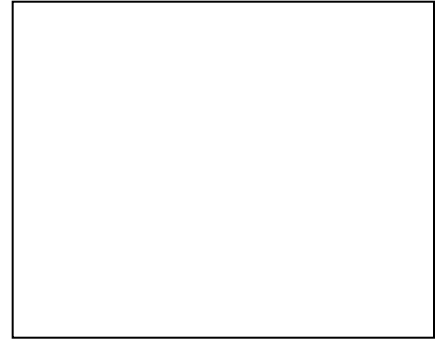


**Montgomery County Industrial Development Agency  
Governance Committee Meeting  
Agenda  
January 8, 2026**

- I. Call to Order
- II. New Business
  - A. Review Policy and Procedures
- III. Adjournment





# POLICY MANUAL

## MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY

Rev. July 2023 Res. No. 23-13, Rev. Jan 2024 Res. 24-1 (Pers.)



**MONTGOMERY COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY  
ADMINISTRATIVE POLICY MANUAL**

**I. ORGANIZATION OF THE AGENCY**

1. Enabling Statute
2. Special Act Creating the Agency
3. By-Laws

**II. INTERNAL POLICIES**

4. Deposits and Investment of Agency Funds
5. Procurement Policy
6. Annual Budget
7. Bond Counsel Disclosure
8. Financial Records; Annual Financial Statements
9. Equal Employment Opportunities
10. Conflicts of Interest
11. Interaction with Other Agencies
12. Structure of Agency Board
13. Access to Agency Records
14. Open Meeting Law
15. Conduct and Notification of Public Hearings
16. Public Authorities Accountability Act Policies:
  - a. Code of Ethics
  - b. Personnel Policy (including Compensation, Reimbursement and Attendance policies)
  - c. Retaliatory Action Policy
  - d. Indemnification of Officers and Trustees
  - e. Travel Policy
  - f. Real Property Acquisition Policy
  - g. Real Property Disposition Policy
  - h. Depreciation of Personal Property
  - i.. Statement of Intent Regarding Debt

**III. PROJECT-SPECIFIC POLICIES AND PROCEDURES**

17. Implementation of State Environmental Quality Review Act
18. Uniform Tax-Exemption Policy
19. Processing of Applications
20. Bond-Volume Allocation
21. Labor Policy
22. Agency Administrative Fees and Counsel Expenses



- 23. Policy Respecting Uniform Criteria for the Evaluation of Projects
- 24. Policy Respecting Recapture and Suspension of Project Benefits
- 25. Media Relations Policy and Guidelines
- 26. Project Monitoring and Enforcement

#### IV. MISCELLANEOUS

- 27. Interpretation



PART 1  
ENABLING ACT



**THE GENERAL ACT WHICH GOVERNS  
THE OPERATIONS AND ACTIVITIES OF  
MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

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**GENERAL MUNICIPAL LAW**

**ARTICLE 18 A - INDUSTRIAL DEVELOPMENT**

**TITLE 1 - AGENCIES, ORGANIZATION AND POWERS**

- Section 850. Short title.
- Section 852. Policy and purposes of article.
- Section 854. Definitions.
- Section 856. Organization of industrial development agencies.
- Section 858. Purposes and powers of the agency.
- Section 858-a. Compensation, procurement and investment.
- Section 858-b. Equal employment opportunities.
- Section 859. Financial records.
- Section 859-a. Additional prerequisites to the provisions of financial assistance.
- Section 859-b. Special procedure for the provision of financial assistance to continuing care retirement communities.
- Section 860. Moneys of the agency.
- Section 861. Notification of budget.
- Section 862. Restrictions on funds of the agency.
- Section 862-a. Additional restrictions on funds of the agency in connection with continuing care retirement communities.
- Section 864. Bonds of the agency.
- Section 866. Notes of the agency.
- Section 868. Agreements of the municipality and state.
- Section 870. State and municipality not liable on bonds or notes.
- Section 872. Bonds and notes as legal investment.
- Section 874. Tax exemptions.
- Section 876. Tax contract by the state.
- Section 878. Remedies of bondholders and noteholders.
- Section 880. Actions against the agency.
- Section 882. Termination of the agency.
- Section 883. Conflicts of interest.
- Section 884. Public bidding.
- Section 886. Title not affected if in part unconstitutional or ineffective.
- Section 888. Inconsistent provisions in other acts superseded.

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



**Section 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 urban cultural park 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 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.

**Section 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 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, civic, 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, a



continuing care retirement community, or a civic facility, 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 provide financial assistance in any respect to a continuing care retirement community, and provided, however, no agency shall provide financial assistance in respect of any project 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 any part of the project is, or is to be, located. Where a project is located partially within and partially outside the municipality for whose benefit the agency was created, the portion of the project outside the municipality must be contiguous with the portion of the project inside the municipality. Provided further, that no agency shall provide financial assistance for any project where the project applicant has any agreement to subsequently contract with a municipality for the lease or purchase of such project or project facility. [\* NB Effective until 07/02/99]

\* (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 or a railroad facility, provided, however, no agency shall use its funds 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. [\* NB Effective 07/02/99]

(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, equipments, 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 urban cultural park 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.

\* (13) “Civic facility” - shall mean any facility which shall be owned or occupied by a not-for-profit corporation organized and existing under the laws of this state or authorized to conduct activities in this state. Such facilities shall not include convention centers, housing facilities, dormitories for educational institutions or roads, buildings, water systems, sewer systems, or any public facility for use by a municipality in the performance of its governmental functions or medical facilities which are predominately used for the delivery of medical services, except that such facilities shall include habilitation centers and hospices.

Notwithstanding the limitations contained in the preceding sentence, a civic facility project may include: (a) dormitories for educational institutions; (b) facilities as defined in article twenty-eight of the public health law; and (c) housing facilities primarily designed to be occupied by individuals sixty years of age or older provided that the total cost of such projects as provided for in paragraphs (a), (b), and (c) herein does not exceed fifteen million dollars. Nothing in this article shall be deemed to waive any applicable requirement for an operating facility certificate, consent or any other approval as provided by law. [\* NB Repealed 07/01/99]

(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 economic development 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 of the public health law and is established to provide, pursuant to continuing care retirement contracts, 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 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 four thousand six hundred four-a of the public health law and the general municipal law 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.

**Section 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.

**Section 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 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 urban cultural 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.

**Section 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.

**Section 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.

**Section 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.

(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.

**Section 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 thirty 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, and provide an opportunity for the public to review the project application, which shall include an analysis of the costs and benefits of the proposed project. [\* NB Effective until 07/01/99]

\* (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. [\* NB Effective 07/01/99]

**Section 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.

**Section 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.



**Section 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 forth-coming fiscal year. Following its consideration of the comments received, the agency may revise its budget accordingly and shall file the revised budget with the clerk of the municipality.

**\*Section 862. Restrictions on funds of the agency.** (1) No financial assistance of the agency shall be used in respect of any project if the completion thereof would result in the removal of a facility or 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 and projects operated by not-for-profit corporations 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 project occupant would, but for the assistance provided by the agency, locate the related jobs outside the state, or (ii) 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 (iii) 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 chapter 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.

(3) No funds of the agency shall be used for the purpose of preventing the establishment of an industrial or manufacturing plant, nor shall any funds of the agency be given to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within this state nor shall such funds be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media. [\* NB Expires 07/02/99]

**Section 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.

**Section 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.

**Section 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 note holders, the note holders shall have all the remedies provided herein for bondholders. Such notes shall be as fully negotiable as the bonds of the agency.

**Section 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 note holders 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 note holders are fully met and discharged.

**Section 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.

**Section 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.

**Section 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 uniform tax exemption policy established pursuant to this section shall be reviewed and readopted by the agency on or before April first, nineteen hundred ninety-nine following a public hearing. Notice of this hearing shall be given to the chief executive officer of each affected tax jurisdiction at least sixty days before the hearing. Prior to the hearing the agency shall review, and respond to any correspondence received from any affected tax jurisdiction. The agency shall allow any representative of an affected tax jurisdiction to address the agency at the hearing. The agency shall develop and submit a report to the affected tax jurisdictions sixty days prior to the hearing which details the projects which the agency has assisted in the previous five years and shall include information specific to each project including the period of exemption; the type of project; the estimated percentage of exemption by year; the estimated value of any other assistance provided by the agency; whether commitments for payments in lieu of taxes were made and met, the estimated value of such payments by year and affected tax jurisdiction; the estimated amount of private sector investment generated by the project; and the extent to which the project created or retained permanent, private sector jobs. [\* NB Effective until 07/01/99]

\* (c) 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. [\* NB Effective 07/01/99]

\* (d) 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. Such notice to the affected tax jurisdictions shall be given to the chief executive officer of each affected tax jurisdiction at least thirty days prior to the meeting of the agency at which the agency shall consider whether to approve such proposed deviation. Prior to taking final action at said meeting, the agency shall review and respond to any correspondence received from any affected tax jurisdiction regarding such proposed deviation. The agency shall allow any representative of an affected tax jurisdiction present at such meeting to address the agency regarding such proposed deviation. [\* NB Effective until 07/01/99]

(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) 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 extending a sales 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 goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating the agency's rough estimate of the value of the goods 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. [\* NB Repealed 07/01/99]

**Section 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 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.

**Section 878. Remedies of bondholders and note holders.** (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 note holders, 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 note holders. 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 note holders, 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 note holders 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 note holders in the enforcement and protection of their rights.

**Section 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 the general municipal law shall govern the giving of such notice. No action shall be commenced more than one year after the cause of action therefor shall have accrued.

**Section 882. Termination of the agency.** Whenever all of the bonds or notes issued by the agency shall have been redeemed or cancelled, 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.



**Section 883. Conflicts of interest.** All members, officers, and employees of an agency or authority shall be subject to the provisions of article eighteen of this chapter.

**Section 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.

**Section 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.

**Section 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 666 of the Laws of 1970 is attached hereto as Appendix 2A.



## APPENDIX 2A

### **THE SPECIAL ACT WHICH CREATED MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

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#### **CHAPTER 666 OF THE 1970 LAWS OF NEW YORK**

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#### **GENERAL MUNICIPAL LAW**

##### **TITLE 2 - MUNICIPAL INDUSTRIAL DEVELOPMENT AGENCIES**

**Section 895-d. Montgomery county industrial development agency.** For the benefit of the county of Montgomery and the inhabitants thereof, an industrial development agency, to be known as the MONTGOMERY COUNTY 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 county of Montgomery, 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 county of Montgomery. 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.



## 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 Montgomery County 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 days written notice thereof has been previously given to all members of the Agency.



APPENDIX 3A  
BY-LAWS  
OF  
THE MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY

ARTICLE I  
THE AGENCY

Section 1. Name. The name of the Agency shall be the Montgomery County Industrial Development Agency.

Section 2. Seal of Agency. The seal of the Agency shall be in the form of a circle and shall bear the name of the Agency and the year of its organization.

Section 3. Office of Agency. The office of the Agency shall be at Old County Courthouse, P.O. Box 1500, Fonda, New York, but the Agency may have other offices at such other places as the Agency may from time to time designate by resolution.

ARTICLE II  
MEMBERS; OFFICERS OF THE BOARD;  
BOARD COMMITTEES

Section 1. Officers. The officers of the Agency shall be a Chairman, a Vice Chairman, a Secretary, a Treasurer, an Assistant Secretary-Assistant Treasurer.

Section 2. Chairman. The Chairman shall preside at all meetings of the Agency. Except as otherwise authorized by resolution of the Agency, the Chairman shall sign all agreements, contracts, deeds, bonds or other evidences of indebtedness and any other instruments of the Agency. At each meeting the Chairman shall submit such recommendations and information as he may consider proper concerning the business, affairs and policies of the Agency.

Section 3. Vice Chairman. The Vice Chairman shall perform the duties of the Chairman in the absence or incapacity of the Chairman; and in case of the resignation or death of the Chairman, the Vice Chairman shall perform such duties as are imposed on the Chairman until such time as the Agency shall appoint a new Chairman.

Section 4. Secretary. The Secretary shall keep the records of the Agency, shall act as Secretary of the meetings of the Agency and record all votes, and shall keep a record of the proceedings of the Agency in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to his office. He shall keep in safe custody the seal of the Agency and



shall have power to affix such seal to all contracts and other instruments authorized to be executed by the Agency.

Section 5. Treasurer. 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 Agency may select. The Treasurer shall sign all checks for the payment of money; and shall pay out and disburse such moneys under the direction of the Agency except as otherwise authorized by resolution of the Agency, all such checks shall be countersigned by the Chairman. In the event of the absence or incapacity of the Chairman, the Vice Chairman is authorized to countersign any checks prepared by the Treasurer. He shall keep regular books of accounts showing receipts and expenditures and shall render to the Agency at each regular meeting an account of his transactions and also of the financial condition of the Agency. He shall give such bond for the faithful performance of his duties as the Agency may determine.

Section 6. Assistant Secretary-Assistant Treasurer. The Assistant Secretary-Assistant Treasurer shall perform the duties of the Secretary and/or Treasurer in the absence or incapacity of either; and in case of the resignation or death of either, shall perform such duties as are imposed until such time as the Agency shall appoint a replacement.

Section 7. 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 bylaws of the Agency, or by the rules and regulations of the Agency. In the absence or incapacity of the Treasurer, each officer of the Agency may countersign with the Chairman and with such countersignature of the Chairman shall have (1) the power to sign all checks of the Agency for the payment of money, (2) the power to pay out and disburse such moneys under the direction of the Agency, and (3) the care and custody of all funds of the Agency and the power to deposit the same in the name of the Agency in such bank or banks as the Agency may select.

Section 8. Appointment of Officers. All officers of the Agency except the first Chairman shall be elected at the annual meeting of the Agency from among the members of the Agency, and shall hold office for one year or until the successors are appointed.

Section 9. Vacancies. Should any office become vacant, the Agency shall elect a successor from among its membership at the next regular meeting, and such appointment shall be for the unexpired term of said office.

Section 10. Chief Executive Officer. The Chief Executive Officer shall be the chief administrative and operating officer of the Agency and shall; subject to oversight by the board, be responsible for the general supervision, efficient administration and operation and activities of the Agency, carry out the policies and directives of the Board; be responsible for obtaining and furnishing to the Board financial and other reports as may be required by the Agency; recommend to the Board, from time to time, such measures as the Chief Executive Officer shall deem necessary or advisable; furnish the Board with necessary information respecting any Business of the Agency; be responsible for supervising the implementation and maintenance of those systems and processes necessary to assess and address risks confronted by the Agency in the performance of its corporate objectives, measuring corporate performance and for furnishing the Board with necessary



information respecting those functions; be responsible for the preparation and submission to the Board of the proposed annual budget for adoption by the Board and of any amendments thereto, from time to time, for adoption by the Board; keep the Board informed as to the financial needs and condition of the Agency; and exercise such other powers and perform such other duties as the Board may determine. The Chief Executive Officer shall certify the Annual financial Report.

Section 11. Chief Financial Officer. The Chief Financial officer shall: supervise and direct the financial activities of the Agency; supervise and direct the Agency's investment program; supervise and direct the Agency's accounting functions; report on operations and financial performance; recommend and implement financial policies; develop financial management systems and appropriate internal controls necessary for accurate financial reporting; and perform such other duties as the Chief Executive Officer may determine. The CFO shall also maintain the PARIS system. The Chief Financial Officer shall certify the Annual Financial Report.

Section 12. Contracting Officer (Usually CEO). The contracting officer shall be responsible for the preparation of guidelines for the disposition of property as required by the Public Authorities Accountability Act of 2005. He or she shall assist the Board in its Annual Review and approval of said guidelines and their annual filing with the state comptroller. The contracting officer shall develop and maintain inventory controls and accountability system for all property under the control of the Agency. He or she shall periodically inventory property to determine if disposal is appropriate. He or she shall prepare annual written reports for submission to the appropriate state officials required by the statute.

Section 13. Investment Officer (Usually CFO). The Investment Officer shall be responsible to invest 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. Proper records shall be maintained of all books, notes, securities or other evidences of indebtedness held by or for the Agency for purposes of investment.

Section 14. Committees. The Chairman and members of all committees shall be appointed by the Chairman 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.

Section 15. Governance Committee. (A) The Chairman shall appoint a Governance Committee, to be comprised of not less than three 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 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 16. Audit Committee. (A) The Chairman shall appoint an Audit Committee, to be comprised of not less than three 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 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 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 17. Finance Committee. (A) The Chairman shall appoint a Finance Committee, to be comprised of not less than three 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 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 Agency's board 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.



Section 18. Consultants. The Agency may from time to time employ consultants. Such consultants shall have such duties and have such compensation as provided by written contract with the Agency.

Section 19. Additional Personnel. The Agency may from time to time employ such personnel as it deems necessary to exercise its powers, duties and functions as prescribed by the New York State Industrial Development Act, as amended, and all other laws of the State of New York applicable thereto. The selection and compensation of all personnel including the Chief Executive Officer shall be determined by the Agency subject to the laws of the State of New York.



## ARTICLE III

### MEETINGS

Section 1. Annual Meetings. The annual meeting of the Agency will be held on the 2<sup>nd</sup> Thursday of January at a time to be determined by the Chairman at the regular meeting place of the Agency or such other place as designated by the members. In event such day shall fall on a legal holiday, the annual meeting shall be held as soon thereafter as is practicable but not later than June 1.

Section 2. Regular Meetings. Regular meetings of the Agency will be held with notice at such times and places as from time to time may be determined by resolution of the Agency and in accordance with New York law.

Section 3. Special Meetings. The Chairman of the Agency may, as he deems it desirable, and shall, upon the written request of the members of the Agency call a special meeting of the Agency for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered to each member of the Agency or may be mailed to the business or home address of each member of the Agency at least two days prior to the date of such special meeting. Waivers of notice may be signed by any members failing to receive proper notice. At such special meeting, no business shall be considered other than as designated in the call, but if all the members of the Agency are present at a special meeting, with or without notice thereof, any and all business may be transacted at such special meeting.

Section 4. Quorum. At all meetings of the Agency, a majority of the members of the Agency shall constitute a quorum for the purpose of transacting business.

Section 5. Order of Business. At the regular meetings of the Agency the following shall be the order of business:

1. Call to Order
2. Approval of the minutes
3. Communications
4. Public Comment
5. Chair's Report
6. CEO Report
7. Financial Report
8. Unfinished Business
9. New Business
10. Adjournment

All resolutions shall be in writing and shall be copied in a journal of the proceedings of the Agency.



Section 6. Manner of Voting. The voting on all questions coming before the Agency shall be by roll call, and yeas and nays shall be entered on the minutes of such meeting, except in the case of appointments when the vote may be by ballot.

#### ARTICLE IV

#### 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 a special meeting, but no such amendment shall be adopted unless at least seven days written notice thereof has been previously given to all members of the Agency.



## 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 Montgomery County 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 Chief Financial Officer 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”) is 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 CFO 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 Financial Officer and the Chief Executive Officer of the Agency shall prepare and submit to the members of the Agency at each regular meeting of the Agency (but not more often than monthly), a summary showing the amount of Agency Funds on deposit in each Depository and the general nature of the investment of such Agency Funds.

(B) Annual Report. Within ninety (90) days of the end of each fiscal year, the Chief Financial Officer and the Chief Executive Officer of the Agency shall prepare and submit to the members 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 CFO and CEO shall certify the report.

(C) Annual Audit. The Annual 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 Agency’s annual audit and this Part, and shall make any amendments to this Part necessary to achieve the purposes of this Part.

(E) PARIS. The members of the Agency shall review the annual PARIS report. The CFO and the CEO shall certify the report.

(F) Procurement Report. The members of the Agency shall review the annual procurement report. The CFO and the CEO shall certify the report.



## PART 5

### PROCUREMENT POLICY

SECTION 501. PURPOSE AND AUTHORITY. The purpose of this Part is to outline the procurement policy (the “Procurement Policy”) of Montgomery Industrial Development Agency (the “Agency”) 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 favoritism will be avoided, except in the following circumstances: purchases costing less than \$3,000; 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:

Items which can be purchased without full Board approval (up to \$1,500):

\$500- \$1,500 - signed purchase order with 2 quotations attached unless a good or product where pricing is uniform.

This would be used to purchase items needed to carry out the general administrative function of the Agency.

#### Estimated Amount of Purchase Contract

#### Method

\$1,501 and above

3 written/fax quotations or  
written request for proposals

#### Estimated Amount of Public Works Contract

#### Method

\$1,501 - 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 purchaser is unable to obtain the required number of proposals or quotations, the purchaser will document the attempt made at obtaining the proposals. In no event shall the failure to obtain the proposals 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 purchaser 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 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, judgment, integrity, continuity of service and moral worth. 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.

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; 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; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of pre-packaged software.

Individual/firms for Accountant/Audit Services shall be determined as follows: Requests For Proposals will be issued by the Chief Executive Officer no later than October 1<sup>st</sup> every 5 years.



Each RFP will contain provisions for appointment at a five year term, commencing on January 31<sup>st</sup> the following year, ending five years thereafter.

(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 also difficult to try to compare prices of used goods and a lower price may indicate an older product.

(D) Goods or Services Under \$3,000. 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 favoritism.

**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, creed, color, national origin, sex, age, disability or marital 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, creed, color, national origin, sex, age, disability or marital status.

(B) Any contract awarded by the Agency will include the provisions of Section 505(A) 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.



APPENDIX 5A

FORM OF PROCUREMENT POLICY RESOLUTION

A regular meeting of Montgomery County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at \_\_\_\_\_ in the \_\_\_\_\_, Montgomery County, New York on \_\_\_\_\_, \_\_\_\_ at \_\_\_\_:\_\_\_\_ o'clock \_\_\_\_m., local time.

The meeting was called to order by the (Vice) Chairman and, upon roll being called, the following members of the Agency were:

PRESENT:

ABSENT:

THE FOLLOWING PERSONS WERE ALSO PRESENT:

The following resolution was offered by \_\_\_\_\_, seconded by \_\_\_\_\_, to wit:

Resolution No. \_\_\_\_\_

RESOLUTION ESTABLISHING A PROCUREMENT POLICY APPLICABLE  
TO THE PROCUREMENT OF GOODS AND SERVICES PAID FOR BY THE  
AGENCY FOR ITS OWN USE AND ACCOUNT

WHEREAS, Montgomery County 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 666 of the 1970 Laws of New York, as amended, constituting Section 895-b 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, subsection (2) of Section 858-a of the Act, as added by Chapter 356 of the Laws of 1993 of the State of New York, provides that the provisions of Section 104-b of the General Municipal Law shall be applicable to the procurement of goods and services paid for by the Agency for its own use and account; and

WHEREAS, Section 104-b of the General Municipal Law requires that the governing board of every political subdivision subject to said provision shall adopt by resolution internal policies and procedures governing all procurements of goods and services which are subject to the provisions of such Section; and

WHEREAS, a tentative procurement policy, a copy of which is annexed hereto, (the "Procurement Policy") has been presented to the members of the Agency for their review;

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

Section 1. The Agency hereby finds and determines that it is desirable and in the public interest for the Agency to adopt the Procurement Policy.

Section 2. The form and substance of the Procurement Policy (in the form presented to this meeting) are hereby approved.

Section 3. Pursuant to subsection (2) of Section 858-a of the Act, the members of the Agency hereby adopt the Procurement Policy as the Agency's Procurement Policy applicable to the procurement of goods and services paid for by the Agency for its own use and account.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Procurement Policy, and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Agency with all of the terms and provisions of the Procurement Policy.

Section 5. This resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

_____	Voting _____
_____	Voting _____
_____	Voting _____
_____	Voting _____
_____	Voting _____
_____	Voting _____
_____	Voting _____

The Resolution was thereupon declared duly adopted.



STATE OF NEW YORK                    )  
  )SS.:  
COUNTY OF MONTGOMERY         )

I, the undersigned (Assistant) Secretary of Montgomery County Industrial Development Agency (the “Agency”), DO HEREBY CERTIFY that I have compared the annexed extract of the minutes of the meeting of the Agency, including the resolution contained therein, held on \_\_\_\_\_, 20\_\_, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting, (B) said meeting was in all respects duly held, (C) pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and public notice of the time and place of said meeting was duly given in accordance with such Article 7, and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Assistant) Secretary

(S E A L)



PART 6  
ANNUAL BUDGET

SECTION 601. PURPOSE AND AUTHORITY. The purpose of this Part is to implement Section 861 of Title One of Article 18-A of the General Municipal Law, in addition to the required PAAA and PARA requirements which sets forth a requirement that Montgomery County Industrial Development Agency (the “Agency”) make available its adopted budget, , for each fiscal year.

SECTION 602. BUDGET PREPARATION. (A) Tentative Budget. The Chief Executive Officer and Chief Financial Officer of the Agency shall annually, at least sixty (60) days prior to the expiration of the then-current fiscal year, prepare a tentative budget for the forthcoming 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) Proposed Budget. The Chief Executive Officer of the Agency shall endeavor to schedule a meeting of the finance committee members of the Agency for the purpose of discussing the proposed tentative 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 proposed tentative budget. Once the Chief Executive Officer has made any revisions to the proposed tentative budget necessary to reflect the input from the members of the Agency, the proposed tentative budget shall become the adopted budget.

(E) Distribution of Adopted Budget. Once the adopted budget is prepared, the Chief Executive Officer of the Agency shall provide a copy to the following, annually not less than 60 days before the commencement of its fiscal year to :

- (1) The Chief Executive Officer and the Chief Fiscal Officer of the Authority;
- (2) The Chairperson of the legislative body of the local
- (3) The Authority Budget Office
- (4) One copy shall be placed on file in the office of the Agency and made available for public inspection during normal business hours.
- (5) Adopted Budget shall be posted to Agency website ([www.mcbdc.org](http://www.mcbdc.org))

(F) Filing of Budget. Upon adoption by the Agency of a budget, the Chief Executive Officer of the Agency shall promptly file same with the County Clerk.



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



APPENDIX 6A

SAMPLE FORM OF BUDGET



**Budget and Financial Plan**  
**2011**  
**Budgeted Revenues, Expenditures and Changes in Current Net Assets**

	Interim 9/30/2010				
<b><u>REVENUE &amp; FINANCIAL SOURCES</u></b>	<b>Last Year Actual 2009</b>	<b>Current Year Actual 2010</b>	<b>Next Year Adopted 2011</b>	<b>Proposed 2012</b>	<b>Proposed 2013</b>
<b>Operating Revenues</b>					
Charges for Services	\$ 1,021,338	\$ -	\$ -	\$ -	\$ -
Rental & Financing Income	\$ 99,495	\$ 83,223	\$ 103,181	\$ 62,260	\$ 61,252
Other Operating Revenues	\$ 3,900	\$ -	\$ -	\$ -	\$ -
<b>Nonoperating Revenues</b>					
Investment earnings	\$ 3,188	\$ 1,646	\$ 2,100	\$ 2,121	\$ 2,142
State Subsidies/grants	\$ -	\$ -	\$ -	\$ -	\$ -
Federal Subsidies/grants	\$ -	\$ -	\$ -	\$ -	\$ -
Municipal Subsidies/grants	\$ 9,500	\$ 7,950	\$ -	\$ -	\$ -
Public Authority Subsidies	\$ -	\$ -	\$ -	\$ -	\$ -
Other Nonoperating Revenues	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Proceeds from the issuance of debt</b>	\$ 2,994	\$ -	\$ -	\$ -	\$ -
<b>Total Revenues and Financing Sources</b>	<b>\$ 1,140,415</b>	<b>\$ 92,819</b>	<b>\$ 105,281</b>	<b>\$ 64,381</b>	<b>\$ 63,394</b>
<b><u>EXPENDITURES</u></b>					
<b>Operating Expenditures</b>					
Salaries & Wages	\$ 32,000	\$ 20,923	\$ 32,000	\$ 32,000	\$ 32,000
Other employee Benefits	\$ 3,537	\$ 2,454	\$ 4,000	\$ 4,000	\$ 4,000
Professional services contracts	\$ 118,768	\$ 34,000	\$ 36,000	\$ 36,000	\$ 36,000
Supplies & Materials	\$ 2,832	\$ 9,199	\$ 2,949	\$ 3,037	\$ 3,129
Other operating expenditures	\$ 61,573	\$ 27,633	\$ 34,701	\$ 27,217	\$ 27,748
<b>Nonoperating Expenditures</b>					
Payment of principal on bonds and financing arrangements					
Interest and other financing charges					
Subsidies to other public authorities					
Capital Asset outlay					
Grants and donations	\$ 13,000	\$ 6,000	\$ 500	\$ 500	\$ 500
Other nonoperating expenditures	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Expenditures</b>	<b>\$ 231,710</b>	<b>\$ 100,209</b>	<b>\$ 110,150</b>	<b>\$ 102,754</b>	<b>\$ 103,377</b>
<b>Capital Contributions</b>					
<b>Excess (deficiency) of revenues and capital contributions over expenditures</b>	<b>\$ 908,705</b>	<b>\$ (7,390)</b>	<b>\$ (4,869)</b>	<b>\$ (38,373)</b>	<b>\$ (39,983)</b>



## PART 7

### BOND COUNSEL DISCLOSURE

SECTION 701. PURPOSE AND AUTHORITY. The purpose of this Part is to establish such procedures relating to bond counsel as are deemed by Montgomery County Industrial Development Agency (the “Agency”) as necessary for the implementation of Section 858(8)(b) 6f 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. 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. (1) Prior to the appointment by the Agency of bond counsel for a particular project, a timely Disclosure Statement must be on file with the Agency relating to said project. A Disclosure Statement shall be deemed timely if it is dated not more than sixty (60) days prior to the date of adoption of the resolution of the Agency appointing such attorney as bond counsel with respect to such project.

(2) If a Disclosure Statement is on file with the Agency with respect to a particular project, the attorney named in such Disclosure Statement may not accept an engagement to provide legal services to any party not listed as a client in such Disclosure Statement unless and until (a) a supplemental Disclosure Statement listing each additional party, and including all Additional Disclosures required by subsection (B) hereof, is filed with the Agency and (b) the Agency by resolution of its members reaffirms the appointment of such attorney as bond counsel.

(3) Not more than fifteen (15) days nor less than five (5) days prior to adoption of a bond resolution by the Agency, bond counsel shall file with the Agency a certificate, in substantially the form of Appendix 7B to this Part (a “Pre-Closing Certificate”), itemizing each Disclosure Statement filed by such attorney with the Agency and affirming that such attorney and his firm has provided and/or is providing no legal services to any parties to the transaction, other than the parties listed in such Disclosure Statements and (if providing legal services to any party other than the Agency) a description of the nature of the legal services being provided to such parties.



(4) Within ten (10) days following a closing of the sale of any bonds by the Agency, bond counsel shall furnish to the Agency a certificate, in substantially the form of Appendix 7C to this Part (a “Closing Certificate”), (a) itemizing each Disclosure Statement filed by such attorney with the Agency, (b) affirming that such attorney has provided no legal services to any parties to the transaction, other than those listed in such Disclosure Statement and if legal services were provided to any party other than the Agency, the nature of the legal services being provided to such parties, and (c) affirming that attached to such Closing Certificate is a true and correct copy of such attorney’s bill for all legal services provided as bond counsel and/or as counsel to the Agency in any other capacity.

SECTION 703. FINANCIAL DISCLOSURE. Since case law has determined that the legal fees of bond counsel are a public record, (A) each Disclosure Statement filed pursuant to Section 702(C)(1) 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, and (B) each Closing Certificate shall have attached thereto a copy of such attorney’s bill for all legal services provided as bond counsel and/or as counsel to the Agency in any other capacity.

SECTION 704. ENFORCEMENT. (A) Appointment of Bond Counsel. The Agency shall not adopt any resolutions or take any other action to appoint an attorney as bond counsel for a particular transaction unless such attorney has filed with the Agency a timely Disclosure Statement complying with the requirements of Section 702(A) and (B) and Section 703(A) of this Part.

(B) Penalty for Failure to File. The Agency shall not adopt any resolutions or take any other action to appoint an attorney or firm as bond counsel for a particular transaction if such attorney or his firm is delinquent in filing any information with the Agency pursuant to this Part.



APPENDIX 7A

FORM OF DISCLOSURE STATEMENT

BOND COUNSEL DISCLOSURE STATEMENT

TO: Montgomery County Industrial Development Agency  
Old County Courthouse  
P.O. Box 1500  
Fonda, New York 12068

RE: [Identify Proposed Bond Issue]

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

Gentlemen:

I hereby request that the members of Montgomery County Industrial Development Agency (the "Agency") adopt a resolution appointing [me] [my law firm, \_\_\_\_\_] to act as bond counsel in connection with the captioned proposed bond issue. Pursuant to Part 7 of the Rules and Regulations of the Agency, I hereby certify as follows:

A. Attached hereto as Schedule A is a list of each party to the proposed transaction whom either myself or my law firm represents or has represented in the past in connection with the proposed transaction.

B. If either myself or my law firm represents or has represented any party to the transaction other than the Agency, Schedule A also includes a description of the nature of the legal services provided to all parties to the transaction (including the Agency).

C. Attached hereto as Schedule B is a true and correct copy of an engagement letter or other summary of the method by which [I] [my firm] expect to charge for legal services in connection with the transaction.

I hereby affirm that, to the best of my knowledge and belief, all information contained or described herein is true, correct and complete.

Pursuant to Section 702(C)(3) of the Rules and Regulations of the Agency, I hereby agree to supply to the Agency a preclosing certificate not more than fifteen (15) days nor less than five (5) days prior to the adoption of a bond resolution by the Agency.

Pursuant to Section 702(C)(4) of the Rules and Regulations of the Agency, I hereby agree to supply to the Agency a closing certificate within ten (10) days following the closing of the sale of the captioned bonds.



SCHEDULE A

LIST OF PARTIES REPRESENTED

PARTIES REPRESENTED

DESCRIPTION OF THE  
NATURE OF SERVICES  
PROVIDED TO EACH  
SUCH PARTY  
(IF REQUIRED)



SCHEDULE B

ENGAGEMENT LETTER OR OTHER SUMMARY OF METHOD  
OF CHARGING EACH PARTY LISTED ON SCHEDULE A



APPENDIX 7B

FORM OF PRECLOSING CERTIFICATE



## BOND COUNSEL PRECLOSING CERTIFICATE

TO: Montgomery County Industrial Development Agency  
Old County Courthouse  
P.O. Box 1500  
Fonda, New York 12068

RE: [Identify Proposed Bond Issue]

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

Gentlemen:

This certificate is submitted to Montgomery County Industrial Development Agency (the “Agency”) pursuant to Section 702(C)(3) of the Rules and Regulations of the Agency in connection with [my] [my firm’s] position as bond counsel to the Agency in connection with the captioned proposed bond issue:

A. Attached hereto as Schedule A is a list of all Disclosure Statements filed by [me] [my firm] with the Agency in connection with this transaction.

B. I hereby affirm that neither myself nor my law firm have provided or are providing any legal services in connection with the captioned transaction to any parties to the captioned transaction, other than as disclosed in such Disclosure Statements or as disclosed on Schedule B attached hereto, and that said Disclosure Statements and Schedule B attached hereto contain the additional information (if any) required by Section 702(B) of the Rules and Regulations of the Agency.

I hereby affirm that, to the best of my knowledge and belief, all information contained or described herein is true, correct and complete.

Pursuant to Section 702(C)(4) of the Rules and Regulations of the Agency, I hereby agree to supply to the Agency a closing certificate within ten (10) days following the closing of the sale of the captioned bonds.



SCHEDULE A

SUPPLEMENTAL LIST OF PARTIES REPRESENTED

ADDITIONAL PARTIES REPRESENTED

DESCRIPTION OF THE NATURE  
OF SERVICES PROVIDED  
TO EACH SUCH PARTY



APPENDIX 7C

FORM OF CLOSING CERTIFICATE



## BOND COUNSEL CLOSING CERTIFICATE

TO:           Montgomery County Industrial Development Agency  
              Old County Courthouse  
              P.O. Box 1500  
              Fonda, New York 12068

RE::           [Identify Proposed Bond Issue]

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

Gentlemen:

This certificate is submitted to Montgomery County Industrial Development Agency (the “Agency”) pursuant to Section 702(C)(4) of the Rules and Regulations of the Agency in connection with [my] [my firm’s] position as bond counsel to the Agency in connection with the captioned bond issue:

A.       Attached hereto as schedule A is a list of all Disclosure Statements and Pre-Closing Certificates filed by [me] [my firm] with the Agency in connection with this transaction.

B.       I hereby affirm that neither myself nor my law firm have provided or are providing any legal services in connection with the captioned transaction to any parties to the captioned transaction, other than as disclosed in such Disclosure Statements or Pre-Closing Certificates and that such Disclosure Statements and Pre-Closing Certificates contain all additional information (if any) required by Section 702(B) of the Rules and Regulations of the Agency.

C.       Attached hereto as Schedule A is a true and correct copy of all bills for legal services rendered by myself or my firm to any parties to this transaction as bond counsel and/or as counsel to the Agency in any other capacity.



SCHEDULE A  
COPIES OF LEGAL BILLS



## PART 8

### FINANCIAL RECORDS; ANNUAL FINANCIAL STATEMENTS; FILINGS WITH THE NEW YORK STATE COMPTROLLER AND AUTHORITY BUDGET OFFICE

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”), in addition to the PAAA and PARA guidelines, which sets forth certain requirements that Montgomery County Industrial Development Agency (the “Agency”) must follow with regard to maintenance of financial records, the preparation of annual financial statements, and the filing of such annual financial statements with the New York State Comptroller (the “Comptroller”) and the Authority Budget Office (the “ABO”).

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 Comptroller and ABO, such financial statement to include supplemental schedules containing certain additional information required by the Comptroller and ABO. Information from the annual financial statement is required to be entered into the Public Authority Reporting Information System (the “Paris System”).

(B) Contract with Independent Certified Public Accountant. 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 to be known as the “Independent Audit Report”, together with all supplemental schedules required by the Act, and ensure that the same are filed with the Comptroller and ABO not later than ninety (90) days following the close of such fiscal year.



(C) Filings. The Act prescribes certain penalties for (1) failure to file the annual financial statement with the Comptroller and ABO or (2) failure to substantially complete such annual financial statement, as determined by the Comptroller. The Chairman of the Agency shall ensure that the annual financial statement is substantially completed and is filed with the Comptroller and ABO within the ninety (90) day period required by the Act. Within thirty (30) days after completion of the annual financial statement, the Agency and/or the Accountant shall send copies of such statement along with the management letter and any other external examination of the books and accounts of such authority, other than copies of the reports of examinations made by the State Comptroller to (a) the Chief Executive Officer and the Chief Fiscal Officer of the authority, (b) the Chairperson of the legislative body of the local government or governments and (c) the Authority Budget Office.

(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 Chairman 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 Montgomery County 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, disability, age or marital status in all aspects of its personnel policies, programs, practices and operations in accordance with Title VII of the Civil Rights Act of 1964 and the Human Rights Law of the State of New York.

SECTION 903. PROJECT EMPLOYMENT OPPORTUNITIES. (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 (1) the New York State Department of Labor Community Services Division and (2) 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 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)).

(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 Section 6 of the Private Activity Bond Volume Allocation Act of 2008 (the “Allocation Act”), except that such new requirements apply to every project undertaken by the Agency. Accordingly, attached hereto as Appendix 9A to this Part are the guidelines prepared by the New York State Department of Economic Development relating to the listing and first consideration requirements of the Allocation Act.



APPENDIX 9A

GUIDELINES RELATING TO THE LISTING AND  
FIRST CONSIDERATION REQUIREMENTS  
OF THE ALLOCATION ACT



GUIDELINES FOR ACCESS TO EMPLOYMENT OPPORTUNITIES  
PURSUANT TO THE PRIVATE ACTIVITY BOND ALLOCATION ACT OF 2008

Section 7 of the Private Activity Bond Allocation Act of 2008 ("Section 7") imposes employment listing requirements on all issuers of qualified small issue bonds for industrial or manufacturing projects. In addition, issuers of qualified small issue bonds must require that persons eligible for service under the Federal Job Training Partnership Act be considered first for any new jobs created in connection with the issuance of qualified small issue bonds for industrial or commercial projects. All issuers of qualified small issue bonds must monitor compliance with the Section 7 requirements as prescribed by the Commissioner of Economic Development. The attached Guidelines for Access to Employment Opportunities set forth the procedures to be followed by issuers of qualified small issue bonds for purposes of compliance with Section 7.

I. Definitions

A. "Industrial or Manufacturing Project" means a manufacturing facility, as such term is defined in Section 144(a)(12)(C) of the Internal Revenue Code of 1986, as amended.

B. "Issuer" means any entity authorized to issue Qualified Small Issue Bonds.

C. "New Employment Opportunities" mean permanent positions created in connection with Industrial or Manufacturing Projects financed through the issuance of Qualified Small Issue Bonds.

D. "Qualified Small Issue Bonds" or "Bonds" mean those bonds described in Section 144(a) of the Internal Revenue Code of 1986, as amended.

E. "Project Beneficiary" means the nonexempt person in whose trade or business the proceeds of Qualified Small Issue Bonds are used.

II. Job Listing Procedures

A. Prior to the expenditure of Qualified Small Issue Bond proceeds for Industrial or Manufacturing Projects, all Issuers shall require that the Project Beneficiary complete an employment plan (hereinafter referred to as "Employment Plan") describing the following information, in the format set forth in Appendix A, attached hereto:

1. current and planned occupations in the company;
2. the current number of jobs per occupation;
3. projection of the number of New Employment Opportunities during the first, second and third operational years of the Industrial or Manufacturing Project;  
and
4. information on estimated hiring dates for the number and types of positions to be filled and any special recruitment or training efforts that may be required.

B. All Issuers shall submit copies of each such Employment Plan to:



1. the local service delivery area office created pursuant to the Job Training Partnership Act;
2. the local New York State Jobs Service Division; and
3. the Regional Office of the New York State Department of Economic Development in the locality in which the Industrial or Manufacturing Project is located.

C. Furthermore, prior to the expenditure of Bond proceeds for Industrial or Manufacturing Projects, all Issuers shall arrange a meeting between the representative of the local service delivery area, the job service superintendent and the Project Beneficiary for the purpose of supplying information about projected New Employment Opportunities. Such Issuers shall notify the Regional Office of the New York State Department of Economic Development, in advance, as to the time and location of each such meeting.

### III. Hiring Requirements

In connection with Qualified Small Issue Bonds issued for an Industrial or Manufacturing Project, Issuers shall require Project Beneficiaries to agree, subject to the requirements of any existing collective bargaining agreement, to first consider for New Employment Opportunities, persons eligible for service under the Job Training Partnership Act.

### IV. Recordkeeping and Reporting

A. All Issuers shall maintain an Employment Plan for each Industrial or Manufacturing Project on file as part of the record of the Qualified Small Issue Bond financing. The Commissioner of Economic Development may at any time require the production of such records.

B. On or before January 15th of each year, all Issuers affected by the foregoing requirements shall report to the Department of Economic Development regarding the status of the Employment Plans, including the number of New Employment Opportunities created, the number listed, and the number filled, in the form attached hereto as Appendix B. All Issuers shall require Project Beneficiaries to provide such data on a timely basis for inclusion in the Issuer's January 15th report. All Issuers' reports shall be filed with: New York State Department of Economic Development, 30 South Pearl Street, Albany, New York 12245.

### V. Miscellaneous

A. All Issuers shall require each Project Beneficiary, in consideration of the issuance of Bonds for Industrial or Manufacturing Projects, to agree to perform the requirements of Section 7 of the Private Activity Bond Allocation Act of 2008 and these Guidelines. Recommended contractual language is attached hereto as Appendix C.



B. Nothing in these Guidelines shall be construed to require a Project Beneficiary to violate any existing collective bargaining agreement with respect to the hiring of new employees.

C. Failure to comply with the requirements of these Guidelines shall not affect the allocation of Statewide bond volume ceiling to any Issuer, or the validity or tax exempt status of Qualified Small Issue Bonds.



PROJECTED  
EMPLOYMENT PLAN

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TYPE OF BUSINESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

Please complete the following chart describing your projected employment plan following receipt of financing.

Current and Planned Full Time Occupations in Company	Current Number Full Time Jobs Per Occupation	Estimated Number of Full Time Jobs After Completion of the Project		
		1 year	2 year	3
year				

Please indicate the estimated hiring dates for the new jobs shown above and any special recruitment or training that will be required.

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APPENDIX A



Are the employees of your firm currently covered by a collective bargaining agreement?

Yes \_\_\_\_\_ No \_\_\_\_\_

If Yes, Name and Local

Prepared by:

Title:

Signature:

Date:

A-2



## EMPLOYMENT PLAN STATUS REPORT

To Be Filed by January 15, 2009

COMPANY NAME:

ADDRESS:

TYPE OF BUSINESS:

CONTACT PERSON:

TELEPHONE NUMBER: \_\_\_\_\_

<u>Occupation</u>	<u>Number of New Jobs</u>	<u>Number Listed<sup>1</sup></u>	<u>Number Filled</u>	
			Job Service Applicants	Job Training Eligible Persons

## APPENDIX B

<sup>1</sup>With local Jobs Service Division and local service delivery office created pursuant to the Job Training Partnership Act.



In consideration of the issuance of qualified small issue bonds

\_\_\_\_\_, \_\_\_\_\_, agrees  
to  
(name of issuer) (project beneficiary)

cause any new employment opportunities created in connection with industrial or  
manufacturing projects financed by the proceeds of such obligations to be listed with the  
New York State Department of Labor Job Service Division and with the

\_\_\_\_\_  
(name of administrative entity of the service delivery area created  
pursuant to the Job Training  
pursuant to the Job Training  
Partnership Act (P.L. 97-300) in  
which the project is located) (project beneficiary)

also agrees to report to the \_\_\_\_\_ on or before January  
1 (name of issuer)

of each year on the status of employment plans filed with the Department of Economic  
Development, including the number of new employment opportunities created, the  
number listed and the number filled. \_\_\_\_\_  
(project beneficiary)

further agrees, subject to the requirements of any existing collective bargaining  
agreement, to first consider for new employment opportunities, persons eligible for  
service under the Job Training Partnership Act.

#### APPENDIX C



## 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 Montgomery County 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) appoints an officer or employee who has any of the powers or duties set forth above.

(2) No chief financial 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, only a 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 (75) dollars 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 services 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(2,) of the Conflict of Interest Law, members, officers and employees of the Agency are deemed officers and employees of Montgomery County 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 Montgomery County Industrial Development Agency (the “Agency”) with other County agencies and departments.

SECTION 1102. DISTRIBUTION OF APPLICATIONS FOR FINANCIAL ASSISTANCE. The Agency shall distribute copies of any Applications for Financial Assistance to the following officials and departments:

- (A) County Executive.
- (B) County Legislature.
- (C) County Attorney.
- (D) Department of Real Property Taxation.
- (E) Town Supervisor (and Mayor, if applicable) where the proposed Project is located.



## 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 Montgomery County 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 895-d 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 County Legislature of Montgomery County. The members serve at the pleasure of the County Legislature. 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 County Clerk. The oath of office must be filed in the office of the Clerk of Montgomery County, New York.

(C) Number of Members. The Agency shall consist of not less than three nor more than seven members.

(D) Qualifications. Each member must be at least 18 years of age and a resident of Montgomery County.

(E) Representation. Members of the Agency may include, but not be limited to, representatives of local government, school boards, 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 County Legislature appointing such member. In any event, each member of the Agency shall serve at the pleasure of the County Legislature.

(G) Officers. The officers of the Agency shall be a Chairman, Vice Chairman, 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

MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
CERTIFICATE OF APPOINTMENT

This is to certify that on \_\_\_\_\_, by Resolution adopted by the Montgomery County Legislature pursuant to the provisions of Section 856 of General Municipal Law, \_\_\_\_\_ was duly appointed a Member of the MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY which has been duly established by Chapter 666 of the Laws of 1970.

\_\_\_\_\_  
Clerk of the Legislature  
of Montgomery County, New York

DATED:

(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 Montgomery County 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 in every Agency proceeding;
- (2) a record setting forth the name, public office address, title and salary of every officer or employee of the Agency; and
- (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) 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 County Clerk or in his absence the Chief Executive Officer of the Agency, shall be the records access officer of the Agency. The business address of the records access officer of the Agency is Old County Courthouse, P.O. Box 1500, Fonda, New York 12068. 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 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: Old County Courthouse, P.O. Box 1500, Fonda, New York 12068.

(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 form 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 public inspection 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 interagency materials which are not:

- (a) statistical or factual tabulations or data;
- (b) instructions to staff that affect the public;
- (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 if 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 appealed 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 excerpted 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

Montgomery County Clerk  
New County Office Building  
P.O. Box 1500  
Broadway  
Fonda, New York 12068-1500

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

---

Title

---

Date



NOTICE: You have a right to appeal a denial of this application to the Chief Executive Officer of the Agency, Montgomery County Industrial Development Agency, Old County Courthouse, P.O. Box 1500, Fonda, New York 12068, 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

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” means 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 notice is given as aforesaid, the Chief Executive Officer 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. 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 or 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 of 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 1406. EXEMPTIONS. No provision herein shall extend to any matter made confidential by federal or state law.



APPENDIX 14A

SAMPLE NOTICE OF MEETING



[LETTERHEAD OF MONTGOMERY COUNTY 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 Montgomery County Industrial Agency will be held on \_\_\_\_\_, 20\_\_ \_\_\_\_\_ o'clock p.m., in the Old County Courthouse, 9 Park Street, Montgomery County, New York.

I look forward to seeing you then.

ED:sec

cc: [newspapers]  
[radio stations]



APPENDIX 14B

SAMPLE PROOF OF NOTICE



[LETTERHEAD OF MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY]

CERTIFICATE REGARDING MAILING AND POSTING  
OF NOTICE OF MEETING

The undersigned Chief Executive Officer of Montgomery County 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 \_\_\_\_\_ of \_\_\_\_\_, Montgomery County, 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 at Old County Courthouse, 9 Park Street, PO Box 1500, Fonda, New York 12068.

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 Montgomery County 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. The public hearing shall be held in the municipality where the project is located.

(C) Publication of Notice. The notice of such hearing shall be published one (1) time in a newspaper having general circulation in Montgomery County at least thirty (30) days prior to the proposed hearing date.

(D) 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; and
- (3) Appendix 15C: Tax-Exempt manufacturing bonds.

(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 Chairman of the Legislature of Montgomery County. Any written comments received by the Agency shall be made part of the transcript. The cost of the stenographer and preparing the transcript shall be paid by the applicant.

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 the Chairman of the Agency.



(B) The Chairman shall read the public notice and indicate the publication in which it was published and when it was published.

(D) The Chairman 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) Each interested party wishing to speak at the public hearing shall be given five minutes in which to express his or her views.

SECTION 1505. NOTIFICATION OF AFFECTED TAX JURISDICTIONS. (A) General. The Agency shall notify the Chairman of the Legislature of Montgomery County and the chief executive of each affected tax jurisdiction (as defined in Section 854(16) of the General Municipal Law) 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 15D.



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 Montgomery County Industrial Development Agency (the “Agency”) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ o’clock \_\_.m., local time, at \_\_\_\_\_ in the [City, Village, Town] of Montgomery 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 Montgomery 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 MONTGOMERY COUNTY, NEW YORK, AND NEITHER THE STATE OF NEW YORK NOR MONTGOMERY COUNTY, 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\_\_.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
(Vice) Chairman



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 Montgomery County Industrial Development Agency (the “Agency”) on \_\_\_\_\_, the \_\_\_\_ day of, \_\_\_\_\_ 20\_\_ at \_\_\_\_\_ o’clock \_\_.m., local time, at \_\_\_\_\_ in the [City, Village, Town] of \_\_\_\_\_, Montgomery 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 Montgomery 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 MONTGOMERY COUNTY, NEW YORK, AND NEITHER THE STATE OF NEW YORK NOR MONTGOMERY COUNTY, 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: \_\_\_\_\_, 20\_\_\_\_.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
(Vice) Chairman



APPENDIX 15C

FORM OF NOTICE OF PUBLIC HEARING  
FOR PROJECT INVOLVING TAX-EXEMPT MANUFACTURING BONDS  
ON PROPOSED PROJECT  
AND FINANCIAL ASSISTANCE  
RELATING THERETO



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 Montgomery County Industrial Development Agency (the “Agency”) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_o’clock \_\_.m., local time, at \_\_\_\_\_ in the [City, Village or Town] of \_\_\_\_\_ Montgomery 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 Montgomery 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 MONTGOMERY COUNTY, NEW YORK, AND NEITHER THE STATE OF NEW YORK NOR MONTGOMERY COUNTY, 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:\_\_\_\_\_.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
(Vice) Chairman



APPENDIX 15D

FORM OF LETTER OF NOTIFICATION TO  
AFFECTED TAX JURISDICTIONS



[LETTERHEAD OF MONTGOMERY COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY]

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

\_\_\_\_\_  
County Legislature

\_\_\_\_\_  
Amsterdam, New York 12010

[TOWN]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[VILLAGE]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[SCHOOL DISTRICT]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
PROPOSED **[PROJECT NAME]** PROJECT

Gentlemen:

Pursuant to Section 859-a(3) of the New York General Municipal Law (the "Act"), Montgomery County 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,

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
(Vice) Chairman

Enclosure



## PART 16

### PUBLIC AUTHORITIES ACCOUNTABILITY ACT OF 2005

SECTION 1601. PURPOSE AND SCOPE. The Public Authorities Accountability Act of 2005 (chapter 766 of the laws of 2005) (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 Montgomery County 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 (Appendix A(a)-1 attached);
- (2) Personnel Policy (including compensation, retaliatory action policy, and Indemnification policies), (Appendices A(b)-1 ,A(c)-1 and A (d)-1 attached);
- (3) Travel Policy (Appendix A(e)-1 attached);
- (4) Real Property Acquisition Policy (Appendix A(f)-1 attached);
- (5) Real Property Disposition Policy (Appendix A(g)-1 attached); and
- (6) Procurement Policy (See Tab 5 of Policy Manual).

(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 attached.



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

- (1) Investment 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 and PARA 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) Evaluate Mission Statement and Performance Measures Annually and Publish
- (7) Board members must be independent and cannot hold certain positions;
- (8) Board members must attend training sessions;
- (9) Prepare and publish real and personal property lists and transactions report;
- (10) Create inventory controls;
- (11) Board members must file annual financial disclosure forms; and
- (12) Prohibit insider loans.
- (13) Board Members must complete annual board evaluations

(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.



APPENDIX 16A

ADMINISTRATIVE POLICIES



## APPENDIX 16A(a)-1

### CODE OF ETHICS

1. Generally. This Code of Ethics applies to both the members and the employees of Montgomery County 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 Montgomery County Industrial Development Agency.

(b) “employee” shall mean any employee of the Montgomery County 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 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.

6. Implementation of Code of Ethics. This Code of Ethics shall be provided to all directors and employees upon commencement of employment or appointment and shall be reviewed annually by the Governance Committee.

The board may designate an Ethics Officer, who shall report to the board and shall have the following duties:

- Counsel in confidence Authority Directors and employees who seek advice about ethical behavior.
- Receive and investigate complaints about possible ethics violations.
- Dismiss complaints found to be without substance.
- Prepare an investigative report of their findings for action by the Board.



## APPENDIX 16A(b)-1

### COMPENSATION, REIMBURSEMENT AND ATTENDANCE POLICY

#### ARTICLE I

##### GENERAL PROVISIONS

SECTION 1.1. PURPOSE. The purpose of this policy (the “Policy”) is to set forth the policy of Montgomery County Industrial Development Agency (the “Agency”) regarding the payment of compensation and the reimbursement of expenses to board members, officers and employees of the Agency.

SECTION 1.2, DEFINITIONS. For purposes of this Policy, the following terms shall have the following meanings:

“Act” shall mean Article 18-A of the General Municipal Law of the State of New York, as amended.

“Board” shall mean members of the Agency, acting as the governing board of the Agency.

“Compensation” shall include base salary, health insurance benefits, any approved membership dues, professional licensing fees, and reimbursement of unsubstantiated business expenses.

SECTION 1.3. AT-WILL EMPLOYEES. Nothing in this policy shall be interpreted to affect the at-will relationship between the Agency and the Agency’s officers and employees.

#### ARTICLE II

##### BOARD MEMBERS

SECTION 2.1. DUTIES. The members of the Board of the Agency shall be available as required to perform the operations of the Agency and as set forth within the By-Laws of the Agency and in the policies and procedures of the Board and any other directives of the Board relating to same, as the same may be amended, restated or revised by the Board from time to time. Said members of the Board of the Agency shall put forth their best efforts to perform their respective duties as outlined in the By-Laws of the Agency and any other directives of the Board relating to same.

SECTION 2.2 COMPENSATION. Pursuant to and in accordance with Sections 856 and 906-a of the Act, the members of the Board of the Agency (including members of the Board of the Agency who also serve as officers of the Agency) shall serve **without compensation** at the pleasure of the



super of Montgomery County, New York (the “County”), but may be reimbursed for reasonable expenses incurred in the performance of Agency duties at the approval of the Board.

SECTION 2.3. REIMBURSEMENT OF EXPENSES. 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.

### ARTICLE III

#### OFFICERS AND EMPLOYEES

SECTION 3.1. DUTIES. (A) Officers. The officers of the Agency (1) serve at the pleasure of the Board and (2) shall be available as required to perform the operations of the Agency under the direction of the Board of the Agency and as set forth within the By-Laws of the Agency and in the policies and procedures of the Agency and any other directives of the Agency relating to same, as the same may be amended, restated or revised by the Board from time to time. Said officers of the Agency shall put forth their best efforts to perform their respective duties as outlined in the directions of said Board and consistent with such By-Laws, policies, procedures and other directives.

(B) Employees. The employees of the Agency (1) serve at the pleasure of the Board and (2) shall be available as required to perform the operations of the Agency under the direction of the officers of the Agency and as set forth in the policies and procedures of the Agency and any other directives of the Agency relating to same, as the same may be amended, restated or revised by the Board from time to time. Said employees of the Agency shall put forth their best efforts to perform their respective duties as outlined in the directions of said officers and consistent with such By-Laws, policies, procedures and other directives.

SECTION 2.2. COMPENSATION PROGRAM. (A) General. The Agency provides every officer (excepting members of the Board who also serve as officers of the Agency) and every employee with a compensation program that includes base compensation, reimbursement of expenses, and related fringe benefit costs (collectively, the “Compensation Program”).

(B) Base Compensation. The Agency provides every officer (excepting members of the Board who also serve as officers of the Agency) and every employee with a base salary, which base salary for each individual officer or employee shall be in such amount as may be approved by the Board from time to time. This base salary is paid to every such officer and employee in bi-weekly pay periods pursuant to the Agency’s ordinary payroll practices. The current annual base salaries for each officer (excepting members of the Board who also serve as officers of the Agency) are listed on the attached **Schedule A**. The salaries referenced on **Schedule A** will be updated annually.



(C) Reimbursement of Expenses. Officers and employees of the Agency may be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their regular duties in accordance with the policies and procedures of the Agency and any other directives of the Agency relating to same.

[(D) Fringe Benefits. [List any fringe benefits (i.e., health insurance, pension, etc.)]

(E) Incentive Compensation. The Agency does not provide its members, officers or employees with any form of performance based or incentive based compensation.

#### SCHEDULE A

##### 2024 OFFICER AND EMPLOYEE SALARIES

<i>OFFICER/EMPLOYEE</i>	<i>SALARY</i>
Chief Executive Officer	\$23,000
Chief Financial Officer	\$19,000
Director of Program Development	\$10,000
Economic Dev. Specialist	\$5,000



## APPENDIX 16A(c)-1

### RETALIATORY ACTION 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 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.

(d) Notwithstanding the provisions of paragraphs (a) and (c) of this subdivision, a health care employee who has been the subject of a retaliatory action by a health care employer in violation of section seven hundred forty-one of this article may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within two years after the alleged retaliatory personnel action was taken. In addition to the relief set forth in that subdivision, the court, in its discretion, based upon a finding that the employer acted in bad faith in the retaliatory action, may assess the employer a civil penalty of an amount not to exceed ten thousand dollars, to be paid to the improving quality of patient care fund established pursuant to section ninety-seven-aaaa of the state finance law.



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.



## APPENDIX 16A(d)-1

### INDEMNIFICATION OF OFFICERS AND TRUSTEES

1. Generally. 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 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 being or having been a member or officer of the Agency.

2. Misconduct or Gross Negligence. Except in such cases where a member or officer 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 reasonably believed to be in or not opposed to the best interest of the Agency and its members.

3. Reimbursement. 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.

4. Exclusivity. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights such member or officer may have.

5. Notice. The Board shall notify all members that it has approved an indemnification payment at least ten (10) days prior to making such payment.



## APPENDIX 16A(e)-1

### 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 Chairman. The Chairman will advise the Chief Executive Officer of all requests received.

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

(c) The Chairman 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.



## APPENDIX 16A(f)-1

### 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 Montgomery County 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 \$10,000.

C. Method of Acquisition.

(i) 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.

(ii) 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.

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.

The designated Contracting Officer for the Agency is the Chief Executive Officer.



PROPERTY DISPOSITION POLICY

**SECTION 1. DEFINITIONS.**

A. “Contracting officer” shall mean the officer or employee of the Montgomery County 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 2 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) of this Section F.
- (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 is of a nature and quantity which, if disposed of under subsections (i) and (ii) of this Section F, 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:

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



(C) 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:

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

(1) a full description of the asset;

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

(3) 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;

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

(5) 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

(6) 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.

(B) 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) and (D) 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 \$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.

The designated Contracting Officer for the Agency is the Chief Executive Officer.



## APPENDIX 16 A(h.)-1

### Depreciation of Personal Property Assets

The Montgomery County Industrial Development Agency (the “Agency”) is committed to supporting projects in Montgomery County, New York that create and/or retain jobs and/or promote private sector investment. It is sometimes necessary for the Agency to purchase personal property assets for the Agency. It is the general policy of the Agency to depreciate those assets with a fair market value of over \$10,000.00. The Agency will depreciate these assets on a straight line basis depending on the average life of the asset; which is determined at the time of purchase.



## APPENDIX 16A(i.)-1

### STATEMENT OF INTENT REGARDING DEBT

The Montgomery County Industrial Development Agency (the “Agency”) is committed to supporting projects in Montgomery County, 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 Montgomery County.

Unless debt issued by the Agency is issued to finance the actions and operations of the Agency, 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. Further, debt issued by the Agency shall not be an obligation of Montgomery County, 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”), Montgomery County 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 (EISs) 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) Refinancing 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 application such reasonable information, including a completed environmental assessment form found under 6 NYCRR 617.20, as is deemed necessary by the Agency to assist the Agency in:

- (1) determining whether an action is exempt or excluded;
- (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 SEQRA Act, the Agency shall utilize the forms as prescribed in 6 NYCRR 617.20.. The Agency EAF shall be supplied to each applicant and 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. However, the Agency can undertake initial actions such as scheduling and holding of public hearing and notification to taxing jurisdictions.

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 SEQRA Act pursuant to the SEQRA Act and the SEQRA Regulations;
- (B) is an exempt or Type II action, in which case it shall have no further obligation under the SEQRA Act or the SEQRA 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 shall act pursuant to Section 8-0111(1) or (2) of the SEQRA 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 SEQRA 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 SEQRA 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 SEQRA 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 EISs 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 nor 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 EISs 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 an 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 SEQR 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 1707(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.



## 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”), Montgomery County Industrial Development Agency is required to establish a uniform tax exemption policy applicable to the provision of any financial assistance of more than one hundred thousand dollars 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 imposed by 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 Amsterdam.

(E) “County” shall mean the County of Montgomery.

(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 any school district located in the County.

(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.



(I) “Town” shall mean any town located in the County.

(J) “Village” shall mean any village located in the County.

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 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 factors: (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. Such application shall contain the information requested by the Agency, including a description of the proposed project and of each tax exemption sought with respect to the project, the estimated value of each tax exemption sought with respect to the project, the proposed financial assistance being sought with respect to the project, the estimated date of completion of the project, and whether such financial assistance is consistent with this part.

(D) Preliminary Notification. No request for tax exemption (each a “Request”) shall be granted by the Agency unless the Agency completes certain notifications as required under the Act. Pursuant to Section 859-a(1) of the Act, the Agency is required to adopt a resolution describing a project being contemplated by the Agency and any Tax Exemption to be granted in connection therewith (the “Preliminary Resolution”). The Preliminary Resolution generally consists of (a) a Public Hearing Resolution, with respect to straight-lease transactions, or (b) a Preliminary Inducement Resolution, with respect to bonds to be issued by the Agency. Pursuant to Section 859-a(1-a) of the Act, no Request shall be granted by the Agency unless the Agency delivers the Preliminary Resolution with respect to the Request to each Taxing Jurisdiction (as hereinafter defined) via **certified mail, return receipt requested**.

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 materials be filed with a vendor to establish a purchaser's entitlement to a sales tax exemption. For example, TSB-M-87(7) outlines the materials 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. (1) Pursuant to Section 874(8), 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.

(2) Pursuant to Section 874(9) of the Act, the Agency is required to file within thirty (30) days of the date that the Agency designates an applicant to act as agent of the Agency a New York State Department of Taxation and Finance form ST-60. The form identifies the agent of the Agency, provides a brief description of the project and an estimate of the value of the sales tax exemption and certain other information. The project documents shall require the applicant to assist the Agency in completing the form.

SECTION 1805. MORTGAGE RECORDING TAX EXEMPTION. (A) General. 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.

(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 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 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 same.

(E) Exemption Affidavit. The act of granting a 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 as 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 "nonexempt 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 and the real estate transfer gains 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 nongovernmental 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 Requirement. 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.

(C) PILOT Agreement. Unless otherwise determined by resolution of the Agency, all PILOT Agreements shall satisfy the following general conditions:

(1) Amount of Abatement: The general policy of the Agency is to allow the assessor of the municipality in which the project is located to ascertain the assessed value of a project owned by the Agency. Once the assessed value is established, the Agency will reduce the assessed value by an exemption percentage, and the resulting value will become the value for PILOT purposes (the “PILOT value”). The PILOT payment will then be computed for each taxing entity in each year by multiplying the PILOT value by the applicable tax rate of such tax entity in such year.

(D) Real Property Tax/Payments-in-lieu-of-Taxes (PILOT)

(1) New Construction

- a. Industrial project (manufacturing, assembly, R & D, processing, distribution, warehousing, etc.) consisting of new construction, will receive the following tax abatement: years 1-5, 75%; years 6-10, 50%; years 11-15, 25%
- b. Commercial projects (wholesale, office, insurance, etc) consisting of new construction will receive the following tax abatements: years 1-5, 50% and year 6-10, 25%
- c. Retail projects will receive no tax abatements.



(2) Purchase of Existing Facilities

- a. Industrial projects consisting of the purchase of an existing facility will have taxes frozen at the amount (annual property tax liability) in place at the time of purchase for the first 5 years subsequent to the purchase. In year 6-10 , any tax increase in the amount of annual property taxes, over the above frozen amount, will be abated by 50%
- b. Commercial projects consisting of the purchase of an existing facility will have taxes frozen at the amount (annual property tax liability) in place at the time of purchase for the first 3 years subsequent to the purchase. In years 4 and 5, any tax increase in the amount of annual local property taxes, over the above the frozen amount, will be abated by 50%. In years 6-10, any tax increase in the amount of annual local property taxes, over above the frozen amount, will be abated by 25%.
- c. Retail projects will receive no tax abatements.

(3) Improvement of Existing Facility Currently

- a. Any project, industrial or commercial, which consists of capital improvements to the facility, will have taxes frozen at that amount (annual property tax liability) in place prior to improvements for the first 3 years. In year 4 and 5, any tax increase in the amount of annual property taxes, over the above frozen amount, will be abated 50% and years 6-10, 25%.
- b. Retail projects will receive no tax abatements

(4) Leased Facilities

- a. In any lease transaction ( new construction, existing building, etc) industrial or commercial, the policies stated in Sections 1,2, and 3 will apply so long as the tax abatement benefits are passed on to the tenant/occupant. Both the beneficial owner and the tenant/occupant must certify in writing that all tax advantages provided by the MCIDA are accruing to the benefits of the tenant/ occupant.
- b. Retail projects will pay 100% of Real Property Taxes

(5) Actual real property tax saving must be reported to the MCIDA at year's end in compliance with the NYS general Municipal Laws, Article 18-A Tile 1, Section 874 as amended.

(6) Percentage of Exemption. The percentage of abatement applicable to a project shall normally be computed in accordance with the following table:



MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY						
SCHEDULE OF UNIFORM REAL PROPERTY TAX EXEMPTION POLICY						
	New Construction		Purchase of Existing Facility		Improve/Expand of Existing	
	Abatement		Abatement		Facility Abatement	
	Industrial	Commercial	Industrial	Commercial	Industrial	Commercial
Years						
1	75%	50%	Frozen (1)	Frozen (1)	Frozen (3)	Frozen (3)
2	75%	50%	Frozen	Frozen	Frozen	Frozen
3	75%	50%	Frozen	Frozen	Frozen	Frozen
4	75%	50%	Frozen	50% (2)	50% (2)	50% (2)
5	75%	50%	Frozen	50%	50%	50%
6	50%	25%	50% (2)	25% (2)	25% (2)	25%
7	50%	25%	50%	25%	25%	25%
8	50%	25%	50%	25%	25%	25%
9	50%	25%	50%	25%	25%	25%
10	50%	25%	50%	25%	25%	25%
11	25%	0%	0%	0%	0%	0%
12	25%	0%	0%	0%	0%	0%
13	25%	0%	0%	0%	0%	0%
14	25%	0%	0%	0%	0%	0%
15	25%	0%	0%	0%	0%	0%
(1) Frozen at pre-purchase levels						
(2) Percent of increase over frozen level						
(3) Frozen at pre-improvement levels						



(7) 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 project occupant. However, applicant and project occupants should be aware that the courts have ruled that an Agency sponsored project is eligible to apply for a tax-exemption under Section 485-b of the Real Property Tax Law. If an applicant or project occupant desires to obtain an exemption under Section 485-b, it is the responsibility of the applicant and/or project occupant to apply for same.

(8) 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 Agency. 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.

(9) Enforcement. 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.

- (E) Required Filings. (1) 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 exception 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.

(2) Pursuant to Section 858(15) of the Act, the Agency shall deliver a notification of the expiration of all PILOT Agreements entered into by the Agency two (2) years prior to the scheduled expiration of such PILOT Agreement and immediately upon any early termination of such PILOT Agreement.

- (F) 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 Town, 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.

(G) Assessment Notification. If the Agency grants the applicant an exemption under this Section 1807, the applicant will be required to complete certain filings in the event the applicant files for a change of assessment pursuant to Real Property Tax Law of the State of New York (the “RPTL”). Pursuant to Section 561-a of the RPTL, any entity which makes payments in lieu of taxes (“PILOT Payments”) must provide notification (the “Assessment Notification”) of the intention to file for a change in assessment **in writing, at least forty-five (45) days** prior to filing for the change in assessment. The Assessment Notification must be provided to the Agency and any Taxing Jurisdictions.

(H) Employment Filings. If the Agency grants the applicant an exemption under this Section 1807, the applicant will be required 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.

(I) Recapture of Benefits

- (1) The Montgomery County Industrial Development Agency reserves the right to recapture project financial assistance provided through the Agency in cases in which a company’s performance is substantially different than anticipated, as defined below:
  - a. Failure to complete the acquisition, construction or installation of the Project Facility;
  - b. Liquidation of substantially all of the Company’s operating assets and/or cessation of substantially all of the Company’s operations;
  - c. Relocation of all or substantially all of the Company’s operations at the Project Facility to another site, or the sale, lease or other disposition of all or substantially all of the Project Facility;
  - d. Transfer of jobs equal to at least fifteen percent (15%) of the Company’s Base Employment Level out of the County;
  - e. Sublease of all or part of the Project Facility in violation of the Agency Agreement with the Company;
  - f. A change in the use of the Project Facility, other than as a facility of that of the Company.



- (2) The Project Financial Assistance to be recaptured by the Agency upon the occurrence of a Recapture Event during the Recapture Period shall be an amount equal to the sum of the following:
- a. the portion of the amount of New York State sales and use taxes allocable to Montgomery County that the Company would have paid in connection with the undertaking of the Project if the Project Facility was privately owned by the Company and not deemed owned or under the jurisdiction and control of the Agency;
  - b. the amount of any mortgage recording tax exemption provided by the Agency to the Company in connection with the undertaking of the Project; and
  - c. the difference between the amount of the payment in lieu of tax payments paid by the Company under the Payment in Lieu of Tax Agreement and the amount of the general real property ad valorem taxes that would have been payable by the Company to the Taxing Entities if the Project Facility was privately owned by the Company and not deemed owned or under the jurisdiction and control of the Agency.
- (3) In case deemed to meet one or more of the above conditions, the following recapture schedule will apply:

<b>Year</b>	<b>Amount of Recapture</b>
1	94% of the Project Financial Assistance
2	88% of the Project Financial Assistance
3	82% of the Project Financial Assistance
4	76% of the Project Financial Assistance
5	70% of the Project Financial Assistance
6	64% of the Project Financial Assistance
7	58% of the Project Financial Assistance
8	52% of the Project Financial Assistance
9	46% of the Project Financial Assistance
10	40% of the Project Financial Assistance
11	34% of the Project Financial Assistance
12	28% of the Project Financial Assistance
13	22% of the Project Financial Assistance
14	16% of the Project Financial Assistance
15	10% of the Project Financial Assistance

The time period above is from the effective date of the PILOT agreement. Imposition of this recapture policy is at the sole discretion of the MCIDA and will be considered on a case-by-case basis. The time period above may differ to reflective the term of the PILOT Agreement.



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 there for. Such notice to the affected tax jurisdictions shall be given to the chief executive officer of each affected tax jurisdiction **via certified mail return receipt requested** prior to the meeting of the Agency at which the Agency shall consider whether to approve such deviation. Prior to taking any final action on a proposed deviation, the Agency shall require that each affected tax jurisdiction approve the payment terms of the proposed PILOT deviation.

(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.

SECTION 1810. GREEN ENERGY POLICY. (A) General. The Agency wishes to adopt a policy regarding green energy development for the following purposes:

(1) Recognize that the development of energy projects in Montgomery County is a local concern and that local municipalities should be the primary decision-makers regarding the siting of and granting assistance to such projects.

(2) Stress the primary mission of the Agency is to create jobs and job opportunities, and, because the development of energy projects generally results in low job creation and opportunity, the development of energy projects is a low priority of the Agency.

(B) Eligible Projects.



(1) No hydro, wind and solar project will constitute an “eligible project” under the Agency’s Policies and, accordingly, the Agency will not grant any “financial assistance” to any such projects.

(2) Notwithstanding the foregoing, in the event that the Agency determines to grant “financial assistance” to a hydro, wind or solar project, the Agency will first obtain the consent of each affected tax jurisdiction to the terms of any grant of “financial assistance” prior to the granting by the Agency of such financial assistance.

(C) Miscellaneous. Unless specifically outlined in this Policy, the applicant will be responsible for complying with all other rules and regulations as set forth in the Agency’s Administrative Policy Manual.



## APPENDIX 18A

### SAMPLE INTERIM SALES TAX EXEMPTION RESOLUTION



Resolution No.

RESOLUTION TEMPORARILY APPOINTING (THE “COMPANY”) AS  
AGENT OF MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT  
AGENCY FOR THE PURPOSE OF UNDERTAKING AND COMPLETING A  
PROJECT TO BE LOCATED AT IN THE OF MONTGOMERY COUNTY, NEW  
YORK.

WHEREAS, Montgomery County 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 666 of the 1970 Laws of New York, as amended, constituting Section 895-d 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 MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. 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:

(1) 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”).

(2) The Company will not revise the Plans 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.

(3) 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.



(4) 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.

(5) 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.

(6) 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, officers, agents, employees and servants) in defending any claims, suits or actions which may result as a result of the foregoing.

(7) 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.

(8) 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.

(9) 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.

(10) The Company shall supply the Chairman 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 Chairman 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.

(11) The Company shall supply the Chairman 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.

(12) 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.

(13) 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 Montgomery County, New York, and neither the State of New York nor Montgomery County, 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).

(14) 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.

(15) Payment by the Company of the Agency's administrative fee with respect to the Project.

(16) 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.

(17) 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.

(18) 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.

(19) The following additional conditions: None.

Section 2. 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 Chairman 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 Chairman of the Agency, such evidence to be in such form as the Chairman 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.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

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

(Vice) Chairman



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  
Montgomery County 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 Montgomery County 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,

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman



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  
Montgomery County Industrial Development Agency Project  
\_\_\_\_\_ 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 Montgomery County 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,

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman



APPENDIX 18D

SAMPLE MORTGAGE TAX EXEMPTION AFFIDAVIT



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IN THE MATTER OF TAXATION

OF

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

---

STATE OF NEW YORK                    )  
  ) SS.:  
COUNTY OF MONTGOMERY        )

The undersigned, being duly sworn, deposes and says:

1. That he resides in Montgomery County, New York, and is the (Vice) Chairman of Montgomery County 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 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 \_\_\_\_\_, Montgomery 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.

MONTGOMERY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
(Vice) Chairman

Sworn to before me this  
\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Notary Public



EXHIBIT A

DESCRIPTION OF LAND

(TO BE PROVIDED BY THE 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 Montgomery County Industrial Development Agency (the “Agency”) pursuant to Section 895-d 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.

(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) the applicant (if the applicant is an individual).

(D) Application 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 18 of these Rules and Regulations;

(10) an estimate of the total number of jobs to be created and/or retained by the Project;

(11) 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;

(12) 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 (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") in which the Project is located;

(13) 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 JTPA programs who shall be referred by JTPA Entities for new employment opportunities created as a result of the Project;

(14) 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;

(15) verification that the applicant has received from the Agency a list of the members, officers and employees of the Agency; and

(16) 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.

(E) SEQR Documents. Each application shall be accompanied (1) by the documents required pursuant to Part 17 of these Rules and Regulations or (2) by written explanation as to why such documents are not readily available.

(F) Place for Filing. Applications shall be filed by mailing or delivering four (4) copies 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 Old County Courthouse, P.O. Box 1500, 9 Park Street, Fonda, New York 12068.



### SECTION 1903. PROCEDURES FOR PROCESSING APPLICATIONS.

(A) Distribution. Upon receipt of an application, the Chairman and 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 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 Chairman of the Agency;
- (2) counsel to the Agency; and
- (3) each of the members of the Agency.

(B) Agency Action. Once the application has been distributed pursuant to Section 1903(A) hereof, counsel to the Agency shall contact counsel to the applicant to discuss and agree, 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.

(C) Agency Consideration. The Agency will endeavor to consider the Application at the next regularly scheduled meeting of the Agency. However, in order to be considered by the Agency, the Application must be mailed to each member of the Agency at least seven (7) days in advance of the meeting date.

### SECTION 1904. UNIFORM AGENCY PROJECT AGREEMENT

(A) All approved projects will be subject to entering into of a Uniform Agency Project Agreement in substantial form as depicted in Appendix 19B.



APPENDIX 19A

APPLICATION OF AGENCY



**MONTGOMERY COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY**

**APPLICATION  
FOR  
FINANCIAL ASSISTANCE**



**MONTGOMERY COUNTY 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 Montgomery County 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: Montgomery County Industrial Development Agency  
9 Park Street  
Fonda, New York 12068  
Attention: Chief Executive Officer

This application 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 APPLICATION:

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 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 two (2) copies 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 Dollars (\$1,000) 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 established a project fee for each project in which the Agency participates. **UNLESS THE AGENCY AGREES IN WRITING TO THE CONTRARY, THIS PROJECT FEE IS REQUIRED TO BE PAID BY THE APPLICANT AT OR PRIOR TO THE GRANTING OF ANY FINANCIAL ASSISTANCE BY THE AGENCY.**



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 and Elected Officials	_____, 20____
5. Preliminary Inducement Resolution (if Bond Project)	_____, 20____
6. Resolution Scheduling Public Hearing	_____, 20____
7. Mailing Inducement Resolution/Public Hearing Resolution	_____, 20____
8. Mailing Public Hearing Notice	_____, 20____
9. Hold Public Hearing	_____, 20____
10. Resolution Authorizing Mailing of PILOT Deviation Letter (if applicable)	_____, 20____
11. Mailing PILOT Deviation Letter if Applicable	_____, 20____
12. Post IDA Application and Construction Employment Agreement on Website	_____, 20____
13. Perform Inform Analytics Cost/Benefit Analysis present to Board	_____, 20____
14. Perform Written Evaluation Report and present to Board	_____, 20____
15. SEQR Resolution	_____, 20____
16. PILOT Deviation Resolution (if applicable)	_____, 20____
17. Approving Resolution	_____, 20____
18. Final Project Agreement Posted to Website	_____, 20____

AGENCY FEE SCHEDULE INFORMATION

1. APPLICATION FEE: \$1,000.00 (Non-refundable)

2. AGENCY FEE:

- (a) Bond Transactions:  $\frac{3}{4}$  of 1% of bond amount
- (b) Sale Leaseback Transactions:  $\frac{3}{4}$  of 1% of Total Project Cost
- (c) Rental Payments: The Company shall pay basic annual rental payments for the Project Facility in an amount equal to \$.0005 x the cost of the Agency Project on January 1 of each year during the term of the Lease Agreement.

3. AGENCY COUNSEL FEE:



(a) Determine on a Project by Project Basis



## 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:

10. Will the Project be owned by a not-for-profit corporation? Yes\_\_\_\_; No\_\_\_\_. If yes, please provide detail:

11. Will the Project be sold or leased to a municipality? 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, second and third year after the Project has been completed. Also include an monthly breakdown of full-time and part-time jobs to be created during the first three years. Using the tables below, provide an overview of these job numbers 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.

TYPE OF EMPLOYMENT Employees of Applicant					
	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					
Second Year Full Time					
Second Year Part Time					
Third Year Full Time					
Third Year Part Time					



TYPE OF EMPLOYMENT Employees of Applicant First Year Full Time					
Month	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled	Totals
January					
February					
March					
April					
May					
June					
July					
August					
September					
October					
November					
December					

TYPE OF EMPLOYMENT Employees of Applicant First Year Part Time					
Month	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled	Totals
January					
February					
March					
April					
May					
June					
July					
August					
September					
October					
November					
December					



TYPE OF EMPLOYMENT Employees of Applicant Second Year Full Time					
Month	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled	Totals
January					
February					
March					
April					
May					
June					
July					
August					
September					
October					
November					
December					

TYPE OF EMPLOYMENT Employees of Applicant Second Year Part Time					
Month	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled	Totals
January					
February					
March					
April					
May					
June					
July					
August					
September					
October					
November					
December					



TYPE OF EMPLOYMENT Employees of Applicant Third Year Full Time					
Month	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled	Totals
January					
February					
March					
April					
May					
June					
July					
August					
September					
October					
November					
December					

TYPE OF EMPLOYMENT Employees of Applicant Third Year Part Time					
Month	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled	Totals
January					
February					
March					
April					
May					
June					
July					
August					
September					
October					
November					
December					



<b>TYPE OF EMPLOYMENT</b> <b>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 Mohawk Valley 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.

<b>RELATED EMPLOYMENT INFORMATION</b>				
	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled
Estimated Salary and Fringe Benefit Averages or Ranges				
Estimated Number of Employees Residing in the Mohawk Valley				



Economic Development Region				
--------------------------------	--	--	--	--

- 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.



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>\$ _____</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. If the answer to question 1 is yes, 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.

B. Tax Benefits

1. Is the applicant requesting any real property tax exemption in connection with the Project that would not be available to a project that did not involve the Agency? Yes\_\_\_\_; No\_\_\_\_\_. If yes, is the real property tax exemption being sought consistent with the Agency's Uniform Tax Exemption Policy? 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.

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. In accordance with Section 858-b(2) of the New York General Municipal Law, the applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the “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. 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.

D. 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.

E. Uniform Agency Project 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.

F. 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.

G. 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:

H. 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.

I. 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.

J. 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.

K. 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:

L. Additional Information. Additional information regarding the requirements noted in this Application and other requirements of the Agency are included in the Agency's Policies which can be accessed at <http://www.mcfdc.org/>.

I affirm under penalty of perjury that all statements made on this application are true, accurate and complete to the best of my knowledge.

By: \_\_\_\_\_  
Applicant  
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 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 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 limit 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)

-----  
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 Montgomery County 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, (ii) the Agency's financing of the Project described therein; and (iii) any further action taken by the Agency with respect to the Project, 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: Montgomery County Industrial Development Agency  
RE: Cost/Benefit Analysis

---

In order for the Montgomery County 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 Schedules 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:	

### **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 Montgomery County 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			
Year 11			
Year 12			
Year 13			
Year 14			
Year 15			



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.

Should you need additional space, please attach a separate sheet.



## SCHEDULE B

### CONSTRUCTION EMPLOYMENT AGREEMENT

Recognizing the mission of the Industrial Development Agency of Montgomery County (IDA) to promote construction employment opportunities for residents of Montgomery County and in consideration of the extension of financial assistance by the IDA, \_\_\_\_\_ (Project Beneficiary) understands that it is the Agency's policy that benefiting companies should employ New York State residents and agrees to provide the information requested below as a way to provide local construction opportunities.

\_\_\_\_\_ (Project Beneficiary) also agrees to provide an estimate of the number, type and duration of construction jobs to be created through IDA financial assistance, whether employment is gained directly through the Company, its general contractor, or individual vendors.

Upon project completion \_\_\_\_\_ (Project Beneficiary) shall, if requested by the Agency, submit to the IDA a Construction Completion Report in which is identified names and business addresses of the prime contractor, subcontractors and vendors engaged in the construction of the facility.

---

---

Company: \_\_\_\_\_  
Company Representative for Contract Bids and Awards:

\_\_\_\_\_  
Mailing Address:

\_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

General Contractor, if determined

Company: \_\_\_\_\_  
Representative: \_\_\_\_\_  
Mailing Address:

\_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Construction start date is estimated to be \_\_\_\_\_ with occupancy to be taken on \_\_\_\_\_

Construction Phase or Process	Duration of Construction Phase	# to be Employed

(Attach additional sheets if needed)

Name of Applicant: \_\_\_\_\_ Dated: \_\_\_\_\_

Company Position: \_\_\_\_\_ Signed: \_\_\_\_\_



APPENDIX 19B

UNIFORM AGENCY PROJECT AGREEMENT

---

MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

[BORROWER]

---

UNIFORM AGENCY PROJECT AGREEMENT

---

DATED AS OF [DOCUMENT DATE]

---

RELATING TO FINANCIAL ASSISTANCE GRANTED BY THE  
AGENCY WITH RESPECT TO A CERTAIN PROJECT LOCATED AT  
[PROJECT ADDRESS] IN [PROJECT CITY], MONTGOMERY  
COUNTY, NEW YORK.

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## UNIFORM AGENCY PROJECT AGREEMENT

THIS UNIFORM AGENCY PROJECT AGREEMENT dated as of [DocumentDate] (the “Uniform Agency Project Agreement”) by and between MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 9 Park Street, Fonda, New York (the “Agency”) and [BORROWER], [BorrowerType] and validly existing under the laws of the State of New York having an office for the transaction of business located at [BorrowerStreet], [BorrowerCityState] [BorrowerZip] (the “Company”);

### WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 24 of the Consolidated Laws of New York (the “Enabling Act”) was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York, as amended; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the “State”) and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, 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; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 666 of the Laws of 1970 of the State, as amended, constituting Section 859-d of said General Municipal Law (collectively, with the Enabling Act, the “Act”) and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in [ApplicationMonthYear], [Borrower] (the “Company”), a [BorrowerType] duly organized and validly existing under the laws of [BorrowerJurisdiction], presented an application (the “Application”) to Montgomery County Industrial Development Agency (the “Agency”), a public benefit corporation duly established under Chapter 1030 of the 1969 Laws of New York, codified as 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 666 of the Laws of 1970 of the State of New York, as amended, constituting Section 895-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”), which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project to include 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 and real estate transfer taxes (the “Financial Assistance”); and (C) the lease of the Project Facility to the Company or such other entity or person as may be designated by



the Company and agreed upon by the Agency; and

[WHEREAS PARAGRAPHS TO BE INSERTED BASED ON TRANSACTION STRUCTURE]

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on [DATE] (the “SEQRA Resolution”), the Agency [TO BE PROVIDED]; and

WHEREAS, by further resolution adopted by the members of the Agency on [DATE] (the “Approving Resolution”), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of [MonthDayYear] (the “Lease Agreement”) between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the “Basic Documents”); and

WHEREAS, pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the “Closing”), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of [MonthDayYear] (the “Lease to Agency”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the “Leased Premises”); (2) a certain license agreement dated as of [MonthDayYear] (the “License to Agency”) by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (a) a license to enter upon the balance of the Land (the “Licensed Premises”) for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a certain bill of sale dated as of [MonthDayYear] (the “Bill of Sale to Agency”), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver (1) a certain payment in lieu of tax agreement dated as of [MonthDayYear] (the “Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility and (2) a certain recapture agreement (the “Section 875 GML Recapture Agreement”) by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (C) the Agency and the Company will execute and deliver the uniform agency project agreement (the “Uniform Agency Project Agreement”) by and between the Agency and the Company relating to the terms of the granting by the Agency of the Financial Assistance to the Company; (D) the Agency will file with the assessor and mail to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the Payment in Lieu of Tax Agreement, (E) the Agency will execute and deliver to the Company a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (F) the Agency will file with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or



Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”); and

WHEREAS, (A) the Agency has established certain policies allowing denial of Financial Assistance to any project which does not deliver the public benefits promised at the time said project was approved by the Agency (the “Public Benefits”), (B) the Agency is unwilling to grant Financial Assistance to a project unless the beneficiary of such project agrees that the amount of Financial Assistance to be received by such beneficiary with respect to such project shall be contingent upon, and shall bear a direct relationship to, the success or lack of success of such project in delivering the promised Public Benefits, and (C) the Agency has created this Uniform Agency Project Agreement in order to establish the conditions under which the Agency will be entitled to recapture some or all of the Financial Assistance that has been granted to the Company under the Basic Documents if the Project is unsuccessful in whole or in part in delivering the promised Public Benefits; and

WHEREAS, the Company desires to receive certain Financial Assistance from the Agency with respect to the Project, and accordingly is willing to enter into this Uniform Agency Project Agreement in order to secure such Financial Assistance from the Agency; and

WHEREAS, all things necessary to constitute this Uniform Agency Project Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Uniform Agency Project Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS TO WIT:



## ARTICLE I

### DEFINITIONS

SECTION 1.01. DEFINITIONS. All capitalized terms used herein and not otherwise defined herein shall have the same meanings as set forth in the Lease Agreement. The following words and terms used in this Uniform Agency Project Agreement shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent.

“Application” means the application submitted by the Company to the Agency in [ApplicationMonthYear] with respect to the Project, in which the Company (A) described the Project, (B) requested that the Agency grant certain Financial Assistance with respect to the Project, and (C) indicated the Public Benefits that would result from approval of the Project by the Agency.

“Basic Documents” shall have the meaning set forth in the Lease Agreement, and includes this Uniform Agency Project Agreement.

“Completion Date” means the earlier to occur of (A) [TO BE PROVIDED BY COMPANY] or (B) such date as shall be certified by the Company to the Agency as the date of completion of the Project pursuant to Section 4.2 of the Lease Agreement, or (C) such earlier date as shall be designated by written communication from the Company to the Agency as the date of completion of the Project.

“Contract Employee” means (A) a full-time, private-sector employee (or self-employed individual) that is not on the Company’s payroll but who has worked for the Company at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee, or (B) 2 part-time, private-sector employees (or self-employed individuals) that are not on the Company’s payroll but who have worked for the Company at the Project Facility for a combined minimum of 35 hours per week for not less than 4 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee.

“Conveyance Documents” shall have the meaning set forth in the Lease Agreement.

“Equipment” shall have the meaning set forth in the Lease Agreement.

“Facility” shall have the meaning set forth in the Lease Agreement.

“Financial Assistance” means exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes as more particularly described in the Basic Documents.

“Full Time Equivalent Employee” means (A) a full-time, permanent, private-sector employee on the Company’s payroll, who has worked at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties; or (B) two part-time, permanent, private-sector employees on Company’s payroll, who have worked at the Project Facility for a combined minimum of 35 hours per week for not less than 4 consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties; or (C) a Contract Employee.



“Financial Assistance” means exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes as more particularly described in the Basic Documents.

“Land” means approximately [LandSizeShort] parcel of land located at [ProjectAddress] in [ProjectCity], Montgomery County, New York.

“Lease Agreement” means the lease agreement dated as of [DocumentDate], by and between the Agency, as landlord, and the Company, as tenant, pursuant to which, among other things, the Agency has leased the Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

“Payment in Lieu of Tax Agreement” means the payment in lieu of tax agreement dated as of [DocumentDate], by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Project Facility, as such agreement may be amended or supplemented from time to time.

“Pilot Payments” means payments in lieu of taxes with respect to the Project Facility pursuant to the provisions of the Payment in Lieu of Tax Agreement.

“Project” shall have the meaning set forth in the Lease Agreement.

“Project Facility” shall have the meaning set forth in the Lease Agreement.

“Recapture Events” shall mean the following:

- (1) failure to complete the acquisition, remediation, construction and installation of the Project Facility;
- (2) failure by the Company to meet at least eighty percent (80%) of the Employment Level requirements contained in Section 3.02(E) hereof and in the Application;
- (3) liquidation of substantially all of the Company’s operating assets and/or cessation of substantially all of the Company’s operations;
- (4) relocation of all or substantially all of Company’s operations at the Project Facility to another site;
- (5) transfer of jobs equal to at least fifteen percent (15%) of the Company’s Employment Level out of the Montgomery County, New York;
- (6) the sale, lease or other disposition of all or substantially all of the Project Facility to an individual or entity that abandons the Project;
- (7) failure by the Company to comply with the annual reporting requirements or to provide the Agency with reasonably requested information;
- (8) sublease of all or part of the Project Facility in violation of Basic Documents;
- (9) a change in the use of the Project Facility, other than [ProjectUse];



or

(10) failure by the Company to make an actual investment in the Project by the Completion Date equal to or exceeding 80% of the Total Project Costs as set forth in the Application.

“Recapture Period” means [Recapture Period]

SECTION 1.2. INTERPRETATION. In this Uniform Agency Project Agreement, unless the context otherwise requires:

(A) the terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms as used in this Uniform Agency Project Agreement, refer to this Uniform Agency Project Agreement, and the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the date of this Uniform Agency Project Agreement;

(B) words of masculine gender shall mean and include correlative words of feminine and neuter genders;

(C) words importing the singular number shall mean and include the plural number, and vice versa;

(D) any headings preceding the texts of the several Articles and Sections of this Uniform Agency Project Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Uniform Agency Project Agreement nor affect its meaning, construction or effect; and

(E) any certificates, letters or opinions required to be given pursuant to this Uniform Agency Project Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Uniform Agency Project Agreement.



## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

SECTION 2.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into this Uniform Agency Project Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Uniform Agency Project Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Uniform Agency Project Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Uniform Agency Project Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 2.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is limited liability company duly organized and validly existing under the laws of the Delaware, is duly authorized to do business in the State of New York and has the power under the laws of the New York to enter into this Uniform Agency Project Agreement and to perform and carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement, and by proper action of its board of directors has been duly authorized to execute, deliver and perform this Uniform Agency Project Agreement.

(B) Authorization. The Company is authorized and has the power under its Articles of Organization, Operating Agreement and the laws of the New York to enter into this Uniform Agency Project Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement. By proper action of its members, the Company has duly authorized the execution, delivery and performance of this Uniform Agency Project Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Uniform Agency Project Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement by (and the execution, delivery



and performance of this Uniform Agency Project Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Uniform Agency Project Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization or operating agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Uniform Agency Project Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Uniform Agency Project Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Uniform Agency Project Agreement by the Company or as a condition to the validity of this Uniform Agency Project Agreement.



## ARTICLE III

### COVENANTS AND AGREEMENTS

SECTION 3.01. FINANCIAL ASSISTANCE. (A) Financial Assistance. In the Application, the Company certified to the Agency employment information with respect to the Project Facility, and the operations of the Company. In reliance on the certifications provided by the Company in the Application, the Agency agrees to provide the Company with the following Financial Assistance related to the Project:

- (1) sales and use tax exemptions: \$\_\_\_\_\_
- (2) a real property tax exemption: \$\_\_\_\_\_
- (3) a mortgage recording tax exemption: \$\_\_\_\_\_

(B) Description of Project and Public Purpose of Granting Financial Assistance to the Project. In the Application and in the discussions had between the Company and the Agency with respect to the Company's request for Financial Assistance from the Agency with respect to the Project, the Company has represented to the Agency as follows:

- (1) That the Project is described as follows: [ProjectDescription]
- (2) That the Project will furnish the following benefits to the residents of Montgomery County, New York (the "Public Benefits"): [PublicBenefit]

(B) Payment in Lieu of Tax Agreement. A copy of the Payment in Lieu of Tax Agreement is attached hereto as Schedule C. The attached Payment in Lieu of Tax Agreement describes the dates the payments in lieu of taxes are to be made and includes a table describing the amount of payments in lieu of taxes to be made.

(C) Contingent Nature of the Financial Assistance. Notwithstanding the provisions of Section 3.01(A) of this Uniform Agency Project Agreement, the Agency and the Company agree that the amount of Financial Assistance to be received by the Company with respect to the Project shall be contingent upon, and shall bear a direct relationship to, the success or lack of success of the Project in delivering the promised Public Benefits.



SECTION 3.02. COMPANY AGREEMENTS. The Company hereby agrees as follows:

(A) Filing – Closing Date. To file with the Agency, prior to the Closing Date, an employment plan, in substantially the form attached as Exhibit F to the Lease Agreement.

(B) Filing – Annual. To file with the Agency, on an annual basis, by February 1<sup>st</sup>, a report regarding the number of people employed at the Project Facility and certain other matters, including as required under Applicable Law, the initial said annual employment report to be in substantially the form annexed as Exhibit G to the Lease Agreement.

(C) Employment Listing. To list new employment opportunities created as a result of the Project with the following entities (hereinafter, the “JTPA Entities”): (1) the New York State Department of Labor Community Services Division and (2) 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 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)). 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.

(D) Employment Consideration. Except as otherwise provided by collective bargaining agreement, 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.

(E) Employment Level. To maintain, as described in the Application, the following employment level (the “Employment Level”) during the term of the Uniform Agency Project Agreement, beginning no later than one \_\_\_\_\_ year after the Completion Date:

Year	Total Employees
	Not Applicable
	Full Time Employees
	Full Time Employees

(2) (a) To verify that the Employment Level is being achieved at the Project Facility and the information contained in the Annual Status Report, the Company is required to submit, or cause to be submitted, within sixty (60) days after the end of each calendar year: a form NYS-45 as of the last payroll date in the month of December (the “Quarterly Report,” a copy of which is attached hereto as Schedule A and, together with the Annual Status Report described in Section 3.02(B) above, being collectively referred to as the “Employment Affidavits”) or some other form that is explicitly approved by the Agency. Full Time Equivalent Employees for each calendar year during the term of this Uniform Agency Project Agreement shall be the number reported in the Employment Affidavits delivered by the Company pursuant to Section 3.02(B) and this Section 3.02(E)(2).

(b) In the event that some or all of the Full-Time Equivalent Employees employed at the Project Facility constitute Contract Employees, it shall be the responsibility of the Company to deliver, or cause to be delivered, the Quarterly Reports of the employers relating to such Contract Employees. The Company hereby agrees to



provide such Quarterly Reports in accordance with the terms contained in Section 3.02(E)(2)(a) above.

(F) Non-Discrimination. (1) At all times during the term of this Project Benefit Agreement, the Company shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Company shall use its best efforts to ensure that employees and applicants for employment with the Company or any subtenant of the Project Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(2) The Company agrees that, in all solicitations or advertisements for employees placed by or on behalf of the Company during the term of this Project Benefit Agreement, the Company will state in substance that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.



## ARTICLE IV

### EVENTS OF DEFAULT AND REMEDIES

SECTION 4.01. EVENTS OF DEFAULT DEFINED. (A) The following shall be “Events of Default” under this Uniform Agency Project Agreement, and the terms “Event of Default” or “default” shall mean, whenever they are used in this Uniform Agency Project Agreement, any one or more of the following events:

(1) A default in the performance or observance of any of the covenants, conditions or agreements on the part of the Company in this Uniform Agency Project Agreement and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute the same with due diligence.

(2) The occurrence of an “Event of Default” under any other Basic Document.

(3) Any representation or warranty made by the Company herein or in any other Basic Document proves to have been false at the time it was made.

SECTION 4.02. REMEDIES ON DEFAULT. (A) Whenever any Event of Default hereunder shall have occurred, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

(1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 of the Lease Agreement, and (b) all other payments due under this Uniform Agency Project Agreement or any of the other Basic Documents; or

(2) terminate the Lease Agreement and the Payment in Lieu of Tax Agreement and convey to the Company all the Agency’s right, title and interest in and to the Project Facility (The conveyance of the Agency’s right, title and interest in and to the Project Facility shall be effected by the delivery by the Agency of the Termination of Lease to Agency and the Bill of Sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such transfer of title); or

(3) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Company under this Uniform Agency Project Agreement.

(B) No action taken pursuant to this Section 4.02 (including repossession of the Project Facility) shall relieve the Company from its obligations to make any payments required by this Uniform Agency Project Agreement and the other Basic Documents.

SECTION 4.03. RECAPTURE OF FINANCIAL ASSISTANCE. (A) General. Upon the occurrence of a Recapture Event that occurs during the Recapture Period, the Agency may require the Company to provide for the recapture of the project financial assistance (the “Project Financial Assistance”), all in



accordance with the terms of this Section 4.03. The Company hereby agrees, if requested by the Agency, to pay to the Agency the recapture of the Project Financial Assistance, as provided in this Section 4.03.

G. Project Financial Assistance to be Recaptured. The Project Financial Assistance to be recaptured by the Agency upon the occurrence of a Recapture Event during a Recapture Period shall be an amount equal to the sum of the following:

- (i) the portion of the amount of New York State sales and use taxes allocable to Montgomery County that the Company would have paid in connection with the undertaking of the Project if the Project Facility was privately owned by the Company and not deemed owned or under the jurisdiction and control of the Agency;
- (ii) the amount of any mortgage recording tax exemption provided by the Agency to the Company in connection with the undertaking of the Project; and
- (iii) the difference between the amount of the payment in lieu of tax payments paid by the Company under the Payment in Lieu of Tax Agreement and the amount of the general real property ad valorem taxes that would have been payable by the Company to the Taxing Entities if the Project Facility was privately owned by the Company and not deemed owned or under the jurisdiction and control of the Agency.

H. Amount of Project Financial Assistance to be Recaptured. Upon the occurrence of a Recapture Event, the Company shall pay the following amounts as recapture:

<b>Year</b>	<b>Amount of Recapture</b>
1	94% of the Project Financial Assistance
2	88% of the Project Financial Assistance
3	82% of the Project Financial Assistance
4	76% of the Project Financial Assistance
5	70% of the Project Financial Assistance
6	64% of the Project Financial Assistance
7	58% of the Project Financial Assistance
8	52% of the Project Financial Assistance
9	46% of the Project Financial Assistance
10	40% of the Project Financial Assistance
11	34% of the Project Financial Assistance
12	28% of the Project Financial Assistance
13	22% of the Project Financial Assistance
14	16% of the Project Financial Assistance
15	10% of the Project Financial Assistance

I. Redistribution of Project Financial Assistance to be Recaptured. Upon the receipt by the Agency of any amount of Project Financial Assistance pursuant to this Section 4.03, the Agency shall redistribute such amount within thirty (30) days of such receipt to the Taxing Entity that would have received such amount but for the granting by the Agency of the Project Financial Assistance.

J. Survival of Obligations. The Company acknowledges that the obligations of the Company in this Section 4.03 shall survive the conveyance of the Project Facility to the Company and the termination of the Lease Agreement.



K. Agency Review of Recapture Determination. The Agency's determination to recapture all or a portion of the Project Financial Assistance shall be made by the Agency after an evaluation of the criteria for recapture set forth in the Agency's "Policy Respecting Recapture of Project Benefits" as in effect as of the Closing Date (a copy of which policy is attached hereto as Schedule B). If the Agency determines that a Recapture Event has occurred, it shall give notice of such determination to the Company. The Company shall have thirty (30) days from the date the notice is deemed given to submit a written response to the Agency's determination and to request a written and/or oral presentation to the Agency why the proposed recapture amount should not be paid to the Agency. The Company may make its presentation at a meeting of the Agency. The Agency shall then vote on a resolution recommending (i) a termination of Financial Assistance, (ii) a recapture of Financial Assistance, (iii) both a termination and a recapture of Financial Assistance, (iv) a modification of Financial Assistance or (v) no action.

SECTION 4.04. LATE PAYMENTS. (A) One Month. If the Company shall fail to make any payment required by this Uniform Agency Project Agreement within thirty days of the date that written notice of such payment is sent from the Agency to the Company at the address provided in Section 4.05 of this Uniform Agency Project Agreement, the Company shall pay the amount specified in such notice together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Uniform Agency Project Agreement when due and such delinquency shall continue beyond the thirty days after such notice, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the Agency until such payment in default shall have been made in full, and the Company shall pay the same to the Agency together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

SECTION 4.05. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. If the Company should default in performing any of its obligations, covenants or agreements under this Uniform Agency Project Agreement and the Agency should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.06. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Uniform Agency Project Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of a Recapture Event or an Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.



(C) Notice Not Required. In order to entitle the Agency to exercise any remedy reserved to it in this Uniform Agency Project Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Uniform Agency Project Agreement.

(D) No Waiver. In the event any provision contained in this Uniform Agency Project Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Uniform Agency Project Agreement shall be established by conduct, custom or course of dealing.

## ARTICLE V

### MISCELLANEOUS

SECTION 5.01. TERM. This Uniform Agency Project Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the execution and delivery of this Uniform Agency Project Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Uniform Agency Project Agreement shall continue to remain in effect until [BenefitAgreementTerminationDate].

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Uniform Agency Project Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Uniform Agency Project Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, property addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

[Borrower]  
[BorrowerStreet]  
[BorrowerCityStateZip]  
Attention: [Contact]

WITH A COPY TO:



[BorrowerCounselFirm]  
[BorrowerCounselStreet]  
[BorrowerCityStateZip]  
Attention: [BorrowerCounsel1]

IF TO THE AGENCY:

Montgomery County Industrial Development Agency 9 Park  
Street  
Fonda, New York 12068 Attention:  
Chairman

WITH A COPY TO:

Hodgson Russ LLP  
677 Broadway, Suite 301 Albany, New  
York 12207  
Attention: A. Joseph Scott, III, Esq.

(C) Change of Address. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Uniform Agency Project Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Uniform Agency Project Agreement are intended to be for the benefit of the Agency.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Uniform Agency Project Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Uniform Agency Project Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Uniform Agency Project Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Uniform Agency Project Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Uniform Agency Project Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

MONTGOMERY COUNTY INDUSTRIAL DEVELOPMENT AGENCY



BY:  
Authorized Officer

[BORROWER]

BY:  
Authorized Officer

### SPECIAL PROJECT CERTIFICATION

As required under Section 859-a(6) of the Act, the Company hereby certifies, under penalty of perjury, that the Company is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

[BORROWER]

BY: \_\_\_\_\_  
Authorized Officer







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

On the \_\_\_\_\_ day of [NotaryMonth] in the year [NotaryYear], before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public



SCHEDULE A  
NYS-45 QUARTERLY REPORT







Withholding  
identification number



### Part D - Form NYS-1 corrections/additions

Use Part D **only** for corrections/additions for the quarter being reported in Part B of **this** return. To correct original withholding information reported on Form(s) NYS-1, complete columns a, b, c, and d. To report additional withholding information not previously submitted on Form(s) NYS-1, complete **only** columns c and d. Lines 12 through 15 on the front of this return **must** reflect these corrections/additions.

a Original last payroll date reported on Form NYS-1, line A (mmdd)	b Original total withheld reported on Form NYS-1, line 4	c Correct last payroll date (mmdd)	d Correct total withheld
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

### Part E - Change of business information

22. This line is not in use for this quarter.

23. If you **permanently ceased paying wages**, enter the date (mmddyy) of the final payroll (see Note below) .....

24. If you **sold or transferred all or part of your business**:

• Mark an **X** to indicate whether in **whole** ☐ or in **part** ☐

• Enter the date of transfer (mmddyy) .....

• Complete the information below about the acquiring entity

Legal name	EIN
Address	

**Note:** For questions about other changes to your withholding tax account, call the Tax Department at (518) 485-6654; for your unemployment insurance account, call the Department of Labor at (518) 485-8589 or 1 888 899-8810. If you are using a paid preparer or a payroll service, the section below must be completed.

Paid preparer's use	Preparer's signature	Date	Preparer's NYTPRIN	Preparer's SSN or PTIN	NYTPRIN excl. code
	Preparer's firm name (or yours, if self-employed)	Address	Firm's EIN	Telephone number ( )	
Payroll service's name				Payroll service's EIN	<input type="text"/>

Checklist for mailing:

- File original return and keep a copy for your records.
- Complete lines 9 and 19 to ensure proper credit of payment.
- Enter your withholding ID number on your remittance.
- Make remittance payable to *NYS Employment Contributions and Taxes*.
- Enter your telephone number in boxes below your signature.
- See *Need help?* on Form NYS-45-I if you need forms or assistance.

Mail to:

NYS EMPLOYMENT  
CONTRIBUTIONS AND TAXES  
PO BOX 4119  
BINGHAMTON NY 13902-4119

NYS-45 (12/15) (back)



## SCHEDULE B

### POLICY RESPECTING RECAPTURE OF PROJECT BENEFITS

SECTION 1. PURPOSE AND JUSTIFICATION. (A) The purpose of this Policy is to provide the uniform criteria to be utilized by Montgomery County 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 895-d 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 Montgomery County, New York (the “County”) 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 the County 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. (A) 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; (6) any additional public benefits; and (7) local labor construction jobs.

(B) The following additional criteria may apply to warehousing and research projects: (1) wage rates (above median for County); (2) in County purchases (% of purchases from local vendors); (3) supports local businesses or clusters; (4) retention or flight risk; and (5) provides capacity to meet County demand or shortage.

(C) The following additional criteria may apply to commercial projects: (1) regional wealth creation (% of sales/customers outside of the County); (2) located in a highly distressed census tract; (3) alignment with local planning and development efforts; (4) promotes walkable community areas; (5) elimination or reduction in blight; (6) proximity/support of regional tourism attractions/facilities; (7) local or County official support; (8) building or site has historic designation; and (9) provides brownfield remediation.

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.



SCHEDULE C

COPY OF PAYMENT IN LIEU OF TAX AGREEMENT

-SEE ATTACHED -



SCHEDULE D  
COPY OF APPLICATION  
-SEE ATTACHED-



SCHEDULE E  
FORM OF ANNUAL STATUS REPORT

January \_\_, 20\_\_

Re: New Project Verification

Dear \_\_\_\_\_ :

The Montgomery County Industrial Development Agency (the "Agency") is currently providing assistance in connection with your project in the [Project City], Montgomery County, New York.

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

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

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

Very truly yours,



Company name and address:

Project Name:

Company contact:

Contact phone number:

(Please-correct any information above)

### **Financing Information**

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

Yes

No

If financing assistance was provided, please provide:

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

Interest rate on mortgage as of December 31, 20\_\_ \_\_\_\_\_

Final maturity date of the bond or note \_\_\_\_\_

Is the Company a not-for-profit? \_\_\_\_\_

### **Sales Tax Abatement Information**

Did your company receive Sales Tax Abatement on your Project during 20\_\_ ?

Yes

No

If so, please provide the amount of sales tax savings received for each year \_\_\_\_\_

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

### **Mortgage Recording Tax Information**

Did your company receive Mortgage Tax Abatement on your Project during 20\_\_ ?

Yes

No

The amount of the mortgage recording tax that was abated during 20\_\_ : \_\_\_\_\_



**Job Information**

Number of full time equivalent employees ("FTE") existing jobs by category **before IDA status:**

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					
Independent Contractors					
Employees of Independent Contractors					

Current number of FTE employees for 20\_\_ by category:

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					
Independent Contractors					
Employees of Independent Contractors					

Number of FTE jobs **created** during 20\_\_ as a result of the assistance received through the IDA by category:

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					
Independent Contractors					
Employees of Independent Contractors					



Number of FTE jobs **retained** during 20\_\_ by category:

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
<b>Full Time</b>					
<b>Part Time</b>					
<b>Seasonal</b>					
<b>Independent Contractors</b>					
<b>Employees of Independent Contractors</b>					

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

Number of FTE construction jobs created during 20\_\_ \_\_\_\_\_

Number of FTE construction jobs during 20 \_\_\_\_\_

#### **Salary and Fringe Benefits**

Is the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created described in the Application still complete, true, and accurate: Yes No

If not, please provide the revised amounts using the table below:

<b>RELATED EMPLOYMENT INFORMATION</b>				
	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled
Estimated Salary and Fringe Benefit Averages or Ranges				
Estimated Number of Employees Residing in the Mohawk Valley Economic Development Region <sup>1</sup>				

<sup>1</sup> The Mohawk Valley Economic Development Region consists of the following counties: Oneida, Herkimer, Fulton, Montgomery, Schoharie and Fulton.



**Capital Investment Information**

20\_ Capital Investment

\_\_\_\_\_

Real Estate

\_\_\_\_\_

Construction

\_\_\_\_\_

Machinery and Equipment

Other Taxable Expenses

Other Non-Taxable Expenses

**Total Capital Investment**



**Officer's Certification**

I certify that to the best of my knowledge and belief all of the information on this form is correct. I also understand that failure to report completely and accurately may result in enforcement of provisions of the Uniform Agency Project Agreement dated as of December 1, 2018 by and between the Company and Montgomery County Industrial Development Agency (the "Project Agreement"), including but not limited to the suspension, discontinuance, and potential claw back of financial assistance provided for the project.

Signed:  
(Authorized Company Representative) Date:

\_\_\_\_\_



## PART 20

### BOND-VOLUME ALLOCATION

SECTION 2001. PURPOSE AND AUTHORITY. The purpose of this Part is to describe the requirements of the Montgomery County Industrial Development Agency (the “Agency”) pursuant to Title One of Article 18-A of General Municipal Law (collectively, the “Act”) and Chapter 110 of the Laws of 2008 (the “Private Activity Bond Allocation Act of 2008”).

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 of 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. The Private Activity Bond Allocation Act of 2008 describes the procedures and requirements for the Agency to obtain portions of the New York State Volume Cap.

SECTION 2004. REQUIREMENTS. Attached to this Part is a copy of a Memorandum dated July 24, 2008 from the New York State Department of Economic Development describing the requirements of the Private Activity Bond Allocation Act of 2008.

SECTION 2005. FORMS. Attached to this Part are the following forms to be used by the Agency in connection with complying with the requirements of the Private Activity Bond Allocation Act of 2008:

- (A) Application for Additional Allocation from the Statewide Reserve.
- (B) Request for Certification.
- (C) Overlapping Jurisdictions: Election to Surrender Share.



MEMORANDUM

July 24, 2008

TO: Industrial Development Agencies  
FROM: Robert W. Meyer *RWM*  
SUBJECT: Private Activity Allocations for 2008

The Legislature has passed and Governor Paterson has signed into law the Private Activity Bond Allocation Act of 2008 (Chapter 110 Laws of 2008). This law establishes a system for allocating the State's Private Activity Bond Volume Cap that is similar in structure and process to that which has been in effect for several years. Following are some of the key features of the law which may affect upon your activities:

- (1) Initial Allocations -- Each industrial development agency receives an initial allocation that is computed by applying the percentage that the population within the agency's jurisdiction bears to the total State population, to one-third of the State's Volume Cap. In the case of overlapping jurisdictions (e.g., a county and a town) the population of the overlapping jurisdiction is divided equally between the two agencies for the purpose of computing the allocation. A notification of your initial allocation is enclosed.
- (2) Bond Reserve -- One-third of the State's Volume Cap is set aside as a Statewide Bond Reserve. If you have a project that requires an allocation in excess of your agency's remaining initial allocation, you may apply to the Commissioner of Economic Development for a supplemental allocation from the Statewide Bond Reserve. An application for this purpose is enclosed and will be required along with the authorization for the release of Unemployment Insurance Records.
- (3) If your agency received an allocation this year prior to the enactment of Chapter 110, under the interim process established by Governor Paterson, the amount of that allocation has been deducted from your agency's set aside and any excess from the Statewide Bond Reserve. This adjustment is not reflected in the enclosed notification.

**New York State Department of Economic Development**  
30 South Pearl Street Albany New York 12245 Tel 518 292 5100  
Website [www.empire.state.ny.us](http://www.empire.state.ny.us)



- (4) Transfer of allocations -- The law permits initial allocations to be transferred between agencies with overlapping jurisdictions. The Department of Economic Development must be notified if this occurs, using the enclosed form.
- (5) Allocation Recapture -- On or before October 1, 2008, your agency must report to the Commissioner of Economic Development on the status of your allocation and anticipated bond issuing activity for the remainder of 2008. On October 15, 2008, any unused and uncommitted local allocations will be transferred to the Statewide Bond Reserve to be available for reallocation.
- (6) Carryforward Allocations -- Federal Tax Law permits the carryforward of unused Volume Cap for public purpose projects, but not for manufacturing projects. Eligible projects include housing, solid waste, sewage, water and energy. Carryforward elections by local agencies may be made only after approval by the Commissioner of Economic Development. If you wish to apply for an allocation for the purpose of filing a carryforward election, please notify us by November 15 and supply us with as much detail as possible about the project for which the carryforward is needed.
- (7) Access to Employment Opportunities -- the law requires that any new employment opportunities created in connection with manufacturing projects financed with qualified small issue bonds be listed with the State Job Service and the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act. It further requires that in filling these jobs, consideration be given to the JTPA-eligible applicants referred by these agencies. Instructions on the implementation of this provision are enclosed.

Encs.



**EMPIRE STATE DEVELOPMENT  
APPLICATION FOR ADDITIONAL ALLOCATION  
FROM THE STATEWIDE RESERVE**

Name and of Issuing Agency and contact information:

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Amount of initial allocation	\$ _____
Amount of previous allocation(s) from the reserve	\$ _____
Total bonds issued from above allocations	\$ _____
<b>Amount of additional allocation requested</b>	<b>\$ _____</b>

Principal User FEIN # \_\_\_\_\_

NYS UI Employer Registration # \_\_\_\_\_

List the Principal User and Use, the location, and amount for each project for which additional allocation is requested. Please detail the impact on workforce, business operations, and economic activity resulting from the proposed use of allocation. Attach additional pages as necessary.

**Proposed Project Costs and Financing**

IDA Financing (would include bond issuances)	\$ _____
Company equity	\$ _____
Other grants	\$ _____
Private loans	\$ _____
<b>Total Project Cost</b>	<b>\$ _____</b>

Signed \_\_\_\_\_  
(for the Issuing Agency)

Date \_\_\_\_\_

Attached: Copy of "Inducement Resolution" and copy of firm's application for Incentives and Services to IDA.



**AUTHORIZATION FOR RELEASE OF  
UNEMPLOYMENT INSURANCE RECORDS**

I \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_ (the Company) do hereby authorize and give my consent to the New York State Commissioner of Labor to disclose, to employees of the New York State Department of Economic Development all records filed by the company in making Unemployment Insurance (U.I.) reports and contributions required by State Labor and Tax Law, including, but not limited to, all information contained in or relating to the quarterly combined withholding, wage reporting and U.I. returns, the registration for U.I., the New Hire file, and all records of U.I. delinquencies. In addition, this authorization and consent shall include all information contained in any survey reports requested by the Department of Labor on behalf of the U.S. Department of Labor, Bureau of Labor Statistics including, but not limited to, the Current Employment, Occupational Employment, multiple worksite, and annual refiling surveys. The use of information and records released pursuant to this authorization shall be limited to government purposes concerning the application of this company for a grant(s) from the Department of Economic Development made pursuant to sections 100 and 221 of the State's Economic Development Law.

\_\_\_\_\_  
**Sworn to before me this**  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
**Notary Public**



## REQUEST FOR CERTIFICATION

The \_\_\_\_\_ (the Issuer) hereby requests a Certification to fulfill the information reporting requirements provided in the Internal Revenue Code, Section 194(e). The undersigned, who is the \_\_\_\_\_ of the Issuer certifies that the bonds issued for the project(s) and the amounts listed below:

- (i) are subject to the State ceiling;
- (ii) have been issued from an initial allocation or Statewide Reserve allocation received by the Issuer; and
- (iii) that the aggregate face amount of the Private Activity Bonds listed, when added to the aggregate face amount of tax-exempt Private Activity Bonds previously issued by such Issuer since January 1, 2008, does not exceed this Issuer's 2008 Private Activity Bond allocation pursuant to Section 146 of the Code.

ISSUER

BY:

DATE:

Title of Issue

Amount

Date Issued



### ELECTION TO SURRENDER ALLOCATION

Pursuant to Section 10 of Chapter 110, Laws of 2008, the  
\_\_\_\_\_, a political subdivision, hereby elects to surrender all or a portion of its  
private activity bond volume allocation for calendar year 2008, an amount equal to \$  
to the \_\_\_\_\_ Industrial Development Agency, a local agency, and agrees  
that such election is effective immediately.

Date:

By:

For:

Political Subdivision  
Electing to Surrender

By:

For:

Industrial Development Agency  
Recipient of Surrendered Allocation



**OVERLAPPING JURISDICTIONS: ELECTION TO SURRENDER SHARE**

Pursuant to Section 8 of Chapter 110, Laws of 2008, the \_\_\_\_\_  
\_\_\_\_\_ Industrial Development Agency, a local agency, hereby elects to surrender all or a portion of its  
private activity bond volume allocation for calendar year 2008, an amount equal to  
\$ \_\_\_\_\_ to the \_\_\_\_\_ Industrial Development Agency, another  
local agency with overlapping jurisdiction, and agrees that such election is effective immediately.

Date:

By:

For:

Political Subdivision  
Electing to Surrender

By:

For:

Industrial Development Agency  
Recipient of Surrendered Allocation



## PART 21

### LABOR POLICY

#### **Declaration of Motivation For the Employment of Local Tradespeople During the Construction Phase of IDA-Benefited Projects**

The Montgomery County Industrial Development 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 666 of the 1970 Laws of New York, as amended, constituting Section 895-d 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, warehousing, commercial, research and manufacturing 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 and Montgomery County, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration. The IDA is authorized by Section 858 of the Act to enter into agreements requiring payments in lieu of taxes ("PILOT Agreements") with private companies in order to facilitate the location or the expansion of their businesses in Montgomery County. A PILOT Agreement essentially extends, either in whole or in part, IDA’s exemption from real property and other taxes to private companies participating in IDA programs.

Construction jobs, although limited in time duration, are vital to the overall employment opportunities within Montgomery County since construction wages earned by local residents are reinvested in the local economy, adding greatly to its vitality. It is the IDA’s strong conviction that companies benefiting from its programs should employ New York State residents during the construction phase of projects. Only in that way can the public benefits accruing from the IDA’s efforts be maximally distributed to the residents and taxpayers of Montgomery County. It is, therefore, the request of the IDA that firms benefiting from its programs be fully cognizant of the IDA’s mission to promote employment opportunities during all project phases, including the construction phase.

It is the IDA’s policy that companies that receive any type of financial assistance from the IDA engage, to the maximum extent possible, Montgomery County residents during the project construction phase. The IDA’s policy will be implemented and enforced through the addition of an amendment to the IDA project application that will require applicants to:

1. Identify the name, title, mailing address, 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 IDA 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 IDA programs.

To ensure compliance with the IDA's policy, the IDA will:

a. Following the public hearing and Agency approval of a project the web-site will be promptly updated for all current data including the name, title, mailing address, phone/fax/email of the project contact person who will be responsible and accountable for providing information about the bidding and awarding of construction contracts relative to the application and project.

b. Reserve the right to modify and/or rescind benefits granted to any company under the IDA's Uniform Tax Exemption Policy as a result of the company's failure to comply with the IDA's policy. Prior to any benefit being modified or rescinded, a company will be given an opportunity to provide the IDA with a reasonable justification for its inability to comply with any of the provisions listed herein.



## PART 22

### AGENCY ADMINISTRATIVE FEES AND COUNSEL EXPENSES

SECTION 2201. PURPOSE AND AUTHORITY. The purpose of this Part is to establish such procedures relating to the imposition of fees of the Montgomery County 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 2202. TYPES OF FEES. The types of fees imposed by the Agency in connection with Agency Projects shall consist of (A) an application fee and (B) an administrative fee.

SECTION 2203. APPLICATION FEE. The Agency will charge a non-refundable application fee equal to \$1,000 (One thousand Dollars) upon the submission of the Agency’s Application For Financial Assistance. The application fee is payable at the time the Application is delivered and will not be applied toward the administrative fee of the Agency.

#### SECTION 2204. ADMINISTRATIVE FEE.

(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 financing 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 Obligations: Except as provided below, three quarters of one percent (.75%) 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.
- Taxable Obligations: three quarters of one percent (.75%) 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.
- .



The Agency agrees to 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 Transaction. 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 equal to zero.
- 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 agrees to modify the amount of the administrative fee computed herein if Bond Counsel advised 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 Transaction. The amount of the administrative fee for an Agency Project involving straight lease transactions shall be computed as follows:

- three-quarters of one percent (.75%) of the cost of the Agency Project. The cost of the Agency Project shall be the greater of the (A) amount financed by the applicant in undertaking the Agency Project, or (B) the cost incurred by the applicant in undertaking the Agency Project.

(E) Amount: Rental Payments. The applicant shall pay basic annual rental payments for the Project Facility in an amount equal to .0005 x the cost of the Agency Project on January 1 of each year during the term of the Lease Agreement.

SECTION 2205. EXPENSES. In addition to any application fees and administrative fees an Agency Project is subject, the Agency may also charge to the applicant 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 2205 shall become the property of the Agency and part of its general fund.



SECTION 2206. AGENCY COUNSEL. (A) The Agency shall also charge to the applicant its Agency counsel fees. The amount of such counsel fee is based on the principal amount of the obligations issued, in the case of a bond financing, and the cost of the Agency Project, in the case of a straight lease transaction.

(B) The fee schedule is described as follows:

Determined on a Project by Project Basis

SECTION 2207. NEW YORK STATE BOND ISSUANCE FEE

- (A) 0.168% up to \$1,000,000
- (B) 0.336% for the amount between \$1,000,001 to \$5,000,000
- (C) 0.504% for the amount between \$5,000,001 to \$10,000,000

SECTION 2208. 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 2209. DEVIATION. The agency may provide for a different application fee and/or a different administrative fees for a particular project based upon the magnitude and economic impact of a particular project.



## PART 23

### POLICY RESPECTING UNIFORM CRITERIA FOR THE EVALUATION OF PROJECTS

SECTION 2301. PURPOSE AND JUSTIFICATION. (A) The purpose of this Policy is to provide the uniform criteria to be utilized by Montgomery County 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 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 Montgomery County, New York (the “County”) 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 the County 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 2302. ELIGIBLE PROJECT CATEGORIES. The Agency may provide financial assistance to any “project,” as defined in Section 854 of the Act.

SECTION 2303. UNIFORM CRITERIA. (A) 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; (6) Any additional public benefits; and (7) Local labor construction jobs

(B) The following additional criteria may apply to warehousing and research projects: (1) wage rates (above median for County); (2) in County purchases (% of purchases from local vendors); (3) supports local businesses or clusters; (4) retention or flight risk; and (5) provides capacity to meet County demand or shortage.

(C) The following additional criteria may apply to commercial projects: (1) regional wealth creation (% of sales/customers outside of the County); (2) located in a highly distressed census tract; (3) alignment with local planning and development efforts; (4) promotes walkable community areas; (5) elimination or reduction in blight; (6) proximity/support of regional tourism attractions/facilities; (7) local or County official support; (8) building or site has historic designation; and (9) provides brownfield remediation.

SECTION 2304: 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 2305. 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 24

### POLICY RESPECTING RECAPTURE AND SUSPENSION OF PROJECT BENEFITS

SECTION 2401. PURPOSE AND JUSTIFICATION. (A) The purpose of this Policy is to outline the procedures utilized by Montgomery County 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.

(A) 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 666 of the 1970 Laws of New York, as amended, constituting Section 895-d 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 manufacturing, warehousing, research, commercial and industrial 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.

(B) 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.

(C) 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.

(D) 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.



(E) 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.

(F) 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.

(G) 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 2402. 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 therefore 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 thirty (30) 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 thirty (30) 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 County, the Project Agreements will require that each Agency Project Operator agree that, annually, within 30 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 "Annual Status 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 2403. ENFORCEMENT. (A) The Agency will use the information contained in the Annual Status 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 County and, as a result, fails to achieve the economic benefits projected;

(2) If the Project Operator moves all operations outside the County, neglects to move operations to the County, 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 2404. 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 25

### MEDIA RELATIONS POLICY AND GUIDELINES

SECTION 2501. PURPOSE AND AUTHORITY. (A) The purpose of this Part is to establish such procedures relating to the interaction and coordination by the Montgomery County Industrial Development Agency (the “Agency”) with the members of the news media and social media.

(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 County and the Agency’s business partners build their individual perceptions of the Agency and the work the Agency does in the County. 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 2502. 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 2503. 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 County 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 County, 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 2504. 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 County such as changes in local governmental officials or policies, problems or issues specific to the County, 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 518.853.8334."

(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 2505. GUIDELINES FOR SOCIAL MEDIA AND OTHER PUBLIC POSTINGS. Members should be aware that there is a reasonable chance that their posting through any media platform could be misconstrued as a position of Montgomery County IDA. If the member posts material while using their official title, or posts material with a description of their work at the IDA level. In such circumstances, users can use a disclaimer such as the following, where technically feasible, to avoid this situation: "The postings on this site are my own and do not represent the position, strategy or opinion of the Montgomery County IDA."

SECTION 2506. 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 2507. 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 26

### PROJECT MONITORING AND ENFORCEMENT

SECTION 2601. PURPOSE AND AUTHORITY. The purpose of this Part is to outline the procedures utilized by the Montgomery County Industrial Development Agency (the “Agency”) 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 2602. 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 “Uniform Agency Project 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 2603. 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 2603(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:

- (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 described in Section 2603(B)(9).

(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 2604. 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 2603(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 Agency’s Chief Financial Officer and the Municipal 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 ninety (90) 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 2603 (B) above and the results of the project monitoring described in Section 2604 (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 2603(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 2604(A), as described in Section 2605 below, and



(D) PILOT Agreements.

(1) Prior to distribution of the PILOT payment bills, the staff of the Agency will confirm with the Agency's Chief Financial Officer and the Municipal Assessor the payment amounts for such PILOT bills for the current fiscal year

(2) The staff of the Agency will also confirm with the Agency's Chief Financial Officer and the Municipal 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 re-conveyed to the applicant.

(E) Re-conveyance.

(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 re-conveyed to the applicant and placed on the taxable roll of Montgomery County.

(2) Annually the staff of the Agency will confirm with the County Treasurer's Office and the Municipal Assessor that a particular project facility should be re-conveyed to the applicant and placed on the taxable roll of Montgomery County

(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 Montgomery County.

SECTION 2605. ENFORCEMENT. (A) General. Upon completion of the report prepared by the staff of the Agency described in Section 2604(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 2603(B) above or (b) the negative results of the project monitoring in Section 2604(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 “Uniform Agency Agreement”.



PART 27  
INTERPRETATION

SECTION 2701. INTERPRETATION. In these Rules and Regulations, words of masculine gender shall mean and include correlative words of the feminine and neutral genders, and words importing the singular number shall mean and include the plural number and vice versa.