


Tompkins County *Industrial Development Agency*

Administration provided by 

TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY BOARD OF DIRECTORS MEETING

• Thursday, June 9, 2016 •

4:00 – 5:30 PM

Legislative Chambers

Governor Daniel D. Tompkins Building

121 E. Court Street, Ithaca NY

AGENDA

1. CALL TO ORDER

2. PRIVILEGE OF THE FLOOR

3. BUSINESS

- Energy Efficiency Study – Presentation
Ian Shapiro, Taitem Engineering
- Compliance with new NYS IDA Legislation – Adoption/Approval
 - Application
 - Recapture Policy
 - Uniform Evaluation and Selection Criteria
 - Project Agreement

4. STAFF REPORT

5. APPROVAL OF MEETING MINUTES – May 12, 2016

6. ADJOURNMENT

Next Meeting: July 14, 2016

Tompkins County
Industrial Development Agency /
Tompkins County Development Corporation

Industrial Application for Incentives

Blue Text – best practice or clarification

Red Text – NYS law compliance

Date: _____

I. APPLICANT INFORMATION (company receiving benefit)

Name of Company/Applicant: _____

Owner: _____

Address: _____

City: _____ State: _____ Zip: _____

Primary Contact (First, Last): _____

Phone: () - Email: _____ Fax: () -

→ Will a separate company hold title to/own the property in question that is separate from the operating company/applicant? Yes No

If yes, please provide the name and contact information for that entity:

Name of Company/Applicant: _____

Owner: _____

Address: _____

City: _____ State: _____ Zip: _____

Primary Contact (*if different from owner*): _____

Phone: () - Email: _____ Fax: () -

Describe the terms and conditions of the lease between the applicant and the owner of the property.

Select the type of incentives being requested (select all that apply):

- Tax-Exempt Bonds Taxable Bonds
- Real Property Tax Exemption
 - Standard Tax Exemption (7-year)
 - Other (attach justification)
 - CIITAP: 7-year 10-year (requires determination of financial need – see CIITAP for details)
- Sales Tax Exemption Mortgage Recording Tax Exemption

Applicant Attorney

Attorney: _____

Address: _____

City: _____ State: _____ Zip: _____

Primary Contact (*if different from above*): _____

Phone: () - _____ Email: _____ Fax: () - _____

Applicant Accountant

Accountant: _____

Address: _____

City: _____ State: _____ Zip: _____

Primary Contact: _____

Phone: () - _____ Email: _____ Fax: () - _____

Applicant Engineer/Architect (if known)

Engineer/Architect: _____

Address: _____

City: _____ State: _____ Zip: _____

Primary Contact: _____

Phone: () - _____ Email: _____ Fax: () - _____

Applicant Contractor (if known)

Contractor: _____

Address: _____

City: _____ State: _____ Zip: _____

Primary Contact: _____

Phone: () - _____ Email: _____ Fax: () - _____

II. BUSINESS HISTORY

Year company was founded: _____ NAICS Code: _____

Type of ownership (i.e. C-Corp, LLC): _____

~~Description of product or service~~ Describe in detail company background, products, customers, goods and services: _____

Major customers: _____

Major Suppliers: _____

Has your business every received incentives tied to job creation from local governments in New York State? Yes No

If yes, please describe: _____

Were the goals met? Yes No

If no, why were the goals not met? _____

Annual sales to customers in Tompkins County \$ _____
 Percent of sales subject to local sales tax: _____ %
 Annual purchases of operating items subject to local sales tax _____ %
 Percent of total annual supplies, raw materials and vendor services are purchased from firms in Tompkins County. _____ %

BUSINESS PROFIT HISTORY

Please provide five (5) years of **past history** in the format provided below.

<i>Years</i>	1	2	3	4	5
<i>Revenues</i>	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
<i>Profits</i>	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

Please provide three (3) years of **future projections** in the format provided below.

<i>Years</i>	1	2	3
<i>Revenues</i>	\$ _____	\$ _____	\$ _____
<i>Profits</i>	\$ _____	\$ _____	\$ _____

III. PROJECT DESCRIPTION AND DETAILS

Please ~~give a description of the project~~ provide a narrative of the Project and the purpose of the Project (new build, renovations, and/or equipment purchases, etc.). Identify specific uses occurring within the Project. Describe any and all tenants and end users:

Describe the reasons why the Agency's financial assistance is necessary, and the effect the Project will have on the Applicant's business or operations. Focus on competitiveness issues, project shortfalls, etc.

Location (all addresses and tax parcels): _____

Property Size (acres): existing: _____ proposed: _____

Building Size (square feet): existing: _____ proposed: _____

Proposed Dates: start: _____ end: _____

Describe what green building practices you plan to use:

(moved to section X) Do you certify that the project will not result in the relocation of all or part of any business or jobs within New York State to Tompkins County?

Yes No

Will this project result in a regular increase in overnight visitors to your facility (e.g. for training programs)?

Yes No

If yes, number of visitors per year: _____

Average duration of stays (days): _____

Is there a likelihood that the Project would not be undertaken but for the financial assistance provided by the Agency?

Yes No

If the Project could be undertaken without financial assistance provided by the Agency, then provide a statement in the space provided below indicating why the Project should be undertaken by the Agency:

If the Applicant is unable to obtain financial assistance for the Project what will be the impact on the Applicant and the County/City/Town/Village?

Occupancy

Select Project type for all end users at Project site (select all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Industrial | <input type="checkbox"/> Service*, ** |
| <input type="checkbox"/> Acquisition of existing facility | <input type="checkbox"/> Back office |
| <input type="checkbox"/> Housing | <input type="checkbox"/> Mixed use |
| <input type="checkbox"/> Multi-tenant | <input type="checkbox"/> Facility for aging |
| <input type="checkbox"/> Commercial | <input type="checkbox"/> Civic facility (not for profit) |
| <input type="checkbox"/> Retail*, ** | <input type="checkbox"/> Other |

* For Purposes of this question, the term "retail sales" means (1) sales by a registered vendor under Article 28 of the Tax Law of New York (the "Tax Law") primarily engaged in the retail sale of tangible personal property (as defined in Section 1101(b)(4)(i) of the Tax Law, or (2) sales of a services to customers who personally visit the project location.

** If Applicant checked "retail" or "service," complete the Retail Questionnaire contained in Section **XX** of the Application.

List the name(s), nature of business of proposed tenant(s), and percentage of total square footage to be used for each tenant (additional sheets may be attached, if necessary):

Business	Nature of Business	% of total square footage
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____

IV. PROJECT COSTS AND FINANCING

	<i>Amount</i>	<i>% Subject to sales tax</i>
Value of land to be acquired (if any)	\$ _____	N/A
Value of building to be acquired (if any)	\$ _____	N/A
Cost of new construction	\$ _____	_____ %
Value of improvements to existing building	\$ _____	_____ %
Value of equipment to be acquired	\$ _____	_____ %
Other: _____	\$ _____	_____ %
Other: _____	\$ _____	_____ %
Total	\$ _____	N/A

For IDA to fill out

<i>Est. reimbursement of soft costs on project cost:</i>	\$ _____
<i>Agency Fee:</i>	\$ _____
<i>Agency Counsel Fee:</i>	\$ _____
<i>Agency Bond Counsel Fee:</i>	\$ _____

Project Costs

	Amount (\$)
Land and/or Building Acquisition: _____ acres _____ square feet	_____
New Building Construction: _____ square feet	_____
Building Addition(s): _____ square feet	\$ _____
Infrastructure Work:	\$ _____
Reconstruction/Renovation: _____ square feet	\$ _____
Manufacturing Equipment:	\$ _____
Non-Manufacturing Equipment (furniture, fixtures, etc.):	\$ _____
Soft Costs (professional services, etc.):	\$ _____
Other (Specify): _____	\$ _____
TOTAL:	\$ _____

Have any of the above costs been paid or incurred as of the date of this application? Yes No

If yes, describe particulars: _____

Sources of Funds for Project Costs

Bank Financing	\$ _____
Equity	\$ _____
Tax Exempt Bond Issuance (if applicable)	\$ _____
Taxable Bond Issuance (if applicable)	\$ _____
Public Sources (Include sum total of all state and federal grants and tax credits)	\$ _____

Identify each State and federal grant/credit:

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Total sources of funds for Project costs: _____ \$ _____

Project refinancing of existing debt only (estimated): _____ \$ _____

Amount of anticipated financing from a lending institution: \$ _____

Please note: the applicant must inform the TCIDA/TCDC at the time of issuance of commitment letter if the

financing will exceed the amount stated here.

Value of Incentives - Property Tax Abatement

Property Tax Exemption: (Agency Staff will fill out property tax exemption information based on information submitted by the applicant).

Assumptions:

\$ _____ Value of increase in assessment
4% Annual increase in assessment and tax rate

New taxes paid: \$ _____ **Taxes Abated:** \$ _____

Year	County	School	City/Town	Village	Total	County	School	City/Town	Village	Total
1										
2										
3										
4										
5										
6										
7										
Totals										

If the applicant is requesting incentives that are greater than the Agency's Standard Tax Exemption (7 years), please attach a detailed description and justification for this request.

If the applicant is requesting incentives that are greater than the Agency's Standard Tax Exemption (7 years), please confirm a description and justification is attached. Yes No

Sales and Use Tax: Gross amount of costs for goods and services that are subject to State and local sales and use tax – said amount to benefit from the Agency's sales and use tax exemption benefit: _____ \$

Estimated State and local sales and use tax benefit (product of 8% multiplied by the figure above) _____ \$

Note that the estimate provided above will be provided to the New York State Department of Taxation and Finance. The Applicant acknowledges that the estimate above represents the maximum amount of sales and use tax benefit that the Agency may authorize with respect to the application. The Agency may utilize the estimate above, as well as the proposed total Project costs as contained within this application, to determine the financial assistance that will be offered.

Mortgage Recording Tax Benefit: Amount of mortgage that would be subject to mortgage recording tax:

Mortgage Amount (include construction/permanent/bridge financing/refinancing): _____ \$

Estimated mortgage recording tax exemption benefit _____

(product of mortgage amount as indicated above multiplied by .0025%): _____ \$

Value of sales tax abatement: \$ _____

Estimated length of sales tax abatement (years): _____ years

Estimated value of abatement for facility construction including information on assumptions used in calculations:

Estimated value of abatement for furniture, fixtures and equipment including information on assumptions used in calculations:

Mortgage Recording tax abatement: \$ _____

Other governmental incentives or support. Include summary of program, name of contact person and terms and conditions of program.

<i>Program</i>	<i>Contact Person</i>	<i>Terms & Conditions</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Complete for bond applicants only:

	Without Bonds	With Bonds
First Year Debt Service	\$ _____	\$ _____
Total Debt Service	\$ _____	\$ _____

(Projected 25 year borrowing term)

Percentage of Project costs financed from public sector: *(Agency Staff will fill out based on information provided by Applicant in drafted application)*

- A. Total Project Cost \$ _____
- B. Estimated Value of PILOT \$ _____
- C. Estimated Value of Sales Tax Incentive \$ _____
- D. Estimated Value of Mortgage Tax Incentive \$ _____
- E. Total Other Public Incentives (tax credits, grants, ESD incentives, etc.) \$ _____

Calculation of percentage of Project costs financed from public sector: _____%
(Total B + C + D + E above / Total Project Cost)

NEED FOR INCENTIVES

Are you asking for a schedule of incentives that deviates from the IDA's Yes No

Standard Tax Abatement Program as listed below?

<i>Year</i>	<i>Standard</i>	<i>Abatement</i>
1		90%
2		77%
3		64%
4		51%
5		39%
6		26%
7		13%

V. EMPLOYMENT INFORMATION

Note: during the course of the abatement you will be required to provide detailed employment information annually.

Please provide a description of the benefits that you offer to your employees:

Please provide a description of internal training and advancement opportunities you offer to your employees:

What percentage of your current positions are occupied by women? _____ %

What percentage of your current positions are occupied by minorities? _____ %

Are you willing to pay a livable wage, as defined by the Alternatives Federal Credit union (AFCU) of Ithaca, NY (http://www.alternatives.org/pdf/AFCU-2015-1055_FINAL2.pdf) to all employees for the duration of the abatements? Yes No

If no, estimate the percentage of the current workforce whose wages meet or exceed the livable wage, as defined by AFCU. _____ %

What percent of your current workforce and management are live in:

Tompkins County?	_____ %
New York State?	_____ %
Out of New York State?	_____ %

Please describe your strategy for ensuring diversity in hiring.

Do you have a strategy for ensuring diversity in hiring?

Yes

No

If yes, please describe: _____

Will you allow your building to be used as a polling facility?

Yes

No

Employment Plan

Occupation in Company	Current (Retained) Permanent Full Time Jobs		Projected New Permanent Full-Time Jobs			
	Average Annual Salary Ranges/ Hourly Wage	Number of Employees	Year 1	Year 2	Year 3	Total New Jobs
Professional						
Clerical						
Sales						
Services						
Construction						
Manufacturing						
High Skilled						
Medium Skilled						
Basic Skilled						
Other (describe)						
Total						

Estimated percentage of new hires who would be unemployed at time of hire: _____ %

Estimate the number of residents of the labor market area in which the Project is located that will fill the projected new jobs created. *(The Agency defines the labor market area as Tompkins County and the contiguous counties; Cayuga, Seneca, Schuyler, Chemung, Tioga, and Cortland Counties.)* _____

VI. CONSTRUCTION LABOR

Will you use contractors who:

- Have a certified apprenticeship program Yes No _____ %
- Pay a prevailing wage Yes No _____ %
- Use local labor Yes No _____ %

Note: Applicants will be required to comply with the Agency's Local Labor Utilization Policy.

VII. ENVIRONMENTAL REVIEW AND PERMITTING

Environmental Assessment Form – Short Form Long Form

Submitted to: _____

Agency Name: _____

Agency Address: _____

City: _____ State: _____ Zip: _____

Date of submission: _____ Status of submission: _____

Note: ~~an environmental review must be completed~~ The Applicant must comply with the State Environmental Quality Review Act (SEQRA) before the Agency can vote on proposed financial incentives. It is the applicant's responsibility to provide a copy of the ~~determination of environmental impact~~ SEQRA determination by another entity to the Agency.

Permits

Describe other permits required and status of approval process.

<i>Permit</i>	<i>Status</i>
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____

VIII. OTHER

Do you have anything else you would like to tell the TCIDA regarding this project?

IX. RETAIL QUESTIONNAIRE

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

- A. Will any portion of the Project (including that portion of the cost to be financed from equity or other sources) consist of facilities or property that are or will be primarily used in making sales of goods or services to customers who personally visit the project site? Yes No

If yes, please continue. If no, do not complete the remainder of the retail questionnaire and proceed to the next section of the application.

For Purposes of this question, the term "retail sales" means (1) sales by a registered vendor under Article 28 of the Tax Law of New York (the "Tax Law") primarily engaged in the retail sale of tangible personal property (as defined in Section 1101(b)(4)(i) of the Tax Law, or (2) sales of a service to customers who personally visit the project location.

- B. What percentage of the cost of the Project will be expended on such facilities or property primarily used in making sales of goods or services to customers who personally visit the Project? _____ %

If the answer is less than 33% do not complete the remainder of the retail determination and proceed to the next section of the application.

If the answer to Question A is Yes AND the answer to Question B is greater than 33.33%, indicate which of the following questions below apply to the Project:

1. Will the Project be operated by a not-for-profit corporation? Yes No
2. Is the Project location or facility likely to attract a significant number of visitors from outside Tompkins County? Yes No

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

3. Is the predominant purpose of the Project to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of the municipality within which the proposed Project would be located because of a lack of reasonably accessible retail trade facilities offering such goods or services? Yes No

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

4. Will the Project preserve permanent, private sector jobs or increase the overall number of permanent, private sector jobs in the State of New York? Yes No

If yes, explain: _____

X. INTER-MUNICIPAL MOVE DETERMINATION

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

Will the Project result in the removal of an industrial or manufacturing plant of the Project occupant from one area of the state to another area of the State? Yes No

Will the Project result in the abandonment of one or more plants or facilities of the Project occupant located within the State? Yes No

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

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

Within New York State: Yes No

Within County/City/Town/Village: Yes No

If yes to either question, please explain: _____

REPRESENTATIONS, CERTIFICATIONS AND INDEMNIFICATION

_____(name of CEO or other authorized representative of Applicant)

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

- A. **Job Listings.** In accordance with Section 858-b(2) of the New York General Municipal Law, the applicant understands and agrees that, if the proposed 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 proposed Project must be listed with the New York State Department of Labor Community Services Division (the "DOL") and with the administrative entity (collectively with the DOL, the "JTPA Entitle") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA") in which the proposed Project is located.
- B. **First Consideration for Employment.** In accordance with Section 858-b(2) of the General Municipal Law, the applicant understands and agrees that, if the proposed Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, where practicable, the applicant must 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 proposed Project.
- C. **Employment Reports.** The Applicant understands and agrees that, if the proposed Project receives any Financial Assistance from the Agency, the Applicant agrees to file, or cause to be filed, with the Agency, at least annually or as otherwise required by the Agency, reports regarding the number of people employed at the project site, salary levels, contractor utilization, local construction labor utilization and such other information (collectively, "Employment Reports") that may be required from time to time on such appropriate forms as designated by the Agency. Failure to provide Employment Reports within 30 days of an Agency request shall be an Event of Default under the PILOT Agreement between the Agency

and Applicant and, if applicable, an Event of Default under the Agent Agreement between the Agency and Applicant.

- D. Labor Utilization Reporting. The Applicant understands and agrees that, if the proposed Project receives any Financial Assistance from the Agency, the Applicant agrees to comply with the Labor Utilization Policy, which essentially requires providing documentation that construction bids were solicited from local firms and monthly construction labor reporting as outlined in the Policy.
- E. Hold Harmless Provision. The Applicant acknowledges and agrees that the Applicant shall be and is responsible for all costs of the Agency incurred in connection with any actions required to be taken by the Agency in furtherance of the Application including the Agency's costs of general counsel and/or the Agency's bond/transaction counsel whether or not the Application, the proposed Project it describes, the attendant negotiations, or the issue of bonds or other transaction or agreement are ultimately ever carried to successful conclusion and agrees that the Agency shall not be liable for and agrees to indemnify, defend, and hold the Agency harmless from and against any and all liability arising from or expense incurred by: (i) the Agency's examination and processing of, and action pursuant to or upon, the attached Application, regardless of whether or not the Application or the Project described therein or the tax exemptions and other assistance requested therein are favorably acted upon by the Agency, (ii) the Agency's acquisition, construction and/or installation 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.
- F. Sales Tax. In accordance with Section 874(8) of the General Municipal Law, the Applicant understands and agrees that, if the proposed Project receives any sales tax exemptions as part of the Financial Assistance from the Agency, in accordance with Section 874(8) of the General Municipal Law, the applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the applicant and all consultants or subcontractors retained by the applicant. Copies of all filings shall be provided to the Agency.

Applicant hereby understands and agrees, in accordance with Section 875(3) of the New York General Municipal Law and the policies of the Agency that any New York State and local sales and use tax exemption claimed by the Applicant and approved by the Agency in connection with the Project, may be subject to recapture and/or termination by the Agency under such terms and conditions as will be established by the Agency and set forth in transaction documents to be entered into by and between the Agency and the Applicant.

- G. Fees. By executing and submitting this Application, the applicant covenants and agrees to pay the following fees:
- (i) An Administrative Fee in accordance with the Administrative Fee Policy effective as of the date of this application, to be paid at transaction closing (unless otherwise outlined in the Project agreement or authorizing resolution). This fee will be equal to 1% of the total value of expenses that are positively impacted by the Agency incentives. The Agency may reduce the administrative fees from 1% to .50% of project costs if the total project cost is less than \$1 million. For total project costs greater than \$1 million but less than \$2 million, the fees may be reduced from 1% to .75% of project costs;
 - (ii) All fees, costs and expenses incurred by the Agency for (1) legal services, including but not limited to those provided by the Agency's general counsel or bond/transaction counsel, and (2) other consultants retained by the Agency in connection with the proposed Project; with all such charges to be paid by the Applicant at the closing or, if the closing does not occur, within ten (10) business days of receipt of the Agency's invoices therefore please note that the Applicant is entitled to receive a written estimate of fees and costs of the Agency's bond/transaction counsel;

(iii) The cost incurred by the Agency and paid by the Applicant, including bond/transaction counsel and the Agency's general counsel's fees and the processing fees, may be considered as a cost of the Project and included in the financing of costs of the proposed Project, except as limited by the applicable provisions of the Internal Revenue Code with respect to tax-exempt bond financing.

If 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 Applicant is unable to find buyers willing to purchase the bond issue requested, or if the Applicant is unable to facilitate the sale/leaseback or lease/leaseback transaction, then, upon presentation of an invoice, the Applicant shall pay to the Agency, its agents or assigns, all costs incurred by the Agency in the processing of the Application, including attorneys' fees, if any.

- H. FOIL. The Applicant acknowledges that the Agency is subject to New York State's Freedom of Information Law (FOIL). Applicant understands that all Project information and records related to this application are potentially subject to disclosure under FOIL subject to limited statutory exclusions.
- I. Financial Review. The Applicant acknowledges that the Agency shall undertake an assessment of all material information included in connection with the Application for Financial Assistance as necessary to afford a reasonable basis for the decision by the Agency to provide Financial Assistance for the Project, including, but not limited to qualification of the proposed project under the GML (including any retail analysis, as applicable), conducting a full application review, review of applicant financial history and project pro-formas, and consideration of all local development priorities
- J. The Applicant represents and warrants that the information contained in this Application, to the best of the Applicant's knowledge, is true, accurate and complete.
- K. The Applicant confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the proposed Project is in substantial compliance with applicable local, State and federal tax, worker protection and environmental laws, rules and regulations.
- L. The Applicant confirms and hereby acknowledges that as of the date of this Application, the Applicant is in substantial compliance with all provisions of Article 18-A of the New York General Municipal Law, including, but not limited to, the provisions of Section 859-a(5) and Section 862(1) of the New York General Municipal Law.
- M. The Applicant confirms and acknowledges that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any Financial Assistance and the reimbursement of an amount equal to all or part of any tax exemption claimed by reason of the Agency's involvement in the Project.
- N. The Applicant and the individual executing this application on behalf of Applicant acknowledge that the Agency and its counsel will rely on the representations and covenants made in this application when acting hereon and hereby represents that the statements made herein do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein not misleading.

Name: _____

Title: _____

Company: _____

Date: _____

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

On the __ day of _____ in the year 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signatures on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

CERTIFICATION

_____ deposes that s/he is the _____ of _____, the corporation in the attached application; that s/he has read the foregoing application and knows the content thereof; that the same is true to his knowledge. Deponent further says that the reason this verification is made by the deponent and not by _____ 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.

As an officer of said corporation (hereinafter referred to as the “Applicant”), deponent acknowledges and agrees that applicant shall be and is responsible for all costs incurred by the nonprofit Tompkins County Industrial Development Agency (hereinafter referred to as the “Agency”) acting in behalf of the attached application whether or not the application, the project it describes, the attendant negotiations and ultimately the necessary issue of bonds or transfer of title are ever carried to successful conclusion. If, for any reason whatsoever, the Applicant fails to conclude or consummate necessary negotiations or fails to act 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 Applicant are unable to find buyers willing to purchase the total bond issue required or financing for the project, then upon presentation of invoice, the Applicant shall pay to the Agency, its agents, or assigns all actual costs involved in conduct of the application, up to that date and time, including but not limited to fees of bond counsel for the Agency and fees of general counsel for the Agency. Upon successful conclusion and sale of the required bond issue or transfer of title the Applicant shall pay to the Agency an administrative fee set by the Agency, not to exceed an amount equal to 1% of the total project cost. The cost incurred by the Agency and paid by the Applicant, including bond counsel, the Agency’s general counsel’s fees and the Agency’s administrative fees, may be considered as a cost of the project and included as part of the resultant bond issue.

Applicant hereby understands and agrees, in accordance with Section 875(3) of the New York General Municipal Law, that any New York State and local sales and use tax exemption claimed by Applicant and approved by the Agency in connection with the Project may be subject to recapture by the Agency under such terms and conditions as will be set forth in the Agent Agreement to be entered into by and between the Agency and the Applicant. The Applicant further represents and warrants that the information contained in this Application, including without limitation information regarding the amount of New York

~~State and local sales and use tax exemption benefits, is true, accurate and complete.~~

~~SIGNATURE PAGE FOLLOWS ON SEPARATE PAGE~~

NEW YORK STATE FINANCIAL REPORTING REQUIREMENTS FOR INDUSTRIAL DEVELOPMENT AGENCIES

Please be advised that the New York General Municipal Law imposes certain reporting requirements on IDAs and recipients of IDA financial assistance. Of particular importance to IDA applicants is Section 859 (copy attached). This section requires IDAs to transmit financial statements within 90 days following the end of an Agency's fiscal year ending December 31, prepared by an independent, certified public accountant, to the New York State Comptroller, the Commissioner of the New York State Department of Economic Development. These audited financial statements shall include supplemental schedules listing the following information:

1. All straight-lease ("sale-leaseback") transactions and whether or not they are obligations of the Agency.
2. All bonds and notes issued, outstanding or retired during the period and whether or not they are obligations of the Agency.
3. All new bond issues shall be listed and for each new bond issue, the following information is required:
 - a. Name of the project financed with the bond proceeds.
 - b. Whether the project occupant is a not-for-profit corporation.
 - c. Name and address of each owner of the project.
 - d. The estimated amount of tax exemptions authorized for each project.
 - e. Purpose for which the bond was issued.
 - f. Bond interest rate at issuance and, if variable, the range of interest rates applicable.
 - g. Bond maturity date.
 - h. Federal tax status of the bond issue.
 - i. Estimate of the number of jobs created and retained for the project.
4. All new straight lease transactions shall be listed and for each new straight lease transaction, the following information is required:
 - a. Name of the project.
 - b. Whether the project occupant is a not-for-profit corporation.
 - c. Name and address of each owner of the project.
 - d. The estimated amount of tax exemptions authorized for each project.
 - e. Purpose for which each transaction was made.
 - f. Method of financial assistance utilized for each project, other than the tax exemptions claimed by the project.
 - g. Estimate of the number of jobs created and retained for the project.

Please sign below to indicate that you have read and understood the above.

Name: _____

Title: _____

Company: _____

Date: _____

**TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY
PROJECT RECAPTURE POLICY**

Adopted _____, 2016

Pursuant to and in accordance with Section 874 (10)-(12) of the General Municipal Law (“GML”), the Tompkins County Industrial Development Agency (the “Agency”) hereby establishes a Project Recapture and Termination Policy for the suspension, discontinuance and/or recapture of Financial Assistance (as defined herein), or for the modification of any Payment in Lieu of Tax Agreement (“PILOT Agreement”) to require increased payments under circumstances as specified herein, which may include but shall not be limited to events of material violation of the terms and conditions of any Project Agreement (as defined herein).

The Agency in its discretion reserves the right pursuant to this policy and any applicable Project Agreement to suspend, discontinue and/or recapture any financial assistance granted for a project that may include: (i) sales and use tax exemptions; (ii) mortgage recording tax exemptions; and (iii) real property tax exemptions governed by a PILOT Agreement (collectively, “Financial Assistance”). The Agency’s provision of Financial Assistance shall be administered and governed pursuant to one or more Project Agreements, which shall include (i) an Agent, Financial Assistance and Project Agreement, (ii) Leaseback Agreement, and/or (iii) PILOT Agreement, along with related documents and herein, each a “Project Agreement.”

I. Recapture of Financial Assistance

The Agency reserves the right to suspend, discontinue and/or recapture any financial assistance previously conferred to a Company where it is determined through the process specified below, that:

i. Financial Assistance was obtained as a result of a knowing, misstatement of a material fact where such misstatement occurred in the Application for Financial Assistance, in any written submission, or in any on the record verbal statement made to the Agency or Agency staff.

ii. A material violation of the terms and conditions of a Project Agreement which may include but not be limited to material shortfalls in job creation and retention projections or material violations of the terms and conditions of a Project Agreement.

iii. In accordance with GML Section 875(3), if the Agency grants any sales and use tax exemptions to any Applicant (hereinafter, the “Company”) and it is determined that: (i) the Company is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project, then the Agency is bound and shall recapture the sales and use tax benefits from the Company and the Agency, in its sole discretion, may terminate all applicable Project Agreements. The Agency’s Project Agreements shall include provisions whereby the Company will (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such

amounts to the Agency that the Agency demands in connection therewith. The Agency shall cooperate with the New York State Tax Commissioner in connection with any efforts by the State of New York to assess and determine New York State and local sales and use taxes due from the Company, together with any relevant penalties and interest due on such amounts.

iv. If the company shifts production activity to a facility outside of Tompkins County and, as a result, fails to achieve the economic benefits projected, then the Agency will declare the agreement to be in default and require the value of the incentives utilized to date to be repaid, together with any relevant penalties and interest due on such amounts.

II. Due Process for Recapture of Financial Assistance

When Agency staff become aware of a potential issue with respect to a potential violation related to the provision of Financial Assistance to an Applicant and is unable to otherwise remedy the issue, staff shall notify the Agency board.

The Agency shall at least annually assess the progress of each project that continues to receive financial assistance, or project that is otherwise active, toward achieving job retention or creation or other material aspects of the terms and conditions of a Project Agreement. Such assessments shall be provided to the Agency board. The Agency board shall then make a decision to commence a recapture proceeding if any material violations have occurred.

Agency Decision to Commence a Proceeding. The Agency board shall cause a proceeding to be commenced to determine if Financial Assistance should be recaptured.

Notice to the Applicant. If a decision is made to commence a proceeding to recapture Financial Assistance, then the Applicant shall be provided written notice (“Notice”) of: (i) the alleged Material Factor(s) violation, (ii) the potential for recapture of Financial Assistance as may be considered with respect to the commencement of such a proceeding, (iii) their rights to be heard and to appeal any such determination, and (iv) the date and time where a meeting will take place to consider the matter.

Due Process Provisions.

- (i) **Sufficient Time to Prepare a Response:** An Applicant shall be given ten (10) business days from the date said Notice is received or deemed received to prepare and submit a written response to any alleged violation(s).
- (ii) **Opportunity to be Heard:** An Applicant will be provided an opportunity to make a written or written and oral presentation to the Agency following the ten (10) day Notice period.
- (iii) **Representation:** An Applicant shall have the right to be represented by counsel, or to appear without counsel.
- (iv) **Creation of Written Record:** The Agency shall create a full written or electronic record that includes a statement of the alleged violation(s), the response, all evidence that has been submitted and a transcript or summary of any oral

presentations that have been made. The record shall also include the vote, if any, taken by the Agency.

- (v) Executive Session: To the extent allowed by the New York State Open Meetings Law, at the request of an Applicant, the Agency may go into executive session to receive certain confidential information that pertains to the considerations being made by the Agency.
- (vi) Agency Recommendation: The Agency shall vote on a resolution recommending whether to recapture Financial Assistance.

III. Flexible Application Recapture of Agency Benefits

To the extent permitted by law and Agency policies, the Agency board shall have broad discretion in recommending how to implement the termination of Project Agreements, suspension or discontinuance of Financial Assistance and recapture of Financial Assistance. Such recommendation related thereto shall be based upon the circumstances that trigger such action.

The Agency Board shall consider the extent of the violation, the duration of such violation, the cause of such violation and the extent to which there was a creation of net new jobs, new investment, the use of local labor and such other material factors as may have been considered at the time of the inducement.

The following criteria will be used to determine if a valid explanation exists for failure to achieve the economic benefits projected by the Company:

- a. Natural Disaster: if a natural disaster such as a fire, flood, or tornado disrupts the business
- b. Industry Trends: An evaluation of industry trends will be made relevant to the company, and a determination reached as to whether the company is in a market that is declining. International and national data will be used in the evaluation. An industry is considered in decline when, measured by the appropriate SIC code, it experiences employment or revenue declines--beyond its control--of 10% or more over 3 years.
- c. Loss of Major Supplier or Customer: if the loss of a customer or supplier represents 15% or more of the sales of the company
- d. Productivity Improvements: if new technology, equipment or general productivity improvements result in the need for less than projected employees or investment

IV. Recapture Payments

Sales Tax and Mortgage Recording Tax Recapture. If a determination is made to recapture New York State and local sales and use tax exemptions and mortgage recording tax exemptions, in accordance with General Municipal Law and Agency policies, the maximum amount that may be recaptured is equal to, but may be less than, the sum total of New York State and local sales and use tax exemption and/or mortgage recording tax exemption benefit so obtained and utilized.

PILOT Payment Recapture. If a determination is made to recapture an abated amount of real property tax payment or payments provided by and through the Agency to an Applicant under the terms of a PILOT Agreement, the maximum amount that may be recaptured is equal to, but may be less than, the sum total of real property tax abatement received by the Applicant in the year or

years that the violation(s) of Material Factors occurred as so determined by the Agency and as provided in the related inducement resolution authorizing the provision of Financial Assistance to the Applicant.

Interest and Recapture Payment Amount and Distribution. Interest shall be due from the date when the Company failed to achieve the economic benefits projected by the Company to the date of payment, at the rate of interest for judgments set forth in New York Civil Practice Law and Rules §5004 and any future amendments thereof. The taxing jurisdictions will receive the recaptured property tax, sales and use tax, and/or mortgage recording tax, plus the estimated interest income the taxing jurisdictions would have earned if they had collected the taxes when due, as calculated and determined by the Finance Director of Tompkins County, unless the taxing jurisdiction specifically waives receipt of the recapture payments in advance. The remainder of the interest shall constitute an Administrative Fee of the Agency and shall be retained by the Agency and used for future economic development activities.

V. Right to Appeal

All determinations by the Agency with respect to recapture shall be final. Such determination may be contested by commencing a proceeding under Article 78 of the Civil Practice Law and Rules (CPLR) in the Tompkins County Supreme Court.

VI. Rights and Remedies of the Agency

The Agency reserves all rights and remedies pursuant to applicable law, including the right to enforce payment of all recaptured sums through applicable provisions of the Project Agreement(s) and to institute legal actions to recover any recaptured sums.

Draft – proposed new policy to comply with NYS Legislation (June 2016)

**TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY
UNIFORM PROJECT EVALUATION POLICY**

Adopted _____, 2016

Pursuant to and in accordance with Section 859-a(5) of the General Municipal Law (“GML”), the Tompkins County Industrial Development Agency (the “Agency”) hereby establishes a Uniform Project Evaluation Policy for the evaluation and selection for all qualifying categories of projects for which the Agency may provide Financial Assistance in accordance with its Uniform Tax Exemption Policy (“UTEPP”).

For each Application for Financial Assistance received by the Agency, the following must occur prior to authorizing the project and provision of Financial Assistance:

- 1) The Agency shall undertake an assessment of all material information included in connection with the Application for Financial Assistance as necessary to afford a reasonable basis for the decision by the Agency to provide Financial Assistance for the Project, including, but not limited to qualification of the proposed project under the GML (including any retail analysis, as applicable), conducting a full application review, review of applicant financial history and project pro-formas, and consideration of all local development priorities;
- 2) A written cost-benefit analysis shall be developed by the Agency that identifies
 - a. The extent to which a project will create or retain permanent, private sector jobs,
 - b. The estimated value of any tax exemptions to be provided,
 - c. The amount of private sector investment generated or likely to be generated by the proposed project,
 - d. The likelihood of accomplishing the proposed project in a timely fashion,
 - e. The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts,
 - f. Any other public benefits that might occur as a result of the project, including the economic condition of the area at the time of the application, the effect of the proposed project upon the environment and surrounding property, and the extent to which the proposed project will provide a benefit (economic or otherwise) not otherwise available within the municipality in which the project is located;
- 3) The Agency’s Application for Financial Assistance shall include a statement by the applicant that the project, as of the date of the application, is in substantial compliance with all provisions of GML Article 18-A, including, but not limited to, the provisions of GML Section 859-a(5) and 862(1)

AGENCY PROJECT AGREEMENT

THIS AGREEMENT is made as of the _____ day of _____, 20____, by and between the **Tompkins County Industrial Development Agency**, a public benefit corporation of the State of New York, having its offices at 401 East State Street, Suite 402B, Ithaca, New York 14850 (the “Agency”) and _____, a _____ *[type of entity]* duly formed and validly existing pursuant to the laws of the State of _____, with a business address of _____ (the “Company”).

WITNESSETH:

WHEREAS, the Agency was created by Section 895 of the General Municipal Law of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the “Act”) as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company desires to _____ *[description of the project]* (the “Project”); and

WHEREAS, by Resolution dated _____ (the “Resolution”), the Agency authorized the Company to act as its agent for the purposes of acquiring, constructing and equipping the Project as set forth above, subject to the Company entering into this Agency Project Agreement; and

WHEREAS, the Agency approved the following financial assistance to the Company, as set forth in the Resolution: _____ *[description of amount and type of financial assistance to be provided to the Company]*; and

WHEREAS, the Agency purpose to be achieved by providing the financial assistance to the Company is as follows, as set forth in the Resolution: _____;

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. Scope of Agency. The Company hereby agrees to limit its activities as agent for the Agency under the authority of the Resolution to acts reasonably related to the acquisition, construction and equipping of the Project. The right of the Company to act as agent of the Agency shall expire on _____ *[date]*, unless extended as contemplated by the Resolution.
2. The parties are contemplating that the Agency and the Company will enter into a lease agreement from the Company to the Agency (the “Lease Agreement”), a leaseback agreement from the Agency to the Company (the “Leaseback Agreement”) and payment-in-lieu-of-tax agreement (the “PILOT Agreement”) with the Company. The Company agrees not to take title to any property as agent for the Agency until the Leaseback Agreement and PILOT Agreement have been executed and delivered.
3. Representations and Covenants of the Company. The Company makes the following representations and covenants in order to induce the Agency to proceed with the Project:

- a. The Company is a limited partnership duly formed and validly existing under the laws of the State of New York, has the authority to enter into this Agreement, and has duly authorized the execution and delivery of this Agreement.
- b. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute 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 such instrument or agreement.
- c. The Project and the operation thereof will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Project, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection.
- d. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, an in which an adverse result would in any way diminish or adversely impact on the Company's ability to fulfill its obligations under this Agreement.
- e. The Company covenants that the Project will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (I) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist at the Project except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances at the Project or onto any other property, (iii) that no asbestos will be incorporated into or disposed of at the Project; (iv) that no underground storage tanks will be located at the Project, and (v) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence. The Company, upon receiving any information or notice contrary to the representations contained in this section, shall immediately notify the Agency in writing with full details regarding the same. The Company hereby releases the Agency from liability with respect to, and agrees to defend, indemnify, and hold harmless the Agency, its executive director, directors, members, officers, employees, agents, representatives, successors and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorney's fees) related in any way to any violation of the covenants or failure to be accurate of the representations contained in this section. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental audit performed with respect to the Project, the Company agrees to pay the expenses of same to the Agency upon demand, and agrees that upon failure to do so, its obligation for such expenses shall be deemed to be additional rent.

- f. The Agency encourages the Company to use an open bidding process for construction contracts; to give opportunities for employment in the construction of the Project to persons residing in Tompkins County, New York; and to award contracts for work in connection with the Project to eligible business concerns which are located in, or owned in substantial part by persons residing in, Tompkins County, New York.
- g. The Company commits to the following investment amount: _____
- h. The Company states that the current number of jobs it provides is _____ and projects that the Project will result in the creation of the following number of jobs: _____
- i. The Company makes the following commitment regarding the use of local labor: _____
- j. The Company shall provide a certified statement and documentation annually, containing the following information, and such other information required by the Agency:
 - i. The number of full time equivalent (“FTE”) jobs retained and/or created as a result of the financial assistance, by category, including FTE independent contractors or employees of independent contractors that work at the project location;
 - ii. That the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created that were provided in the application are still accurate, and if it is not still accurate, a revised list of salary and fringe benefit averages or ranges for categories of jobs retained and/or jobs created.
- k. In accordance with Section 875(3) of the New York General Municipal Law, the Company covenants and agrees that, if it receives New York State and local sales and use tax exemption benefits (“sales and use tax exemption benefits”) from the Agency, and it is determined that: (I) the Company is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project, then the Company will (I) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands in connection therewith. The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine New York State and local sales and use taxes due from the Company, together with any relevant penalties and interest due on such amounts.
- l. The Company further covenants and agrees that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in amount up to _____, and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency cannot exceed _____.

m. The Company will receive an abatement of a portion of the mortgage recording tax, in the amount of one-quarter of one percent of the total amount of the mortgage (for example, if the Company borrows \$2,500,000.00, the amount of the mortgage tax that will be abated is \$6,250.00). The Company will make a payment at closing in lieu of the remaining portion of the mortgage recording tax, in the amount of three-quarters of one percent of the total amount of the mortgage.

4. Payments in Lieu of Taxes (“PILOT” payments): The Company will make PILOT payments as set forth in the PILOT Agreement to be executed by the parties. The estimated dates when PILOT payments are to be made and the estimated amounts to be paid to each affected taxing jurisdiction, or a formula by which the amounts will be calculated, are as follows:

5. Suspension or discontinuance of financial assistance; return of all or part of financial assistance: The Company shall be subject to discontinuance of financial assistance and the return of all or part of the financial assistance provided by the Agency as set forth in the Agency Recapture Policy.

6. Hold Harmless Provision. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, directors, officers, members, employees, agents (except the Company), representatives, successors and assigns harmless from and against any and all (I) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Project or breach by the Company of this Agreement or (ii) liability arising from or expense incurred by the Agency’s financing, rehabilitating, renovation, equipping, owning and leasing of the Project, including without limitation the generality of the foregoing, all causes of action and reasonable attorney’s fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability, except that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the Agency or any other person or entity to be indemnified.

7. Insurance Required. Effective as of the date hereof and until the Agency consents in writing to a termination, the Company shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

a. Insurance against loss or damage by fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full replacement value of the Project, exclusive of excavations and foundations, as determined by a recognized appraiser or insurer selected by the Company or (ii) as an alternative to the above requirements (including the requirements of periodic appraisal), the Company may insure the Project under a blanket insurance policy or policies covering not only the Project but other properties as well.

- b. Worker'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 who are located at or assigned to the Project.
- c. Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Company by any applicable worker's compensation law; and a blanket excess liability policy in the amount not less than \$3,000,000, protecting the Company against any loss or liability or damage for personal injury or property damage.

8. Additional Provisions Regarding Insurance.

- a. All insurance required by Section 4(a) hereof shall name the Agency as a named insured and all other insurance required by Section 4 shall name the Agency as an additional insured. All insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State of New York. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (I) payment of the losses of the Company and the Agency as their respective interests may appear, and (ii) at least thirty (30) days' prior written notice of the cancellation thereof to the Company and the Agency.
- b. All such policies of insurance, or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Agency prior to the commencement of the Project. Prior to expiration of any such policy, the Company shall furnish the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agreement.

9. Errors and Omissions; Compliance. In consideration for the assistance provided to the Company by the Agency, the Company agrees, if requested by Agency, to fully cooperate and execute and/or re-execute any document that should have been signed at or before the closing of the transaction described in this Agreement, or a corrected or modified version of any such documents, where the document was inadvertently not executed at or before the closing, or the version executed at or before the closing contained any typographical, clerical or mathematical error, or erroneously contained or omitted any provision that does not conform with the statutory authority and established policies of the Agency.

10. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but which together shall constitute a single instrument.

11. All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Agency: Tompkins County Industrial Development Agency
401 East State Street, Suite 402B
Ithaca, New York 14850

With a copy to: Mariette Geldenhuys, Attorney and Mediator
401 East State Street, Suite 306
Ithaca, New York 14850

To the Company: _____

With a copy to: _____

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this section.

12. This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein, and the parties hereby agree to submit to the personal jurisdiction of the federal or state courts located in Tompkins County, New York.

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

Tompkins County Industrial Development
Agency

Company

By: _____
Name: Heather D. McDaniel
Title: Administrative Director

By: _____
Name:
Title:

CERTIFICATION

_____ [Name], the _____ [Title] of
_____ [Company] hereby certify 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.

Date: _____

[Company]

By: _____

Name: _____

Title: _____

**Tompkins County Industrial Development Agency
Board of Directors Meeting DRAFT Minutes
May 12, 2016
Tompkins County Legislative Offices
121 E. Court Street, Ithaca, NY**

Present: Jim Dennis, Jennifer Tavares, Will Burbank, Martha Robertson, Rich John, Grace Chiang

Staff Present: Ina Arthur, Heather McDaniel, Mariette Geldenhuys

CALL TO ORDER

Jim Dennis called to order the meeting of the **Tompkins County Industrial Development Agency** at 4:20 pm

PRIVILEGE OF THE FLOOR

None.

BUSINESS

2015 Jobs Report

Ms. McDaniel reviewed a memo that outlined the job creation of the 25 active PILOT projects. Thirteen of these 25 did not make their job creation goals for 2015. The TCIDA's policy is to review the information and then to decide whether to initiate recapture procedures. Ms. McDaniel is not recommending initiating recapture for any of the 13 projects. For a number of projects, 2015 was the last year of their PILOT agreement and thus not subject to recapture. For two other projects, this was the first year of occupying their new buildings, so job creation has not been completed yet. The remainder of the projects have reasonable justifications for not meeting job creations goals and continue to provide benefit to the community.

Jim Dennis moved to accept the 2015 Job Report and the recommendation not to pursue recapture of incentives for the projects that did not meet job creation goals. Jennifer Tavares seconded the motion. The motion was approved 6-0.

Compliance with NYS IDA Legislation – Discussion

Ms. McDaniel reviewed proposed changes to the TCIDA's application, recapture policy and uniform evaluation and selection criteria. The actual adoption of any changes will be considered at the June IDA meeting. These modifications come after changes to the NYS IDA legislation that will go into effect at the end of June. A "red-line" version of the changes to the application and other documents will be provided at the June IDA meeting. It was also suggested that one application for use by both IDA and LDC projects be used.

Quarterly Budget Update

Mr. Dennis left the meeting. Ms. Robertson, as Vice Chair, stepped in to lead the discussion.

Ms. McDaniel commented that the 1Q 2016 TCIDA Budget Report is being reported to keep the board informed as to expenses and income.

STAFF REPORT

Ms. McDaniel reported that a public hearing was held for the Therm Inc. Project on May 11, 2016.

MINUTES

Will Burbank moved to approve the draft minutes from the April 14, 2016 TCIDA Board meeting. Rich John seconded the motion. The motion was approved 5-0.

The meeting was adjourned at 5:15 pm