts and other advisors as the Governance Committee may deem appropriate.

The Agency board will ensure that the Governance Committee has the sufficient resources to carry out its duties.

**Composition and Selection**

The membership of the committee shall be as set forth in accordance with and pursuant to the Agency's by-laws. The members shall serve until their resignation, retirement, removal by the Board or until their successors shall be appointed and qualified. When feasible, the immediate past Governance Committee Chair will continue serving as a member of the Committee for at least one year to ensure an orderly transition.

Governance committee members shall be prohibited from being an employee of the Agency or an immediate family member of an employee of the Agency. In addition, Governance Committee members shall not engage in any private business transactions with the Agency or receive compensation from any private entity that has material business relationships with the authority, or be an immediate family member of an individual that engages in private business transactions with the Agency or receives compensation from an entity that has material business relationships with the Agency.

The Governance Committee members should be knowledgeable or become knowledgeable in matters pertaining to governance.

### **Meetings**

The Governance Committee will meet a minimum of twice a year, with the expectation that additional meetings may be required to adequately fulfill all the obligations and duties outlined in the charter.

Members of the Governance Committee are expected to attend each committee meeting, in person or via videoconference. The Governance Committee may invite other individuals, such as members of management, auditors or other technical experts to attend meetings and provide pertinent information, as necessary. A majority of the committee members present or participating through videoconference shall constitute a quorum.

Meeting agendas shall be prepared prior to every meeting and provided to Governance Committee members along with briefing materials five (5) calendar days before the scheduled Governance Committee meeting. The Governance Committee may act only on the affirmative vote of a majority of the members. Minutes of these meetings shall be recorded.

Minutes of the committee's meeting shall be prepared and filed in the records of the Agency and posted to the Agency's webpage.

Meetings of the committee are open to the public, and the committee shall be governed by the rules regarding public meetings set forth in the applicable provisions of the Public Authorities Law and Article 7 of the Public Officers Law that relate to public notice and the conduct of executive session.

### **Reports**

The Governance Committee shall:

Report its actions and recommendations to the Board at the next regular meeting of the Board.

Report to the Board, at least annually, regarding any proposed changes to the governance charter or the governance guidelines.

Provide a self-evaluation of the Governance Committee's functions on an annual basis.

### **Responsibilities**

To accomplish the objectives of good governance and accountability, the Governance Committee has responsibilities related to: (a) the Agency's Board; (b) evaluation of the Agency's policies; and (c) other miscellaneous issues.

### **Relationship to the Agency's Board**

The Board of Directors has delegated to the Governance Committee the responsibility to review, develop, draft, revise or oversee policies and practices for which the Governance Committee has specific expertise, as follows:

Develop the Agency's governance practices. These practices should address transparency, independence, accountability, fiduciary responsibilities, and management oversight.

Develop the competencies and personal attributes required of Directors to assist those authorized to appoint members to the Board in identifying qualified individuals. In addition, the Governance Committee shall:

Develop and recommend to the Board the number and structure of committees to be created by the Board.

Develop and provide recommendations to the Board regarding Board member education, including new member orientation and regularly scheduled board member training to be obtained from state-approved trainers.

Develop and provide recommendations to the Board on performance evaluations, including coordination and oversight of such evaluations of the board, its committees and senior management in the Agency's governance process.

### **Evaluation of the Agency's Policies**

The Governance Committee shall:

Develop, review on a regular basis, and update as necessary the Agency's code of ethics and written policies regarding conflicts of interest. Such code of ethics and policies shall be at least as stringent as the laws, rules, regulations and policies applicable to state officers and employees.

Develop and recommend to the Board any required revisions to the Agency's written policies regarding the protection of whistleblowers from retaliation.

Develop and recommend to the Board any required revisions to the Agency's equal opportunity and affirmative action policies.

Develop and recommend to the Board any required updates on the Agency's written policies regarding procurement of goods and services, including policies relating to the disclosure of persons who attempt to influence the Agency's procurement process.

Develop and recommend to the Board any required updates on the authority's written policies regarding the disposition of real and personal property.

Develop and recommend to the Board any other policies or documents relating to the governance of the Agency, including rules and procedures for conducting the business of the Agency's Board, such as the Agency's by-laws. The Governance Committee will oversee the implementation and effectiveness of the by-laws and other governance documents and recommend modifications as needed.

### **Other Responsibilities**

The Governance Committee shall:

Annually review, assess and make necessary changes to the Governance Committee charter and provide a self-evaluation of the Governance Committee.

## SCHEDULE K

### MISSION STATEMENT

**Name of Public Authority:** City of Albany Industrial Development Agency (the “Agency”).

**Agency’s Mission Statement:**

Assist in the enhancement and diversity of the economy of the City of Albany (the “City”) by acting in support of projects in the City that create and/or retain jobs and/or promote private sector investment utilizing the statutory powers of the Agency as set forth under the provisions of the laws of the State of New York.

**Date Adopted:** December 16, 2010.

**Agency Stakeholders:**

Agency Stakeholders include the following: (A) The Mayor of the City of Albany, (B) The members of the Albany Common Council, (C) The residents of the City of Albany, (D) The businesses located or intending to locate in the City of Albany, (E) The City of Albany School District, (F) the State of New York, and (G) local trade unions.

At a minimum, Agency Stakeholders expect the Agency’s members to carry out the business of the Agency in a manner that accomplishes its mission while strengthening the local economy.

**List of Proposed Performance Measurements:**

- A. Number of firms assisted (with cash, loans, technical assistance, problem-solving) by the Agency.
- B. Number of jobs created with help from Agency assistance.
- C. Number of jobs retained with help from Agency assistance.
- D. Capital investment made in the City (both total and private funds leveraged with public assistance).
- E. Number and dimension of efforts to support local efforts that support continued job growth and economic gains for the City.
- F. Number and dimension of efforts to support regional efforts that support continued job growth and economic gains in the region.

## SCHEDULE L

### STATEMENT OF INTENT AND FINANCING GUIDELINES REGARDING DEBT

The City of Albany Industrial Development Agency (the “Agency”) is committed to supporting projects in the City of Albany, New York that create and/or retain jobs and/or promote private sector investment. It is the general policy of the Agency to support projects that it is permitted to support under applicable NYS law, through the issuance of debt, that meet the job and investment criteria of the preceding sentence after a comprehensive review of the applicable financing application and a finding that the project will provide a substantial benefit to the residents of the City of Albany.

Debt issued by the Agency is issued for the benefit of a conduit borrower and is a special obligation of the Agency, payable solely from the credit of the conduit borrower or revenues derived from the project for which the debt was issued. Regarding debt issued by the Agency to benefit conduit borrowers and which constitute special obligations of the Agency (i.e., limited obligations payable solely from the revenues derived from the project for which the debt was issued), the Agency shall permit the issuance of such debt, subject to the requirements of federal and state law.

Any debt to be issued by the Agency to finance the actions and operations of the Agency and that will be general obligations of the Agency will be subject to financing guidelines established and adopted by the Finance Committee at that time.

In any case, debt issued by the Agency shall not be an obligation of the City of Albany, New York or the State of New York.

## PART 17

### IMPLEMENTATION OF STATE ENVIRONMENTAL QUALITY REVIEW ACT

SECTION 1701. PURPOSE AND AUTHORITY. Pursuant to the New York State Environmental Quality Review Act, being Article 8 of the Environmental Conservation Law (the “SEQR ACT”), and the statewide regulations adopted thereunder by the New York State Department of Environmental Conservation, being 6 NYCRR Part 617 (the “SEQR Regulations”), City of Albany Industrial Development Agency (the “Agency”) must examine any action proposed to be carried out, funded or approved by the Agency pursuant to Article 18-A of the General Municipal Law (the “Act”) or otherwise to determine the potential environmental significance of such proposed action. Pursuant to the SEQR Act and the SEQR Regulations, if a proposed action may have a significant effect on the environment, the Agency may not issue a decision on such action until a final environmental impact statement (“EIS”) and finding statement have been prepared with respect to such action, with certain limited exceptions. The purpose of this Part is to implement the SEQR Act and the SEQR Regulations and establish criteria for determining whether actions under consideration by the Agency may have a significant effect on the environment.

SECTION 1702. DEFINITIONS. The definitions contained in Section 8-0105 of the SEQR Act and 6 NYCRR 617.2 apply to this Part.

SECTION 1703. GENERAL RULE. The Agency will not carry out, fund, approve or issue a final decision on any action until there has been full compliance with the SEQR Act, the SEQR Regulations and this Part.

SECTION 1704. LISTS OF ACTIONS. (A) Type I. In addition to the Type I Actions listed in 6 NYCRR 617.12, the following actions are likely to require preparation of environmental impact statements (EIS’s) because they are likely to have a significant effect on the environment:

- (1) The actions identified as Type I actions in 6 NYCRR 617.12.

(B) Type II. The following actions do not have a significant effect on the environment and do not require preparation of an EIS:



(1) Contracting, including the contracting for or acceptance of professional and technical assistance or advice, or any funding or planning activities not in respect to Type I actions listed in 6 NYCRR 617.12 or in subsection (A) of this section.

(2) The adoption, amendment or repeal of the rules and regulations of the Agency.

(3) Routine or continuing administration and management of projects, not including new programs or major recording of priorities.

(4) Refinancings of existing debt and changes in existing financing documents and other documents not involving new capital construction.

(5) The actions identified as Type II actions in 6 NYCRR 617.13.

(C) Review. Pursuant to 6 NYCRR 617.4(i), any person may request the Commissioner of Environmental Conservation to review any action appearing on the Type II list in subdivision (b) of this section to determine whether it meets the criteria for Type II actions in 6 NYCRR 617.13.

SECTION 1705. INFORMATION REQUIRED OF APPLICANTS. (A) Applications. Each application shall include as a part of such reasonable information, including a completed environmental assessment form, as is deemed necessary by the Agency to assist the Agency in:

(1) determining whether an action is exempt or included;

(2) determining whether an action may have a significant effect on the environment;

(3) determining whether other agencies, including Federal agencies, have jurisdiction over the action or any portion of it; or

(4) preparation of an EIS, if required, and if prepared by the Agency.

(B) Form of Environmental Assessment Form. To assist the Agency in gathering the information deemed necessary by the Agency to assist the Agency in complying with the SEQR Act, the Agency has prepared an environmental assessment form (the "Agency EAF"), a copy of which is attached hereto as Appendix 16A. The Agency EAF shall be supplied to each applicant and, unless such requirement is waived by resolution of the members of the Agency, shall be required as part of any application to the Agency.

(C) Failure to Supply Information. No application or submission pursuant to the Act, or any other statute or regulation, shall be considered complete by the Agency until such information is submitted.

SECTION 1706. THRESHOLD DETERMINATION. As early as possible in its formulation of any action that the Agency proposes to undertake, or upon receipt of any application, notice or filing which involves an action, the Agency will determine whether the action:

- (A) is subject to the SEQR Act pursuant to the SEQR Act and the SEQR Regulations;
- (B) is an exempt or Type II action, in which case it shall have no further obligation under the SEQR Act or the SEQR Regulations;
- (C) is an excluded action; provided that, if the action is excluded because it was undertaken or approved prior to September 1, 1976, the Agency will determine whether the commissioner of Environmental Conservation will require that an EIS be prepared pursuant to Section 8-0111(5)(a)(i);
- (D) involves a Federal agency, in which case it was act pursuant to Section 8-0111(1) or (2) of the SEQR Act and 6 NYCRR 617.16; or
- (E) involves one or more other agencies, in which case it shall act pursuant to Section 8-0111(6) of the SEQR Act and 6 NYCRR 617.6.

SECTION 1707. NEGATIVE DECLARATIONS. (A) Preparation. If the Agency determines that an action is a Type I action or unlisted action subject to SEQR and will not have a significant effect upon the environment, it shall prepare and file a notice of determination that an EIS will not be prepared (“negative declaration”) and maintain written analysis and findings supporting such determination in accordance with 6 NYCRR 617.10(a) in the file referred to in subsection (B) of this section.

(B) Environmental File. In order to afford the opportunity for public notice and response, the Agency will keep a separate file, updated monthly, containing a brief description of determinations made pursuant to this section, and will incorporate reference to the negative declaration in any other notices required by law in connection with the action.

SECTION 1708. POSITIVE DECLARATIONS. (A) Preparation. If the Agency determines that a Type I or unlisted action is subject to SEQR and may have a significant effect on the environment, it shall prepare and file in the file concerning the action a notice of determination that an EIS will be prepared (“positive declaration”) and maintain written analyses and findings supporting such determination in accordance with 6 NYCRR 617.10(b) in the file referred to in section 1707(B) of this part.

(B) Environmental File. In order to provide an opportunity for public notice and response, the Agency will file positive declarations monthly in the file referred to in section 1707(B) of this part, and will incorporate reference to the positive declaration in any other notices required by law in connection with the action.

SECTION 1709. FORM AND CONTENTS OF DRAFT AND FINAL ENVIRONMENTAL IMPACT STATEMENTS. Environmental impact statements shall conform to the requirements of 6 NYCRR 617.14 as to form and content.

SECTION 1710. NOTICE OF COMPLETION OF DRAFT ENVIRONMENTAL IMPACT STATEMENT. (A) Preparation. Upon completion of a draft EIS, or upon acceptance of a draft EIS from an applicant pursuant to 6 NYCRR 617.8, the Agency shall prepare and file a notice of completion in accordance with 6 NYCRR 617.10(c).

(B) Environmental File. In order to provide an opportunity for public response, the Agency shall, in addition to the filing required by 6 NYCRR 617.10(e), file its notices of completion and draft EIS's in the file referred to in section 1708(B) of this part and will incorporate reference to them in notices required by law in connection with the action.

SECTION 1711. PUBLIC HEARING. (A) SEQR Hearings. Upon completion of the draft EIS, or upon acceptance of a draft EIS from an applicant pursuant to 6 NYCRR 617.8, the Agency shall determine whether to conduct a public hearing thereon, based upon:

- (1) the degree of interest shown by other persons in the action;
- (2) the extent to which a public hearing can aid its decision-making process by providing a forum for, or an efficient method for the collection of, public comment; and
- (3) the criteria set forth in 6 NYCRR 617.8(d).

(B) Notice of Hearing. Unless a different time period is provided by statute or regulation for the holding of a public hearing:

- (1) the notice of hearing shall be published at least 14 calendar days in advance thereof, in a newspaper of general circulation in the area of potential impacts and effects of the action; and
- (2) the hearing shall commence not less than 15 or more than 60 calendar days after the filing of the draft EIS.

(C) If the public hearing is one for which the Agency otherwise has authority to conduct, the public hearing shall be conducted according to the procedures governing such hearing. If the public hearing is not otherwise authorized, it may be conducted in the manner provided in Part 15 of these rules and regulations, or in such other manner as the Agency shall direct.

SECTION 1712. FINAL ENVIRONMENTAL IMPACT STATEMENT. (A) Time for Preparation. The final EIS shall be prepared and filed within 45 calendar days after the close of any hearing, or within 60 calendar days after the filing of the draft EIS, whichever occurs last, unless the last date for preparation and filing of the final EIS is extended by the Agency pursuant to 6 NYCRR 617.8(e)(2).

(B) Notice of Completion. The notice of completion shall conform to 6 NYCRR 617.10(g) in form and content.

(C) Notice of Withdrawal: Negative Declaration. If the action has been withdrawn, or if, on the basis of the draft EIS or hearing, the Agency determines that the action will not have a significant effect on the environment, it will not prepare a final EIS but will prepare and file a notice of withdrawal or a negative declaration, as the case may be, in accordance with 6 NYCRR 617.8(e)(1).

(D) Manner of Filing. The filing of a notice of completion of a final EIS and the filing of the final EIS itself shall take place in the same manner as a draft EIS in accordance with 6 NYCRR 617.10(g) and (h). Final EIS's and notices of completion shall also be filed in the file referred to in section 1707(B) of this part.

(E) Required Findings. Subsequent to the preparation and filing of a final EIS, the Agency shall allow agencies and the public a reasonable time period, not less than 10 calendar days, in which to consider the final EIS. A decision on action involving an applicant shall be made after the period described in the preceding sentence, but in any event within 30 calendar days following the filing of a final federal or SEQRA EIS, unless such time period for decision shall be extended by the Agency for good cause.

(F) Final Decision. No final decision whether to commence, engage in, fund or approve an action shall be made until the specific written findings and statement required by 6 NYCRR 617.9(c) or (d) are prepared and filed in accordance with 6 NYCRR 617.10 and in the file referred to in section 1607(B) of this part.

SECTION 1713. APPLICABILITY OF REGULATIONS OF THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION. The provisions of 6 NYCRR Part 617 shall govern any matters not specifically addressed in this Part.

APPENDIX 17A

ENVIRONMENTAL ASSESSMENT FORM

**CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY**

**ENVIRONMENTAL ASSESSMENT FORM**

IMPORTANT NOTICE: The answers to the questions contained in this environmental assessment form are necessary to aid City of Albany Industrial Development Agency in making the environmental decisions required in connection with your proposed project. Accordingly, all questions should be answered accurately and completely by an officer or employee of your firm who is thoroughly familiar with the proposed project, the site of the proposed project and all information available locally concerning said project and said site. This environmental assessment form is subject to acceptance by the Agency.

TO: CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY  
c/o Department of Economic Development  
21 Lodge Street  
Albany, New York 12207  
Attention: Chief Executive Officer

This Environmental Assessment Form by applicant respectfully states:

APPLICANT: \_\_\_\_\_

APPLICANT'S STREET ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_ FAX NO.: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

NAME OF PERSON(S) AUTHORIZED TO SPEAK FOR APPLICANT WITH RESPECT TO  
THIS ENVIRONMENTAL ASSESSMENT FORM: \_\_\_\_\_

IF APPLICANT IS REPRESENTED BY AN ATTORNEY, COMPLETE THE FOLLOWING:

NAME OF FIRM: \_\_\_\_\_

NAME OF ATTORNEY: \_\_\_\_\_

ATTORNEY'S STREET ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_ FAX NO.: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

NOTE: PLEASE READ THE INSTRUCTIONS ON PAGE 2 BEFORE FILLING OUT THIS  
ENVIRONMENTAL ASSESSMENT FORM.

## INSTRUCTIONS

1. The Agency will not consider an environmental assessment form complete unless, in the judgement of the Agency, said environmental assessment form contains sufficient information upon which to base a decision as to whether the action which is the subject of this environmental assessment form (the “Action”) may or will not have a significant effect upon the environment.
2. Fill in all blanks, using “none” or “not applicable” or “N/A” where the question is not appropriate to the project which is the subject of this environmental assessment form (the “Project”).
3. If an estimate is given as the answer to a question, put “(est)” after the figure or answer which is estimated.
4. If more space is needed to answer any specific question, attach a separate sheet.
5. This environmental assessment form is designed to assist in determining whether the proposed Action may have a significant effect on the environment. Please complete the entire environmental assessment form. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review.
6. It is expected that completion of this environmental assessment form will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.
7. When completed, return twelve (12) copies of this environmental assessment form to the Agency at the address indicated on the first page of this environmental assessment form.
8. Please note that Article 6 of the Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the applicant feels that there are elements of the Project which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the applicant’s competitive position, the applicant may identify such elements in writing and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law.

1. Project Number	_____
2. Date environmental assessment form ("EAF") received by Agency.	_____, 20____
3. Date referred to Attorney for review.	_____, 20____
4. Date copy of EAF mailed to members.	_____, 20____
5. Date notice of Agency meeting on EAF posted.	_____, 20____
6. Date notice of Agency meeting on EAF mailed.	_____, 20____
7. Date of Agency meeting to determine significance.	_____, 20____
8. Date Notice of Significance (or Non-Significance) mailed.	_____, 20____



## PART 1. PROJECT INFORMATION

---

### A. Identity of the Project:

1. Name of Project: \_\_\_\_\_
2. Location of the Project:
  - a. Street address: \_\_\_\_\_
  - b. City of \_\_\_\_\_
  - c. Town of \_\_\_\_\_
  - d. Village of \_\_\_\_\_
  - e. County of \_\_\_\_\_
3. Identity of Owner (if different than the Applicant):
  - a. Name of Owner: \_\_\_\_\_
  - b. Street Address of Owner: \_\_\_\_\_
  - c. City: \_\_\_\_\_ State: \_\_\_\_\_ Phone Number: \_\_\_\_\_
  - d. Name of Person authorized to speak for owner with respect to this environmental assessment form: \_\_\_\_\_
4. Description of the Project: (Please provide a brief narrative description of the Project or the Action).

### B. Description of the Project Site: (Physical setting of overall project, both developed and undeveloped areas)

1. Present land use (indicate each applicable use): Urban \_\_\_\_, Industrial \_\_\_\_, Commercial \_\_\_\_, Suburban \_\_\_\_, Rural \_\_\_\_, Forest \_\_\_\_, Agriculture \_\_\_\_, Other: \_\_\_\_\_.
2. Total acreage of project area: \_\_\_\_\_ acres.

<u>Approximate Acreage</u>	<u>Presently</u>	<u>After Completion</u>
Meadow or Brushland (Non-agricultural)	_____ acres	_____ acres
Forested	_____ acres	_____ acres
Agricultural (Includes orchards, cropland, pasture, etc.)	_____ acres	_____ acres
Wetland (Freshwater or tidal as per Articles 24, 25 of ECL)	_____ acres	_____ acres
Water Surface Area	_____ acres	_____ acres
Unvegetated (rock, earth or fill)	_____ acres	_____ acres
Roads, buildings and other paved surfaces	_____ acres	_____ acres
Other (indicate type)	_____ acres	_____ acres

3. What is predominant soil type(s) on the Project site? \_\_\_\_\_  
 \_\_\_\_\_
- a. Soil drainage: Well drained: \_\_\_\_\_% of site  
 Moderately well drained: \_\_\_\_\_% of site  
 Poorly drained: \_\_\_\_\_% of site
- b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? \_\_\_\_\_ acres (See 1 NYCRR 370).
4. a. Are there bedrock outcroppings on project site? Yes\_\_\_\_; No\_\_\_\_.
- b. What is depth to bedrock? \_\_\_\_\_ (in feet).
5. Approximate percentage of proposed project site with slopes:
- a. 0-10%: \_\_\_\_\_%
- b. 10-15%: \_\_\_\_\_%
- c. 15% or greater: \_\_\_\_\_%
6. Is the Project contiguous to, or does it contain, a building, site or district listed on the National Register of Historic Places? Yes\_\_\_\_; No\_\_\_\_.
7. Is the Project substantially contiguous to a site listed on the Register of National Natural Landmarks? Yes\_\_\_\_; No\_\_\_\_.
8. What is the depth to the water table? \_\_\_\_\_ (in feet).
9. Is the site of the Project located over a primary, principal or sole source aquifer? Yes\_\_\_\_; No\_\_\_\_.

10. Do hunting, fishing or shell fishing opportunities presently exist in the area of the Project? Yes\_\_\_\_; No\_\_\_\_.
11. Does the site of the Project contain any species of plant or animal life that is identified as threatened or endangered? Yes\_\_\_\_; No\_\_\_\_. According to \_\_\_\_\_  
\_\_\_\_\_  
If yes, identify each species: \_\_\_\_\_  
\_\_\_\_\_
12. Are there any unique or unusual land forms on the site of the Project? (i.e. cliffs, dunes, other geological formations) Yes\_\_\_\_; No\_\_\_\_. If yes, describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
13. Is the site of the Project presently used by the community or neighborhood as an open space or recreation area? Yes\_\_\_\_; No\_\_\_\_. If yes, describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
14. Does the site of the Project offer or include scenic views or vistas known to be important to the community? Yes\_\_\_\_; No\_\_\_\_. If yes, describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
15. Are there any streams within or contiguous to the site of the Project? Yes\_\_\_\_; No\_\_\_\_. If yes, please indicate the name of such stream and the name of the river to which such stream is tributary: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
16. Are there any lakes, ponds, or wetlands areas within or contiguous to the site of the Project? Yes\_\_\_\_; No\_\_\_\_. If yes, please indicate:  
a. Name \_\_\_\_\_  
b. Size (in acres) \_\_\_\_\_
17. Is the site of the Project served by existing public utilities? Yes\_\_\_\_; No\_\_\_\_.  
a. If yes, does sufficient capacity exist to allow connection? Yes\_\_\_\_; No\_\_\_\_.  
b. If yes, will improvements be necessary to allow connection? Yes\_\_\_\_; No\_\_\_\_.

18. Is the site of the Project located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? Yes\_\_\_\_; No\_\_\_\_. If yes, identify: \_\_\_\_\_
19. Is the site of the Project located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL and 6 NYCRR Part 617? Yes\_\_\_\_; No\_\_\_\_. If yes, describe: \_\_\_\_\_
20. Has the site of the Project ever been used for the disposal of solid or hazardous wastes? Yes\_\_\_\_; No\_\_\_\_. If yes, describe: \_\_\_\_\_

C. Project Description:

1. Physical dimensions and scale of the Project (fill in dimensions as appropriate):

- a. Total contiguous acreage owned by project sponsor: \_\_\_\_\_ acres.
- b. Project acreage developed: \_\_\_\_\_ acres initially; \_\_\_\_\_ acres ultimately.
- c. Project acreage to remain undeveloped: \_\_\_\_\_ acres.
- d. Length of project, in miles: \_\_\_\_\_ (if appropriate).
- e. If project is an expansion, indicate percent of expansion proposed: \_\_\_\_\_%.
- f. Number of off-street parking spaces existing: \_\_\_\_\_; proposed \_\_\_\_\_.
- g. Maximum vehicular trips generated per hour: \_\_\_\_\_ (upon completion of project).
- h. If residential: Number and type of housing units:

	<u>One Family</u>	<u>Two Family</u>	<u>Multiple Family</u>	<u>Condominium</u>
Initial	_____	_____	_____	_____
Ultimate	_____	_____	_____	_____

- i. Dimensions (in feet) of largest proposed structure: \_\_\_\_\_ height; \_\_\_\_\_ width; \_\_\_\_\_ length.

- j. Linear feet of frontage along a public thoroughfare that the Project will occupy is? \_\_\_\_ ft.
2. How much natural material (i.e. rock, earth, etc.) will be removed from the site of the Project? \_\_\_\_\_ tons; \_\_\_\_\_ cubic yards.
3. Will disturbed areas be reclaimed? Yes \_\_\_\_; No \_\_\_\_; \_\_\_\_\_ N/A
- a. If yes, for what intended purpose is the site of the Project being reclaimed? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- b. Will topsoil be stockpiled for reclamation? Yes \_\_\_\_; No \_\_\_\_.
- c. Will upper subsoil be stockpiled for reclamation? Yes \_\_\_\_; No \_\_\_\_.
4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from the site of the Project? \_\_\_\_\_ acres.
5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by the Project? Yes \_\_\_\_; No \_\_\_\_.
6. If single phase project: Anticipated period of construction: \_\_\_\_\_ months (including demolition).
7. If multi-phased project:
- a. Total number of phases anticipated: \_\_\_\_\_.
- b. Anticipated date of commencement of phase one: \_\_\_\_\_ month  
\_\_\_\_\_ year (including demolition).
- c. Approximate completion date of final phase: \_\_\_\_\_ month \_\_\_\_\_  
year.
- d. Is phase one financially dependent on subsequent phases? Yes \_\_\_\_; No \_\_\_\_.
8. Will blasting occur during construction? Yes \_\_\_\_; No \_\_\_\_.
9. Number of jobs generated: during construction: \_\_\_\_\_; after the Project is complete: \_\_\_\_\_.
10. Number of jobs eliminated by the Project: \_\_\_\_\_.

11. Will the Project require relocation of any projects or facilities? Yes\_\_\_\_; No\_\_\_\_. If yes, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
12. Is surface liquid waste disposal involved? Yes\_\_\_\_; No\_\_\_\_.
- a. If yes, indicate type of waste (sewage, industrial, etc.) and amount: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- b. Name of water body into which effluent will be discharged: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
13. Will the Project involve the disposal of subsurface liquid waste? Yes\_\_\_\_; No\_\_\_\_. If yes, indicate type of waste (sewage, industrial, etc.) and amount: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
14. Will surface area of an existing lake, pond, stream, bay or other body of water be increased or decreased by the Project? Yes\_\_\_\_; No\_\_\_\_. If yes, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
15. Is the Project or any portion of the Project located in the 100-year flood plain? Yes\_\_\_\_; No\_\_\_\_. If yes, describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
16. Will the Project generate solid waste? Yes\_\_\_\_; No\_\_\_\_.
- a. If yes, what is the amount per month? \_\_\_\_\_ tons.
- b. If yes, will an existing solid waste facility be used? Yes\_\_\_\_; No\_\_\_\_. If yes, give name: \_\_\_\_\_  
location: \_\_\_\_\_
- c. Will any wastes not go into a sewage disposal system or into a sanitary landfill? Yes\_\_\_\_; No\_\_\_\_. If yes, explain: \_\_\_\_\_  
\_\_\_\_\_
17. Will the Project involve the disposal of solid waste? Yes\_\_\_\_; No\_\_\_\_.
- a. If yes, what is anticipated rate of disposal? \_\_\_\_\_ tons/month.

- b. If yes, what is the anticipated life of the proposed disposal site identified in question 16 above: \_\_\_\_\_ years.
- c. Will any wastes not go into a sewage disposal system or into a sanitary landfill? Yes\_\_\_\_; No\_\_\_\_. If yes, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
18. Will the Project use herbicides or pesticides? Yes\_\_\_\_; No\_\_\_\_. If yes, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
19. Will the Project routinely produce odors (more than one hour per day)? Yes\_\_\_\_; No\_\_\_\_. If yes, explain: \_\_\_\_\_  
\_\_\_\_\_
20. Will the Project produce operating noise exceeding the local ambient noise levels? Yes\_\_\_\_; No\_\_\_\_. If yes, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
21. Will the Project result in an increase in energy use? Yes\_\_\_\_; No\_\_\_\_. If yes, indicate type(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
22. If water supply for the Project is from wells, indicate pumping capacity: \_\_\_\_\_ gallons/minute.
23. Total anticipated water use of the Project per day: \_\_\_\_\_ gallons/day.
24. Does the Project involve local, state or federal funding? Yes\_\_\_\_; No\_\_\_\_. If yes, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

D. Zoning and Planning Information:

1. Does proposed action involve a planning or zoning decision? Yes\_\_\_\_; No\_\_\_\_. If yes, indicate decision required: \_\_\_\_\_ zoning amendment; \_\_\_\_\_ zoning variance; \_\_\_\_\_ special use permit; \_\_\_\_\_ subdivision; \_\_\_\_\_ site plan; \_\_\_\_\_ new/revision of master plan; \_\_\_\_\_ resource management plan; other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. What is the present zoning classification(s) of the site of the Project? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. What is the maximum potential development of the site of the Project if developed as permitted by the present zoning? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. What is the proposed zoning of the site of the Project? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. What is the maximum potential development of the site of the Project if developed as permitted by the proposed zoning? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Is the proposed action consistent with the recommended uses in adopted local land use plans? Yes\_\_\_\_; No\_\_\_\_. If no, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. What are the predominant land use(s) and zoning classification(s) within a 1/4 mile radius of the proposed action? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. Is the proposed action compatible with adjoining/surrounding land uses within a 1/4 mile? Yes\_\_\_\_; No\_\_\_\_. If no, explain: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. If the proposed action is the subdivision of land, how many lots are proposed? \_\_\_\_\_. What is the minimum lot size proposed? \_\_\_\_\_
10. Will the proposed action require any authorization(s) for the formation of sewer or water districts? Yes\_\_\_\_; No\_\_\_\_. If yes, explain: \_\_\_\_\_  
\_\_\_\_\_
11. Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)? Yes\_\_\_\_; No\_\_\_\_. If yes, is existing capacity sufficient to handle projected demand? Yes\_\_\_\_; No\_\_\_\_.



12. Will the proposed action result in the generation of traffic significantly above present levels? Yes\_\_\_\_; No\_\_\_\_. If yes, is the existing road network adequate to handle the additional traffic? Yes\_\_\_\_; No\_\_\_\_.

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## PART 2. OTHER INVOLVED AGENCIES

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GENERAL INFORMATION: Please indicate in the space below all other local agencies, boards, authorities, districts, commissions or governing bodies (including any city, county and other political subdivision of the State of New York and all state departments, agencies, boards, public benefit corporations, public authorities or commissions) involved in approving or funding or directly undertaking action with respect to the Project. For example, do you need a municipal building permit to undertake the Project? Do you need a zoning approval to undertake the Project? If so, you would list the appropriate municipal building department or planning or zoning commission which would give said approvals. Since only those agencies notified of an environmental determination are bound thereby, it is to the applicant's advantage to ascertain, exercising all due diligence, all other agencies involved with the Project.

1. Federal action required:

- a. Is any federal permit required in connection with the Project? Yes\_\_\_\_; No\_\_\_\_.
- b. Does the Project involve any federal funding? Yes\_\_\_\_; No\_\_\_\_.
- c. Does the Project involve any district action by any federal agency? Yes\_\_\_\_; No\_\_\_\_.
- d. If the answer to any of the foregoing is yes, please describe briefly: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. State or local action required:

- a. Is any state or local permit required in connection with the Project? Yes\_\_\_\_; No\_\_\_\_.
- b. Does the Project involve any state or local funding? Yes\_\_\_\_; No\_\_\_\_.
- c. Does the Project involve any district action by any state or local agency? Yes\_\_\_\_; No\_\_\_\_.
- d. If the answer to any of the foregoing is yes, please describe briefly: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. List of governmental action required:

	<u>Action Required</u>		<u>Submittal</u>	<u>Approval</u>
	<u>(Yes, No)</u>	<u>If yes, Type</u>	<u>Date</u>	<u>Date</u>
City, Town, Village Board	_____	_____	_____	_____
City, Town, Village Planning Board	_____	_____	_____	_____
City, Town, Zoning Board	_____	_____	_____	_____
City, County Health Department	_____	_____	_____	_____
Other local agencies	_____	_____	_____	_____
Other regional agencies	_____	_____	_____	_____
State Agencies	_____	_____	_____	_____
Federal Agencies	_____	_____	_____	_____

---

### PART 3. TYPE ONE CHECKLIST

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GENERAL INFORMATION: The following items describe various actions which may be involved with a project. Please indicate which items describe action which may be undertaken with respect to the Project for which you are seeking assistance from the Agency by writing the word "Yes" in the blank provided preceding each item which describes action which may be taken with respect to the Project. Note that most capital projects consist of a set of activities or steps (i.e. planning, design, contracting, construction and operation). For purposes of answering this part, answer YES if the listed activity will probably occur with respect to the Project, even if such activity will be undertaken by someone else other than the Agency. ANSWER ALL QUESTIONS.

A. Will the Project involve action which takes place wholly or partially within or substantially contiguous to any of the following:

- \_\_\_\_\_ (1) Publicly owned or operated parkland, recreation area or designated open space, including any site on the Register of National Natural Landmarks (see 36CFR part 62, 1986).
- \_\_\_\_\_ (2) Any critical environmental area designated by any local or state agency pursuant to 6NYCRR 617.4(h).
- \_\_\_\_\_ (3) Any building, structure, facility, site or district listed on the National Register of Historic Places (see 36CFR part 62, 1986) or that has been proposed by the New York State Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in said National Register, or that is listed on the State Register of Historic Places.
- \_\_\_\_\_ (4) An agricultural district certified pursuant to Article 25 of the Agricultural and Markets Law of the State of New York.

B. Does the Project include any of the following types of actions?

- \_\_\_\_\_ (1) Adoption by a municipality of a land use plan or the initial adoption of comprehensive zoning regulations.
- \_\_\_\_\_ (2) Adoption by any agency of a comprehensive resource management plan.
- \_\_\_\_\_ (3) Adoption of changes in the allowable uses within any zoning district.
- \_\_\_\_\_ (4) The granting of a zoning change.

\_\_\_\_\_ (5) Acquisition, sale, lease, annexation or other transfer of one hundred (100) or more contiguous acres of land by a state or local government or agency thereof.

\_\_\_\_\_ (6) Any structure exceeding one hundred (100) feet above original ground level.

C. Does the Project or Action meet or exceed any of the following thresholds:

\_\_\_\_\_ (1) A project or action which involves the physical alteration of ten (10) acres.

\_\_\_\_\_ (2) A project or action which would use ground or surface water in excess of two million (2,000,000) gallons per day.

\_\_\_\_\_ (3) Parking for one thousand (1,000) vehicles.

\_\_\_\_\_ (4) A facility with more than one hundred thousand (100,000) square feet of gross floor area.

D. Does the Project involve the expansion of existing non-residential facilities by more than fifty (50) percent of any of the following thresholds:

\_\_\_\_\_ (1) A project or action which involves the physical alteration of ten (10) acres.

\_\_\_\_\_ (2) A project or action which would use ground or surface water in excess of two million (2,000,000) gallons per day.

\_\_\_\_\_ (3) Parking for one thousand (1,000) vehicles.

\_\_\_\_\_ (4) A facility with more than one hundred thousand (100,000) square feet of gross floor area.

E. Does the Project involve the construction of new residential facilities which meet or exceed any of the following thresholds:

\_\_\_\_\_ (1) Ten (10) units in a municipality which has not adopted zoning or subdivision regulations.

\_\_\_\_\_ (2) Fifty (50) units not to be connected (at commencement of habitation) to existing community or public water and sewerage systems, including sewage treatment works.

\_\_\_\_\_ (3) Two hundred fifty (250) units to be connected (at commencement of habitation) to existing community or public water and sewerage systems, including sewage treatment works.

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## PART 4. ACTION CHECKLIST

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GENERAL INFORMATION: Please indicate whether any of the following impacts may be reasonably expected to result from the Project. Please indicate which items describe action which may be undertaken with respect to the Project for which you are seeking assistance from the Agency by writing the word "Yes" in the blank provided preceding each item which describes action which may be taken with respect to the project and by writing the word "No" in the blank provided preceding each item which does not describe action which may be taken with respect to the Project.

1. Will the Project result in a significant adverse change in the existing:

\_\_\_\_\_ (a) air quality.

\_\_\_\_\_ (b) ground or surface water quality or quantity.

\_\_\_\_\_ (c) traffic or noise levels.

If so, please explain very briefly: \_\_\_\_\_

\_\_\_\_\_

2. Will the Project create a substantial increase in:

\_\_\_\_\_ (a) solid waste production.

\_\_\_\_\_ (b) potential for drainage problems.

\_\_\_\_\_ (c) potential for erosion problems.

\_\_\_\_\_ (d) potential for flooding problems.

\_\_\_\_\_ (e) potential for leaching problems.

If so, please explain very briefly: \_\_\_\_\_

\_\_\_\_\_

3. Will the Project result in:

\_\_\_\_\_ (a) the removal or destruction of large quantities of vegetation or fauna.

\_\_\_\_\_ (b) substantial interference with the movement of any resident or migratory fish or wildlife species.

\_\_\_\_\_ (c) impacts on a significant habitat area.

\_\_\_\_\_ (d) substantial adverse effects on a threatened or endangered species of animal or plant or the habitat of such a species.

\_\_\_\_\_ (e) other significant adverse effects to natural resources.

If so, please explain very briefly: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. \_\_\_\_\_ Will the Project encourage or attract a large number of people to a place or places for more than a few days compared to the number of people who would come to such place if the Project was not in existence?

If so, please explain very briefly: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. \_\_\_\_\_ Will the Project create a material conflict with a community's existing plans or goals as officially approved or adopted?

If so, please explain very briefly: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. \_\_\_\_\_ Will the Project impair the character or quality of important historical, archaeological, architectural or aesthetic resources?

If so, please explain very briefly: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. \_\_\_\_\_ Will the Project result in a major change in either the quantity or type of energy currently used?

If so, please explain very briefly: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. \_\_\_\_\_ Will the Project create or produce anything which is or can be a hazard to human health or safety?

If so, please explain very briefly: \_\_\_\_\_

\_\_\_\_\_

9. \_\_\_\_\_ Will the Project result in a change in the use, or intensity of use, of land (including agricultural, open space or recreational resources), or in their capacity to support existing uses?

If so, please explain very briefly: \_\_\_\_\_

\_\_\_\_\_

10. \_\_\_\_\_ Will the Project create a material demand for other governmental actions or projects which will result in one of the above consequences?

If so, please explain very briefly: \_\_\_\_\_

\_\_\_\_\_

11. \_\_\_\_\_ Will the Project result in changes in two or more elements of the environment, such as those listed above, no one of which has a significant effect on the environment, but when considered together result in a substantial adverse impact on the environment?

If so, please explain very briefly: \_\_\_\_\_

\_\_\_\_\_



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## PART 5. PROJECT IMPACTS AND THEIR MAGNITUDE

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**GENERAL INFORMATION:** In completing this part, the reviewer should be guided by the question: Have my responses and determinations been reasonable? The reviewer is not expected to be an expert environmental analyst.

1. Identifying that an effect will be potentially large (column 2) does not mean that it is also necessarily significant. Any large effect must be evaluated in PART 6 to determine significance. By identifying an effect in column 2 simply asks that it be looked at further.

2. The Examples provided are to assist the reviewer by showing types of effects and wherever possible the threshold of magnitude that would trigger a response in column 2. The examples are generally applicable throughout the State and for most situations. But, for any specific project or site, other examples and/or lower thresholds may be more appropriate for a Potential Large Impact rating.

3. The impacts of each project, on each site, in each locality, will vary. Therefore, the examples are illustrative and have been offered as guidance. They do not constitute an exhaustive list of impacts and thresholds to answer each question.

4. The number of examples per question does not indicate the importance of each question.

5. In identifying impacts, consider long-term, short-term and cumulative effects.

6. Answer each of the 19 questions in this part. Answer Yes if there will be any effect.

7. Maybe answers should be considered as Yes answers.

8. If answering Yes to a question, then check the appropriate box (column 1 or 2) to indicate the potential size of the impact. If impact threshold equals or exceeds any example provided, check column 2. If impact will occur but threshold is lower than example, check column 1.

9. If reviewer has doubt about the size of the impact, consider the impact as potentially large and proceed to PART 6.

10. If a potentially large impact or effect can be reduced by change(s) in the project to a small to moderate magnitude, place a Yes in column 3. A No response indicates that such a reduction is not possible. This must be explained in PART 6.

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
<b>IMPACT ON LAND</b>			
1. Will the Project result in a physical change to the site of the Project?  Yes ____; No ____.			
<b>Examples</b> that would apply to column 2			
* Any construction on slopes of 15% or greater (15 foot rise per 100 foot of length), or where the general slopes in the project area exceed 10%.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Construction on land where the depth to the water table is less than 3 feet.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Construction of paved parking area for 1,000 or more vehicles.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Construction on land where bedrock is exposed or generally within 3 feet of existing ground surface.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Construction that will continue for more than 1 year or involve more than one phase or stage.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Excavation for mining purposes that would remove more than 1,000 tons of natural material (i.e. rock or soil) per year.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Construction or expansion of a sanitary landfill.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Construction in a designated floodway.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
2. Will there be an effect to any unique or unusual land forms found on the site? (i.e. cliffs, dunes, geological formations, etc.) Yes ____; No ____.			
* Specific land forms: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
<b>IMPACT ON WATER</b>			
3. Will the Project affect any water body designated as protected (Under Articles 15, 24, 25 or the Environmental Conservation Law, ECL)? Yes____; No____.			
<b>Examples</b> that would apply to column 2			
* Developable area of site contains a protected water body.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Dredging more than 100 cubic yards of material from channel of a protected stream.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Extension of utility distribution facilities through a protected water body.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Construction in a designated freshwater or tidal wetland.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts:_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
4. Will the Project affect any non-protected existing or new body of water? Yes____; No____.			
<b>Examples</b> that would apply to column 2			
* A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Construction of a body of water that exceeds 10 acres of surface area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts:_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
5. Will the Project affect surface or groundwater quality or quantity? Yes____; No____.			

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
<b>Examples</b> that would apply to column 2			
* Project will require a discharge permit.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project requires use of a source of water that does not have approval to serve the Project.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project requires water supply from wells with greater than 45 gallons per minute pumping capacity.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Construction or operation causing any contamination of a public water supply system.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will adversely affect groundwater.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Liquid effluent will be conveyed off the site to facilities which presently do not exist or have inadequate capacity.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project would use water in excess of 20,000 gallons per day.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will likely cause siltation or other discharge into an existing body of water to the extent that there will be an obvious visual contrast to natural conditions.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will require the storage of petroleum or chemical products greater than 1,100 gallons.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will allow residential uses in areas without water and/or sewer services.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project locates commercial and/or industrial uses which may require new or expansion of existing waste treatment and/or storage facilities.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
6. Will Project alter drainage flow, patterns or surface water runoff? Yes ____; No ____.			

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
<b>Examples</b> that would apply to column 2			
* Project would change flood water flows	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project may cause substantial erosion.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project is incompatible with existing drainage patterns.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will allow development in a designated floodway.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>IMPACT ON AIR</b>			
7. Will project affect air quality? Yes____; No____.			
<b>Examples</b> that would apply to column 2			
* Project will induce 1,000 or more vehicle trips in any given hours.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will result in the incineration of more than 1 ton of refuse per hour.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Emission rate of total contaminants will exceed 5 lbs. per hour or a heat source producing more than 10 million BTU's per hr.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will allow an increase in the amount of land committed to industrial use.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will allow an increase in the density of industrial development within existing industrial areas.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
<b>IMPACT ON PLANTS AND ANIMALS</b>			
8. Will the Project affect any threatened or endangered species? Yes ____; No ____.			
<b>Examples</b> that would apply to column 2			
* Reduction in one or more species listed on the New York or Federal list, using the site, over or near site or found on the site.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Removal of any portion of a critical or significant wildlife habitat.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Application of pesticide or herbicide more than twice a year other than for agricultural purposes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
9. Will the project substantially affect non-threatened or non-endangered species? Yes ____; No ____.			
<b>Examples</b> that would apply to column 2			
* Project would substantially interfere with any resident or migratory fish, shellfish or wildlife species.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project requires the removal of more than 10 acres of mature forest (over 100 years in age) or other locally important vegetation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>IMPACT ON AGRICULTURAL LAND RESOURCES</b>			
10. Will the Project affect agricultural land resources? Yes ____; No ____.			
<b>Examples</b> that would apply to column 2			
* Project would sever, cross or limit access to agricultural land (includes cropland, hayfields, pastures, vineyard, orchard, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
* Construction activity would excavate or compact the soil profile of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project would irreversibly convert more than 10 acres of agricultural land or, if located in an Agricultural District, more than 2.5 acres of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project would disrupt or prevent installation of agricultural land management systems (e.g., subsurface drain lines, outlet ditches, strip cropping); or create a need for such measures (e.g. cause a farm field to drain poorly due to increased runoff).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>IMPACT ON AESTHETIC RESOURCES</b>			
11. Will the Project affect aesthetic resources? Yes____; No____.			
<b>Examples</b> that would apply to column 2			
* Proposed land uses, or project components, obviously different from or in sharp contrast to current surrounding land use patterns, whether man-made or natural.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Proposed land uses, or project components, visible to users of aesthetic resources which will eliminate or significantly reduce their enjoyment of the aesthetic qualities of that resource.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project components that will result in the elimination or significant screening of scenic views or vistas known to be important to the area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
<b>IMPACT ON HISTORIC AND ARCHAEOLOGICAL RESOURCES</b>			
12. Will the Project impact any site or structure of historic, pre-historic or paleontological importance? Yes____; No____.			
<b>Examples</b> that would apply to column 2			
* Project occurring wholly or partially within or contiguous to any facility or site listed on the State or National Register of historic places.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Any impact to an archaeological site or fossil bed located within the Project site.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will occur in an area designated as sensitive for archaeological sites on the NYS Site Inventory.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other Impacts: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>IMPACT ON OPEN SPACE AND RECREATION</b>			
13. Will the Project affect the quantity or quality of existing or future open spaces or recreational opportunities? Yes____; No____.			
<b>Examples</b> that would apply to column 2			
* The permanent foreclosure of a future recreational opportunity.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* A major reduction of an open space important to the community.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>IMPACT ON TRANSPORTATION</b>			
14. Will there be an effect to existing transportation systems? Yes____; No____.			
<b>Examples</b> that would apply to column 2			



	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
* Alteration of present patterns of movement of people and/or goods.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will result in major traffic problems.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>IMPACT ON ENERGY</b>			
15. Will the Project affect the community's sources of fuel or energy supply? Yes____; No____.			
<b>Examples</b> that would apply to column 2			
* Project will cause a greater than 5% increase in the use of any form of energy in the municipality.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two family residences or to serve a major commercial or industrial use.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>NOISE AND ODOR IMPACTS</b>			
16. Will there be objectionable odors, noise or vibration as a result of the Project? Yes____; No____.			
<b>Examples</b> that would apply to column 2			
* Blasting within 1,500 feet of a hospital, school or other sensitive facility.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Odors will occur routinely (more than one hour per day).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will produce operating noise exceeding the local ambient noise levels for noise outside of structures.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
* Project will remove natural barriers that would act as a noise screen.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>IMPACT ON PUBLIC HEALTH</b>			
17. Will the Project affect public health and safety? Yes____; No____.			
<b>Examples</b> that would apply to column 2			
* Project may cause a risk of explosion or release of hazardous substances (i.e. oil, pesticides, chemicals, radiation, etc.) in the event of accident or upset conditions, or there may be a chronic low level discharge or emission.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project may result in the burial of “hazardous wastes” (i.e. toxic, poisonous, highly reactive, radioactive, irritating, infectious, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Storage facilities for one million or more gallons of liquefied natural gas or other flammable liquids.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project may result in the excavation or other disturbance within 2,000 feet of a site used for the disposal of solid or hazardous waste.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>IMPACT ON GROWTH AND CHARACTER OF COMMUNITY OR NEIGHBORHOOD</b>			
18. Will the Project affect the character of the existing community? Yes____; No____.			
<b>Examples</b> that would apply to column 2			

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
* The permanent population of the city, town or village in which the project is located is likely to grow by more than 5%.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* The municipal budgets for capital expenditures or operating services will increase by more than 5% per year as a result of this project.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will conflict with officially adopted plans or goals.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will cause a change in the density of land use.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will replace or eliminate existing facilities, structures or areas of historic importance to the community.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Development will create a demand for additional community services (e.g. schools, police, fire, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will set an important precedent for future projects.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Project will create or eliminate employment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Other impacts: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
19. Is there, or is there likely to be, public controversy concerning the Project? Yes____; No____.			
<b>Examples</b> that would apply to column 2			
* Either government or citizens of adjacent communities have expressed opposition or rejected the Project or have not been contacted.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
* Objections to the Project from within the community.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO

## PART 6. DISCUSSION OF ENVIRONMENTAL IMPACTS

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GENERAL INFORMATION: If there are or may be any environmental impacts associated with this proposed Project, please discuss such impacts and the measures which may be taken to mitigate or avoid any adverse impacts associated with this Project. ALL IMPACTS OR EFFECTS IDENTIFIED AS POTENTIALLY LARGE IN COLUMN 2 OF PART 5 OF THIS ENVIRONMENTAL ASSESSMENT FORM MUST BE DESCRIBED IN THIS PART, EVEN IF THE IMPACT(S) MAY BE MITIGATED. Please answer the following questions briefly but fully. Use additional paper if needed.

1. Describe the Project and its environmental setting:
2. Describe the environmental impact of the Project, including short term and long term effects:
3. Describe any adverse environmental effects which cannot be avoided should the project be implemented:
4. With respect to any potentially large impacts identified in Column 2 of Part 5, please indicate whether it is reasonable to conclude that these impacts are important, taking into consideration the following, (a) the probability of the impact occurring; (b) the duration of the impact; (c) the irreversibility of the impact, including permanently lost resources of value; (d) whether the impact can or will be controlled; (e) the regional consequences of the impact; (f) the potential divergence of the impact from local needs and goals; and (g) whether known objections to the Project apply to this impact:
5. Describe alternatives, if any, to the Project:

6. Describe any irreversible and irretrievable commitments of resources which would be included should the Project be implemented:
7. Describe the mitigation measures, if any, proposed to minimize the potential environmental impact of the Project:
8. Describe the growth inducing aspects of the Project:
9. Describe the effects of the Project on the use and conservation of energy resources:
10. List any studies, reports or other information upon which the answers to the above questions are based:

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(Applicant)

BY:\_\_\_\_\_

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NOTE: APPLICANT MUST COMPLETE THE APPROPRIATE VERIFICATION  
APPEARING ON PAGES 34 THROUGH 36 HEREOF BEFORE A NOTARY PUBLIC

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VERIFICATION

(if Applicant is a corporation)

STATE OF \_\_\_\_\_ )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_ deposes and says that he is the  
(Name of officer of applicant)

\_\_\_\_\_ of \_\_\_\_\_,  
(Title) (Company name)

the corporation named in the attached environmental assessment form; that he has read the foregoing environmental assessment form and knows the contents thereof; and that the same is true and complete and accurate to the best of his knowledge. Deponent further says that the reason this verification is made by the deponent and not by said company is because the said company is a corporation. The grounds of deponent's belief relative to all matters in the said environmental assessment form which are not stated upon his own personal knowledge are investigations which deponent has caused to be made concerning the subject matter of this environmental assessment form as well as information acquired by deponent in the course of his duties as an officer of and from the books and papers of said corporation.

\_\_\_\_\_  
(officer of applicant)

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

VERIFICATION

(If applicant is partnership)

STATE OF \_\_\_\_\_ )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, deposes and says that he is one of the members  
(Name of Individual)  
of the firm of \_\_\_\_\_,  
(partnership name)

the partnership named in the attached environmental assessment form; that he has read the foregoing environmental assessment form and knows the contents thereof; and that the same is true and complete and accurate to the best of his knowledge. The grounds of deponent's belief relative to all matters in the said environmental assessment form which are not stated upon his own personal knowledge are investigations which deponent has caused to be made concerning the subject matter of this environmental assessment form as well as information acquired by deponent in the course of his duties as a member of and from the books and papers of said partnership.

\_\_\_\_\_  
Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

VERIFICATION

(if applicant is sole proprietor)

STATE OF \_\_\_\_\_ )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, deposes and says that  
(Name of individual)

he has read the following environmental assessment form and knows the contents thereof; and that the same is true and complete and accurate to the best of his knowledge. The grounds of deponent's belief relative to all matters in the said environmental assessment form which are not stated upon his own personal knowledge, are investigations which deponent has caused to be made concerning the subject matter of this environmental assessment form.

\_\_\_\_\_

Sworn to before me this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public



## PART 18

### UNIFORM TAX EXEMPTION POLICY

**SECTION 1801. PURPOSE AND AUTHORITY.** Pursuant to Section 874(4)(a) of Title One of Article 18-A of the General Municipal Law (the “Act”), City of Albany 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 to any project.

**SECTION 1802. DEFINITIONS.** All words and terms used herein and defined in the Act shall have the meanings assigned to them in the Act, unless otherwise defined herein or unless the context or use indicates another meaning or intent. The following words and terms used herein shall have the respective meanings set forth below, unless the context or use indicates another meaning or intent:

(A) “Administrative fee” shall mean a charge imposed by the Agency to an applicant or project occupant for the administration of project.

(B) “Agency fee” shall mean the normal charges imposed by the Agency on an applicant or a project occupant to compensate the Agency for the Agency’s participation in a project. The term “Agency Fee” shall include not only the Agency’s normal administrative fee, but also may include (1) reimbursement of the Agency’s expenses, (2) rent imposed by the Agency for use of the property of the Agency, and (3) other similar charges imposed by the Agency.

(C) “Applicant” shall mean an applicant for financial assistance.

(D) “City” shall mean the City of Albany.

(E) “County” shall mean the County of Albany.

(F) “PILOT” or “Payment in Lieu of Tax” shall mean any payment made to the Agency or an 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 tax exemption obtained by reason of the involvement of the Agency in such project, but such term shall not include Agency fees.

(G) “School District” shall mean the school district of the City of Albany.

(H) “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.

SECTION 1803. GENERAL PROVISIONS. (A) General Policy. The general policy of the Agency is to grant tax exemption as hereinafter set forth to any project which has been or will be financed by the issuance by the Agency of bonds, notes or other evidences of indebtedness with respect thereto.

(B) Exceptions. The Agency intends to follow the general policy enunciated under subsection (A) of this Section absent special circumstances. The Agency reserves the right to deviate from such policy in special circumstances. In determining whether special circumstances exist to justify such a deviation, the Agency may consider factors which make the project unusual, which factors might include but not be limited to the following: (1) the magnitude and/or importance of any permanent private sector job creation and/or retention related to project; (2) whether the affected tax jurisdictions will be reimbursed by the project occupant if the project does not fulfill the purposes for which tax exemption was granted; (3) the impact of the project on existing and proposed businesses and/or economic development projects; (4) the amount of private sector investment generated or likely to be generated by the project; (5) demonstrated public support for the project; (6) the estimated value of the tax exemptions requested; and (7) the extent to which the proposed project will provide needed services and/or revenues to the affected tax jurisdictions. In addition, the Agency may consider the other factors outlined in Section 874(4)(a) of the Act.

(C) Application. No request for a tax exemption shall be considered by the Agency unless an application and environmental assessment form are filed with the Agency on the forms prescribed by the Agency pursuant to the rules and regulations of 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, an analysis of the costs and benefits of the project, and whether such financial assistance is consistent with this part.

SECTION 1804. SALES AND USE TAX EXEMPTION. (A) General. 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 and use taxes imposed pursuant to Article 28 of the Tax Law. The Agency has a general policy of abating sales taxes applicable only to the initial acquisition, construction and/or equipping of each project with respect to which the Agency grants financial assistance. The Agency has no requirement for imposing a payment in lieu of tax arising from the exemption of a project from sales and/or use taxes applicable to the initial acquisition, construction and/or equipping of such project, except (1) as described in subsection (E) below or (2) in the circumstance where (a) a project is offered sales tax exemption on the condition that a certain event (such as the issuance of bonds by the Agency with respect to the project) occur by a certain date and (b) such event does not occur, in which case

the Agency may require that the applicant make payments in lieu of sales tax to the New York State Department of Taxation and Finance.

(B) Period of Exemption. Except as set forth in subsection (A) above, the period of time for which a sales tax exemption shall be effective (the “tax exemption period”) shall be determined as follows:

(1) General. Unless otherwise determined by the Agency, the tax exemption for sales and use taxes shall be for the tax exemption period commencing with the issuance by the Agency of bonds, notes or other evidences of indebtedness with respect to the project and ending on the date of completion of the project.

(2) Early Commencement. The tax exemption period may, at the discretion of the Agency, commence earlier than the date of issuance by the Agency of the Agency’s debt relating to the project, provided that (a) the Agency has complied with the requirements of Section 859-a of the Act, (b) the Agency thereafter adopts a resolution determining to commence such period earlier, said resolution to be substantially in the form of Appendix 18A attached hereto, (c) the applicant agrees to the conditions of such resolution and supplies to the Agency the materials required to be supplied to the Agency thereunder, and (d) the Chief Executive Officer of the Agency acknowledges satisfaction of all conditions to the granting of such tax exemption set forth in such resolution.

(3) Normal Termination. The tax exemption period will normally end upon the completion of the project. On construction projects, the parties shall agree on the estimated date of completion of the project, and the tax exemption shall cease on the earlier of (a) the actual date of completion of the project or (b) the date which is six (6) months after the estimated date of such project. On non-construction project, the parties shall agree on the estimated date of completion of the project, and the tax exemption shall cease on the earlier of (a) the actual date of completion of the project or (b) the date which is three (3) months after the estimated date of completion of the project. If the Agency and the applicant shall fail to agree on a date for completion of the project, the Agency shall on notice to the applicant make the determination on the basis of available evidence.

(4) Later Termination. The Agency, for good cause shown, may adopt a resolution extending the period for completion of the project and/or extending the tax exemption period.

(C) Items Exempted. The sales and use tax exemption granted by the Agency shall normally extend only to the following items acquired during the tax exemption period described in subsection (B) above:

(1) Items incorporated into the real property;

(2) Tangible personal property, including furniture, furnishings and equipment used to initially equip the project or otherwise forming part of the project, if purchased as agent of the Agency;

(3) The rental of tools and other items necessary for the construction and/or equipping of the project, if rented as agent of the Agency; and

(4) Office supplies, fuel and similar items consumed in the process of acquiring, constructing and/or equipping the project, if purchased as agent of the Agency.

(D) Items Not Exempted. A sales and use tax exemption shall not be granted for the following:

(1) purchases occurring beyond the tax exemption period described in subsection (B) above;

(2) repairs, replacements or renovations of the project, unless such repairs, replacements or renovations constitute major capital-type expenses approved by the Agency as a separate project in the manner contemplated by the Act; or

(3) operating expenses, unless such operating expenses constitute major capital-type expenses approved by the Agency as a separate project in the manner contemplated by the Act.

(E) Percentage of Exemption. Unless otherwise determined by resolution of the Agency, the sales and use tax exemption shall be equal to one hundred percent (100%) of the sales and/or use taxes that would have been levied if the project were not exempt by reason of the Agency's involvement in the project. If an exemption of less than one hundred percent (100%) is determined by the Agency, then the applicant shall be required to pay a PILOT to the Agency equal to the applicable percentage of sales and/or use tax liability not being abated. The Agency shall remit such PILOT within thirty (30) days of receipt by the Agency to the affected tax jurisdictions in accordance with Section 874(3) of the Act.

(F) Confirmation Letter. The final act of granting a sales and/or use 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. Such confirmation letter shall be in the form of either Appendix 18B (where the exemption is permanent, because the Agency is satisfied that any conditions precedent to such tax exemption, such as the issuance of bonds by the Agency, have been satisfied) or Appendix 18C (where such exemption is tentative, because there remain conditions precedent to such tax exemption which have not been satisfied). Each such confirmation letter shall describe the scope and term of the sales and use tax exemption being granted.

(G) Required Filings. The New York State Department of Taxation and Finance requires that proper forms and supporting material be filed with a vendor to establish a purchaser's entitlement to a sales tax exemption. For example, TSB-M-87(7) outlines the material that must be filed to establish entitlement to sales tax exemption as "agent" of the Agency. It is the responsibility of the applicant and/or project occupant to ensure that the proper documentation is filed with each vendor to obtain any sales tax exemptions authorized by the Agency.

(H) Required Reports and Records. Pursuant to Section 874(B), the applicant and/or project occupant is required to annually file with the New York State Department of Taxation and Finance a statement of the value of all sales and use tax exemptions claimed under the Act by the applicant and/or the project occupant and/or all agents, subcontractors and consultants thereof. The project documents shall require that (1) a copy of such statement will also be filed with the Agency and (2) that the project occupant shall maintain, for a period ending seven (7) years after the last purchase made under the sales and use tax exemption, and make available to the Agency at the request of the Agency, detailed records which shall show the method of calculating the sales and use tax exemption benefit granted by the Agency.

SECTION 1805. MORTGAGE RECORDING TAX EXEMPTION. (A) General. (1) State law provides that mortgages recorded by the Agency are exempt from mortgage recording taxes imposed pursuant to Article 11 of the Tax Law. The Agency has a general policy of abating mortgage recording taxes for the initial financing obtained from the Agency with respect to each project with respect to which the Agency issues debt which will be secured by a mortgage upon real property. In instances where the initial financing commitment provides for a construction financing of the Agency to be replaced by a permanent financing of the Agency immediately upon the completion of the project, the Agency's general policy is to abate the mortgage recording tax on both the construction financing and the permanent financing.

(2) Where the Agency has determined to approve a deviation in accordance with Section 1808 hereof with respect to the payment of real property taxes, the general policy of the Agency will be to require the applicant to pay the same mortgage recording taxes with respect to any mortgage as would have been payable had the Agency not been a party to said mortgage. Such mortgage recording taxes are payable to the County Clerk of the County, who shall in turn distribute same in accordance with law.

(B) Refinancing. In the event that the Agency retains title to a project, it is the general policy of the Agency to abate mortgage recording taxes on any debt issued by the Agency for the purpose of refinancing prior debt issued by the Agency, and on any modifications, extensions and renewals thereof, so long as the Agency fees relating to the same have been paid.

(C) Non-Agency Projects. In the event that the Agency does not hold title to a project, it is the policy of the Agency not to join in a mortgage relating to that project and not to abate any mortgage recording taxes relating to that project.

(D) Non-Agency Financings. Occasionally, a situation will arise where the Agency holds title to a project, the project occupant needs to borrow money for its own purposes (working capital, for example), and the lender will not make the loan to the project occupant without obtaining a fee mortgage or leasehold mortgage, if applicable, as security. In such instances, the policy of the Agency is to consent to the granting of such mortgage and to join in such mortgage, so long as the following conditions are met:

(1) the documents relating to such proposed mortgage make it clear that the Agency is not liable on the debt, and that any liability of the Agency on the mortgage is limited to the Agency's interest in the project;

(2) the granting of the mortgage is permitted under any existing documents relating to the project, and any necessary consents relating thereto have been obtained by the project occupant; and

(3) the payment of the Agency fee relating to the same.

(E) Exemption Affidavit. The act of granting mortgage recording tax exemption by the Agency is confirmed by the execution by an authorized officer of the Agency of an exemption affidavit relating thereto. A sample exemption affidavit is attached to Appendix 18D.

(F) PILOT Payments. If the Agency is a party to a mortgage that is not to be granted a mortgage recording tax exemption by the Agency (a “non-exempt mortgage”), then the applicant and/or project occupant or other person recording same shall pay the same mortgage recording taxes with respect to same as would have been payable had the Agency not been a party to said mortgage (the “normal mortgage tax”). Such mortgage recording taxes are payable to the County Clerk of the County, who shall in turn distribute same in accordance with law. If for any reason a non-exempt mortgage is to be recorded and the Agency is aware that such non-exempt mortgage may for any reason be recorded without the payment of the normal mortgage tax, then the Agency shall prior to executing such non-exempt mortgage collect a PILOT equal to the normal mortgage tax and remit same within thirty (30) days of receipt by the Agency to the affected tax jurisdiction in accordance with Section 874(3) of the Act.

SECTION 1806. REAL ESTATE TRANSFER TAXES. (A) Real Estate Transfer Tax. 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. The general policy of the Agency is to impose no payment in lieu of tax upon any real estate transfers to or from the Agency.

(B) Required Filings. It shall be the responsibility of the applicant and/or project occupant to ensure that all documentation necessary relative to the real estate transfer tax are timely filed with the appropriate officials.

SECTION 1807. REAL ESTATE TAX EXEMPTION. (A) General. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, property owned by or under the jurisdiction or supervision or control of the Agency is exempt from general real estate taxes but not exempt from special assessments and special ad valorem levies. However, it is the general policy of the Agency that, notwithstanding the foregoing, every non-governmental project will be required to enter into a payment in lieu of tax agreement (a “PILOT Agreement”), 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 below.

(B) PILOT Requirements. (1) Unless the applicant and/or project occupant and the Agency shall have entered into a PILOT Agreement acceptable to the Agency, the project

documents shall provide that the Agency will not file a New York State Department of Taxation and Finance, Division of Equalization and Assessment Form EA-412-a (an "Exemption Form") with respect to the project, and the project documents shall provide that the applicant and/or the project occupant shall be required to make PILOT payments in such amounts as would result from taxes being levied on the project by the taxing jurisdictions if the project were not owned by or under the jurisdiction or supervision or control of the Agency. The project documents shall provide that, if the Agency and the applicant and/or project occupant 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 agreement.

(2)(a) The Agency has adopted an Urban Reinvestment Tax Incentive Program (the "Urban Incentive Program"). An applicant will be considered for participation in the Urban Incentive Program by the Agency upon satisfaction of the conditions described in Appendix E attached hereto. In order to be considered for the Urban Incentive Program, the applicant must complete the Agency's Urban Incentive Program application.

(b) After completion of the Urban Incentive Program application, the applicant should submit the application to the Agency. The Agency shall make a determination based on the application whether the applicant is eligible for the Urban Incentive Program.

(C) Pilot Agreement. Unless otherwise determined by resolution of the Agency, all PILOT Agreements shall satisfy the following general conditions:

(1) Amount of Abatement: (a) The general policy of the Agency is to not provide the applicant and/or project occupant with any abatement other than abatements allowed under Section 485-b of the Real Property Tax Law and applicable ordinances and local laws of the City of Albany (currently known as the "Commercial and Industrial Incentive Board of the City of Albany"). Accordingly, the amount of any PILOT payment would equal the amount of taxes that would be levied on the project by the taxing jurisdictions if the project were not owned by or under the jurisdiction or supervision or control of the Agency.

(b)(i) In circumstances where the applicant has complied with the requirements contained in Section 1807(B)(2) hereof regarding the Urban Reinvestment Tax Incentive Program and the Agency has determined that the applicant is eligible for the Urban Reinvestment Incentive Program, the amount of abatement provided under the PILOT Agreement shall be described as follows:

<u>Year</u>	<u>Percentage Abatement</u>
1	100%
2	100%
3	100%
4	100%
5	100%
6	100%
7	100%
8	75%
9	50%
10	25%
11 and thereafter	0%

(ii) The abatement schedule described above will be applied against the increase in assessed value due to the project proposed by the applicant. There will be no diminution of existing real property taxes being paid prior to the undertaking of the proposed project.

(c) Notwithstanding anything herein to the contrary, if the project consists of an affordable housing project, the applicant shall make annual payments in lieu of property taxes pursuant to the PILOT Agreement with respect to the project as follows:

(i) An amount equal to ten percent (10%) of the shelter rents (rents, excluding the component thereof, if any, attributable to energy and utility costs paid by the applicant) payable by the tenants in connection with the housing project. Tenant paid rents generated by the housing project shall include rent supplements and subsidies received from the federal government, the State, or a municipality on behalf of such tenants.

(ii) The amounts payable under the PILOT Agreement with respect to the housing project shall be (x) payable at the times normal taxes are billed and collected, and (y) allocated among the affected tax jurisdictions in proportion to the tax rates of such affected tax jurisdictions in accordance with Section 858(15) of the Act.



(2) Special District Taxes. As indicated above, the Agency is not exempt from special assessments and special ad valorem levies, and accordingly these amounts are not subject to abatement by reason of ownership of the Project by the Agency. The PILOT Agreement shall make this clear and shall require that all such amounts be directly paid by the applicant and/or the project occupant.

(3) Payee. Unless otherwise determined by resolution of the Agency, all PILOT payments payable to an affected tax jurisdiction shall be assessed, billed and collected directly by the same officials which assess, bill and collect normal taxes levied by such affected tax jurisdiction. Pursuant to Section 874(3) of the Act, such PILOT payments shall be remitted to each affected tax jurisdiction within thirty (30) days of receipt.

(4) Enforcement. (a) 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. 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 and, 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.

(b) In addition, where the Agency has entered into a PILOT Agreement granting an applicant a real property tax abatement under the Urban Reinvestment Incentive Program, failure by the applicant to comply with the terms of the Urban Reinvestment Tax Incentive Program, including, but not limited to, the filing of the annual affidavits described in the Urban Reinvestment Incentive Program Application or the creation or retention of the jobs described in the Application, may result, in the discretion of the Agency, in the termination of the real property tax abatement provided under the Program and the conveyance of the project from the Agency to the Company. Upon such conveyance, the Company will then be responsible for the payment of normal real property taxes with respect to the project.

(D) Required Filings. As indicated in subsection (B) above, pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, no real estate tax exemption with respect to a particular project shall be effective until an exemption form is filed with the assessor of each county, city, town, village and school district in which such project is located (each, a "Taxing Jurisdiction"). Once an exemption form with respect to a particular project is filed with a particular Taxing Jurisdiction, the real property tax exemption for such project does not take effect until (1) a tax status date for such Taxing Jurisdiction occurs subsequent to such filing, (2) an assessment roll for such Taxing Jurisdiction is finalized subsequent to such tax status date, (3) such assessment roll becomes the basis for the preparation of a tax roll for such Taxing Jurisdiction, and (4) the tax year to which such tax roll relates commences.

(E) Real Property Appraisals. Since the policy of the Agency stated in subsection (C)(1) is to base the value of a project for payment in lieu of tax purposes on a valuation of such

project performed by the Assessor of the City, normally a separate real property appraisal is not required. However, the Agency may require the submission of a real property appraisal if (1) the assessor of any particular Taxing Jurisdiction requires one or (2) if the valuation of the project for payment in lieu of tax purposes is based on a value determined by the applicant or by someone acting on behalf of the applicant, rather than by an assessor for a Taxing Jurisdiction or by the Agency. 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.

SECTION 1808. PROCEDURES FOR DEVIATION. (A) General. In the case where the Agency shall determine that any policy of the Agency as herein established is inappropriate or unfair, the Agency may determine:

(1) the amount of the tax exemption, the amount and nature of the PILOT, the duration of the exemption and of the PILOT and whether or not an exemption of any kind shall be granted and shall impose such terms and conditions as shall be just and proper; and

(2) the Agency shall give written notice of the proposed deviation from the policy set forth herein to each affected taxing jurisdiction setting forth the terms and conditions of the deviation and the reasons therefor.

(B) Troubled Projects. Where a project is owned and operated by the Agency or has been acquired by the Agency for its own account after a failure of a project occupant, the project shall at the option of the Agency be exempt from all taxes in accordance with law.

(C) Unusual Projects. Where a project is unusual in nature and requires special considerations related to its successful operations as demonstrated by appropriate evidence presented to the Agency, the Agency shall consider the granting of a deviation from the established exemption policy in accordance with the procedures provided in the title. The Agency may authorize a minimum payment in lieu of tax or such other arrangement as may be appropriate.

SECTION 1809. ANNUAL REVIEW OF POLICIES. (A) General. At least annually, the Agency shall review its tax exemption policies to determine relevance, compliance with law, effectiveness, and shall adopt any modifications or changes that it shall deem appropriate. Unless otherwise provided by resolution, such annual review shall take place at the regular June meeting of the Agency, notice for comments on such policies shall be circulated as provided by law for input from the City of Albany and affected tax jurisdictions, and adoption of any changes shall take not less than 10 days thereafter. The Chief Executive Officer shall be responsible for conducting an annual review of the tax exemption policy and for an evaluation of the internal control structure established to ensure compliance with the tax exemption policy which shall be submitted to the Agency for approval. The thirty day comment period shall not apply to the adoption of the original policies of the Agency which said policies shall become effective as herein provided.

## APPENDIX 18A

### SAMPLE INTERIM SALES TAX EXEMPTION RESOLUTION

Resolution No. \_\_\_\_\_

RESOLUTION TEMPORARILY APPOINTING \_\_\_\_\_ (THE  
“COMPANY”) AS AGENT OF CITY OF ALBANY INDUSTRIAL DEVELOPMENT  
AGENCY FOR THE PURPOSE OF UNDERTAKING AND COMPLETING A  
PROJECT TO BE LOCATED AT \_\_\_\_\_ IN THE  
CITY OF ALBANY, NEW YORK.

WHEREAS, City of Albany Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”), and Chapter 325 of the 1974 Laws of New York, as amended, constituting Section 903-a of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to issue its industrial development revenue bonds to finance the cost of acquisition, construction and installation of one or more “projects” (as defined in the Act), to acquire, construct and install said projects or to cause said projects to be acquired, constructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, \_\_\_\_\_ (the “Company”) has presented an application (the “Application”) to the Agency, a copy of which was presented at this meeting and copies of which are on file at the office of the Agency, requesting that the Agency consider undertaking a project (the “Project”) consisting of: [insert project description]; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended, and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the “SEQR Act”), by resolution adopted on \_\_\_\_\_ (the “SEQR Resolution”), the Agency has determined that the Project will not have a significant effect on the environment and therefore that an environmental impact statement is not required to be prepared with respect to the Project; and

WHEREAS, by further resolution adopted on \_\_\_\_\_ (the “Inducement Resolution”), the Agency has (A) determined that the procedural requirements of Section 859-a of the Act have been fulfilled and therefore has decided to proceed with the granting of the financial assistance described in Section 2 of the Inducement Resolution (the “Financial Assistance”), and (B) approved the execution of a lease agreement or an installment sale agreement

(the "Project Agreement") and related documentation between the Agency and the Company with respect to the Project; and

WHEREAS, although the Project Agreement and the related documentation have not yet been prepared, the Company has indicated to the Agency that the Company desires to commence the Project prior to completion of said Project Agreement and related documentation; and

WHEREAS, in order to preserve the sales tax exemption which forms a major portion of the Financial Assistance, the Agency now desires to temporarily formalize its understandings with the Company regarding the undertaking and completion of the Project by the Company as agent of the Agency;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

In order to preserve the sales tax exemption which forms a major part of the Financial Assistance, and in order to facilitate the commencement of the Project, the Company is hereby temporarily appointed the true and lawful agent of the Agency (A) to undertake and complete the Project, as the stated agent for the Agency, (B) to make, execute, acknowledge and deliver all contracts, orders, receipts, writings and instruments necessary in connection therewith, and in general to do all things as may be requisite or proper for completing the Project with the same powers and the same validity as the Agency could do if acting in its own behalf and (C) to pay all fees, costs and expenses incurred in the undertaking and completion of the Project from its own funds, subject to reimbursement from the proceeds of the Bonds, if and when the Bonds shall be issued, said temporary appointment to last until earlier to occur of (1) the execution and delivery of the Project agreement or (2) \_\_\_\_\_, and said temporary appointment to be subject to the following conditions:

The Company will, on behalf of the Agency, undertake and complete the Project in accordance with the plans (the "Plans") of the Company described in the Inducement Resolution and the application of the Company to the Agency referred to therein (the "Application").

The Company will not revise the Plan in any material respect without the prior written consent of the Agency, which consent may not be unreasonably withheld or delayed but may be subject to such reasonable conditions as the Agency may deem appropriate.

Title to all materials, equipment, machinery and other items of property intended to be incorporated in or installed as part of the Project shall vest in the Agency immediately upon delivery to the Project site, at which time such materials, machinery and other items of property shall become the sole property of the Agency. The Company shall execute, deliver and record or file all instruments necessary or appropriate to so vest title in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third persons. Title to the Project shall be conveyed by the Agency to the Company pursuant to the provisions of the Project Agreement.

All materials, equipment, machinery and other items of personal property intended to be incorporated in or installed as part of the Project shall be ordered and purchased by the company, as agent of the Agency, and invoices therefore shall be directed to the Company, as agent of the Agency. The Agency hereby appoints the Company as agent of the Agency to make such purchases of said materials, equipment, machinery and other items of personal property; provided, however, that NO SUCH CONTRACT SHALL RESULT IN THE ASSUMPTION BY THE AGENCY OF ANY OBLIGATION TO PAY ANY COSTS AND EXPENSES, EXCEPT OUT OF THE PROCEDURES OF THE BONDS (IF AND WHEN ISSUED, AND THEN ONLY TO THE EXTENT PROVIDED IN THE INITIAL RESOLUTION), and the Company shall agree to pay all funds necessary to make all payments required under such contracts, subject to reimbursement from the proceeds of the Bonds if the Bonds are issued. It is understood that if the Bonds shall be issued and the proceeds of the Bonds are not sufficient to pay in full all costs of the acquisition, construction and installation of the Project Facility, the Company shall pay such excess costs and shall not be entitled to any reimbursement therefor from the Agency or otherwise.

The Company shall indemnify, defend and hold the Agency (and its members, officers, agents, employees and servants) harmless from all claims and liabilities for labor, services, materials and supplies, including equipment, ordered or used in connection with the undertaking and completion of the Project (including any expenses incurred by the Agency and its members, officers, agents, employees and servants, in defending any claims, suits or actions which may arise as a result of any of the foregoing), whether or not such claims or liabilities arise as a result of the Company acting as agent for the Agency pursuant to the authority conferred upon it by this Resolution.

The Company shall indemnify, defend and hold the Agency (and its members, officers, agents, employees and servants) harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever in relation to the Project, including any expenses incurred by the Agency (and its members, officer, agents, employees and servants) in defending any claims, suits or actions which may result as a result of the foregoing.

The Company shall give or cause to be given all notices and comply or cause compliance with all laws, ordinances, rules, regulations and requirements of all governmental agencies and public authorities applying to or affecting the undertaking and completion of the Project (the applicability of all such laws, ordinances, rules, regulations and requirements shall be determined both as if the Agency were deemed to be the owner of the Project and as if the Company and not the Agency were deemed to be the owner of the Project), and the Company will defend and save the Agency and its officers, members, agents, employees and servants harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the undertaking and completion of the Project shall be procured promptly by the Company.

The Company shall agree, and by executing this Resolution does agree, that as agent for the Agency the Company will comply with all laws applicable to the Agency in connection with the undertaking and completion of the Project by the Agency (the applicability of all such laws, ordinances, rules, regulations and requirements shall be determined both as if the Agency were deemed to be the owner of the Project and as if the Company and not the Agency were deemed to

be the owner of the Project). Such laws shall include, if applicable, Article 8 of the Labor Law of the State of New York, as amended from time to time.

Any costs or expenses incurred by the Agency or by the Company as agent of the Agency with respect to the Project shall, to the extent permitted by law and the Initial Resolution, be paid or reimbursed out of the proceeds of the Bonds, or if the Bonds are not issued by the Agency, shall be paid by the Company.

The Company shall supply the Chair of the Agency with a general liability insurance policy naming the Company and the Agency as insureds and providing coverage in minimum amounts reasonably acceptable to the Chair and Counsel of the Agency, including coverage for accidents or occurrences on account of personal injury, including death resulting therefrom, and damage to the property of others, excluding liability imposed upon the Company by any applicable workers' compensation law, which insurance policies shall (a) also name the members, officers, agents, employees and servants of the Agency as additional insureds, as their interests shall appear, and (b) also provide contractual liability insurance coverage insuring the Company's obligations pursuant to paragraphs (5) and (6) hereof to indemnify, defend and save harmless the Agency and its members, officers, agents, employees and servants, as their interests shall appear.

The Company shall supply the Chair of the Agency with policies, or certificates evidencing such policies, of workmen's compensation insurance, disability benefits insurance and each other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company or the Agency who are located at or assigned to work on the Project.

The obligations and agreements of the Agency contained herein shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent (other than the Company), employee or servant of the Agency in his individual capacity, and the members, officers, agents (other than the Company), employees and servants of the Agency shall not be liable personally hereon or be subject to any personal liability of accountability based upon or in respect hereof or of any transaction contemplated hereby.

The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or the City of Albany, New York, and neither the State of New York nor the City of Albany, New York shall be liable thereon, and further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project (excepting funds payable pursuant to paragraphs (5), (6) and (14) hereof).

Notwithstanding any provision of this resolution to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (a) the Agency shall have been requested to do so in writing by the Company and (b) if compliance with such request is reasonable expected to result in the incurrence by the Agency (or any member, officer, agent (other than the Company), employee or servant of the Agency) of any liability, fees, expenses or other costs, the Agency shall

have received from the Company security or indemnity satisfactory to the Agency for protection against all such liability and for the reimbursement of all such fees, expenses and other costs.

Payment by the Company of the Agency's administrative fee with respect to the Project.

The Company acknowledges receipt of notice of Section 874(8) of the Act, which requires that the Company as agent of the Agency must annually file a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency.

The foregoing appointment of the Company as agent of the Agency is subject to the condition that, in the event that the Bonds are not sold and delivered on or before \_\_\_\_\_ (or such later date as may be agreed to in writing by the Agency), the foregoing appointment of the Company as agent of the Agency may be revoked by the Agency, retroactive to the date of this resolution, and thereupon the Agency shall notify the New York State Department of Taxation and Finance of such revocation.

The Company acknowledges receipt of notice of Section 858-b of the Act, which requires that the Company list new employment opportunities created as a result of the Project with the following entities (hereinafter, the "JTPA Entities"): (a) the New York State Department of Labor Community Services Division and (b) the administrative entity of the service delivery area created by the federal job training partnership act (P.L. No. 97-300) in which the project is located. The Company agrees, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

The following additional conditions: None.

This Resolution shall take effect upon the date that all of the following shall have occurred: (a) the Company shall have accepted the provisions of this Resolution; (b) the Company shall have delivered two copies of this Resolution, with the acceptance clauses thereof fully executed by the Company, to the Chair of the Agency; (c) the Company shall have obtained the insurance policies required by paragraphs (10) and (11) of Section 1 hereof and shall have delivered evidence thereof to the Chair of the Agency, such evidence to be in such form as the Chair of the Agency shall deem appropriate, (d) the Company shall have paid the Agency's administrative fee with respect to the Project and (e) the Agency shall deliver to the Company a copy of this Resolution with the receipt and acknowledgment executed by the Agency.



## ACCEPTANCE

The Company hereby accepts the appointment to act as agent of the Agency in connection with the Project and the Company accepts the provisions of this Resolution, including the conditions contained in Section 2 of this Resolution, and agrees to comply with such provisions and conditions.

IN WITNESS WHEREOF, the company has caused this Acceptance to be executed in its name as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

BY: \_\_\_\_\_

Title: \_\_\_\_\_

## RECEIPT

The undersigned hereby acknowledges receipt of the items called for in Section 2 of this Resolution and acknowledges that therefore this Resolution is in full force and effect.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

By \_\_\_\_\_

(Vice) Chair

APPENDIX 18B

SAMPLE SALES TAX CONFIRMATION LETTER  
WHERE EXEMPTION IS PERMANENT

\_\_\_\_\_ , \_\_\_\_\_

To whom It May Concern:

Re: New York State Sales or Use Tax Exemption  
City of Albany Industrial Development Agency  
\_\_\_\_\_ Project

Pursuant to TSB-M-87(7) issued by the New York State Department of Taxation and Finance on April 1, 1987 (the "Policy Statement"), you have requested a letter from City of Albany Industrial Development Agency (the "Agency") containing the information required by the Policy Statement regarding the Temporary appointment by the Agency of \_\_\_\_\_ (the "Company") as agent of the Agency for purposes of affording the Company a sales tax exemption with respect to supplies, materials, fixtures and equipment intended to be incorporated in or installed as part of the following described project (the "Project"), as well as a sales tax exemption for all labor and other services used in connection with the acquisition and installation of said Project, to wit: [insert project description].

Please be advised that on \_\_\_\_\_, \_\_\_\_\_, the Agency, a public benefit corporation and a governmental agency of the State of New York, adopted a resolution whereby the Issuer appointed the Company as its agent to undertake and complete the Project.

This is to certify that, under the Policy Statement, purchases by the Agency, through its agent, the Company, of materials and equipment to be incorporated into the Project, as well as purchases of supplies, tools, equipment, or services necessary to undertake and/or complete the Project, are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York.

It is hereby further certified that, under the Policy Statement, since the Agency is a public benefit corporation, neither the Agency, nor the Company as its agent, is required to furnish an "Exempt Organization Certificate" in order to secure exemption from any sales or use tax for such items or services.

Under the Policy Statement, a copy of this letter retained by any vendor or seller to the Company, as agent for the Agency, may be accepted by such vendor or seller as a "statement and additional documentary evidence of such exemption" as provided by New York State Tax Law 1132(c)(2), thereby relieving such vendor or seller from the obligation to collect any sales or use tax upon

purchases or rentals of such materials, supplies, tools, equipment or services by the Issuer through its agent, the Company.

THIS LETTER SHALL BE IN EFFECT UNTIL\_\_\_\_\_.

In the event you have any questions with respect to the above, please do not hesitate to call me.

Very truly yours,

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

BY:\_\_\_\_\_  
(Vice) Chair

APPENDIX 18C

SAMPLE SALES TAX CONFIRMATION LETTER  
WHERE EXEMPTION IS TENTATIVE

\_\_\_\_\_ , \_\_\_\_\_

To Whom It May Concern:

Re: Tentative New York State Sales or Use Tax Exemption  
City of Albany Industrial Development Agency  
\_\_\_\_\_ Project

Pursuant to TSB-M-87(7) issued by the New York State Department of Taxation and Finance on April 1, 1987 (the "Policy Statement"), you have requested a letter from City of Albany Industrial Development Agency (the "Agency") containing the information required by the Policy Statement regarding the temporary appointment by the Agency of \_\_\_\_\_ (the "Company") as agent of the Agency for purposes of affording the Company a sales tax exemption with respect to supplies, materials, fixtures and equipment intended to be incorporated in or installed as part of the following described project (the "Project"), as well as a sales tax exemption for all labor and other services used in connection with the acquisition and installation of said Project, to wit: [insert project description].

Please be advised that on \_\_\_\_\_, \_\_\_\_\_, the Agency, a public benefit corporation and a governmental agency of the State of New York, adopted a resolution whereby the Issuer appointed the Company as its agent to undertake and complete the Project, SUBJECT TO THE CONDITION THAT IN THE EVENT THAT THE BONDS ARE NOT SOLD AND DELIVERED ON OR BEFORE \_\_\_\_\_ (OR SUCH LATER DATE AS MAY BE AGREED TO IN WRITING BY THE AGENCY), THE FOREGOING APPOINTMENT OF THE COMPANY AS AGENT OF THE AGENCY MAY BE REVOKED BY THE AGENCY, RETROACTIVE TO THE DATE OF THIS RESOLUTION, AND THEREUPON THE AGENCY SHALL NOTIFY THE NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE OF SUCH REVOCATION.

This is to certify that, under the Policy Statement, purchases by the Agency, through its agent, the Company, of materials and equipment to be incorporated into the Project, as well as purchases of supplies, tools, equipment, or services necessary to undertake and/or complete the Project, are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York.

It is hereby further certified that, under the Policy Statement, since the Agency is a public benefit corporation, neither the Agency, nor the Company as its agent, is required to furnish an "Exempt Organization Certificate" in order to secure exemption from any sales or use tax for such items or services.

Under the Policy Statement, a copy of this letter retained by any vendor or seller to the Company, as agent for the Agency, may be accepted by such vendor or seller as a "statement and additional documentary evidence of such exemption" as provided by New York State Tax Law 1132(c)(2), thereby relieving such vendor or seller from the obligation to collect any sales or use tax upon

purchases or rentals of such materials, supplies, tools, equipment, or services by the Issuer through its agent, the Company.

THIS LETTER SHALL BE IN EFFECT UNTIL\_\_\_\_\_.

In the event you have any questions with respect to the above, please do not hesitate to call me.

Very truly yours,

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

BY\_\_\_\_\_  
(Vice) Chair

APPENDIX 18D

SAMPLE MORTGAGE TAX EXEMPTION AFFIDAVIT



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IN THE MATTER OF TAXATION

OF

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

---

STATE OF NEW YORK                    )  
  ) SS.:  
COUNTY OF ALBANY                 )

The undersigned, being duly sworn, deposes and says:

1. That he resides at \_\_\_\_\_ in the City of Albany, Albany County, New York, and is the (Vice) Chair of City of Albany Industrial Development Agency (the “Agency”), a public benefit corporation of the State of New York, established by Title 1 of Article 18-A of the General Municipal Law of the State of New York and Chapter \_\_ of the Laws of \_\_ of the State of New York, (collectively, the “Act”).

2. That, on or about \_\_\_\_\_, \_\_\_\_\_, the Agency will acquire certain real property (for convenience hereinafter referred to as the “Land”) situate in the \_\_\_\_\_ of \_\_\_\_\_, Albany County, New York, as more particularly described in Exhibit A attached hereto.

3. That, pursuant to Section 874 of the Act and Section 1405(b)(1) of the Tax Law of the State of New York, no real estate transfer tax is due upon the instruments conveying the Land to the Agency.

4. That, on or about \_\_\_\_\_, \_\_\_\_\_, the Agency will issue its Industrial Development Revenue Bond(s) (\_\_\_\_\_ Project), Series \_\_\_\_\_ in the principal amount of \$\_\_\_\_\_ (the “Bond(s)”) in order to assist in providing financing with which the Agency can undertake a project (the “Project”) consisting of [insert project description].

5. That, contemporaneously with the acquisition of the Land, the Agency will enter into an installment sale agreement dated as of \_\_\_\_\_ (the “Installment Sale Agreement”) with \_\_\_\_\_ (the “Company”) whereby the Company will agree to purchase the Project Facility and will covenant to pay basic installment purchase payments, in the amount required by the Installment Sale Agreement, which basic installment purchase payments are to be paid directly to \_\_\_\_\_, as [holder (the “Holder”)] [trustee for the holders (the “Trustee”)] of the Bond(s).

6. That, contemporaneously with the issuance of the Bond(s), the Agency will deliver to the [Holder] [Trustee] (A) a mortgage from the Agency and the Company to the [Holder] [Trustee] dated as of \_\_\_\_\_ (the "Mortgage") whereby the Agency grants to the [Holder] [Trustee] a Lien on and security interest in the Project Facility to secure the payment of the Bond(s) and the Company joins in said Mortgage to subject its interest in the Project Facility to the lien thereof, (B) a pledge and assignment from the Agency to the [Holder] [Trustee] dated as of \_\_\_\_\_ (the "Pledge and Assignment") whereby the Agency assigns to the [Holder] [Trustee] certain of its rights in the Installment Sale Agreement and certain moneys due the Agency thereunder to further secure the payment of the principal of, premium, if any, and interest on the Bond(s), and (C) an assignment of leases and rents from the Agency and the Company to the [Holder] [Trustee] dated as of \_\_\_\_\_ (the "Assignment of Rents") which assigns to the [Holder] [Trustee] all leases affecting the Project Facility (the "Leases") and the rents payable thereunder.

7. Pursuant to Article 18-A of the General Municipal Law, the Agency is regarded as performing a governmental function and is generally not required to pay taxes or assessments upon any property acquired by it or under its jurisdiction or control or supervision or upon its activities, and any bonds or notes issued by the Agency, together with the income therefrom, as well as the property of the Agency, together with the income therefrom, as well as the property of the Agency, pursuant to such legislation, are exempt from taxation, except for transfer and estate taxes.

8. Deponent submits that no mortgage tax should be imposed upon the Installment Sale Agreement (or a memorandum thereof), the Pledge and Assignment, the Leases (or memoranda thereof), the Assignment of Rents, or the Mortgage (collectively, the "Recording Documents") because (A) said Recording Documents are being executed and delivered under the state authority creating the Agency, (B) the use by the Agency of its powers to additionally secure the payment of principal, premium, if any, and interest on the Bond(s) and to assist in the acquisition of the Project Facility is deemed by Article 18-A of the General Municipal Law to be a public purpose essential to the public interest, and (C) both the New York State Department of Taxation and Finance and the Counsel have expressed their opinion that the recording of similar documents by similar agencies organized under Article 18-A of the General Municipal Law are operations of said agencies entitled to exemption from the mortgage recording tax.

CITY OF ALBANY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
(Vice) Chair

Sworn to before me this  
\_\_ day of \_\_\_\_\_, \_\_\_\_

\_\_\_\_\_  
Notary Public

EXHIBIT A

DESCRIPTION OF LAND

(TO BE PROVIDED BY THE COMPANY)

## APPENDIX 18E

### URBAN REINVESTMENT TAX INCENTIVE PROGRAM APPLICATION

**CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY**

**APPLICATION FOR URBAN REINVESTMENT TAX  
INCENTIVE PROGRAM**

-----  
IMPORTANT NOTICE: The answers to the questions contained in this application are necessary to determine your firm's eligibility for the City of Albany Industrial Development Agency's Urban Reinvestment Tax Incentive Program. These answers will also be used in the preparation of papers in this transaction. Accordingly, all questions should be answered accurately and completely by an officer or other employee of your firm who is thoroughly familiar with the business and affairs of your firm and who is also thoroughly familiar with the proposed project. This application is subject to acceptance by the Agency.  
-----

TO: CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY  
c/o Department of Economic Development  
21 Lodge Street  
Albany, New York 12207

This application by applicant respectfully states:

APPLICANT:

APPLICANT'S ADDRESS:

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_ FAX NO.: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

NAME OF PERSON(S) AUTHORIZED TO SPEAK FOR APPLICANT WITH RESPECT TO THIS APPLICATION:

IF APPLICANT IS REPRESENTED BY AN ATTORNEY, COMPLETE THE FOLLOWING:

NAME OF ATTORNEY:

ATTORNEY'S ADDRESS:

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_ FAX NO.: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

-----  
NOTE: PLEASE READ THE INSTRUCTIONS ON PAGE 2 HEREOF BEFORE FILLING OUT THIS FORM.  
-----

## INSTRUCTIONS

1. The Agency will not approve any application unless, in the judgment of the Agency, said application and the summary contains sufficient information upon which to base a decision whether to approve or tentatively approve an action.
2. Fill in all blanks, using “none” or “not applicable” or “N/A” where the question is not appropriate to the project which is the subject of this application (the “Project”).
3. If an estimate is given as the answer to a question, put “(est)” after the figure or answer which is estimated.
4. If more space is needed to answer any specific question, attach a separate sheet.
5. When completed, return twelve (12) copies of this application to the Agency at the address indicated on the first page of this application.
6. Please note that Article 6 of the Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the applicant feels that there are elements of the Project which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the applicant’s competitive position, the applicant may identify such elements in writing and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law.
7. The applicant will be required to pay to the Agency all actual costs incurred in connection with this application and the Project contemplated herein (to the extent such expenses are not paid out of the proceeds of the Agency’s bonds issued to finance the project). The applicant will also be expected to pay all costs incurred by general counsel and bond counsel to the Agency. The costs incurred by the Agency, including the Agency’s general counsel and bond counsel, may be considered as a part of the project and included as a part of the resultant bond issue.

FOR AGENCY USE ONLY

1. Project Number	_____
2. Date application Received by Agency	_____, 20____
3. Date application referred to attorney for review	_____, 20____
4. Date copy of application mailed to members	_____, 20____
5. Date of Agency meeting on application	_____, 20____
6. Date Agency conditionally approved application	_____, 20____



I. INFORMATION CONCERNING THE PROPOSED OCCUPANT OF THE PROJECT (HEREINAFTER, THE "COMPANY").

A. Identity of Company:

1. Company Name:

Present Address:

Zip Code:

Employer's ID No.:

2. If the Company differs from the applicant, give details of relationship:

II. INFORMATION CONCERNING THE AGENCY'S INVOLVEMENT WITH THE PROJECT

A. Agency Application

1. Attach a copy of the Application previously submitted by the Company to the Agency requesting the Agency to grant the Company financial assistance for the proposed project.

2. Indicate the date the Application was submitted to the Agency:

B. Status of Application

1. Describe the current status of the transaction in which the Company is seeking financial assistance from the Agency:

2. Indicate the estimated closing date for the transaction:

III. INFORMATION REGARDING QUALIFICATION FOR THE AGENCY'S URBAN REINVESTMENT TAX INCENTIVE PROGRAM.

A. Summary: (Please provide a brief narrative description of the Project.)

B. Location of Proposed Project:

1. Street Address
2. City of
3. Town of
4. Village of
5. County of

C. Is the site of the proposed project located in one of the following: (1) business improvement district, (2) economic development zone or (3) a project which qualifies for Community Development Block Grant Assistance? Yes \_\_\_\_; No \_\_\_\_\_. If yes, please describe in more detail:

D. Will the completion of the proposed project result in an increase of the assessed valuation of project site by at least fifty percent? Yes \_\_\_\_; No \_\_\_\_\_. If yes, please attach a copy of an appraisal or other documents satisfactory to the Agency confirming this answer.

E. Indicate below the number of people presently employed at the project site and the number that will be employed at the project site at end of the first and second years after the project has been completed (Do not include construction workers). Also indicate on a separate attachment the number of workers employed at the project site representing newly created positions as opposed to positions relocated from other project sites of the applicant.

TYPE OF EMPLOYMENT					
	PROFESSIONAL MANAGERIAL	SKILLED	SEMI-SKILLED	UNSKILLED	TOTALS
Present Full Time					
Present Part Time					
Present Seasonal					
First Year Full Time					
First Year Part Time					
First Year Seasonal					
Second Year Full Time					
Second Year Part Time					
Second Year Seasonal					

F. Please attach a copy of your correspondence addressed to the City of Albany Department of Youth and Workforce Services describing the jobs to be created and the jobs to be retained (as described in III.E. above).

G. What is the estimated value of each type of tax-exemption being sought in connection with the proposed project? Please detail the type of tax-exemption and value of the exemption.

- a. N.Y.S. Sales and Compensating Use Taxes: \$ \_\_\_\_\_
- b. Mortgage Recording Taxes: \$ \_\_\_\_\_
- c. Real Property Tax Exemptions (assuming qualification for Urban Reinvestment Tax Incentive Program): \$ \_\_\_\_\_
- d. Other (please specify):  
 \_\_\_\_\_ \$ \_\_\_\_\_  
 \_\_\_\_\_ \$ \_\_\_\_\_

H. 1. Will the completion of the proposed project result in the creation or retention of at least one job for every \$1,000 of average tax abatement

described in III.G. above? Yes \_\_\_\_; No \_\_\_\_\_. If yes, please provide details:

2. Are the jobs described in III.E. and III.H.1 retained jobs (as opposed to new jobs)? Yes \_\_\_\_; No \_\_\_\_\_. If yes, would the Company have relocated from the proposed project site to a project site located outside the City of Albany but for the assistance provided by the Urban Reinvestment Tax Incentive Program? Yes \_\_\_\_; No \_\_\_\_\_. If yes, please attach an affidavit from an authorized officer of the Company confirming this answer.

3. Are the jobs described in III.G. and III.H.1 new jobs? Yes \_\_\_\_; No \_\_\_\_\_. If yes, please attach an affidavit from an authorized officer of the Company describing the employment plan of the Company with respect to the proposed project.

I. Please attach an economic impact analysis prepared by or on behalf of the Company which describes and assesses the relative costs and benefits associated with the granting by the Agency of the financial assistance requested by the Company. Include in the analysis the real property tax abatement to be provided by the Urban Reinvestment Tax Incentive Program. The factors that should be included as potential benefits described in the economic impact analysis should include the following:

1. Sales tax;
2. Employee payroll;
3. Payroll tax;
4. Property values (both of the project and adjacent sites); and
5. Related economic development spin-off (e.g., uses of other services such as janitorial services, lunchtime trade, etc.).

Prior to preparing the economic impact analysis, the Company should consult with the Agency's staff to discuss the scope of the analysis and the factors that will be included as potential costs and benefits.

IV. REPRESENTATIONS BY THE APPLICANT. The Company understands and agrees with the Agency as follows:

A. 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 "DOC") and with the City Department of Administrative Services and Workforce Development and the Albany Department of Social Services.

B. The Company understands and agrees that, if the Project receives any Financial Assistance from the Agency, subject to the provisions of Section 858-b of the General Municipal Law and except as otherwise provided by collective bargaining agreements, the Company will first consider persons residing in the area where the project is located for new employment opportunities created as a result of the Project.

C. Where the proposed jobs are jobs that will be created, the Company will execute a first source job agreement in form acceptable to the Agency describing the Company's employment plan.

D. The Company will file annually on or before December 31 of each year during the term of the PILOT Agreement an executed copy of the affidavit described in Appendix F to the Agency's Uniform Tax Exemption Policy. Such affidavit is intended to demonstrate continuing compliance with the Urban Reinvestment Tax Incentive Program. Where the proposed project consists of the construction or reconstruction of a building for lease by the Company to a tenant or tenants, the Company will require the tenant or tenants to comply with the Urban Reinvestment Tax Incentive Program.

E. The Company understands and agrees that failure by the Company to comply with the terms of the Agency's Urban Reinvestment Tax Incentive Program, including, but not limited to, the filing of the annual affidavits described in (D) above or the creation or retention of the jobs described in this Application, may result, in the discretion of the Agency, in termination of the real property tax abatement provide under the Program and the conveyance of the project from the Agency to the Company. Upon such conveyance, the Company will then be responsible for the payment of normal real property taxes with respect to the project.

F. The Company will otherwise comply with all requirements contained in the Agency's Policy Manual and Article 18-A of the General Municipal Law.

[Insert Name]

BY:

-----  
NOTE: APPLICANT MUST ALSO COMPLETE THE APPROPRIATE VERIFICATION APPEARING  
ON PAGES 10 THROUGH 13 HEREOF BEFORE A NOTARY PUBLIC AND MUST SIGN AND  
ACKNOWLEDGE THE HOLD HARMLESS AGREEMENT APPEARING ON PAGE 13  
-----

VERIFICATION

(If Applicant is a Corporation)

STATE OF \_\_\_\_\_ )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_deposes and says that he is the  
(Name of chief executive of applicant)

\_\_\_\_\_of \_\_\_\_\_,  
(Title) (Company Name)

the corporation named in the attached application; that he has read the foregoing application and knows the contents thereof; and that the same is true and complete and accurate to the best of his knowledge. Deponent further says that the reason this verification is made by the deponent and not by said company is because the said company is a corporation. The grounds of deponent's belief relative to all matters in the said application which are not stated upon his own personal knowledge are investigations which deponent has caused to be made concerning the subject matter of this application as well as information acquired by deponent in the course of his duties as an officer of and from the books and papers of said corporation.

(officer of applicant)

Sworn to before me this  
\_\_\_\_day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Notary Public)

## VERIFICATION

(If applicant is Sole Proprietor)

STATE OF \_\_\_\_\_ )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, deposes and says

(Name of Individual)

that he has read the foregoing application and knows the contents thereof; and that the same is true and complete and accurate to the best of his knowledge. The grounds of deponent's belief relative to all matters in the said application which are not stated upon his own personal knowledge are investigations which deponent has caused to be made concerning the subject matter of this application.

Sworn to before me this  
 \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Notary Public)

## VERIFICATION

(If applicant is Partnership)

STATE OF \_\_\_\_\_ )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, deposes and says

(Name of Individual)

that he is one of the members of the firm of \_\_\_\_\_,

(Partnership Name)

the partnership named in the attached application; that he has read the foregoing application and knows the contents thereof; and that the same is true and complete and accurate to the best of his knowledge. The grounds of deponent's belief relative to all matters in the said application which are not stated upon his own personal knowledge are investigations which deponent has caused to be made concerning the subject matter of this application as well as information acquired by deponent in the course of his duties as a member of and from the books and papers of said partnership.

Sworn to before me this  
 \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Notary Public)



VERIFICATION

(If Applicant is a Limited Liability Company)

STATE OF \_\_\_\_\_ )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_deposes and says that he is the  
(Name of chief executive of applicant)

\_\_\_\_\_of \_\_\_\_\_,  
(Title) (Company Name)

the limited liability company named in the attached application; that he has read the foregoing application and knows the contents thereof; and that the same is true and complete and accurate to the best of his knowledge. Deponent further says that the reason this verification is made by the deponent and not by said company is because the said company is a limited liability company. The grounds of deponent's belief relative to all matters in the said application which are not stated upon his own personal knowledge are investigations which deponent has caused to be made concerning the subject matter of this application as well as information acquired by deponent in the course of his duties as an officer of and from the books and papers of said limited liability company.

(officer of applicant)

Sworn to before me this  
\_\_\_\_day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Notary Public)

-----  
NOTE: THIS APPLICATION WILL NOT BE ACCEPTED BY THE AGENCY UNLESS THE HOLD  
HARMLESS AGREEMENT APPEARING ON PAGE 14 IS SIGNED BY THE APPLICANT.  
-----

## HOLD HARMLESS AGREEMENT

Applicant hereby releases City of Albany Industrial Development Agency and the members, officers, servants, agents and employees thereof (hereinafter collectively referred to as the "Agency") from, 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 attached Application, regardless of whether or not the application or the project described therein or the issue of bonds requested therein are favorably acted upon by the Agency, and (ii) the Agency's financing of the Project described therein; including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. If, for any reason, the Applicant fails to conclude or consummate 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 Agency or the Applicant are unable to find buyers willing to purchase the total bond issue requested, then, and in that event, upon presentation of an invoice itemizing the same, the Applicant shall pay to the Agency, its agents or assigns, all actual costs incurred by the Agency in the processing of the Application, including attorneys' fees, if any.

(Applicant)

BY:

Sworn to before me this  
\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Notary Public)

APPENDIX 18F

URBAN REINVESTMENT TAX INCENTIVE PROGRAM AFFIDAVIT

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF ALBANY )

1. That he resides at \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ County, New York, and is the [Insert Title] of [Insert Company Name] (the “Company”), a [Insert Company type].

3. This affidavit is being delivered to the City of Albany Industrial Development Agency (the “Agency”) to demonstrate continuing compliance by the Company with the Agency’s Urban Reinvestment Tax Incentive Program (the “Urban Incentive Program”) and will be delivered to the Agency no later than December 31 of this year.

A. Prior calendar year

1. Number of FTE employees: \_\_\_\_\_
2. Number of part-time employees: \_\_\_\_\_

B. Current calendar year

1. Number of FTE employees: \_\_\_\_\_
2. Number of part-time employees: \_\_\_\_\_

6. The Company provided notices to the following offices of all new job listings for this calendar year:

012001.00005 Business 4118844v8

B. Albany County Department of Social Services.

7. I make the following representations regarding the employees hired by the Company during this calendar year:

A. Number of employees hired that are eligible to participate in the federal job training partnership (P.L. No. 97-300): \_\_\_\_\_

B. Number of employees hired that reside in the area where the project is located: \_\_\_\_\_

8. [Use this paragraph in cases involving new job creation: The Company submitted an employment plan (the "Company Employment Plan") with the Agency in connection with the Company's original application for consideration by the Agency for the benefits provided by the Urban Incentive Program. The Company has complied with the Company Employment Plan, except as described on Schedule A attached.]

9. [Use this paragraph in cases where the Company is not in compliance with the Urban Incentive Program: The Company should provide an explanation why the Company is not in compliance.]

[INSERT COMPANY NAME]

BY: \_\_\_\_\_  
Authorized Officer

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Notary Public

SCHEDULE A

DISCUSSION OF COMPLIANCE BY COMPANY  
WITH COMPANY EMPLOYMENT PLAN

[To Be Completed By Company]

## PART 19

### PROCEDURES FOR PROCESSING OF PROJECTS

SECTION 1901. PURPOSE AND AUTHORITY. The purpose of this Part is to outline the procedures utilized by the City of Albany Industrial Development Agency (the “Agency”) pursuant to Section 903-a of the General Municipal Law and Title One of Article 18-A of the General Municipal Law (collectively, the “Act”) to process applications for financial assistance (within the meaning of Section 854(14) of the Act).

#### SECTION 1902. APPLICATIONS.

(A) General. The Agency shall not entertain a request for financial assistance unless the applicant shall first have filed an application with the Agency and paid the application fee of the Agency.

(B) Form. Each application shall be submitted on the official application form of the Agency. The official application form of the Agency is attached to this Part as Appendix 19A. Each application must be accompanied by a memorandum in a form acceptable to the Agency explaining the action (or actions) requested to be taken by the Agency.

(C) Execution. Both the application and the indemnification agreement attached thereto must be signed by (1) an authorized officer of the applicant (if the applicant is a corporation), or (2) an authorized general partner of the applicant (if the applicant is a partnership), or (3) an authorized member of the applicant (if the applicant is a limited liability company), or (4) the applicant (if the applicant is an individual).

(D) Applicant Information. Each application must include:

(1) the name, address and telephone number of the applicant and, if applicable, the name of applicant’s chief executive officer or other official to whom inquiries should be addressed;

(2) the name, address and telephone number of applicant’s attorney, if any;

(3) a general, functional description of the type and use of the project for which financial assistance is sought (the “Project”);

(4) the prospective location of the Project;

(5) the initial owner, operator or manager of the Project, and whether any of same is a not-for-profit corporation;

(6) the name and address of each owner of the Project;

(7) a general description of the type of financial assistance being sought with respect to the Project;

(8) the estimated value of each type of tax exemption being sought with respect to the Project;

(9) whether any tax exemption sought is not consistent with the Agency's tax exemption policy contained in Part 17 of these Rules and Regulations;

(10) an estimate of the total number of jobs to be created and/or retained by the Project (such estimate shall be described by completing the employment table contained in Part IV of the Application);

(11) an analysis of the costs and benefits of undertaking the project in a form made available to the applicant by the Agency;

(12) if a sales tax exemption is sought with respect to the Project, the Agreement of the applicant to file or cause to be filed with the New York State Department of Taxation and Finance the annual statements required by Section 874(8) of the Act;

(13) the agreement of the applicant that, 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 "DOC") and with the administrative entity (the "Local Labor Office") of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)), such programs collectively with the DOC, hereinafter referred to as the "Workforce Investment Program";

(14) the agreement by the applicant that, except as otherwise provided by collective bargaining agreements, where practicable, the applicant will first consider persons eligible to participate in the Workforce Investment Program who shall be referred by DOC and the Local Labor Office for new employment opportunities created as a result of the Project;

(15) whether the Project includes facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities, and if so, sufficient additional information to permit the Agency to ascertain whether the Project is potentially eligible for financial assistance pursuant to Section 862(2) of the Act;



(16) in the case of civic facility projects, a statement from the applicant describing the public benefit of the Project to the City of Albany residents and taxpayers;

(17) verification that the applicant has obtained a list of the members, officers and employees of the Agency;

(18) a statement describing the interest of any member, officer or employee of the Agency and their immediate family members, if any, whether direct or indirect, in any of the transactions contemplated by the application; and

(19) any other information requested by the Agency.

(E) Bond Counsel. Bond Counsel of the Agency will meet with the staff of the Agency and the Agency's Counsel to discuss the proposed project and the proposed financial assistance.

(F) SEQR Documents. Each application shall be accompanied (1) by the documents required pursuant to Part 17 of these Rules and Regulations, (2) by written explanation as to why such documents are not readily available, and/or (3) by a discussion describing what role the Agency will take in the SEQR review process.

(G) Place for Filing. Applications shall be filed by mailing or delivering one (1) copy of the application, together with an equal number of copies of each accompanying document, to the attention of the Chief Executive Officer of the Agency at the principal office of the Agency, presently located at 21 Lodge Street, Albany, New York 12207.

(H) Form of Transmission. All materials submitted to the Agency must be submitted in "hard" copy form. The Agency will not accept e-mail transmissions unless expressly authorized by the Agency or expressly requested by the Agency. The Agency reserves the right to request e-mail transmissions of documents and communications.

### SECTION 1903. PROCEDURES FOR PROCESSING PROJECTS.

(A) Distribution. In advance of the meeting where the application will be considered, the Chief Executive Officer of the Agency shall examine same to determine compliance with the requirements of Section 1902 of this Part. If the application appears to substantially comply with such requirements, the Chief Executive Officer of the Agency shall distribute one copy of the summary of the application and the documentation accompanying same (together with a memorandum describing any deviations from the requirements of Section 1902 of this Part, if any) to each of the following:

- (1) the Chair of the Agency;
- (2) counsel to the Agency;
- (3) each of the members of the Agency; and

(4) the parties described in Section 1102 of Part 11.

(B) Preliminary Agency Action. Once the application has been distributed pursuant to Section 1903(A) hereof, Bond Counsel to the Agency shall contact counsel to the applicant (or Agency staff will contact the applicant) to discuss, subject to approval by the members of the Agency, to a time schedule whereby the Agency will consider the application, entertain resolutions and provide the financial assistance requested in the application. Except as otherwise determined by the Agency, prior to the Agency taking any preliminary action with respect to an application, the Agency staff shall first submit the application to the Finance Committee of the Agency for preliminary review and consideration. Once the Finance Committee has reviewed the application and has made a recommendation to the full board of the Agency that the Agency take preliminary action with respect to the application, the Agency staff will then submit the application for consideration by the full board of the Agency. Preliminary action by the Agency shall consist of the adoption by the Agency of a preliminary official action resolution approving the execution and delivery of a preliminary agreement describing the financial assistance to be granted by the Agency. Bond Counsel shall be responsible for preparing the preliminary official action resolution, together with a brief memorandum of explanation, and filing same with the Agency in conformance with the deadlines described in (E) below.

(C) Subsequent Agency Action. Any subsequent action by the Agency with respect to an Agency Project shall typically consist of SEQR resolutions and final approval/bond resolutions. Bond Counsel shall be responsible for preparing such resolutions, together with brief memoranda of explanation, and filing same with the Agency in conformance with the deadlines described in (E) below.

(D) Term of Preliminary Resolution. Any preliminary agreement authorized by a preliminary official action resolution shall have a term of twelve (12) months. If the Project has not closed within the twelve (12) month period provided in the preliminary agreement, the applicant must provide a written report to the Agency regarding the status of the Project. The term of the preliminary agreement may be renewed for one additional twelve (12) month period. If the Project has not closed within the second twelve (12) month period, the preliminary agreement will terminate and the applicant must re-apply to the Agency for any financial assistance.

(E) Filing Deadline. Except as otherwise determined by the Agency and except as otherwise provided in Section 1903(B) hereof, an application will not be considered at a meeting of the Agency unless it is filed and meets the requirements of Section 1902 of this Part at least fifteen (15) calendar days before the next scheduled meeting of the Agency. Any and all resolutions must also be filed with the Agency at least six (6) calendar days before the next scheduled meeting of the Agency. The applicant or Bond Counsel must submit at least one (1) copy of all resolutions to the Agency. The applicant and Bond Counsel are responsible for conferring with the Agency staff to ensure that all applications and resolutions are delivered timely to the Agency. The regular meeting schedule of the Agency is the third Thursday of each month. The regular meeting schedule of the Finance Committee of the Agency is the second Wednesday of each month.

(F) Referral to Another Agency. The Agency reserves the right to refer an applicant to the Albany County Industrial Development Agency (the “County IDA”) in the event that the Agency is unable to provide the financial assistance requested by the applicant. The staff of the Agency will review with the applicant the reasons for any referral to the County IDA prior to the making of any referral.

APPENDIX 19A

APPLICATION OF AGENCY

**CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY**

**APPLICATION**

-----  
IMPORTANT NOTICE: The answers to the questions contained in this application are necessary to determine your firm's eligibility for financing and other assistance from the City of Albany Industrial Development Agency. These answers will also be used in the preparation of papers in this transaction. Accordingly, all questions should be answered accurately and completely by an officer or other employee of your firm who is thoroughly familiar with the business and affairs of your firm and who is also thoroughly familiar with the proposed project. This application is subject to acceptance by the Agency.  
-----

TO: CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY  
c/o Department of Economic Development  
21 Lodge Street  
Albany, New York 12207

This application by applicant respectfully states:

APPLICANT: \_\_\_\_\_

APPLICANT'S ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_ FAX NO.: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

NAME OF PERSON(S) AUTHORIZED TO SPEAK FOR APPLICANT WITH RESPECT TO THIS APPLICATION:

IF APPLICANT IS REPRESENTED BY AN ATTORNEY, COMPLETE THE FOLLOWING:

NAME OF ATTORNEY: \_\_\_\_\_

ATTORNEY'S ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

PHONE NO.: \_\_\_\_\_ FAX NO.: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

-----  
NOTE: PLEASE READ THE INSTRUCTIONS ON PAGE 2 HEREOF BEFORE FILLING OUT THIS FORM.  
-----

## INSTRUCTIONS

1. The Agency will not approve any application unless, in the judgment of the Agency, said application and the summary contains sufficient information upon which to base a decision whether to approve or tentatively approve an action.
2. Fill in all blanks, using “none” or “not applicable” or “N/A” where the question is not appropriate to the project which is the subject of this application (the “Project”).
3. If an estimate is given as the answer to a question, put “(est)” after the figure or answer which is estimated.
4. If more space is needed to answer any specific question, attach a separate sheet.
5. When completed, return one (1) copy of this application to the Agency at the address indicated on the first page of this application.
6. The Agency will not give final approval to this application until the Agency receives a completed environmental assessment form concerning the Project which is the subject of this application.
7. Please note that Article 6 of the Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the applicant feels that there are elements of the Project which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the applicant’s competitive position, the applicant may identify such elements in writing and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law.
8. The applicant will be required to pay to the Agency all actual costs incurred in connection with this application and the Project contemplated herein (to the extent such expenses are not paid out of the proceeds of the Agency’s bonds issued to finance the Project). The applicant will also be expected to pay all costs incurred by general counsel and bond counsel/special counsel to the Agency. The costs incurred by the Agency, including the Agency’s general counsel and bond counsel, may be considered as a part of the Project and included as a part of the resultant bond issue.
9. The Agency has established an application fee of One Thousand Five Hundred Dollars (\$1,500) to cover the anticipated costs of the Agency in processing this application. A check or money order made payable to the Agency must accompany each application. **THIS APPLICATION WILL NOT BE ACCEPTED BY THE AGENCY UNLESS ACCOMPANIED BY THE APPLICATION FEE.**
10. The Agency has also established an administrative fee equal to (A) one percent (1%) of the cost of the Project in the case of an Agency Straight Lease Transaction, and (B) one percent (1%) of the aggregate principal amount of the bonds to be

issued by the Agency in the case of an Agency Bond Transaction. The Agency has also established an administrative fee for the issuance of refunding bonds for Agency Bond Transactions. The formula for the calculation of the administrative fee for the issuance of refunding bonds is outlined in the Agency's Policy Manual. THESE FEES ARE PAYABLE ON THE CLOSING DATE.

FOR AGENCY USE ONLY

1. Project Number	_____
2. Date application Received by Agency	_____, 20____
3. Date application referred to attorney for review	_____, 20____
4. Date copy of application mailed to members	_____, 20____
5. Date notice of Agency meeting on application posted	_____, 20____
6. Date notice of Agency meeting on application mailed	_____, 20____
7. Date of Agency meeting on application	_____, 20____
8. Date Agency conditionally approved application	_____, 20____
9. Date scheduled for public hearing	_____, 20____
10. Date Environmental Assessment Form ("EAF") received	_____, 20____
11. Date Agency completed environmental review	_____, 20____
12. Date of final approval of application	_____, 20____



## SUMMARY OF PROJECT

Applicant:

Contact Person:

Phone Number:

Occupant:

Project Location:

Approximate Size of Project Site:

### Description of Project:

Type of Project: ☐ Manufacturing ☐ Warehouse/Distribution  
☐ Commercial ☐ Not-For-Profit  
☐ Other-Specify

Employment Impact:	Existing Jobs
	New Jobs

Project Cost: \$\_\_\_\_\_

Type of Financing:      ☐ Tax-Exempt                      ☐ Taxable                      ☐ Straight Lease

Amount of Bonds Requested: \$\_\_\_\_\_

Estimated Value of Tax-Exemptions:

N.Y.S. Sales and Compensating Use Tax: \$ \_\_\_\_\_  
Mortgage Recording Taxes: \$ \_\_\_\_\_  
Real Property Tax Exemptions: \$ \_\_\_\_\_  
Other (please specify): \$ \_\_\_\_\_

Provide estimates for the following:

Number of Full Time Employees at the Project Site before IDA Status: \_\_\_\_\_  
 Estimate of Jobs to be Created: \_\_\_\_\_  
 Estimate of Jobs to be Retained: \_\_\_\_\_

Average Estimated Annual Salary of Jobs to be Created:  
Annualized Salary Range of Jobs to be Created:  
Estimated Average Annual Salary of Jobs to be Retained:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I. INFORMATION CONCERNING THE PROPOSED OCCUPANT OF THE PROJECT (HEREINAFTER, THE "COMPANY").

A. Identity of Company:

1. Company Name:

Present Address:

Zip Code:

Employer's ID No.:

2. If the Company differs from the Applicant, give details of relationship:

3. Indicate type of business organization of Company:

a. \_\_\_\_\_ Corporation (If so, incorporated in what country?  
What State? \_\_\_\_\_ Date Incorporated? \_\_\_\_\_ Type of  
Corporation? \_\_\_\_\_ Authorized to do business in New York?  
Yes \_\_\_\_; No \_\_\_\_).

b. \_\_\_\_\_ Partnership (if so, indicate type of partnership \_\_\_\_\_,  
Number of general partners \_\_\_\_\_, Number of limited partners \_\_\_\_).

c. \_\_\_\_\_ Limited liability company,  
Date created? \_\_\_\_\_.

d. \_\_\_\_\_ Sole proprietorship

4. Is the Company a subsidiary or direct or indirect affiliate of any other organization(s)? If so, indicate name of related organization(s) and relationship:

B. Management of Company:

1. List all owners, officers, members, directors and partners (complete all columns for each person):

NAME (First, Middle, Last) HOME ADDRESS	OFFICE HELD	OTHER PRINCIPAL BUSINESS

2. Is the Company or management of the Company now a plaintiff or a defendant in any civil or criminal litigation? Yes \_\_\_\_; No \_\_\_\_.

3. Has any person listed above ever been convicted of a criminal offense (other than a minor traffic violation)? Yes \_\_\_\_; No \_\_\_\_.

4. Has any person listed above or any concern with whom such person has been connected ever been in receivership or been adjudicated a bankrupt? Yes \_\_\_\_; No \_\_\_\_\_. (If yes to any of the foregoing, furnish details in a separate attachment).

5. If the answer to any of questions 2 through 4 is yes, please, furnish details in a separate attachment.

C. Principal Owners of Company:

1. Principal owners of Company: Is Company publicly held? Yes \_\_\_\_; No \_\_\_\_\_. If yes, list exchanges where stock traded:

2. If no, list all stockholders having a 5% or more interest in the Company:

NAME	ADDRESS	PERCENTAGE OF HOLDING

D. Company's Principal Bank(s) of account:

II. DATA REGARDING PROPOSED PROJECT

A. Summary: (Please provide a brief narrative description of the Project.)

B. Location of Proposed Project:

1. Street Address
2. City of
3. Town of
4. Village of
5. County of

C. Project Site:

1. Approximate size (in acres or square feet) of Project site:  
Is a map, survey, or sketch of the project site attached? Yes \_\_\_\_; No \_\_\_\_.
2. Are there existing buildings on project site? Yes \_\_\_\_; No \_\_\_\_.
  - a. If yes, indicate number and approximate size (in square feet) of each existing building:
  - b. Are existing buildings in operation? Yes \_\_\_\_; No \_\_\_\_.  
If yes, describe present use of present buildings:
  - c. Are existing buildings abandoned? Yes \_\_\_\_; No \_\_\_\_\_. About to be abandoned? Yes \_\_\_\_; No \_\_\_\_\_. If yes, describe:
  - d. Attach photograph of present buildings.

3. Utilities serving project site:  
Water-Municipal:  
    Other (describe)  
Sewer-Municipal:  
    Other (describe)  
Electric-Utility:  
    Other (describe)  
Heat-Utility:  
    Other (describe)
4. Present legal owner of project site:
- a. If the Company owns project site, indicate date of purchase: \_\_\_\_\_, 20\_\_\_\_; Purchase price: \$\_\_\_\_\_.
- b. If Company does not own the Project site, does Company have option signed with owner to purchase the Project site? Yes \_\_\_\_; No \_\_\_\_\_. If yes, indicate date option signed with owner: \_\_\_\_\_, 20\_\_\_\_; and the date the option expires: \_\_\_\_\_, 20\_\_\_\_\_.
- c. If the Company does not own the project site, is there a relationship legally or by common control between the Company and the present owners of the project site? Yes \_\_\_\_; No \_\_\_\_\_. If yes, describe:
5. a. Zoning District in which the project site is located:
- b. Are there any variances or special permits affecting the site? Yes \_\_\_\_; No \_\_\_\_\_. If yes, list below and attach copies of all such variances or special permits:

D. Buildings:

1. Does part of the Project consist of a new building or buildings? Yes \_\_\_\_; No \_\_\_\_\_. If yes, indicate number and size of new buildings:
2. Does part of the Project consist of additions and/or renovations to the existing buildings? Yes \_\_\_\_; No \_\_\_\_\_. If yes, indicate the buildings to be expanded or renovated, the size of any expansions and the nature of expansion and/or renovation:
3. Describe the principal uses to be made by the Company of the building or buildings to be acquired, constructed, or expanded:

E. Description of the Equipment:

1. Does a part of the Project consist of the acquisition or installation of machinery, equipment or other personal property (the "Equipment")? Yes\_\_\_\_; No\_\_\_\_. If yes, describe the Equipment:
  
2. With respect to the Equipment to be acquired, will any of the Equipment be Equipment which has previously been used? Yes\_\_\_\_; No\_\_\_\_. If yes, please provide detail:
  
3. Describe the principal uses to be made by the Company of the Equipment to be acquired or installed:

F. Project Use:

1. What are the principal products to be produced at the Project?
  
2. What are the principal activities to be conducted at the Project?
  
3. Does the Project include facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities? Yes \_\_\_\_; No \_\_\_\_\_. If yes, please provide detail:
  
4. If the answer to question 3 is yes, what percentage of the cost of the Project will be expended on such facilities or property primarily used in making retail sales of goods or services to customers who personally visit the Project? \_\_\_\_\_%
  
5. If the answer to question 3 is yes, and the answer to question 4 is more than 33.33%, indicate whether any of the following apply to the Project:

- a. Will the Project be operated by a not-for-profit corporation? Yes\_\_\_\_; No\_\_\_\_. If yes, please explain:
- b. Is the Project likely to attract a significant number of visitors from outside the economic development region in which the Project will be located? Yes\_\_\_\_; No\_\_\_\_. If yes, please explain:
- c. Would the Project occupant, but for the contemplated financial assistance from the Agency, locate the related jobs outside the State of New York? Yes\_\_\_\_; No\_\_\_\_. If yes, please explain:
- d. 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 city, town or village within which the Project will be located, because of a lack of reasonably accessible retail trade facilities offering such goods or services? Yes\_\_\_\_; No\_\_\_\_. If yes, please provide detail:
- e. Will the Project be located in one of the following: (i) an area designed as an economic development zone pursuant to Article 18-B of the General Municipal Law; or (ii) a census tract or block numbering area (or census tract or block numbering area contiguous thereto) which, according to the most recent census data, has (x) a poverty rate of at least 20% for the year in which the data relates, or at least 20% of households receiving public assistance, and (y) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates? Yes\_\_\_\_; No\_\_\_\_. If yes, please explain: \_\_\_\_\_

6. If the answers to any of subdivisions c. through e. of question 5 is yes, 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, please explain:

7. Will the completion of the Project result in the removal of a plant or facility of the Company or another proposed occupant of the Project (a "Project Occupant") from one area of the State of New York to another area of the State of New York? Yes\_\_\_\_; No\_\_\_\_. If yes, please explain:



8. Will the completion of the Project result in the abandonment of one or more plants or facilities of the Company located in the State of New York? Yes\_\_\_\_; No\_\_\_\_. If yes, please provide detail:

9. If the answer to either question 7 or question 8 is yes, indicate whether any of the following apply to the Project:

a. Is the Project reasonably necessary to preserve the competitive position of the Company or such Project Occupant in its industry? Yes\_\_\_\_; No\_\_\_\_. If yes, please provide detail:

b. Is the Project reasonably necessary to discourage the Company or such Project Occupant from removing such other plant or facility to a location outside the State of New York? Yes\_\_\_\_; No\_\_\_\_. If yes, please provide detail:

G. Other Involved Agencies:

1. Please indicate all other local agencies, boards, authorities, districts, commissions or governing bodies (including any city, county and other political subdivision of the State of New York and all state departments, agencies, boards, public benefit corporations, public authorities or commissions) involved in approving or funding or directly undertaking action with respect to the Project. For example, do you need a municipal building permit to undertake the Project? Do you need a zoning approval to undertake the Project? If so, you would list the appropriate municipal building department or planning or zoning commission which would give said approvals.

2. Describe the nature of the involvement of the federal, state, or local agencies described above:

H. Construction Status:

1. Has construction work on this Project begun? Yes \_\_\_\_; No \_\_\_\_\_. If yes, please discuss in detail the approximate extent of construction and the extent of completion. Indicate in your answer whether such specific steps have been completed as site clearance and preparation; completion of foundations; installation of footings; etc.:

2. Please indicate amount of funds expended on this Project by the Company in the past three (3) years and the purposes of such expenditures:

3. Please indicate the date the applicant estimates the Project will be completed:  
\_\_\_\_\_.

I. Method of Construction After Agency Approval:

1. If the Agency approves the Project which is the subject of this application, there are two methods that may be used to construct the Project. The applicant can construct the Project privately and sell the Project to the Agency upon completion. Alternatively, the applicant can request to be appointed as “agent” of the Agency, in which case certain laws applicable to public construction may apply to the Project. Does the applicant wish to be designated as “agent” of the Agency for purposes of constructing the Project? Yes \_\_\_\_; No \_\_\_\_.

2. If the answer to question 1 is yes, does the applicant desire such “agent” status prior to the closing date of the financing? Yes \_\_\_\_; No \_\_\_\_.

III. INFORMATION CONCERNING LEASES OR SUBLEASES OF THE PROJECT. (PLEASE COMPLETE THE FOLLOWING SECTION IF THE COMPANY INTENDS TO LEASE OR SUBLEASE ANY PORTION OF THE PROJECT).

A. Does the Company intend to lease or sublease more than 10% (by area or fair market value) of the Project? Yes \_\_\_\_; No \_\_\_\_\_. If yes, please complete the following for each existing or proposed tenant or subtenant:

1. Sublessee name:  
Present Address:  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Employer’s ID No.: \_\_\_\_\_  
Sublessee is: \_\_\_\_ Corporation: \_\_\_\_ Partnership: \_\_\_\_ Sole Proprietorship  
Relationship to Company: \_\_\_\_\_  
Percentage of Project to be leased or subleased: \_\_\_\_\_  
Use of Project intended by Sublessee: \_\_\_\_\_  
Date of lease or sublease to Sublessee: \_\_\_\_\_  
Term of lease or sublease to Sublessee: \_\_\_\_\_

Will any portion of the space leased by this sublessee be primarily used in making retail sales of goods or services to customers who personally visit the Project? Yes\_\_\_\_; No\_\_\_\_. If yes, please provide on a separate attachment (a) details and (b) the answers to questions II(F)(4) through (6) with respect to such sublessee.

2. Sublessee name:  
Present Address:  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Employer's ID No.: \_\_\_\_\_  
Sublessee is: \_\_\_\_\_  
\_\_\_\_ Corporation: \_\_\_\_\_ Partnership: \_\_\_\_\_ Sole Proprietorship  
Relationship to Company: \_\_\_\_\_  
Percentage of Project to be leased or subleased: \_\_\_\_\_  
Use of Project intended by Sublessee: \_\_\_\_\_  
Date of lease or sublease to Sublessee: \_\_\_\_\_  
Term of lease or sublease to Sublessee: \_\_\_\_\_  
Will any portion of the space leased by this sublessee be primarily used in making retail sales of goods or services to customers who personally visit the Project? Yes\_\_\_\_; No\_\_\_\_. If yes, please provide on a separate attachment (a) details and (b) the answers to questions II(F)(4) through (6) with respect to such sublessee.
3. Sublessee name:  
Present Address:  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Employer's ID No.: \_\_\_\_\_  
Sublessee is: \_\_\_\_\_ Corporation: \_\_\_\_\_ Partnership: \_\_\_\_\_ Sole Proprietorship  
Relationship to Company: \_\_\_\_\_  
Percentage of Project to be leased or subleased: \_\_\_\_\_  
Use of Project intended by Sublessee: \_\_\_\_\_  
Date of lease or sublease to Sublessee: \_\_\_\_\_  
Term of lease or sublease to Sublessee: \_\_\_\_\_  
Will any portion of the space leased by this sublessee be primarily used in making retail sales of goods or services to customers who personally visit the Project? Yes\_\_\_\_; No\_\_\_\_. If yes, please provide on a separate attachment (a) details and (b) the answers to questions II(F)(4) through (6) with respect to such sublessee.

B. What percentage of the space intended to be leased or subleased is now subject to a binding written lease or sublease?

#### IV. Employment Impact

- A. Indicate the number of people presently employed at the Project site and the **additional** number that will be employed at the Project site at the end of the first and second years after the Project has been completed, using the tables below for (1) employees of the Applicant, (2) independent contractors, and (3) employees of independent contractors. (Do not include construction workers). Also indicate below the number of workers employed at the Project site representing newly created positions as opposed to positions relocated from other project sites of the applicant. Such information regarding relocated positions

should also indicate whether such positions are relocated from other project sites financed by obligations previously issued by the Agency.

<b>TYPE OF EMPLOYMENT Employees of Applicant</b>					
	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled	Totals
Present Full Time					
Present Part Time					
Present Seasonal					
First Year Full Time					
First Year Part Time					
First Year Seasonal					
Second Year Full Time					
Second Year Part Time					
Second Year Seasonal					

<b>TYPE OF EMPLOYMENT Independent Contractors</b>					
	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled	Totals
Present Full Time					
Present Part Time					

Present Seasonal					
First Year Full Time					
First Year Part Time					
First Year Seasonal					
Second Year Full Time					
Second Year Part Time					
Second Year Seasonal					

<b>TYPE OF EMPLOYMENT</b> <b>Employees of Independent Contractors</b>					
	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled	Totals
Present Full Time					
Present Part Time					
Present Seasonal					
First Year Full Time					
First Year Part Time					
First Year Seasonal					
Second Year Full Time					
Second Year Part Time					

Second Year Seasonal					
----------------------	--	--	--	--	--

- B. Indicate below (1) the estimated salary and fringe benefit averages or ranges and (2) the estimated number of employees residing in the Capital District Economic Development Region for all the jobs at the Project site, both retained and created, listed in the tables described in subsection A above for each of the categories of positions listed in the chart below.

RELATED EMPLOYMENT INFORMATION				
	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled
Estimated Salary and Fringe Benefit Averages or Ranges				
Estimated Number of Employees Residing in the Capital District Economic Development Region <sup>3</sup>				

- C. Please describe the projected timeframe for the creation of any new jobs with respect to the undertaking of the Project:
- D. Please prepare a separate attachment describing in detail the types of employment at the Project site. Such attachment should describe the activities or work performed for each type of employment.

---

<sup>3</sup> The Capital District Economic Development Region consists of the following counties: Albany, Schenectady, Rensselaer, Greene, Columbia, Saratoga, Warren and Washington.

V. Project Cost and Financing Sources

- A. Anticipated Project Costs. State the costs reasonably necessary for the acquisition of the Project site, the construction of the proposed buildings and the acquisition and installation of any machinery and equipment necessary or convenient in connection therewith, and including any utilities, access roads or appurtenant facilities, using the following categories:

<u>Description of Cost</u>	<u>Amount</u>
Land	\$ _____
Buildings	\$ _____
Machinery and equipment costs	\$ _____
Utilities, roads and appurtenant costs	\$ _____
Architects and engineering fees	\$ _____
Costs of Bond Issue (legal, financial and printing)	\$ _____
Construction loan fees and interest (if applicable)	\$ _____
Other (specify)	
_____	\$ _____
_____	\$ _____
_____	\$ _____
<b>TOTAL PROJECT COSTS</b>	\$ _____

- B. Anticipated Project Financing Sources. State the sources reasonably necessary for the financing of the Project site, the construction of the proposed buildings and the acquisition and installation of any machinery and equipment necessary or convenient in connection therewith, and including any utilities, access roads or appurtenant facilities, using the following categories:

<u>Description of Sources</u>	<u>Amount</u>
Private Sector Financing	\$ _____
Public Sector	
Federal Programs	\$ _____
State Programs	\$ _____
Local Programs	\$ _____
Applicant Equity	\$ _____
Other (specify, e.g., tax credits)	
_____	\$ _____
_____	\$ _____
_____	\$ _____
<b>TOTAL AMOUNT OF PROJECT FINANCING SOURCES</b>	<b>\$ _____</b>

- C. Have any of the above expenditures already been made by the applicant?  
Yes \_\_\_\_; No \_\_\_\_\_. If yes, indicate particulars.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- D. Amount of loan requested: \$ \_\_\_\_\_;

Maturity requested: \_\_\_\_\_ years.

- E. Has a commitment for financing been received as of this application date, and if so, from whom?

Yes \_\_\_\_; No \_\_\_\_\_. Institution Name: \_\_\_\_\_

Provide name and telephone number of the person we may contact.

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

- F. The percentage of Project costs to be financed from public sector sources is estimated to equal the following: \_\_\_\_\_%



- G. The total amount estimated to be borrowed to finance the Project is equal to the following:  
\$ \_\_\_\_\_

VI. BENEFITS EXPECTED FROM THE AGENCY

A. Financing

1. Is the applicant requesting that the Agency issue bonds to assist in financing the Project? Yes \_\_\_\_; No \_\_\_\_\_. If yes, indicate:
  - a. Amount of loan requested: \_\_\_\_\_ Dollars;
  - b. Maturity requested: \_\_\_\_\_ Years.
2. Is the interest on such bonds intended to be exempt from federal income taxation? Yes \_\_\_\_; No \_\_\_\_\_.
3. If the answer to question 2 is yes, will any portion of the Project be used for any of the following purposes:
  - a. retail food and beverage services: Yes\_\_\_\_; No\_\_\_\_\_
  - b. automobile sales or service: Yes\_\_\_\_; No\_\_\_\_\_
  - c. recreation or entertainment: Yes\_\_\_\_; No\_\_\_\_\_
  - d. golf course: Yes\_\_\_\_; No\_\_\_\_\_
  - e. country club: Yes\_\_\_\_; No\_\_\_\_\_
  - f. massage parlor: Yes\_\_\_\_; No\_\_\_\_\_
  - g. tennis club: Yes\_\_\_\_; No\_\_\_\_\_
  - h. skating facility (including roller skating, skateboard and ice skating): Yes\_\_\_\_; No\_\_\_\_\_
  - i. racquet sports facility (including handball and racquetball court): Yes\_\_\_\_; No\_\_\_\_\_
  - j. hot tub facility: Yes\_\_\_\_; No\_\_\_\_\_
  - k. suntan facility: Yes\_\_\_\_; No\_\_\_\_\_
  - l. racetrack: Yes\_\_\_\_; No\_\_\_\_\_
4. If the answer to any of the above questions contained in question 3 is yes, please furnish details on a separate attachment.
5. Is the Project located in the City's federally designated Enterprise Zone? Yes\_\_\_\_; No\_\_\_\_\_.
6. Is the applicant requesting the Agency to issue federally tax-exempt Enterprise Zone bonds? Yes\_\_\_\_; No\_\_\_\_\_.

B. Tax Benefits

1. Is the applicant requesting any real property tax exemption that would not be available to a project that did not involve the Agency? Yes \_\_\_\_; No \_\_\_\_\_.

2. Is the applicant expecting that the financing of the Project will be secured by one or more mortgages? Yes \_\_\_\_; No \_\_\_\_\_. If yes, what is the approximate amount of financing to be secured by mortgages? \$\_\_\_\_\_.

3. Is the applicant expecting to be appointed agent of the Agency for purposes of avoiding payment of N.Y.S. Sales Tax or Compensating Use Tax? Yes \_\_\_\_; No \_\_\_\_\_. If yes, what is the approximate amount of purchases which the applicant expects to be exempt from the N.Y.S. Sales and Compensating Use Taxes? \$\_\_\_\_\_.

4. What is the estimated value of each type of tax-exemption being sought in connection with the Project? Please detail the type of tax-exemption and value of the exemption.

a.	N.Y.S. Sales and Compensating Use Taxes:	\$_____
b.	Mortgage Recording Taxes:	\$_____
c.	Real Property Tax Exemptions:	\$_____
d.	Other (please specify):	\$_____
	_____	\$_____
	_____	\$_____

5. Are any of the tax-exemptions being sought in connection with the Project inconsistent with the Agency's Uniform Tax Exemption Policy? Yes \_\_\_\_; No \_\_\_\_\_. If yes, please explain.

6. Is the Project located in the City's state designated Empire Zone? Yes \_\_\_\_; No \_\_\_\_.

C. Project Cost/Benefit Information. Complete the attached Cost/Benefit Analysis so that the Agency can perform a cost/benefit analysis of undertaking the Project. Such information should consist of a list and detailed description of the benefits of the Agency undertaking the Project (e.g., number of jobs created, types of jobs created, economic development in the area, etc.). Such information should also consist of a list and detailed description of the costs of the Agency undertaking the Project (e.g., tax revenues lost, buildings abandoned, etc.).

VII. REPRESENTATIONS BY THE APPLICANT. The applicant understands and agrees with the Agency as follows:

A. Job Listings. 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 "DOC") and with the administrative entity (collectively with the DOC, the "JTPA Entities") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA"), as replaced by the Workforce Investment Act of 1998 (Public Law 105-220), 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. City Human Rights Law. The applicant has reviewed the provisions of Chapter 48, Article III of the City Code, entitled “The Omnibus Human Rights Law” and agrees to comply with such provisions to the extent that such provisions are applicable to the applicant and the Project.

D. 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.

E. Annual 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, on an annual basis, reports regarding the number of people employed at the Project site, including (1) the NYS-45 – Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return – for the quarter ending December 31 (the “NYS-45”), and (2) the US Dept. of Labor BLS 3020 Multiple Worksite report if applicable. The applicant also agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the participation of individuals from minority groups as employees or applicants for employment with regard to the project.

F. Local Labor Information. The applicant is aware of and understands the provisions of Part 24 of the Policy Manual of the Agency. Pursuant to Part 24 of the Policy Manual of the Agency, the applicant agrees to provide information, in form and substance satisfactory to the Agency, relating to construction activities for projects; specifically: (i) the Company’s contact person responsible and accountable for providing information about the bidding for and awarding of construction contracts relative to this Application and the Project, (ii) the nature of construction jobs created by the Project, including the number, type, and duration of construction positions; and (iii) submit to the Agency a “Construction Completion Report” listing the names and business locations of prime contractors, subcontractors, and vendors who were engaged in the construction phase of the Project.

G. Additional Fee for Low Income Housing/Tax Credit (9% only) Projects. An annual administrative fee equal to \$10,000 shall be payable annually by the applicant on each January 1 for a term equal to ten (10) years. This annual administrative fee is in addition to the standard administrative fee for Agency Straight Lease Transactions and Agency Bond Transactions and is applicable to Projects which provide for low income housing/tax credit (9% only) projects.

H. Project Benefits Agreement. The applicant agrees to enter into a project benefits agreement with the Agency where the applicant agrees that (1) the amount of Financial Assistance to be received shall be contingent upon, and shall bear a direct relationship to the success or lack of success of such project in delivering certain described public benefits (the “Public Benefits”) and (2) the Agency will be entitled to recapture some or all of the Financial Assistance granted to the applicant if the project is unsuccessful in whole or in part in delivering the promised Public Benefits.

I. Assignment of Agency Abatements. In connection with any Agency Straight Lease Transaction or Agency Bond Transaction, the Agency may grant to the applicant certain exemptions from mortgage recording taxes, sales and use taxes and real property taxes. The applicant understands that the grant of such exemptions by the Agency is intended to benefit the applicant. Subsequently, if the applicant determines to convey the Project and, in connection with such conveyance to assign such exemptions to the purchaser, the applicant understand that any such assignment is subject to review and consent by the Agency, together with the satisfaction of any conditions that may be imposed by the Agency.

J. Post Closing Cost Verification. The applicant agrees (1) the scope of the Project will not vary significantly from the description in the public hearing resolution for the project and (2) to deliver to the Agency within sixty (60) days following the completion date of a project an affidavit providing the total costs of the project. In the event that the amount of the total project costs described in the affidavit at the completion date exceeds the amount described in an affidavit provided by the applicant on the closing date of the project, the applicant agrees to adjust the amounts payable by the applicant to the Agency by such larger amount and to pay to the Agency such additional amounts. In the event that the amount described is less, there shall not be any adjustment to the Agency fees.

K. Representation of Financial Information. Neither this Application nor any other agreement, document, certificate, project financials, or written statement furnished to the Agency or by or on behalf of the applicant in connection with the project contemplated by this Application contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading. There is no fact within the special knowledge of any of the officers of the applicant which has not been disclosed herein or in writing by them to the Agency and which materially adversely affects or in the future in their opinion may, insofar as they can now reasonably foresee, materially adversely affect the business, properties, assets or condition, financial or otherwise, of the applicant.

L. Agency Financial Assistance Required for Project. The Project would not be undertaken but for the Financial Assistance provided by the Agency or, if the Project could be undertaken without the Financial Assistance provided by the Agency, then the Project should be undertaken by the Agency for the following reasons:

M. Compliance with Article 18-A of the General Municipal Law: The Project, as of the date of this Application, is in substantial compliance with all provisions of article 18-A of the General Municipal including, but not limited to, the provisions of Section 859-a and subdivision one of

Section 862; and the provisions of subdivision one of Section 862 of the General Municipal Law will not be violated if Financial Assistance is provided for the Project.

N. Compliance with Federal, State, and Local Laws. The applicant is in substantial compliance with applicable local, state, and federal tax, worker protection, and environmental laws, rules, and regulations.

O. False or Misleading Information. The applicant understands 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 exemptions claimed by reason of Agency involvement in the Project.

P. Absence of Conflicts of Interest. The applicant acknowledges that the members, officers and employees of the Agency are listed on the Agency's website. No member, officer or employee of the Agency has an interest, whether direct or indirect, in any transaction contemplated by this Application, except as hereinafter described:

Q.

Additional Information. Additional information regarding the requirements noted in this Application and other requirements of the Agency is included the Agency's Policy Manual which can be accessed at [www.albanyida.com](http://www.albanyida.com).

I affirm under penalty of perjury that all statements made on this application are true, accurate and complete to the best of my knowledge.

	_____
	Applicant
By:	_____
Title:	_____

-----  
NOTE: APPLICANT MUST ALSO COMPLETE THE APPROPRIATE VERIFICATION APPEARING ON PAGES 26 THROUGH 29 HEREOF BEFORE A NOTARY PUBLIC AND MUST SIGN AND ACKNOWLEDGE THE HOLD HARMLESS AGREEMENT APPEARING ON PAGE 30  
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VERIFICATION

(If Applicant is a Corporation)

STATE OF \_\_\_\_\_ )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_deposes and says that he is the  
(Name of chief executive of applicant)

\_\_\_\_\_of \_\_\_\_\_,  
(Title) (Company Name)

the corporation named in the attached application; that he has read the foregoing application and knows the contents thereof; and that the same is true and complete and accurate to the best of his knowledge. Deponent further says that the reason this verification is made by the deponent and not by said company is because the said company is a corporation. The grounds of deponent's belief relative to all matters in the said application which are not stated upon his own personal knowledge are investigations which deponent has caused to be made concerning the subject matter of this application as well as information acquired by deponent in the course of his duties as an officer of and from the books and papers of said corporation.

\_\_\_\_\_  
(officer of applicant)

Sworn to before me this  
\_\_\_\_\_day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Notary Public)

VERIFICATION

(If applicant is sole proprietor)

STATE OF \_\_\_\_\_ )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, deposes and says  
(Name of Individual)

that he has read the foregoing application and knows the contents thereof; and that the same is true and complete and accurate to the best of his knowledge. The grounds of deponent's belief relative to all matters in the said application which are not stated upon his own personal knowledge are investigations which deponent has caused to be made concerning the subject matter of this application.

\_\_\_\_\_

Sworn to before me this  
\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Notary Public)



VERIFICATION

(If applicant is limited liability company)

STATE OF \_\_\_\_\_ )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, deposes and says

(Name of Individual)

that he is one of the members of the firm of \_\_\_\_\_,

(Limited Liability Company)

the limited liability company named in the attached application; that he has read the foregoing application and knows the contents thereof; and that the same is true and complete and accurate to the best of his knowledge. The grounds of deponent's belief relative to all matters in the said application which are not stated upon his own personal knowledge are investigations which deponent has caused to be made concerning the subject matter of this application as well as information acquired by deponent in the course of his duties as a member of and from the books and papers of said limited liability company.

\_\_\_\_\_

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Notary Public)

VERIFICATION

(If applicant is partnership)

STATE OF \_\_\_\_\_ )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, deposes and says

(Name of Individual)

that he is one of the members of the firm of \_\_\_\_\_,  
(Partnership Name)

the partnership named in the attached application; that he has read the foregoing application and knows the contents thereof; and that the same is true and complete and accurate to the best of his knowledge. The grounds of deponent's belief relative to all matters in the said application which are not stated upon his own personal knowledge are investigations which deponent has caused to be made concerning the subject matter of this application as well as information acquired by deponent in the course of his duties as a member of and from the books and papers of said partnership.

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Notary Public)

-----  
NOTE: THIS APPLICATION WILL NOT BE ACCEPTED BY THE AGENCY UNLESS THE HOLD  
HARMLESS AGREEMENT APPEARING ON PAGE 30 IS SIGNED BY THE APPLICANT.  
-----

## HOLD HARMLESS AGREEMENT

Applicant hereby releases City of Albany Industrial Development Agency and the members, officers, servants, agents and employees thereof (hereinafter collectively referred to as the "Agency") from, 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 attached Application, regardless of whether or not the application or the project described therein or the issue of bonds requested therein are favorably acted upon by the Agency, and (ii) the Agency's financing of the Project described therein; including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. If, for any reason, the Applicant fails to conclude or consummate 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 Agency or the Applicant are unable to find buyers willing to purchase the total bond issue requested, then, and in that event, upon presentation of an invoice itemizing the same, the Applicant shall pay to the Agency, its agents or assigns, all actual costs incurred by the Agency in the processing of the Application, including attorneys' fees, if any.

(Applicant)

BY:\_\_\_\_\_

Sworn to before me this  
\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Notary Public)

TO: Project Applicants  
FROM: City of Albany Industrial Development Agency  
RE: Cost/Benefit Analysis

---

In order for the City of Albany Industrial Development Agency (the "Agency") to prepare a Cost/Benefit Analysis for a proposed project (the "Project"), the Applicant must answer the questions contained in this Project Questionnaire (the "Questionnaire") and complete the attached Schedules. This Questionnaire and the attached Schedule will provide information regarding various aspects of the Project, and the costs and benefits associated therewith.

This Questionnaire must be completed before we can finalize the Cost/Benefit Analysis, please complete this Questionnaire and forward it to us at your earliest convenience.

### **PROJECT QUESTIONNAIRE**

1. Name of Project Beneficiary ("Company"):	
2. Brief Identification of the Project:	
3. Estimated Amount of Project Benefits Sought:	
A. Amount of Bonds Sought:	\$ _____
B. Value of Sales Tax Exemption Sought	\$ _____
C. Value of Real Property Tax Exemption Sought	\$ _____
D. Value of Mortgage Recording Tax Exemption Sought	\$ _____
4. Likelihood of accomplishing the Project in a timely fashion (please explain):	Yes ____ No _____. _____ _____ _____

### **PROJECTED PROJECT INVESTMENT**

A. Land-Related Costs	
1. Land acquisition	\$ _____
2. Site preparation	\$ _____
3. Landscaping	\$ _____
4. Utilities and infrastructure development	\$ _____
5. Access roads and parking development	\$ _____
6. Other land-related costs (describe)	\$ _____
B. Building-Related Costs	
1. Acquisition of existing structures	\$ _____
2. Renovation of existing structures	\$ _____
3. New construction costs	\$ _____
4. Electrical systems	\$ _____
5. Heating, ventilation and air conditioning	\$ _____
6. Plumbing	\$ _____
7. Other building-related costs (describe)	\$ _____

C. Machinery and Equipment Costs	
1. Production and process equipment	\$ _____
2. Packaging equipment	\$ _____
3. Warehousing equipment	\$ _____
4. Installation costs for various equipment	\$ _____
5. Other equipment-related costs (describe)	\$ _____
D. Furniture and Fixture Costs	
1. Office furniture	\$ _____
2. Office equipment	\$ _____
3. Computers	\$ _____
4. Other furniture-related costs (describe)	\$ _____
E. Working Capital Costs	
1. Operation costs	\$ _____
2. Production costs	\$ _____
3. Raw materials	\$ _____
4. Debt service	\$ _____
5. Relocation costs	\$ _____
6. Skills training	\$ _____
7. Other working capital-related costs (describe)	\$ _____
F. Professional Service Costs	
1. Architecture and engineering	\$ _____
2. Accounting/legal	\$ _____
3. Other service-related costs (describe)	\$ _____
G. Other Costs	
1. _____	\$ _____
2. _____	\$ _____
H. Summary of Expenditures	
1. Total Land-Related Costs	\$ _____
2. Total Building-Related Costs	\$ _____
3. Total Machinery and Equipment Costs	\$ _____
4. Total Furniture and Fixture Costs	\$ _____
5. Total Working Capital Costs	\$ _____
6. Total Professional Service Costs	\$ _____
7. Total Other Costs	\$ _____

### **PROJECTED PROFIT**

- I. Please provide projected profit as defined by earnings after income tax but before depreciation and amortization:

YEAR	Without IDA benefits	With IDA benefits
1	\$ _____	\$ _____
2	\$ _____	\$ _____
3	\$ _____	\$ _____
4	\$ _____	\$ _____
5	\$ _____	\$ _____

### **PROJECTED CONSTRUCTION EMPLOYMENT IMPACT**

- I. Please provide estimates of total construction jobs and the total annual wages and benefits of construction jobs at the Project:

Year	Number of Construction Jobs	Total Annual Wages and Benefits	Estimated Additional NYS Income Tax
Current Year		\$ _____	\$ _____
Year 1		\$ _____	\$ _____
Year 2		\$ _____	\$ _____
Year 3		\$ _____	\$ _____
Year 4		\$ _____	\$ _____
Year 5		\$ _____	\$ _____

### **PROJECTED PERMANENT EMPLOYMENT IMPACT**

- I. Estimates of the total number of existing permanent jobs to be preserved or retained as a result of the Project are described in the tables in Section IV of the Application.
- II. Estimates of the total new permanent jobs to be created at the Project are described in the tables in Section IV of the Application.
- III. Please provide estimates for the following:
- A. Creation of New Job Skills relating to permanent jobs. Please complete Schedule A.
- IV. Provide the projected percentage of employment that would be filled by City of Albany residents:
- \_\_\_\_\_
- A. Provide a brief description of how the project expects to meet this percentage:

### **PROJECTED OPERATING IMPACT**

I. Please provide estimates for the impact of Project operating purchases and sales:

Additional Purchases (1 <sup>st</sup> year following project completion)	\$ _____
Additional Sales Tax Paid on Additional Purchases	\$ _____
Estimated Additional Sales (1 <sup>st</sup> full year following project completion)	\$ _____
Estimated Additional Sales Tax to be collected on additional sales (1 <sup>st</sup> full year following project completion)	\$ _____

II. Please provide estimates for the impact of Project on existing real property taxes and new payments in lieu of taxes ("Pilot Payments"):

Year	Existing Real Property Taxes (Without IDA involvement)	New Pilot Payments (With IDA)	Total (Difference)
Current Year			
Year 1			
Year 2			
Year 3			
Year 4			
Year 5			
Year 6			
Year 7			
Year 8			
Year 9			
Year 10			

III. Please provide a detailed description for the impact of other economic benefits and all anticipated community benefits expected to be produced as a result of the Project (attach additional pages as needed for a complete and detailed response):

## CERTIFICATION

I certify that I have prepared the responses provided in this Questionnaire and that, to the best of my knowledge; such responses are true, correct, and complete.

I understand that the foregoing information and attached documentation will be relied upon, and constitute inducement for, the Agency in providing financial assistance to the Project. I certify that I am familiar with the Project and am authorized by the Company to provide the foregoing information, and such information is true and complete to the best of my knowledge. I further agree that I will advise the Agency of any changes in such information, and will answer any further questions regarding the Project prior to the closing.

I affirm under penalty of perjury that all statements made on this application are true, accurate and complete to the best of my knowledge.

<b>Date Signed:</b> _____, 20__.	<b>Name of Person Completing Project Questionnaire on behalf of the Company.</b>  Name: _____ Title: _____ Phone Number: _____ Address: _____  <b>Signature:</b> _____
----------------------------------	---



## SCHEDULE A

## CREATION OF NEW JOB SKILLS

Please list the projected new job skills for the new permanent jobs to be created at the Project as a result of the undertaking of the Project by the Company.

[illegible]

Should you need additional space, please attach a separate sheet.

## PART 20

### BOND-VOLUME ALLOCATION

SECTION 2001. PURPOSE AND AUTHORITY. The purpose of this Part is to describe the requirements of the City of Albany Industrial Development Agency (the “Agency”) pursuant to Title One of Article 18-A of General Municipal Law (collectively, the Act”).

SECTION 2002. DEFINITIONS. All words and terms used herein and defined in the Act shall have the meanings assigned to them in the Act, unless otherwise defined herein or unless the context or use indicates another meaning or intent. The following words and terms used herein shall have the respective meanings set forth below, unless the context or use indicates another meaning or intent:

“Code” means the Internal Revenue Code of 1986, as amended.

“Volume Cap” means the amount of tax-exempt private activity bonds that may be issued pursuant to Section 146 of the Code.

SECTION 2003. BACKGROUND. Section 146 of the Code imposes a volume cap limit on the issuance of certain types of bonds by the Agency. Customarily, New York State enacts each year a private activity bond allocation act (the “Volume Cap Act”) governing the allocation of bond volume that is reserved to the State of New York. The Volume Cap Act generally describes the procedures and requirements for the Agency to obtain portions of the New York State Volume Cap.

SECTION 2004. REQUIREMENTS. The Agency, after a determination to move forward with a project, will cooperate with the project applicant in obtaining the necessary New York State Volume Cap to undertake its project.

SECTION 2005. PROCEDURE. The Agency will allocate, in its absolute discretion, to projects any volume cap that is held by the Agency.

## PART 21

### AGENCY ADMINISTRATIVE AND OTHER FEES

SECTION 2101. PURPOSE AND AUTHORITY. The purpose of this Part is to establish such procedures relating to the imposition of fees of the City of Albany Industrial Development Agency (the “Agency”) in connection with Agency Projects. An Agency Project is defined as any “project” (as defined in Section 854(4) of the Act) that is provided “financial assistance” (as defined in Section 854(14) of the Act) by the Agency.

SECTION 2102. TYPES OF FEES. The types of fees imposed by the Agency in connection with Agency Projects shall consist of (A) application fees, (B) administrative fees, and (C) other Agency administrative fees.

SECTION 2103. APPLICATION FEES. (A) Finance Transactions. The Agency will charge a nonrefundable application fee for finance transactions equal to \$1,500 upon the submission of the Agency’s Application For Financial Assistance. Finance Transactions shall include projects involving the issuance of tax-exempt obligations, taxable obligations and refunding obligations and the execution and delivery of straight lease transactions. The application fee is in addition to the administrative fee payable to the Agency.

(B) Modification/Amendment Transactions. The Agency will charge a nonrefundable application fee for modification/amendment transactions equal to \$500 upon the submission of a letter to the Agency explaining in detail the requested action. Such letter may be accompanied by the Agency’s Application For Financial Assistance, if required by the Agency. Modification/Amendment Transactions shall include actions to modify or amend existing documents previously executed by the Agency. The application fee is in addition to any administrative fee payable to the Agency.

#### SECTION 2104. ADMINISTRATIVE FEES.

(A) Timing. The Agency will charge an administrative fee in connection with an Agency Project. In the case of an Agency Project involving the issuance of bonds, notes or other obligations issued by the Agency, such administrative fee shall be payable upon the successful conclusion of the sale of the obligations. In the case of an Agency Project involving a straight-lease transaction or other transaction not involving the sale of obligations of the Agency, the fee shall be payable upon the execution and delivery of the documents providing the financial assistance.

(B) Amount: Bond Transactions. The amount of the administrative fee for an Agency Project involving the sale of obligations issued by the Agency shall be computed as follows:

Tax-Exempt Obligation: Except as provided below, one percent (1.0%) of the aggregate principal amount of the obligations the interest on which is not subject to federal income tax issued with respect to the Agency Project.

Tax-Exempt Not-for-Profit Obligations: One percent (1.0%) of the aggregate principal amount of the obligations the interest on which is not subject to federal income tax issued with respect to the Agency Project. This fee formula is applicable to Agency Projects which benefit not-for-profit corporations.

Taxable Obligations: One percent (1.0%) of the aggregate principal amount of the obligations subject to federal income tax issued with respect to the Agency Project.

The Agency may modify the amount of the administrative fee computed herein if Bond Counsel advises the Agency that such modification is necessary in order to ensure that the interest on the obligations is excludable from gross income for federal income tax purposes.

(C) Amount: Refunding Bond Transactions. The amount of the administrative fee for an Agency Project involving the sale of obligations to refund an outstanding amount of obligations shall be computed as follows:

If the outstanding obligations were originally issued by the Agency and the amount of the refunding obligations does not exceed the amount of the existing obligations, the administrative fee shall be one-quarter of one percent (.25%) of the aggregate principal amount of the refunding obligations to be issued.

If the outstanding obligations were originally issued by the Agency and the amount of the refunding obligations does exceed the amount of the outstanding obligations, an administrative fee shall be payable on such difference based on the formula contained in Section 2104(B) above.

If the outstanding obligations were not originally issued by the Agency, an administrative fee shall be payable on the total aggregate principal amount of the refunding obligations based on the formula contained in Section 2104(B) above.

The Agency may modify the amount of the administrative fee computed herein if Bond Counsel advises the Agency that such modification is necessary in order to ensure that the interest on the refunding obligations is excludable from gross income for federal income tax purposes.

(D) Amount: Straight Lease Transactions. The amount of the administrative fee for an Agency Project involving straight lease transactions shall be computed as follows:

One percent (1.0%) of the cost of the Agency Project. The cost of the Agency Project shall be the greater of (A) the amount financed by the applicant in

undertaking the Agency Project, or (B) the cost incurred by the applicant in undertaking the Agency Project. Notwithstanding the one percent (1%) fee formula for Straight Lease Transactions noted above, in cases where the Straight Lease Transaction provides the applicant sales tax and/or mortgage recording tax exemptions (but not real property tax exemptions), the Agency administrative fee shall be one-half of one percent (0.5 of 1%) of the cost of the Agency Project. The costs of the Agency Project shall be determined as noted above. If the administrative fee is to be determined by the cost incurred by the applicant in undertaking the Agency Project, the applicant shall deliver to the Agency at the closing an affidavit certifying as to the cost of the Agency Project.

(E) Additional Fee for Low Income Housing/Tax Credit (9% only) Projects. An annual administrative fee equal to \$10,000 shall be payable annually by the project applicant on each January 1 for a term equal to ten (10) years. This annual administrative fee is in addition to the standard administrative fee for Straight Lease Transactions noted above and is applicable to Agency Projects which provide for low income housing/tax credit (9% only) projects.

#### SECTION 2105. OTHER AGENCY ADMINISTRATIVE FEES.

(A) Other Agency Administrative Fees. The Agency will also charge certain other administrative fees described in this Section 2105 in connection with Agency Projects. Such fees include post-closing modification/amendment transaction fees, URTIP Project fees, New York State Cost Recovery fees, and special meeting fees. Such administrative fees shall typically be payable upon the execution and delivery of documents completing the transaction.

(B) Amount: Post-Closing Modification/Amendment Transactions. The amount of the administrative fee for Post-Closing Modification/Amendment Transactions shall be determined by the staff of the Agency, with the review and approval by the Agency. The minimum administrative fee for such transactions shall equal \$500, payable at the time the applicant submits the application to the Agency.

(C) URTIP Projects. By resolution of the Agency, any project seeking assistance from the Agency under the Agency's URTIP Policy may also be subject to an administrative fee based on a percentage of the present value of the real property tax abatements provided pursuant to the Agency's URTIP Policy. The staff of the Agency shall (1) review with the applicant whether an administrative fee is due and (2) calculate the amount of the administrative fee.

(D) New York State Cost Recovery Fees. Chapter 85 of the Laws of 2002 (the "2002 Act") imposes certain "cost recovery" fees on the Agency. The amount of the fee is based on the principal amount of bonds issued by the Agency, as described below:

<u>Principal Amount of Bonds</u>	<u>Fee</u>
\$1,000,000 or less	.168%
\$1,000,000 to \$ 5,000,000	.336%
\$5,000,001 to \$10,000,000	.504%

\$10,000,001 to \$20,000,000	.672
More than \$20,000,000	.84%

Under the 2002 Act, the Agency is obligated to pay such fee no later than 15 days after the end of the calendar month in which the bonds of the Agency are issued. The Agency will collect the amount of the fee from the applicant and in turn pay such fee to the applicable office of New York State. The Agency will cooperate with applicants in preparing and delivering any letters or forms prepared by the applicant or Bond Counsel necessary to enable the Agency (and the applicant) to qualify for a waiver from such fee. Bond Counsel will prepare and review with Agency staff any forms required to be prepared and filed in connection with the provisions of the 2002 Act.

(E) Amount: Special Meeting Fees. The amount of the administrative fee for the holding of a special meeting of the Agency shall equal \$500.

(F) Other Miscellaneous Fees. The Agency reserves the right to determine and impose other administrative fees on Agency Projects in consideration for the financial assistance being granted by the Agency and/or the costs incurred by the Agency.

SECTION 2106. EXPENSES. In addition to any application fees and administrative fees an Agency Project is subject, the Agency may also charge its reasonable expenses incurred in connection with an Agency Project. Such expenses include the following: publication charges, stenographer and transcription expenses and the expenses and fees of Agency Counsel. Any moneys generated by the payment of the expenses of the Agency pursuant to this Section 2106 shall become the property of the Agency and part of its general fund.

SECTION 2107. REIMBURSEMENT. The application and administrative fees provided for in this Part 21 are designed to cover operating and other expenses of the Agency. Such fees are not charged to collect any real property taxes, or other taxes, which would have been levied by or on behalf of an affected tax jurisdiction (as defined in Section 854(16) of the Act).

SECTION 2108. DEVIATION. The Agency may provide for a different application fee and/or a different administrative fee and/or an additional administrative fee for a particular project by resolution duly adopted by the Agency.

## PART 22

### PROJECT MONITORING AND ENFORCEMENT

SECTION 2201. PURPOSE AND AUTHORITY. The purpose of this Part is to outline the procedures utilized by the City of Albany Industrial Development Agency (the “Agency”) pursuant to Section 903-a of the General Municipal Law and Title One of Article 18-A of the General Municipal Law (collectively, the “Act”) to (A) monitor compliance with Agency requirements relating to the exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (the “Financial Assistance”) provided for authorized projects and (B) review satisfaction of the Agency requirements relating to job creation, retention and reporting. Under the Act, the Agency was created in order to advance the job opportunities, health, general prosperity, and economic welfare of the people of the State and to improve their standard of living.

SECTION 2202. JOB CREATION, RETENTION, AND PUBLIC BENEFITS. When considering applications for Financial Assistance, the Agency will consider and review the job creation and retention information contained in the application completed by the applicant. Further, the applicant for each approved project must enter into a project benefits agreement with the Agency (the “Project Benefits Agreement”) where the applicant agrees (A) that the amount of Financial Assistance to be received shall be contingent upon, and shall bear a direct relationship to the success or lack of success of such project in delivering certain described public benefits (the “Public Benefits”) and (B) the Agency will be entitled to recapture some or all of the Financial Assistance granted to the applicant if the project is unsuccessful in whole or in part in delivering the promised Public Benefits.

### SECTION 2203. REQUIREMENTS OF THE APPLICANT.

(A) Background. Under the Act, the Agency is required to submit certain annual reports relating to Agency projects to the New York State Office of the Comptroller and to the New York State Authorities Budget Office. In order to satisfy its annual reporting requirements and other requirements under the Act, as well as policies of the Agency, the Agency will require applicants for Financial Assistance to satisfy the requirements described in Section 2203(B) below.

(B) Applicant Requirements. Each applicant for Financial Assistance from the Agency will agree to satisfy the following requirements as a condition to the receipt of such Financial Assistance:<sup>4</sup>

(1) 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 “DOC”) and with the administrative entity (collectively with the DOC, the “JTPA Entities”) of the service delivery area created by the federal job training partnership act (Public Law 97-300) (“JTPA”), as replaced by the Workforce Investment Act of 1998 (Public Law 105-220), where the Project is located.

(2) Except as otherwise provided by collective bargaining agreements, where practicable, the applicant will first consider persons eligible to participate in the JTPA programs who shall be referred by the JTPA Entities for new employment opportunities created as a result of the project.

(3) The applicant agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the Applicant, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation.

(4) Within sixty (60) days after the end of each calendar year, the applicant shall furnish to the Agency a certificate of an Authorized Representative of the applicant stating that no event of default under an installment sale agreement or a lease agreement (hereinafter collectively referred to as the “Project Agreement”) has occurred or is continuing or, if any event of default exists, specifying the nature and period of existence thereof and what action the applicant has taken or proposes to take with respect thereto, and setting forth the unpaid principal balance of any bonds and accrued but unpaid interest thereon and that no defenses, offsets or counterclaims exist with respect to the indebtedness evidenced thereby.

(5) The applicant shall insure that all employees and applicants for employment with regard to the project are afforded equal employment opportunities without discrimination.

(6) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the applicant agrees to file with the Agency, no later than sixty (60) days after the end of each calendar year, reports regarding the number of people employed at the project facility and certain other matters, the initial said report to be in

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<sup>4</sup> The requirements described in Section 2203(B)(9) are applicable for projects where the application was received by the Agency after March 19, 2015, unless otherwise required in the documents entered into by the Agency with the project applicant.



substantially the form annexed as Schedule A attached hereto, and subsequent reports to be in the form annexed as Schedule B attached hereto.

(7) Pursuant to Section 874(8) of the Act, the applicant agrees to annually file and cause any other directly appointed operator of the project facility to file annually, with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (“Form ST-340”), a statement of the value of all sales and use tax exemptions claimed by the applicant and all contractors, subcontractors, consultants and other agents of the applicant under the authority granted to the applicant pursuant to an installment sale agreement and/or a lease agreement and/or a final inducement resolution and/or a sales tax exemption letter.

(8) The applicant agrees, if applicable, within sixty (60) days of the end of each calendar year, to furnish to the Agency a copy of each ST-340 submitted to the New York State Department of Taxation and Finance by the applicant pursuant to Section 874(8) of the Act.

(9) The applicant agrees, within sixty (60) days of the end of each calendar year until the project is terminated, to furnish to the Agency a copy of the NYS-45 – Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return – for the quarter ending December 31 (the “NYS-45”), and the US Dept. of Labor BLS 3020 Multiple Worksite report if applicable.

(10) The applicant agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the participation of individuals from minority groups as employees or applicants for employment with regard to the project.

#### SECTION 2204. PROJECT MONITORING.

(A) Monitoring. Agency project monitoring shall include but not be limited to the following:

(1) requesting and reviewing the items outlined in Section 2203(B) and any and all items required to be submitted by an applicant pursuant to the following, including but not limited to: statute, Agency policy, a Project Agreement, or a Project Benefits Agreement; and

(2) confirming with the City Treasurer’s Office and the City Assessor the status of any unpaid payment in lieu of tax (“PILOT”) payments; and

(3) providing for on-site visits of projects identified by the Agency in the calendar year.

(B) Annual Reports. Within seventy-five (75) days after the end of each calendar year, the staff of the Agency will provide the Agency with an annual report describing the compliance

by applicants with the requirements described in Section 2203(B) above and the results of the project monitoring described in Section 2204(A), including the filing of annual reports, the amount of sales tax exemption received for a project, and the number of jobs created and retained by the applicant.

(C) Agency Review. The Agency will review the report prepared by the staff of the Agency at a regular meeting of the Agency. After the review of the report prepared by the staff of the Agency, the Agency will take such action as it deems necessary, including but not limited to, (1) scheduling meetings with applicants to review non-compliance and to discuss remedial actions, (2) considering enforcement action against applicants that fail to comply with the requirements described in Section 2203(B) above, as described in Section 2205 below, (3) considering enforcement action against applicants based on the results of the project monitoring described in Section 2204(A), as described in Section 2205 below, and (4) preparation of letters of commendation or other forms of congratulation to those applicants that have created and/or retained jobs consistent with (or in excess of) the estimates contained in the applicant's original application to the Agency.

(D) PILOT Agreements. (1) Prior to distribution of the PILOT payment bills, the staff of the Agency will confirm with the City Treasurer's Office and the City Assessor the payment amounts for such PILOT bills for the current fiscal year.

(2) The staff of the Agency will also confirm with the City Treasurer's Office and the City Assessor the status of new projects closed in the prior calendar year and the termination of projects whose PILOT term expired or project facility was reconveyed to the applicant.

(E) Reconveyance. (1) Annually the staff of the Agency will review the Project Agreements of all Active Projects to determine if the Project Agreement has expired and the project facility should be reconveyed to the applicant and placed on the taxable roll of the City of Albany.

(2) Annually the staff of the Agency will confirm with the City Treasurer's Office and the City Assessor that a particular project facility should be reconveyed to the applicant and placed on the taxable roll of the City of Albany.

(3) Annually the staff of the Agency will also notify the applicant and work with the applicant and the Agency to file the appropriate documents to place the project on the taxable roll of the City of Albany.

#### SECTION 2205. ENFORCEMENT.

(A) General. Upon completion of the report prepared by the staff of the Agency described in Section 2204(C) above and review of such report by the members of the Agency, the Agency may, after consultation with the staff of the Agency and counsel, initiate enforcement action against applicants as determined by the Agency.

(B) Enforcement Action. Enforcement action by the Agency may include, but not be limited to, the following:

- (1) Requesting the information and/or compliance by a final notice letter.
- (2) Forwarding an event of default notice to the involved parties, including the lender.
- (3) Notifying appropriate New York State agencies of (a) the applicant's failure to comply with the requirements of Section 2203(B) above or (b) the negative results of the project monitoring in Section 2204(A) above.
- (4) Terminating the Financial Assistance provided by the Agency.
- (5) Recapturing some or all of the Financial Assistance granted to the applicant pursuant to the Project Benefits Agreement, if applicable.
- (6) In the event of any failure by an applicant to make any required PILOT payment, to coordinate with the City of Albany and any other affected taxing jurisdiction in the recovery of such due payment.

SCHEDULE A  
INITIAL EMPLOYMENT REPORT

[Please Confirm/Complete Either of the Two Alternative Provisions]

The initial employment plan for the Project is as described in the Application dated \_\_\_\_\_, 20\_\_ and delivered to the IDA.

OR

Project or Company Name: \_\_\_\_\_

1. Number of Full Time Employees at the Project Site before IDA status ..... \_\_\_\_\_
2. Estimate of Jobs to be Created ..... \_\_\_\_\_
3. Estimate of Jobs to be Retained ..... \_\_\_\_\_
4. Estimated Average Annual Salary of Jobs to be Created ..... \_\_\_\_\_
5. Estimated Annualized Salary Range of Jobs to be Created ..... \_\_\_\_\_
6. Estimated Average Annual Salary of Jobs to be Retained ..... \_\_\_\_\_
7. Please complete the following tables:

**PROJECTED CONSTRUCTION EMPLOYMENT IMPACT**

Please provide estimates of total construction jobs and the total annual wages and benefits of construction jobs at the Project:

Year	Number of Construction Jobs	Total Annual Wages and Benefits	Estimated Additional NYS Income Tax
Current Year		\$ _____	\$ _____
Year 1		\$ _____	\$ _____
Year 2		\$ _____	\$ _____
Year 3		\$ _____	\$ _____
Year 4		\$ _____	\$ _____
Year 5		\$ _____	\$ _____

**PROJECTED PERMANENT EMPLOYMENT IMPACT**

Please provide estimates of total number of existing permanent jobs to be preserved or retained as a result of the Project:

Year	Professional	Skilled	Semi-Skilled	Unskilled
Current Year				
Year 1				
Year 2				
Year 3				
Year 4				
Year 5				

Please provide estimates of total new permanent jobs to be created at the Project:

Year	Professional	Skilled	Semi-Skilled	Unskilled
Current Year				
Year 1				
Year 2				
Year 3				
Year 4				
Year 5				

SCHEDULE B  
SUBSEQUENT EMPLOYMENT REPORT

FORM OF ANNUAL EMPLOYMENT VERIFICATION/COMPLIANCE REPORT

Project or Company Name: \_\_\_\_\_

1. Original Estimate of Jobs to be Created and Retained (from the project application)..... \_\_\_\_\_
2. Number of Current Full Time Employees (as of end of Report Year)..... \_\_\_\_\_
3. Number of Full Time Construction Jobs During Fiscal Year (Report Year)..... \_\_\_\_\_
4. If "Original Estimate of Jobs to be Created and Retained" does not equal "Number of Current Full Time Employees (as of end of Report Year)," please explain:  
\_\_\_\_\_

5. Did the Company receive a mortgage recording tax exemption in Report Year (Y/N)? ..... \_\_\_\_\_

If yes, indicate the amount (\$) of mortgage recording tax exemption received in Report Year \_\_\_\_\_

6. Did the Company receive a real property tax exemption in Report Year (Y/N)? ..... \_\_\_\_\_

If yes, indicate if the Company has paid its annual PILOT payments in Report Year (Y/N)... \_\_\_\_\_

If outstanding Report Year PILOT payments remain due, please explain:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. Did the Company receive a sales tax exemption in Report Year (Y/N)? ..... \_\_\_\_\_

If yes, ***please attach*** a copy of a filed NYS Dept. of Taxation and Finance Form **ST-340** Annual Report of Sales and Use Tax Exemptions for Report Year (applicable to projects with sales tax exemption letters for construction phase).

8. Does the Company have a Project Benefit Agreement (Y/N)? ..... \_\_\_\_\_

If yes, ***please attach*** a copy of a filed Report Year **NYS-45** Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return for the last payroll date in the month of December of Report Year.

9. **Attach** an updated Certificate of Insurance naming the Agency as “Additional Insured.” Please refer to your Project Documents for information about required insurance.
10. Has an event of default under the Project Documents occurred or is continuing during the Report Year?

(Y/N) \_\_\_\_\_ If yes, please explain: \_\_\_\_\_

\_\_\_\_\_

#### CERTIFICATION

I hereby certify that I am the owner of the project site or am the duly authorized representative and may sign this data submission on behalf of the owner(s) of said project site. I have read and understand all of the requirements contained within the Project Documents and I have read the foregoing Annual Employment Verification/Compliance Report and know the contents thereof; and that the same is true and complete and accurate to the best of my knowledge.

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
E-mail Address

\_\_\_\_\_  
Company Mailing Address

## PART 23

### ASSIGNMENT OF PILOT AGREEMENT POLICY

SECTION 2301. PURPOSE AND AUTHORITY. The purpose of this Part is to provide guidance in connection with any proposed assignment of an existing payment in lieu of tax agreement (a “PILOT Agreement”) entered into by the City of Albany Industrial Development Agency (the “Agency”) with a project applicant pursuant to Section 874 of the General Municipal Law and Title One of Article 18-A of the General Municipal Law (collectively, the “Act”).

SECTION 2302. BACKGROUND. (A) Authorization. Under the Act, the Agency is authorized to enter into PILOT Agreements in connection with the undertaking of “projects” (as defined in the Act). The terms and process relating to the PILOT Agreements are set forth in the Agency’s Uniform Tax Exemption Policy.

(B) Post Closing Assignment Request. Under the terms of the PILOT Agreements, project applicants are permitted to request the Agency to consent to the assignment of the PILOT Agreement in the event that the project applicant determines to sell the project during the term of the PILOT Agreement.

SECTION 2303. REQUIREMENTS OF THE PROJECT APPLICANT. In the event that a project applicant desires the Agency to consent to the assignment of a PILOT Agreement, the Agency will follow the procedure described as follows

(1) The project applicant will make a written request to the Agency requesting the assignment of the PILOT Agreement, in form and substance satisfactory to the Agency.

(2) After preliminary review of the request by the staff of the Agency, the potential purchaser of the project will be required to submit a completed Agency application along with payment of the application fee.

(3) As part of the review of the request, the project applicant and the potential purchaser will be responsible for providing information to the Agency relating to the assignment request. Such information may include the following:

(a) The name and contact information of the entity purchasing the project from the project applicant.



(b) The terms and conditions of the purchase of the project, including the purchase price.

(c) The current terms of the PILOT Agreement and the assessed value of the project.

(d) A description of the physical condition of the project.

(e) A description of the use of the project.

(f) Such other information as may be requested by the Agency.

SECTION 2304. AGENCY ACTION RELATING TO ANY PROPOSED ASSIGNMENT. The assignment of any PILOT Agreement is subject to consent by the Agency, and such consent is subject to the Agency's absolute discretion. The Agency may condition its consent on one or more conditions in its absolute discretion. Such conditions may include the following:

(1) Modification of the payment terms of the PILOT Agreement to provide for an increase in the amount of the payments in lieu of taxes payable under the PILOT Agreement.

(2) Improvements to the project to enhance the physical condition of the project.

(3) Payment of a lump sum to the affected taxing jurisdictions in an amount determined by the Agency.

## PART 24

### LOCAL LABOR POLICY

**SECTION 2401. PURPOSE AND AUTHORITY.** The purpose of this Part is to request companies benefiting from the City of Albany Industrial Development Agency (the “Agency”) programs to engage local residents from the City of Albany - in addition to residents from Albany County, Columbia County, Fulton County, Greene County, Montgomery County, Rensselaer County, Saratoga County, Schenectady County, Schoharie County, Warren County and Washington County – in and during the construction phase of projects through the addition of an amendment to the Agency project application (attached as Exhibit A). Pursuant to Section 903-a of the General Municipal Law and Title One of Article 18-A of the General Municipal Law (collectively, the “Act”), the Agency was created for the purpose of promoting employment opportunities for and the general prosperity and economic welfare of City of Albany residents.

**SECTION 2402. CONSTRUCTION JOBS.** Construction jobs, although limited in time duration, are vital to the overall employment opportunities within the region since construction wages earned by local residents are reinvested in the local economy, adding greatly to its vitality. It is the Agency’s strong conviction that companies benefiting from its programs should employ local residents during the construction phase of projects. Only in that way can the public benefits accruing from the Agency’s efforts be maximally distributed to the residents and taxpayers of the City of Albany. It is, therefore, the Agency’s mission to promote employment opportunities during all project phases, including the construction phase.

**SECTION 2403. REQUIREMENTS OF THE APPLICANT.** Each applicant for financial assistance from the Agency will agree to satisfy the following requirements, in form and substance satisfactory to the Agency, as a condition to the receipt of such financial assistance:

- (1) Identify the name, title, mailing address, and phone/fax/e-mail of the project contact person who will be responsible and accountable for providing information about the bidding for and awarding of future construction contracts relative to the application and project.
- (2) Describe, in the best way possible, the nature of construction jobs created by the project. The description should provide as much detail as possible, including the number, type, and duration of construction positions.
- (3) Submit to the Agency a “Construction Completion Report” listing the names and business locations of prime contractors, subcontractors, and vendors who have

been engaged for the construction phase of the project by companies benefiting from Agency programs.

SECTION 2404. AGENCY ACTION. The Agency will:

(1) Post all applications approved for a public hearing to its website within five business days of such authorization.

(2) Promptly update the website with current data following the public hearing held by the Agency.

## PART 25

### POLICY RESPECTING RECAPTURE OF PROJECT BENEFITS

SECTION 2501. PURPOSE AND JUSTIFICATION. (A) The purpose of this Policy is to outline the procedures utilized by City of Albany Industrial Development Agency (the “Agency”) to review compliance with (1) the requirements of the Agency relating to job creation and/or retention, other expected public benefits and reporting and (2) the requirements of the State of New York (the “State”) relating to sales tax exemptions and reporting.

(B) The Agency was created pursuant to Section 903-a of Title 2 of Article 18-A of the General Municipal Law and Title 1 of Article 18-A the General Municipal Law (collectively, the “Act”) for the purpose of promoting employment opportunities for, and the general prosperity and economic welfare of, residents of the City of Albany and the State. Under the Act, the Agency was created in order to advance the job opportunities, health, general prosperity, and economic welfare of the residents of the City of Albany, New York (the “City”) and of the State.

(C) The Agency has been advised that a number of other industrial development agencies have adopted policies that (1) contain provisions allowing the industrial development agency to recapture certain financial benefits provided by said agency to a project applicant if said project applicant does not fulfill certain job creation promises contained in its application or fails to fulfill certain other promises made to said agency and (2) allow said agency to take into account exigent circumstances in deciding whether to exercise these provisions respecting the recapture of said financial benefits.

(D) Chapter 59 of the Laws of 2013 (Part J), effective March 28, 2013 (the “2013 Budget Law”), enacted March 28, 2013, established new recordkeeping, reporting, and recapture requirements for industrial development agency projects that receive sales tax exemptions.

(E) The new sales tax recording and reporting requirements required by the 2013 Budget Law include the following: (1) a requirement to keep records of the amount of sales tax benefits provided to each project and make those records available to the State upon request; (2) a requirement to report to the State, within 30 days after providing financial assistance, the amount of sales tax benefits intended to be provided to a project; and (3) a requirement that the Agency post on the internet and make available without charge copies of its resolutions and agreements appointing an agent or project operator or otherwise related to any project it establishes. A project operator (“Project Operator”) is appointed by the Agency through the filing of form ST-60 with the New York State Department of Taxation and Finance.

(F) The 2013 Budget Law requires that the Agency recapture State sales tax benefits where: (1) the project is not entitled to receive those benefits; (2) the exemptions exceed the amount authorized or are claimed for unauthorized property or services; or (3) the Project Operator failed to use property or services in the manner required by its agreements with the Agency.

(G) For purposes of this Policy, with respect to a particular calendar year and a particular project, the term “financial assistance” shall include the following:

(1) Proceeds of debt obligations issued by the Agency with respect to said project have been disbursed during the calendar year in question.

(2) Any tax exemption or abatement (a) which may have directly or indirectly benefitted the project or Project Operator shall during such calendar year and (b) which resulted from (i) the Agency’s title to, possession of or, control of or other interest in said project, or (ii) the designation by the Agency of said project occupant (or any sublessee, contractor, supplier or other operator of the project) as an agent of the Agency.

(3) Any grant made by the Agency with respect to said project or Project Operator shall during such calendar year.

(4) Any loan made by the Agency with respect to said project or Project Operator shall during such calendar year.

(H) For purposes of this Policy, with respect to a particular project, the term “Project Agreements” shall mean the project documents between the Agency and an applicant with respect to the applicant’s project. In addition to a lease agreement or installment sale agreement between the Agency and the applicant, the Project Agreements may also include a payment in lieu of tax agreement, a project agreement, and one or more recapture agreements, as well as security agreements intended to ensure compliance by the applicant with the requirements of the Project Agreements.

**SECTION 2502. REQUIREMENTS FOR APPLICANTS.** (A) Under the Act, the Agency is required to submit certain annual reports relating to Agency projects to the New York State Office of the Comptroller. In order to satisfy its annual reporting requirements and other requirements under the Act and certain other requirements imposed by the Act, as well as the new requirements imposed upon the Agency by the 2013 Budget Law, the Agency will require each applicant for financial assistance from the Agency agree to satisfy the following requirements as a condition to the receipt of such financial assistance:

(1) Any applicant requesting a sales tax exemption from the Agency must include in the application a realistic estimate of the value of the savings anticipated to be received by the applicant. Each applicant is hereby warned to provide a realistic estimate in the application, as the 2013 Budget Law and the regulations expected to be enacted thereunder are expected to require that the Agency recapture any benefit that exceeds the greater of (a) the amount listed in said application or (b) authorized by the Agency in a separate resolution.

(2) Any applicant requesting a sales tax exemption from the Agency must agree to annually file (and cause any sublessee, contractor, supplier or other operator of the project to file annually) with the State, on a form and in such manner as is prescribed by the State, a statement of the value of all sales and use tax exemptions claimed by the applicant and all contractors, subcontractors, consultants and other agents of the applicant under the authority granted to the applicant by the Agency.

(3) Any applicant requesting a sales tax exemption from the Agency must agree to furnish to the Agency a copy of each such annual report submitted to the State by the applicant or any sublessee, contractor, supplier or other operator of the project.

(4) As required by the 2013 Budget Law, the Project Agreements will provide that any sales tax benefits determined by the Agency to be subject to recapture pursuant to the 2013 Budget Law must be remitted by the applicant to the Agency within 20 days of a request therefor by the Agency.

(5) The applicant agrees that, as required by the 2013 Budget Law, the resolutions of the Agency with respect to the project and the Project Agreements will now be publicly available on the Agency's website. As provided in the New York Freedom of Information Law ("FOIL"), the applicant may request that certain information contained therein be redacted and, if the applicant can demonstrate to the satisfaction of the Agency that release of said information would result in substantial harm to the applicant's competitive position, the Agency may comply with such request.

(6) 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 "DOC") and with the administrative entity (collectively with the DOC, the "JTPA Entities") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA"), as replaced by the Workforce Investment Act of 1998 (Public Law 105-220), where the Project is located.

(7) 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 JTPA Entities for new employment opportunities created as a result of the Project.

(8) The applicant agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the Applicant, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation.

(9) Within sixty (60) days after the end of each calendar year, the applicant shall furnish to the Agency a certificate of an Authorized Representative of the applicant

stating that no event of default under the Project Agreements has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the applicant has taken or proposes to take with respect thereto, and setting forth the unpaid principal balance of the Bonds and accrued but unpaid interest thereon and that no defenses, offsets or counterclaims exist with respect to the indebtedness evidenced thereby.

(10) The applicant shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination.

(11) The applicant agrees to file with the Agency, no later than sixty (60) days after the end of each calendar year, reports regarding the number of people employed at the project and certain other matters.

(B) In order to ensure that the project will create the public benefits anticipated by the Agency accruing to the residents and taxpayers of the City, the Project Agreements will require that each Agency Project Operator agree that, annually, within 60 days of the end of each calendar year during which a project has received any financial assistance from the Agency, such Agency Project Operator will complete and file with the Agency an annual report (the "Operator Annual Report") describing the status of the project during the calendar year just completed, including such information as: jobs projected to be created/retained; estimated salary of jobs to be created/retained; current number of jobs; construction jobs created through the year; exemptions from taxes and payments in lieu of tax made; status of local labor; and status of bond financing related to the project.

SECTION 2503. ENFORCEMENT.(A) The Agency will use the information contained in the Operator Annual Report, and may use site visits and follow-ups, to gauge the status of a project in relation to the original commitment of the applicant as stated in the project application.

(B) Should the staff or board members of the Agency find significant deficiencies in any area; the project will be further reviewed. Examples of situations that may trigger review and/or action by the Agency include:

(1) If the Project Operator shifts production activity to a facility outside of the City and, as a result, fails to achieve the economic benefits projected;

(2) If the Project Operator moves all operations outside the City, neglects to move operations to the City, or the project does not otherwise conform to the project described in the Project Agreements;

(3) If a significant shortfall in economic benefits is identified, as compared with the application, such as a significant shortfall in new job creation/retention and/or expected major investments in the business;

(4) Failure to comply with annual reporting requirements or provide the Agency with requested information; or

(5) Closure of a project within the time period the applicant receives Agency financial assistance.

(C) Should the staff or board members of the Agency find significant deficiencies in the achievement of the economic benefits promised as described in the application and the Project Agreements, the Project Operator will be asked to provide justification for said shortfalls. The board members of the Agency will compare these statements against industry standards, as well as the current market and economic conditions, to determine whether the Project Operator did all that it could to meet its obligations as outlined in the application and the Project Agreements.

(D) The board members of the Agency will determine on a case by case basis whether a hearing is appropriate to allow a Project Operator to be heard on the issue regarding said Project Operator's failure to achieve the projected economic benefits.

(E) Should the board members of the Agency find that (1) significant deficiencies in the achievement of the economic benefits promised as described in the application and the Project Agreements have occurred and (2) there appears to be no justification satisfactory to the Agency to explain these deficiencies, the Agency may determine to undertake any enforcement action available to the Agency under the Agency Agreements to seek redress for these deficiencies.

(F) Enforcement action taken by the Agency under the Agency Documents may include, but shall not be limited to, the following:

(1) Requesting cure of the deficiency by a final notice letter.

(2) Forwarding an event of default notice under the Project Agreements.

(3) Notifying appropriate New York State agencies of the Project Operator's failure to comply with such requirements.

(4) Terminating any or all of the Project Agreements early.

(5) Reducing the value of financial assistance moving forward.

(6) Terminating any future financial assistance.

(7) Requiring that the value of all the financial assistance utilized to date to be repaid in full or in part.

(G) In connection with the undertaking of a Project and/or the preparation of Project Agreements, the Agency also reserves the right to negotiate the terms and conditions of these recapture provisions.



SECTION 2504. EFFECTIVE DATE. This policy shall be effective with respect to any project undertaken by the Agency where receipt of the application for the project occurs after the date of approval of this Policy.

## PART 26

### MEDIA RELATIONS POLICY AND GUIDELINES

SECTION 2601. PURPOSE AND AUTHORITY. (A) The purpose of this Part is to establish such procedures relating to the interaction and coordination by the City of Albany Industrial Development Agency (the “Agency”) with the members of the news media. The Agency offers certain financial benefits to promote, develop, encourage and assist projects for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the City of Albany (the “City”), to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration.

(B) While providing these benefits, the news media is frequently interested in the Agency. The Agency has a responsibility to be open and responsive to their information requests because the media are among the many ways the people of the City and the Agency’s business partners build their individual perceptions of the Agency and the work the Agency does in the City. This policy exists to assure that information disclosed by the Agency is timely, accurate, comprehensive, authoritative, and relevant to all aspects of the Agency. Adherence to this policy is intended to provide an effective and efficient framework to facilitate the timely dissemination of information.

SECTION 2602. SCOPE. This media policy applies to all employees of the Agency, and any subsidiaries, as well as the members of the Agency. This policy covers all external news media including broadcast, electronic, and print as well as social media, including but not limited to Facebook, Twitter, LinkedIn, and blogs.

SECTION 2603. DESIGNATION OF AGENCY SPOKESPERSON. (A) The Chief Executive Officer is designated as the Agency principal media contact and Agency spokesperson. The Chief Executive Officer has expertise in media relations and weighs each media inquiry to determine the best way to provide information in relationship with other information that is not yet public. The Chief Executive Officer will convey the official Agency position on issues of significance or situations that are particularly controversial or sensitive in nature. Among the Chief Executive Officer’s responsibilities:

- (1) Increase public awareness and understanding of the Agency, the services that we provide the City and our future prospects for projects.

(2) Promote a positive public image of the Agency and the work we do to the audiences that are important to the Agency, which includes the people of the City, employees, and vendors/landlords as well as government officials, banks, shareholders and developers.

(B) Depending on the situation, an individual external to the Chief Executive Officer may be asked to be a spokesperson on a particular issue due to their knowledge, experience, and expertise. The Chief Executive Officer will work with that designated spokesperson to prepare them for the media interview as needed. Preparation may include developing talking points as well as counseling, training and practicing for the interview.

SECTION 2604. GUIDELINES FOR TALKING WITH THE MEDIA. (A) A reporter, producer, or other news media may contact you for a number of reasons, for example:

(1) To get information about the Agency.

(2) To get information about a recent unexpected event such as natural disasters, thefts or arrests, accidents or injuries; citizen or employee complaints, federal, state or local regulatory actions; etc.

(3) To get information or comment about an action or event that could impact the City, new projects, new development plans, changes in government or Agency policies.

(4) To get general information on a topical story in the City such as changes in local governmental officials or policies, problems or issues specific to the City, etc.

(B) Refer all media calls to the Chief Executive Officer. Advise the reporter of the following: “the Agency policy is to refer all media inquiries to the Chief Executive Officer. You can reach the Chief Executive Officer at (telephone number).”

(C) Whenever taking a call from the media, the same courtesy and professionalism in which we approach project applicants should be displayed toward the media. Act quickly when approached by the media to ensure that the reporter’s deadline is met. This is important because the way this call is handled may be the reporter’s first impression of the Agency and that first impression may end up in the story published or the news segment broadcast. In order to promote our image, it is important to respond quickly, courteously and professionally to all media calls.

(D) Contact the Chief Executive Officer if and when you have been approached by the media. Even though you have referred the media, the Chief Executive Officer will need your help to prepare a response. The Chief Executive Office may also direct a reporter to speak directly with a member of the Agency. Do not let a reporter compel you to answer questions on the spot. It is always beneficial to prepare in advance in order to provide accurate and relevant information.

SECTION 2605. GUIDELINES FOR PHOTOGRAPHS AND FILM. (A) A similar process as described above will be used when someone from the media is requesting permission to take photographs or to film inside a project facility or the Agency office. Refer the caller to the Chief

Executive Officer. No one will be given access to a project facility for a photo or filming without approval from the Chief Executive Officer, and equally important, the Chief Executive Officer will not give approval without talking in advance with the project beneficiary. This is a joint decision between the project beneficiary and the Chief Executive Officer. Decisions will be based upon a number of considerations including but not limited to:

- (1) What does the Agency have to gain from the photo and filming?
- (2) How much disruption will this cause to the project?
- (3) What is the condition of the project facility?

(B) A reporter or camera crew may show up unannounced at a project facility or the Agency office. This is most likely to occur in a crisis situation. Or, it could occur if the media learned about an event at a project facility from an external source who has organized a demonstration or boycott.

(C) We cannot prevent the filming or photographing of common areas outside of the Agency office or a project facility. Examples would include public parking lots, courtyards and walk ways.

(D) The following guidelines should be used when television camera crews or print photographers show up unannounced at the Agency office or a project facility.

- (1) Although we cannot prevent the media from photographing or filming the exterior of our facilities, we will contact their news room and/or editors for clarification.
- (2) The media cannot enter our facility to photograph or film without permission.
- (3) The media cannot block the entrance to the facility or prevent people from entering the facility or conducting business as usual.
- (4) We can inform the media if a project beneficiary complains about the inconvenience caused in the parking lot or walkways.

(E) Be courteous and friendly, but also remember that no matter how congenial or affirming the reporter, photographer or camera crew are, everything you say and do may be observed and reported by the media representative who is trying to make the Agency office or project facility come alive for his/her audience.

**SECTION 2606. GUIDELINES FOR SEEKING MEDIA COVERAGE.** In circumstances in which you believe you have a positive news story to share with the public, contact the Chief Executive Officer. It is the only department authorized to distribute the Agency news releases, pitch coverage of particular events or hold news conferences.

(1) Do not call a reporter directly without first consulting the Chief Executive Officer.

(2) The Chief Executive Officer will work with you to gather information and determine if and how the news media should be contacted. Similar measures used by editors and reporters will be considered to determine if your story is newsworthy.

(3) Some news items may be more appropriate for internal publicity such as through e-mail or other forms of employee communications.

SECTION 2607. RELEASE OF INFORMATION TO THE NEWS MEDIA. Under no circumstances should information be released to the external news media or social media outlets without prior approval from the Chief Executive Office as the Agency principal media contact and Agency spokesperson.

## PART 27

### UNIFORM CRITERIA FOR THE EVALUATION OF PROJECTS POLICY

SECTION 1. PURPOSE AND JUSTIFICATION. (A) The purpose of this Policy is to provide the uniform criteria to be utilized by City of Albany Industrial Development Agency (the “Agency”) to evaluate and select projects from each category of eligible projects for which the Agency can provide financial assistance.

(B) The Agency was created pursuant to Section 903-a of Title 2 of Article 18-A of the General Municipal Law and Title 1 of Article 18-A the General Municipal Law (collectively, the “Act”) for the purpose of promoting employment opportunities for, and the general prosperity and economic welfare of, residents of the City of Albany and the State of New York (the “State”). Under the Act, the Agency was created in order to advance the job opportunities, health, general prosperity, and economic welfare of the residents of City of Albany, New York (the “City”) and of the State.

(C) Chapter 563 of the Laws of 2015, effective June 15, 2016 (the “Reform Legislation”), requires each industrial development agency to adopt an assessment of all material information included in connection with an application for financial assistance, as necessary to afford a reasonable basis for the decision by an industrial development agency to provide financial assistance for a project.

SECTION 2. ELIGIBLE PROJECT CATEGORIES. The Agency may provide financial assistance to any “project,” as defined in Section 854 of the Act.

SECTION 3. UNIFORM CRITERIA. The following general uniform criteria will apply to all categories of eligible projects: (1) Extent to which a project will create or retain jobs; (2) Estimated value of tax exemptions; (3) Amount of private sector investment; (4) Likelihood of project being accomplished in a timely fashion; (5) Extent of new revenue provided to local taxing jurisdictions; and (6) Any additional public benefits.

SECTION 4. REMOVAL OR ABANDONMENT. If the proposed project involves the removal or abandonment of a facility or plant within the state, the Agency will notify the chief executive officer or officers of the municipality or municipalities in which the facility or plant was located.

SECTION 5. EFFECTIVE DATE. This policy shall be effective with respect to any project undertaken by the Agency after the date of approval of this Policy.

## PART 28

### INTERPRETATION

SECTION 2801. INTERPRETATION. In these Rules and Regulations, words of masculine gender shall mean and include correlative words of the feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa.