

TIOGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY
PROJECT POLICY MANUAL

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A. INTRODUCTION

The Tioga County Industrial Development Agency (the “IDA”) was created under New York law to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing certain types of projects and facilities, including recreational facilities. The purpose of the IDA’s activities is to advance the job opportunities, health, general prosperity and economic welfare of the citizens of Tioga County and to increase trade and attract tourists.

To carry out the purposes for which it was created, the IDA assists applicants through the following mechanisms, which are described in greater detail in this Manual: sale-leasebacks (see Part O), issuance of tax-exempt bonds for qualified projects (see Part Q), issuance of taxable bonds (see Part P), and issuance of a combination of taxable and tax-exempt bonds.

Participation in an IDA program may provide an applicant with one or more of the following economic benefits, which are discussed in greater detail in this Manual: financing (through bond issuances), exemption from sales and use taxes with respect to certain machinery, equipment and materials acquired in connection with an IDA project, abatement of (and, in some cases, a limited exemption from) real property taxes in connection with IDA projects and, if the project involves a mortgage on the real property to which the IDA takes title, exemption from mortgage recording taxes.

The purpose of this Manual is to describe to you in general terms the types of IDA programs available to applicants, the general structure, documentation and timelines of the various types of IDA transactions and the obligations of the applicant in an IDA transaction. This will allow you to assess the compatibility of your proposed project with the various types of IDA programs. This Manual also includes the form of IDA Application and Environmental Assessment Form (“EAF”) you will be required to submit if you decide to proceed with an IDA transaction.

PLEASE TAKE THE TIME TO REVIEW THIS MANUAL CAREFULLY. AFTER YOU HAVE REVIEWED IT, AND BEFORE YOU PREPARE THE APPLICATION OR THE EAF, PLEASE CONTACT THE IDA EXECUTIVE ADMINISTRATOR OR EXECUTIVE DIRECTOR OR A MEMBER OF THE TIOGA COUNTY DEPARTMENT OF ECONOMIC DEVELOPMENT AND PLANNING TO DISCUSS YOUR PROJECT AND TO DETERMINE ITS COMPATIBILITY WITH THE OBJECTIVES AND CRITERIA OF THE IDA PROGRAM FOR WHICH YOU INTEND TO APPLY.

B. FINANCIAL CONSIDERATIONS

In determining whether to participate in an IDA program, an applicant should evaluate both the financial benefits of participation and the transaction costs such participation will involve.

1. Financial Benefits

The projected financial benefits a particular project will receive by virtue of IDA involvement depends on many factors, including the nature of the IDA involvement and the size and nature of the proposed project. The IDA Executive Administrator or Executive Director or a member of the Tioga County Department of Economic Development and Planning can help you determine the projected financial benefits in your particular case. However, the following general information will be useful to you.

a. Bond Financing. The issuance of IDA bonds may enable an applicant to obtain financing that would otherwise be unavailable or only available at less favorable rates or with less favorable payment terms.

b. Real Property Tax Abatements. Because the IDA will own or otherwise control the project real property, the real property is exempt from real property taxes under New York law. However, the practice of the IDA is to require the applicant (unless the applicant is a not-for-profit corporation that meets certain requirements) to make payments in lieu of real property taxes in a manner that will be reflected in a Payment-in-Lieu-of-Tax (“PILOT”) Agreement. New York law requires the applicant to pay all special assessments on the property in the same manner as if the applicant owned the property, but the PILOT Agreement reduces the amount the applicant would otherwise pay in real property taxes if it retained title to the property. The IDA has adopted a Uniform Tax Exemption Policy, set forth in Part E of this Manual, which describes the IDA’s policies regarding real property tax abatements.

c. Exemptions from Sales and Use Taxes. Purchases of construction materials, supplies and fixtures, purchases of materials consumed in the construction process, leasing of construction equipment and purchases of equipment installed in or used at a project to which the IDA holds title can all be exempt from New York State and local sales and use taxes if the documents are properly drawn.

This can result in significant sales tax savings. If, for instance, a \$4 million project includes \$2 million of materials costs and \$500,000 of supplies and consumable items, the sales tax savings in a transaction in which the developer is appointed as the IDA’s agent is \$200,000.00 (assuming a combined sales tax rate of 8%).

Likewise, the purchase of equipment that becomes part of a project that is owned by the IDA is exempt from sales tax. Because equipment costs and installation do not have large labor factors, the higher the percentage of equipment in a project, the more significant the sales tax savings. The sales tax savings for equipment owned by the IDA as part of a project can be important for warehouse equipment, store fixtures, computers, word processing systems and other

office equipment. Production equipment, as defined in the applicable New York sales tax provisions, is exempt from sales tax irrespective of IDA ownership.

The IDA's Uniform Tax Exemption Policy, set forth in Part E of this Manual, describes the IDA's general policies regarding sales and use tax exemptions, and certain other sales tax issues are addressed in Part J of this Manual.

d. Mortgage Recording Taxes. A mortgage granted by the IDA to secure its bonds or to secure financing in connection with a sale-leaseback transaction is exempt from the combined New York State and local mortgage recording tax of 3/4% of the principal amount of the mortgage. This mortgage recording tax can be a substantial expense for the developer or owner of a sizable project and can be completely avoided, in most cases, by the IDA's participation in the transaction. For example, a mortgage securing a \$5 million conventional bank loan will be subject to a mortgage recording tax of \$37,500 in Tioga County. However, a mortgage granted by an IDA securing the same principal amount will be entirely exempt from this tax. Obviously, the larger the amount secured by the IDA mortgage, the more valuable this benefit becomes.

2. Transaction Costs

Although some of the transaction costs listed below are particular to IDA transactions, most of the cost categories listed will be present in any type of financing arrangements.

a. Agency Fees. The IDA charges an application fee in the amount of \$2,500.00 in connection with all applications submitted to it. In the event that multiple public hearings are required, \$500.00 per hearing will be charged in addition to the application fee. In addition, the IDA charges an administrative fee, payable at closing, determined as set forth in Schedule A, the amount of which depends on the type and size of the transaction. For certain transactions, as described on Schedule A, the IDA may require payment of an ongoing annual administrative fee.

b. Bond or Transaction Counsel/Agency Counsel. In addition to the payment of its own counsel fees, an applicant is responsible for payment of the fees and disbursements of Bond Counsel (called "Transaction Counsel" in a sale-leaseback transaction)* and IDA counsel ("Agency Counsel"), whether or not the transaction ultimately closes. Transaction Counsel fees in sale-leasebacks typically range from \$7,500 to \$10,000, plus disbursements, depending on degree of complexity and whether a lender is involved. Agency Counsel fees in a sale-leaseback typically range from 1/3 to 1/2 of Transaction Counsel's fees, but may be greater depending on the degree of involvement required of Agency Counsel. Bond Counsel fees and Agency Counsel fees in bond transactions vary greatly depending on many factors, including, but not limited to, the size of the bond issue, whether the bonds are taxable, tax-exempt or a combination thereof (for a comparably-sized bond issue, Bond Counsel and Agency Counsel fees generally are lower for a taxable bond issue), whether the bonds are privately placed or publicly offered (for a

* Throughout this Manual, we have frequently used only the term "Bond Counsel", intending the term to mean either Bond Counsel or, in a sale-leaseback transaction, Transaction Counsel.

comparably-sized bond issue, Bond Counsel and Agency Counsel fees generally are lower for in private placement), whether a credit enhancement such as a letter of credit or bond insurance is involved (Bond Counsel and Agency Counsel fees generally are higher for credit-enhanced deals), and whether the project will receive financing other than the bond issue (JDA, UDC, conventional financing, etc.). For all types of transactions, complicated real estate, environmental, tax or similar issues will affect the fees of Bond Counsel and Agency Counsel. Once you have submitted a draft application to the IDA (see Part C), the IDA will work with you to obtain a fee estimate from Agency Counsel and Bond Counsel before you submit your final application.

In addition to Bond Counsel's and Agency Counsel's fees, the applicant is also responsible for their respective disbursements. Disbursements include the cost of photocopying, long distance telephone calls, overnight and messenger delivery, facsimiles, closing books, travel, record searches and other out-of-pocket costs and expenses, and will vary depending on circumstances such as how many drafts of documents are circulated, the frequency and duration of conference calls and drafting conferences and the demands of the parties for overnight deliveries and telecopies.

c. Company Counsel. The applicant will be required to use its own counsel ("Company Counsel") in an IDA transaction. The IDA requires that Company Counsel issue an opinion regarding certain matters, such as (but not limited to) the applicant's authority to enter into the IDA transaction and its ability to perform its obligations in connection therewith. Company Counsel also is responsible for handling the various real estate aspects of the transaction (e.g., making sure any objections to title are removed before the property is conveyed to the IDA, etc.) and making sure all necessary action is taken to authorize the applicant's participation in the transaction (corporate resolutions, etc.) The fee of Company Counsel is a matter to be determined between the applicant and Company Counsel.

d. Insurance. The applicant is responsible for providing certain insurance coverage regarding the project, as described in greater detail in Part I of this Manual. The applicant should determine early in the transaction the specific amounts of coverage the IDA will require in order to determine the cost of such coverage. In many cases, the applicant will find that it maintains equivalent insurance coverage in the normal course of its business activities, with the only necessary changes being the reflection of the IDA's ownership of the property, the naming of the IDA as an additional named insured and the provision of insurance certificates to the IDA at or before closing. As indicated in Part I, any lender or other mortgagee or secured party may impose additional insurance requirements that may affect the cost of insurance.

e. Survey. The IDA may require an instrument survey of the parcel to be conveyed to it. The IDA generally requires preparation of a new survey in connection with a project, and will not accept a survey prepared more than six months before the contemplated closing date of the transaction. The survey must show the dimensions of the parcel, all angles, any improvements on the parcel, any encroachments and all easements affecting the parcel. In some cases, additional information, such as setback requirements, may be required. Any lender or other mortgagee in the transaction may have additional requirements. The survey must be certified to the IDA, the applicant and the title insurer. If the transaction is a bond issuance involving a trustee, the survey must be certified to the trustee. Any lender or other mortgagee in the transaction will require certification to it as well. The cost of an instrument survey is determined by the size of parcel and

when it was last surveyed, and the applicant can obtain a quote directly from the surveyor it intends to use.

f. Title Insurance. The IDA may also require a title insurance policy insuring its fee interest in the parcel and insuring that the deed conveys good and marketable title to the IDA free and clear of all liens and encumbrances except for liens created in conjunction with the IDA transaction and other liens approved by the IDA. Any lender or other mortgagee involved in the transaction generally will require a mortgagee title policy as well. The applicant also may wish to purchase a TIRSA IDA Endorsement, which is attached to any title insurance policy insuring the IDA's fee interest in the parcel, and which affords the benefits of that policy to the IDA's subsequent grantee, provided that such grantee is either the grantor of the deed that conveyed title to the IDA or that grantor's nominee. The cost of the TIRSA IDA Endorsement is \$25.00.

Title insurance generally protects the owner of an interest in, or the mortgagee with respect to, real property against loss, up to the stated amount of the policy, by reason of defects in the owner's title or in the mortgagee's lien. The insurance coverage is subject to certain more or less standard conditions and stipulations and certain specific exceptions from coverage. In any bond transaction secured by real property, the trustee or, if there is no trustee, the bond purchaser will almost always require a policy of mortgagee title insurance which insures the validity and priority of the mortgage as a good and valid first lien on the real property, subject to any exceptions to title approved by it.

The applicant will pay a one-time premium for each policy it obtains. Title companies will quote a premium for each policy according to their standard rate schedule, which will primarily be based upon the stated amount of the policy and the number of other policies issued (for example, if a title company issues a fee title policy, it may discount the premiums it would otherwise charge for a mortgagee policy or a leasehold policy). The IDA will require its policy to have a principal amount of at least the amount of the financing involved in the transaction (i.e., the amount of any conventional loan or, in a bond transaction, the principal amount of the bonds). In a sale-leaseback transaction involving no financing, Agency Counsel will determine the required principal amount of the policy.

g. Recording Fees. The applicant will be required to pay all recording fees in connection with the transaction. These fees will be paid at closing in the form of a check payable to the Tioga County Clerk and given to the title company or other person or entity charged with recording the documents. The recording fees will be based on the County Clerk's standard fee schedule according to the number and type of documents to be recorded and the number of pages of each recorded document. The title company and Company Counsel will determine the amount of recording fees before closing.

h. Lender Fees. Any lender involved in the transaction is likely to have fees in connection with the issuance of the commitment letter and the services of its counsel in connection with the transaction, and may impose other fees as well. The applicant should consult with its lender to determine its fees.

i. Bond Issuance Fees. A bond issuance typically involves higher fees because of the complexity of the transaction and the number of parties involved. The placement agent or underwriter, as the case may be, generally will work with the applicant and the other parties to the transaction to provide the applicant with an estimate of the fees involved. Fees in these categories can vary widely, so the applicant should obtain estimates from two or more entities in each category, if possible. Among the categories of fees possible in a bond issue are:

- (i) Fees of placement agent or underwriter, as applicable, will vary depending on the size, nature and complexity of the transaction and the type of offering;
- (ii) Fees of any trustee (and fees of trustee's counsel);
- (iii) Fees of letter of credit bank or bond insurer, if applicable (and fees of credit provider's counsel);
- (iv) Fees of rating agency, if applicable;
- (v) Cost of printing and distributing offering materials, if applicable, will depend on schedule, number of pages extent of distribution; and
- (vi) Cost of printing bonds, if applicable.

j. Public Hearing Costs. The applicant will be responsible for all costs of conducting the necessary public hearings, described in Part L of this Manual, which generally involve newspaper charges for publishing the required notices, any rental charges for the hearing location and the cost of stenographic or transcription services, if any, the IDA requires to record minutes of the public hearing.

The IDA will charge \$500.00 if an additional public hearing is necessary.

In a taxable bond issuance, the applicant can use bond proceeds to pay all or part of its transaction costs (subject to any limitations the other parties to the transaction may impose). In a tax-exempt bond issuance, the applicant cannot use more than 2% of the bond proceeds to finance costs of issuance.

C. APPLICATION

Attached to this Manual as Exhibit A is the form of Application the IDA requires all applicants for financial assistance to submit. A complete Application is essential to the determination of whether a proposed project meets the IDA's program objectives and criteria, and to a determination of how best to structure a proposed transaction. By signing and submitting the Application, you are agreeing that you have read and understood the contents of this Manual and have had sufficient opportunity to ask and have answered any questions or concerns concerning its contents. In addition, by signing and submitting your Application, you have agreed to comply with all of the terms of this Manual.

A complete Application is in the best interest of the applicant, as it flags early any potential issues and provides information necessary for drafting the transaction documents. A complete Application not only expedites a transaction, but helps reduce transaction costs as well.

A fully completed EAF (the form of which is attached to the Application) is an integral part of the Application, and no Application will be considered complete unless all questions on the EAF are answered and the form is signed. The significance of the EAF is discussed in Part D of this Manual.

PLEASE NOTE, HOWEVER, THAT YOU SHOULD FIRST SUBMIT A DRAFT OF THE APPLICATION AND EAF TO THE IDA AND REVIEW THE DRAFT WITH THE IDA EXECUTIVE ADMINISTRATOR OR EXECUTIVE DIRECTOR AND/OR ATTORNEY OR THE DIRECTOR OF TIOGA COUNTY ECONOMIC DEVELOPMENT & PLANNING BEFORE SUBMITTING A FINAL APPLICATION.

D. ENVIRONMENTAL ISSUES

1. Environmental Assessment Forms and SEQR. The IDA is a governmental entity that must comply with the New York State Environmental Quality Review Act (“SEQR”) in connection with projects it undertakes. Failure to comply properly with SEQR can result in a determination that the IDA could not properly enter into the transaction, and, in the case of bonds, that the bonds are not duly issued, resulting in the loss of all the financial benefits of IDA participation in a transaction and exposing both the IDA and the applicant to the risk of a lawsuit. Consequently, compliance with SEQR is not merely a paperwork requirement but an essential component of the IDA process, compliance with which is in the best interest of the applicant.

Compliance with SEQR requires the IDA, or another government entity involved in the financing or approval of the project (for example, an entity that must issue a zoning change or a special use permit for the project) to classify the project under SEQR and to determine to what extent environmental quality review may be necessary. The IDA or other “lead agency” must have sufficient information to make its determination, which it obtains in large part from the EAF the applicant submits to the IDA as part of its Application. In the case of many IDA projects, the IDA or other lead agency is able to conclude that the action relating to the project is “unlisted” and that no further environmental review is necessary. However, certain projects will fall within SEQR classifications that will require more extensive environmental quality review, and may involve preparation of an environmental impact statement.

The submission of a fully completed EAF with the Application (and, if any other governmental entity will be involved in the project, identification of that entity and the nature of its involvement, in order to determine which entity must act as lead agency and whether coordinated review of the action is necessary) is essential to the IDA’s involvement in the transaction. The IDA cannot adopt an Inducement Resolution for the project until SEQR’s requirements have been satisfied, and the applicant cannot begin claiming sales tax exemptions on the basis of the IDA’s involvement, or reimburse itself out of bond proceeds for certain expenditures incurred, before the IDA adopts the Inducement Resolution.

2. Environmental Audits. The IDA, in its discretion, may require the applicant to obtain an environmental audit of the real property which is the proposed site of the project. Information the IDA has, from the Application or otherwise, regarding the prior use of the site or its proposed use or the use of neighboring sites may influence its decision. If the applicant prepares or obtains an environmental audit or other environmental review for itself or other parties to the transaction, such as a lender, or if an environmental audit has been prepared (whether by the applicant or a prior owner) in connection with the property within five years before application to the IDA, a copy of such audit must be provided to the IDA.

3. Environmental Compliance and Indemnification. Because the IDA takes either fee title to or some other substantial ownership or control with respect to the real property involved in an IDA transaction, the IDA may be at risk of liability if any environmental problems are present, are discovered or arise at or near the project site. For this reason, any Lease Agreement (or, if applicable, Installment Sale Agreement) between the IDA and the applicant will contain certain environmental representations, warranties, covenants and indemnifications.

In addition, the IDA always requires the applicant to execute an Environmental Compliance and Indemnification Agreement (the “Environmental Agreement”). The IDA also may require any sublessee that is a substantial user or occupant of the project to be a party to the Environmental Agreement and may, in certain circumstances, also require the applicant’s parent corporation or other related entity to be a party to the Environmental Agreement. In a bond transaction involving a mortgage, the trustee (and/or letter of credit bank, if applicable) typically expects to be a party to the Environmental Agreement as an indemnitee, as generally does the lender in a sale-leaseback transaction involving a mortgage.

While the parties to the Environmental Agreement may be negotiable, the basic terms of the Environmental Agreement generally are not.

E. UNIFORM TAX EXEMPTION POLICY

1. General Policy—Case-by-Case Basis

The general policy of the IDA is to grant applicants real property tax abatements well in excess of those provided pursuant to Section 485-b of the Real Property Tax Law, as well as full exemption from sales, use and mortgage recording taxes. In addition, the IDA may grant enhanced benefits, including a modification of the uniform real property tax abatement schedule under Section 2, below, on a case-by-case basis for a project expected to have a significant effect on the locality where the project will be sited. The IDA considers the following factors in granting such enhanced benefits, no one of which is determinative:

- The nature of the proposed project (e.g., manufacturing, commercial, civic)
- The nature of the property before the project begins (e.g., vacant land, vacant buildings)
- The economic condition of the area at the time of the application
- The extent to which a project will create or retain permanent, private sector jobs
- The estimated value of tax exemptions to be provided
- The impact of the project and the proposed tax exemptions on affected tax jurisdictions
- The impact of the 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 likelihood of completing 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
- The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts in which the project is located
- 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

- (Civic facility projects only) The extent to which the proposed project encourages charitable entities to locate within the municipality in which the project is located.

The decision as to whether to deviate from the uniform tax exemption policy is light of the foregoing factors is within the sole discretion of the IDA as authorized by New York law.

2. Real Property Tax Abatements

A. All projects, unless deviation is approved on the basis of the factors listed in “1. General Policy—Case-by-Case Basis”, shall pay to the IDA, in lieu of real property taxes, including Village, Town, County and School taxes, the following amounts:

1st Year	0% of real property taxes otherwise due with respect to the project
2nd Year	10% of real property taxes otherwise due with respect to the project
3rd Year	20% of real Property taxes otherwise due with respect to the project
4th Year	30% of real property taxes otherwise due with respect to the project
5th Year	40% of real property taxes otherwise due with respect to the project
6th Year	50% of real property taxes otherwise due with respect to the project
7th Year	60% of real property taxes otherwise due with respect to the project
8th Year	70% of real property taxes otherwise due with respect to the project
9th Year	80% of real property taxes otherwise due with respect to the project
10th Year	90% of real property taxes otherwise due with respect to the project
11th Year	100% of real property taxes otherwise due with respect to the project

B. Under New York law, no project shall be exempt from special assessments or special ad valorem levies, including with respect to fire, water, ambulance, garbage and sewer districts and the like.

C. Where there is an existing facility and the owner of the existing facility requests tax abatement under this policy for additional construction and/or renovation, the tax abatement shall apply only to the additional assessed value of the construction/renovation.

3. Sales Tax Exemptions

A. All purchases with respect to the acquisition, construction, renovation or equipping of a project will be exempt from sales tax during the initial construction, renovation or equipping of that facility. Such sales tax exemption shall cease upon completion of such construction, renovation or equipping or upon the expiration of one year, whichever occurs first.

B. The applicant shall file all necessary documents required by the New York State Department of Taxation and Finance and shall forward copies of the same to the IDA.

C. Any recapture, described below, shall include the value of such sales tax exemptions.

D. Deviations may be made from the policy on a case-by-case basis according to the factors set forth in “1. General Policy—Case-by-Case Basis”.

E. Please review Part J of this Manual pertaining to the obligations of the applicant and the IDA with respect to sales tax exemption.

4. Mortgage Recording Tax Exemption.

A. All projects may be granted mortgage recording tax exemptions for all security documents recorded within one year from the date of the closing for all project-related transactions.

B. Any recapture, described below, shall include the value of such mortgage recording tax exemptions.

C. Deviations may be made from the policy on a case-by-case basis according to the factors set forth in “1. General Policy—Case-by-Case Basis”.

5. Recapture of Benefits

A. The IDA will recapture tax exemption benefits provided and distribute the taxes proportionately to the relevant taxing authorities in relation to the taxes abated if any events set forth in subparagraph 5.B. below occur.

B. Recapture of benefits will be determined on a case by case basis in light of such factors as sale or closure of the facility, significant employment reductions from those projected by the applicant, significant change in use of the facility (including to a use in which Industrial Development Agencies are prohibited from engaging), or any other significant change in the business activities of the applicant.

C. If any event occurs requiring a recapture, the following schedule shall be used for the recapture of tax abatement:

Event Occurs:	Recovery:
Within 1 year after PILOT Agreement effective date	100%
Within 2 years	75%
Within 3 years	50%
Within 4 years	25%
After 4 years	0%

6. Payment of PILOT

A. All PILOT payments received will be distributed to the relevant taxing authorities in proportion to the share each would have received had the parcel not been exempt, except as set forth below.

B. In cases where a municipality expends capital funds for the establishment of a project (e.g., sewer and water connections), the taxing jurisdiction expending the capital funds shall receive 50% of all PILOT payments received until such time as the municipality is fully reimbursed or the PILOT period has expired. In cases of recapture, the municipality shall receive 50% of the monies recaptured. In cases where more than one municipality has made a capital expenditure, the municipalities shall share proportionately in the PILOT or recapture amounts received in relation to the amount expended by each municipality.

C. In cases where the IDA has obtained financing from grant projects such as Empire State Development or the New York State Department of Economic Development and is under obligation to repay such financing, the IDA reserves the right to use any or all PILOT payments or recapture payments for repayment of such debt.

D. In all other cases in which the IDA determines that a deviation from the PILOT payment policy is necessary to the project, such deviation from this policy shall be made in accordance with the laws of the State of New York.

7. Sole Discretion of IDA; Advisement by Taxing Authorities

The IDA shall notify all taxing authorities prior to extending tax-exempt status to a project, and prior to any recapture of benefits. All final decisions, however, shall be within the sole discretion of the IDA and shall be made in accordance with the laws of New York State.

8. Local Labor

The IDA's goal is to maximize the use of local labor for projects receiving financial assistance.

F. LIENS/PAYMENT AND PERFORMANCE BONDS

The applicant is required, under the terms of the transaction documents for any type of IDA transaction, to keep the project free and clear of all mechanics', materialmen's or other types of liens by reason of any labor, services or materials rendered or supplied or claimed to have been rendered or supplied with respect to all or any part of the project. Mechanics' liens must be discharged or bonded within thirty (30) days of their filing or perfection.

The IDA may, in certain situations, require the applicant to post a payment bond to ensure payment of all materialmen and suppliers, subcontractors and workers with respect to the project. The IDA also may, in certain circumstances, require the applicant to provide a performance bond to ensure the lien-free completion of the project. The IDA may, in some cases, require both. The IDA makes the determination whether to require payment and/or performance bonds on a case-by-case basis, considering factors such as the nature and financial strength of the applicant and the type and cost of construction. Whether or not the IDA requires a payment and/or performance bond, any lender involved in financing the project may require the applicant to post such bonds.

Nothing in this section shall limit the ability of the applicant to properly contest any such lien provided the applicant indemnifies, defends and holds harmless the IDA for any claims, demands or actions arising out of such liens.

G. AFFIRMATIVE ACTION/NOTICE OF JOBS

IDAs are required by law to ensure equal employment opportunities without discrimination for all employment opportunities created as a result of an IDA-financed project. To this end, such new employment opportunities must be listed by the applicant with the New York State Department of Labor, Community Services Division and the Job Training Partnership Act (“JTPA”) Service Delivery Area, unless prohibited by a collective bargaining or other labor or employment agreement to which the applicant (or, if the applicant will not be the principal user of the facility, such principal user) is a party.

The appropriate offices to be contacted are:

Department of Labor
Regional Office

Southern Tier Region

Bruce Glazier
Glendale Technology Park
2001 Perimeter Drive East, Suite 3
Endicott, N.Y. 13760-3700
Telephone: (607) 741-4500
Fax: (607) 741-4569

JTPA Service Delivery Area

Tioga County

Office of Employment and Training
Telephone: (607) 687-8500
Fax: (607) 687-7759

Except if a collective bargaining or other agreement provides otherwise, the entity creating such new employment opportunities should first consider hiring eligible job applicants who are subsequently referred by these agencies.

The IDA will require a special covenant in the Lease Agreement, Installment Sale Agreement or other appropriate agreement requiring the applicant to comply with foregoing requirement. If the applicant will not be the principal user of the project, the applicant must pass this requirement on to its sublessee(s) who will use the project. The applicant (or other user, if applicable) will be responsible to contact the appropriate agencies listed above and to receive and consider for hiring those eligible applicants referred by such agencies.

H. [RESERVED]

I. INSURANCE REQUIREMENTS

Because of the ownership interest it takes in projects, the IDA requires applicants to provide certain insurance coverage in favor of the IDA. The specific insurance requirements for a transaction will vary depending upon the size of and nature of the transaction and the nature of the project. The insurance requirements for each transaction will be detailed in the Lease Agreement (or Installment Sale Agreement) for that transaction. In general, at least the following types and coverages are required by the IDA:

1. Property Damage. Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, in an amount not less than the full replacement value of the completed project, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the applicant. If bonds are issued, coverage must be in an amount at least equal to the principal amount of the bonds. During the period the project is under construction, such policy shall be written in the so-called "Builder's Risk Form" and shall contain a provision granting the insured permission to complete and/or occupy.

2. Workers' Compensation. Workers' compensation insurance, disability benefits insurance and each other form of insurance which the applicant is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the applicant who are located at or assigned to the project site.

3. Liability. Insurance protecting the IDA and the applicant against loss or losses from liability imposed by law or assumed in any written contract (including the contractual indemnifications the applicant will make in favor of the IDA in the transaction documents) and arising from personal injury, including bodily injury or death, or damage to the property of others caused by an accident or other occurrence, with a limit of liability to be determined by the IDA depending on the nature and size of the project, but as a general rule not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage) and with a blanket excess liability coverage in an amount to be determined by the IDA depending on the nature and size of the project, but as a general rule not less than \$5,000,000 combined single limit or equivalent, protecting the IDA and the applicant against any loss or liability or damages for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the period the project is under construction.

4. Flood Insurance. A policy or policies of flood insurance in an amount not less than (i) the principal amount of the bonds (if bonds are issued) or the mortgage amount (if the project is mortgaged), or (ii) the maximum amount of flood insurance available with respect to the project under the Flood Disaster Protection Act of 1973, as amended, whichever is less. This requirement will be waived upon presentation of evidence satisfactory to the IDA that no portion of the real property on which the project is located is within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

5. Contractor's Liability Insurance. During the period the project is under construction (and for at least one year thereafter in the case of Products and Completed Operations, as set forth below), the Company shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

(i) Workers' compensation and employer's liability with limits in accordance with applicable law.

(ii) Comprehensive general liability providing coverage for:

Premises and Operations
Products and Completed Operations
Owners Protective
Contractors Protective
Contractual Liability
Personal Injury Liability
Broad Form Property Damage
(including completed operations)
Explosion Hazard
Collapse Hazard
Underground Property Damage Hazard

Such insurance shall have a limit of liability to be determined by the IDA depending on the size and nature of the project, but generally not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate (combined single limit for personal injury, including bodily injury or death, and property damage).

(iii) Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability to be determined by the IDA depending on the size and nature of the project, but generally not less than \$3,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

(iv) Excess "umbrella" liability providing liability insurance in excess of the coverages in (i), (ii) and (iii) above with a limit to be determined by the IDA depending on the size and nature of the project, but generally not less than \$5,000,000.

You should be aware that any lender involved in a transaction, or any other party (like a letter of credit bank) that takes a mortgage or security interest in the project may impose additional insurance requirements.

J. SALES TAX EXEMPTION POLICY

The IDA's general policy regarding sales tax exemptions is described in the Uniform Tax Exemption Policy contained in Part E of this Manual. The purpose of this Part is to explain the timing and procedure for claiming the sales tax exemption.

The applicant cannot begin to claim the sales tax exemption until (i) the IDA has passed its Inducement Resolution, which it cannot do until it has received a completed application and all SEQR requirements have been complied with, as described in Part C of this Manual; (ii) the applicant has executed the Inducement Agreement with the IDA, and (iii) the IDA has issued its "agency appointment letter" (sometimes called the "sales tax letter"). Accordingly, the applicant should not enter into contracts or purchase orders until these steps have occurred. In the case of long lead-time items that the applicant feels it must order before inducement, it may in some circumstances be possible to amend the contracts or purchase orders to reflect the applicant's designation as agent of the IDA. The applicant should consult Bond Counsel regarding any necessary amendments.

After the IDA has issued the sales tax letter to the applicant (the general form of which is attached to this Manual as Exhibit B), the applicant will present each of its suppliers, contractors or vendors with a copy of the letter and a completed "Contractor Exempt Purchase Certificate" (NYS Form ST-120.1) (the general form is attached to this manual as part of Exhibit B). Contracts, purchase orders and invoices should reflect that the applicant (or its agents, subagents, contractors or subcontractors, as applicable), acted as agent of the IDA in making the purchase or entering the contracts. After inducement, Bond Counsel will send you suggested sales tax language to be inserted in your bidding documents, contracts and purchase orders.

Within thirty days of the date the agency designation is made, the IDA is required to file a completed "IDA Appointment of Project Operator or Agent" (NYS Form ST-60) which form must include: a brief description of the goods and/or services intended to be exempted from sales tax; a rough estimate of the value of the goods and/or services to which the appointment relates; and the effective dates of the exemption. Unless otherwise extended by the IDA, an agency designation will only last one year.

You should be aware that the New York State General Municipal Law requires you to file an annual statement with the New York State Department of Taxation and Finance regarding the value of sales tax exemptions you, your agents, consultants or subcontractors have claimed pursuant to the authority the IDA confers upon you. The penalty for failure to file such statements is the removal of your authority to act as the IDA's agent, and the consequent inability to claim exemption from sales tax.

You also should be aware that if, for any reason, the IDA transaction never closes, you will be liable for payment of the sales tax (if applicable and you are not otherwise exempt) on all materials and equipment purchased.

K. ADDITIONAL PROJECT POLICIES

1. Extra-Territorial Projects. The IDA will not undertake any project outside or partially outside the boundaries of Tioga County unless the portion of the project outside Tioga County is contiguous with the portion of the project inside Tioga County AND the governing bodies of all other municipalities in which any part of the project is located consent in writing before the time of inducement.

2. Zoning and Planning. The IDA requires compliance with all local zoning and planning regulations for all projects it undertakes and in which it participates. The IDA also takes into consideration regional and local comprehensive land use plans and state designated urban cultural management plans.

3. Anti-Raid. The IDA will not provide financial assistance to 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 in another area of the State, unless the IDA determines, based on 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.

L. PUBLIC HEARINGS

New York law requires the IDA to hold a public hearing for all projects it undertakes (including sale-leasebacks, taxable bonds and refinancing of projects it closed before the effective date of the law in question) in which the projected value of the IDA's involvement (considering bond amount, if any, mortgage tax exemption, sales and use tax exemptions and real property tax abatements) exceeds \$100,000. The public hearing must be held after at least 10 days public notice, copies of which must be sent to the chief executive officer of each municipality and school district within which the project will be located, and must be held at a location in the municipality in which the project will be located. Consequently, the IDA will not be able to conduct public hearings at its usual meeting place for projects located in another city, town or village, and may have to rent a hearing location, at the applicant's expense.

The Notice of Public Hearing must 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 type of financial assistance the IDA proposes to provide.

The IDA will designate a hearing officer to conduct the public hearing and record the minutes. For projects which are controversial and/or for which the IDA expects a substantial attendance, it may require the presence of a stenographer or other transcription service to record the minutes, at the applicant's expense.

M. CONDITIONS TO SCHEDULING CLOSINGS

As a general rule, the IDA will not schedule a closing date unless Bond Counsel has received all of the items listed below. However, the IDA may waive this requirement if it determines, in its sole discretion, that circumstances warrant the scheduling of a closing date before Bond Counsel receives the listed items, and the applicant makes arrangements to provide the listed items to Bond Counsel in sufficient time to review before closing.

1. Instrument survey of the real property to be conveyed to the IDA, prepared within six months before the proposed closing date, and certified to the IDA and any other parties in the transaction that may require certification (such as the trustee, letter of credit bank, other lender, etc.). See Part B, item 2(e) of this Manual.
2. Title insurance policy insuring the fee interest of the IDA in the real property (any party to the transaction taking a mortgage on the property is likely to require a mortgagee title policy as well). See Part B, item 2(f) of this Manual.
3. Applicant's Certificate of Incorporation certified by the New York Secretary of State (or analogous organizational document).
4. By-Laws of the applicant (or analogous organizational document).
5. List of officers and date of election to office (or analogous information regarding principals of applicant).
6. Names of officers (or other principals) executing the required documents.
7. Certificates of good standing relating to the applicant from the New York Secretary of State and Tax Commission, as applicable.
8. List of the equipment and other personal property to be acquired and installed in the project (to serve as Exhibit B to Lease Agreement or Installment Sale Agreement).
9. Certificates of insurance evidencing the insurance required by Section 6.4 of the Lease Agreement or Installment Sale Agreement (summarized in Part I of this Manual).
10. For Tax-Exempt bonds Only -- Tax Compliance Agreement (to be prepared by Bond Counsel in conjunction with applicant), in particular (with respect to small issue manufacturing bonds):

Schedule A	--	Use of bond proceeds
	--	Summary of Use of bond proceeds
	--	Form of Accountant's Letter
Schedule B	--	Prior Issues and Capital Expenditures
Schedule C1-C5	--	Useful Lives of Assets and Average Bond Maturity

Schedule D -- Estimated Withdrawals from the Construction Fund

Schedule E -- \$40 Million Limitation

11. Copies of all contracts relating to the acquisition, construction and equipping of the project.
12. Copy of proposed subleases.
13. Bond Counsel and Agency Counsel also may require items listed in 3, 4, 5 and 7 for sublessees, guarantors or other entities involved in the transaction.

Please be aware that any lender may require special items not included on this list.

N. PROCEDURES FOR IDA TRANSACTIONS AND PARTIES RESPONSIBLE

Unless otherwise indicated below, the following steps apply to all IDA transactions.

The Commitment Letter/Term Sheet (item 3) and, in the case of a tax-exempt bond issue, the Bond Counsel Questionnaire (item 5) contain information crucial to the structure of the transaction. No drafting of documents can begin until Bond Counsel has received and reviewed these documents. Many of these steps will occur concurrently.

1. Application and EAF must be submitted to IDA.
(Applicant's responsibility)
2. SEQR Approval Process.
(Applicant's responsibility, with assistance of IDA)
3. Commitment Letter/Term Sheet from Bank or underwriter.
(Applicant's responsibility)
4. Apply for additional volume cap allocation from State if necessary. **[Tax-Exempt bonds Only]**
(IDA's and Bond Counsel's responsibility)
5. Submit Bond Counsel Questionnaire to Bond Counsel. **[Tax-Exempt bonds Only]**
(Applicant's responsibility)
6. Phase I Audit may be required by IDA.
(Applicant's responsibility—requires a minimum of 2 weeks to prepare)
7. Survey.
(Applicant's responsibility)
8. Title Insurance.
(Applicant's responsibility)
9. Public Notice (at least 10 days prior to hearing in the case of any type of IDA transaction).
(Bond Counsel or Agency Counsel will prepare. IDA will schedule hearing and publish notice.)
10. Public Hearing.
(IDA will schedule at least 10 days after Public Notice was published.)
11. Inducement Resolution.
(Bond Counsel or Agency Counsel will prepare. IDA will schedule meeting.)
12. Inducement Agreement.

(Bond Counsel or Agency Counsel will prepare.)

13. Agency Appointment (Sales Tax) Letter issued by IDA.
(Bond Counsel or Agency Counsel will prepare.)
14. Transition and closing documents are circulated.
(Bond Counsel's responsibility. First drafts generally will be circulated 7-10 days after receipt by Bond Counsel of Commitment Letter/Term Sheet and, in the case of Tax-Exempt bonds, completed Bond Counsel Questionnaire.)
15. Present Resolution for "Applicable Elected Representative" (i.e., Tioga County Legislature) to consider. **[Tax-Exempt bonds Only]**
(Bond Counsel will prepare the resolution. IDA will coordinate.)
16. Bond Resolution or, in the case of a Sale-Leaseback, Final Authorizing Resolution.
(Bond Counsel or Agency Counsel will prepare form of Bond Resolution.)
17. Closing.
(Bond Counsel will coordinate. Company must provide for attendance of title company to mark up title insurance policy and record documents.)

NOTE: Depending on how the bonds, if any, are offered and sold, additional steps may need to be required, such as printing and mailing of Preliminary Official Statement (or other preliminary offering documents) and Official Statement (or other final offering documents), printing bonds, sending letters of representation and final bonds to DTC, etc. If bonds are to be rated, approval of the rating agency needs to be obtained. Provided that the applicant furnishes all necessary items in a timely fashion and the project does not present any unexpected or complex real estate, environmental or permitting issues or require prolonged negotiations, a sale-leaseback transaction generally can close within 4-6 weeks after submission of an application. The typical time frame for a bond issue is at least 60 days from submission of the application, but often is longer depending on the complexity of the project, whether the bonds will be rated, the amount of time needed to market the bonds, whether the project (in a tax-exempt bond issue) has any complicated tax issues, and the degree of coordination necessary with any non-IDA financing of the project.

O. SALE-LEASEBACK TRANSACTIONS

A “sale-leaseback” transaction is one in which the IDA takes title to or control of real property from the applicant, and leases it (together with the other components of the project) back to the applicant for a period of time (or sells it to the applicant on an installment sale basis). At the end of the term, the IDA re-conveys the property to the applicant for a minimal price (usually \$1.00), plus payment of the IDA’s expenses. In some transactions, the applicant subleases all or part of the project to a related entity or an unrelated third party.

The primary financial advantages to an applicant of a sale-leaseback transaction are exemption from sales and use taxes for equipment, machinery, building materials and other personal property acquired or used in connection with the construction and equipping of the project, and real property tax abatements provided pursuant to the PILOT Agreement. The lease or sale term is negotiated by the IDA and the applicant and may be influenced by the terms of any conventional financing that the transaction will involve. The real property tax abatements under the PILOT Agreement cannot extend beyond the term of the Lease Agreement or Installment Sale Agreement.

Some sale-leasebacks are closed in conjunction with conventional bank financing of a project. The IDA, as fee owner, is a party to the mortgage, which permits the recording of the mortgage without the payment of mortgage recording tax.

The usual documentation in a sale-leaseback transaction in which no financing is involved is listed below. After the transaction closes, Transaction Counsel will prepare a “closing book” for all parties containing this documentation. With the exception of the sublease agreement, if any (which Company Counsel prepares), the instrument survey and the title report, which the applicant provides, and the PILOT Agreement, which Agency Counsel prepares, Transaction Counsel prepares the documents listed.

Typical Sale-Leaseback Documentation

1. IDA’s Inducement Resolution.
2. Inducement Agreement between applicant and IDA.
3. Deed from the applicant to the IDA relating to the real property conveyed.
4. Bill of Sale from the applicant to the IDA relating to the personal property conveyed.
5. Lease Agreement between IDA and applicant (and a Memorandum of Lease, which is the summary document that is recorded with the County Clerk) (or Installment Sale Agreement, if applicable).
6. Sublease agreement between applicant and any sublessee (if applicable).
7. Environmental Compliance and Indemnification Agreement among the IDA, the applicant, and any other party the IDA may require (such as a parent corporation or a sublessee).
8. PILOT Agreement between the applicant and the IDA (and, if applicable, any taxing authorities).
9. IDA’s Final Authorizing Resolution.

10. Closing Certificate of the IDA.
11. Closing Certificate of the applicant (with typical attachments being the applicant's organizational documents, authorizing resolutions, and evidence of the required insurance coverage).
12. Closing Certificate of the sublessee (if applicable and if required by Transaction Counsel or Agency Counsel, as when, for example, the sublessee is a party to the Environmental Compliance and Indemnification Agreement).
13. Opinion of Company Counsel.
14. Opinion of Agency Counsel.
15. Opinion of Transaction Counsel.
16. Application for Real Property Tax Exemption (Form RP-412-a) (filed with Town Assessor and all affected tax jurisdictions with a copy of the PILOT Agreement within 15 days after PILOT Agreement signed).
17. Title Policy.
18. Survey.
19. Notice of Minutes and Public Hearing.

If a lender provides financing in connection with the project, the transaction will include any additional documentation required by the lender (which lender's counsel will prepare, with the possible exception of the form of mortgage, which Transaction Counsel sometimes may prepare because the IDA is a party). Typical lender documents may include:

1. Promissory Note.
2. Loan Agreement/Building Loan Contract.
3. Mortgage and/or Security Agreement (usually combined in one document if real property interest taken as security) and related UCC financing statements.
4. Guaranty of any corporate parent, principal shareholder or other entity the lender may require.
5. Assignment of Leases and Rents (and/or Assignment of Subleases and Rents).
6. Mortgage Tax Affidavit.

P. TAXABLE BONDS

In a taxable bond transaction, the IDA issues its taxable bonds to provide all or part of the costs of acquiring, constructing and/or renovating and equipping the project. The IDA contemporaneously enters into a Lease Agreement or Installment Sale Agreement to lease or sell the project to the applicant. The Lease Agreement or Installment Sale Agreement obligates the applicant to make certain basic payments (i.e., the payments to be used to pay the principal of, premium, if any, and interest on the bonds as and when the same shall be due and payable). The applicant is entitled to acquire from the IDA title to the project for an aggregate amount equal to the amount required to retire the bonds, plus certain additional amounts. In some transactions, the applicant subleases all or part of the project to a related entity or an unrelated third party.

One financial advantage to the applicant of a taxable bond is the availability of the bond proceeds to pay project costs. Other financial advantages include exemption from sales and use taxes for equipment, machinery, building materials and other personal property acquired or used in connection with the construction and equipping of the project and real property tax abatements provided pursuant to a PILOT Agreement. The real property tax abatements under the PILOT Agreement cannot extend beyond the term of the Lease Agreement or Installment Sale Agreement.

The IDA pledges and assigns to the trustee or the bond purchaser, as applicable, its rights under the Lease Agreement or Installment Sale Agreement (except certain enumerated unassigned rights, such as indemnities), and the applicant makes payments directly to the trustee or bond purchaser. Payment of the principal, redemption premium, if any, and interest on the bonds generally is secured by a mortgage on the real property, which generally also encompasses a security interest in the equipment and personal property that is part of the project or, if the transaction involves equipment only, a security agreement covering the equipment. The IDA, as fee owner, is a party to any mortgage, which permits the recording of the mortgage without payment of mortgage recording tax.

The applicant, and often its principal shareholders or its parent corporation (or analogous principals), also generally is required to execute a guaranty of payment of principal, redemption price, if any, and interest on the bonds and performance by the applicant of its obligations under the various financing documents. The guaranty often includes certain negative and affirmative covenants relating to, for example, maintenance of defined financial ratios and lien free completion of the project.

The bond purchaser or the provider of any credit enhancement such as a letter of credit or bond insurance may require additional collateral, depending of the creditworthiness of the applicant, including pledges of accounts receivable and inventory, assignments of life insurance proceeds and assignments of sublease rentals. If the bonds are to be rated, the rating agency may impose certain requirements as well.

The applicant is responsible for arranging for the purchase of the bonds. This may be accomplished by identifying a single purchaser (such as a financial institution or a related company), working with a placement agent to arrange a private placement of the bonds, or working with an underwriter to arrange for a public offering of the bonds.

The usual documentation in a fixed-rate taxable bond transaction, with a trustee and no credit enhancement, is listed below. After the transaction closes, Bond Counsel will prepare a “closing book” for all parties containing this documentation. With the exception of the sublease agreement, if any (which Company Counsel prepares); the instrument survey and the title report, which the applicant provides; the bond purchase agreement or bond placement agreement, as applicable, the preliminary and final official statement or placement memorandum, as applicable, the Blue Sky memorandum and the legal investment survey, which underwriter’s or placement agent’s counsel prepares; and the PILOT Agreement, which Agency Counsel prepares, Bond Counsel prepares the documents listed:

Typical Taxable Bond Documents

1. IDA’s Inducement Resolution.
2. Inducement Agreement between applicant and IDA.
3. Deed from the applicant to the IDA relating to the real property conveyed.
4. Bill of Sale from the applicant to the IDA relating to the personal property conveyed.
5. Indenture of Trust between the IDA and the trustee, with form of bond.
6. Lease Agreement (or Installment Sale Agreement) between IDA and applicant (and a Memorandum of Lease or Memorandum of Installment Sale which is the summary document that is recorded with the County Clerk).
7. Pledge and Assignment from IDA to trustee, with acknowledgment by the applicant.
8. Bond placement agreement or bond purchase agreement among the applicant, the IDA and the underwriter or placement agent outlining the parties’ respective obligations relating to the sale of the bonds.
9. Sublease agreement between the applicant and any sublessee, if applicable.
10. Mortgage and Security Agreement (or, in an equipment-only deal, Security Agreement) from the IDA (and in some cases, the applicant as well) to the trustee.
11. Guaranty from the applicant and any other guarantors to the trustee.
12. Environmental Compliance and Indemnification Agreement among the IDA, the trustee, the applicant, and any other party the IDA may require (such as a parent corporation or a sublessee).
13. PILOT Agreement between the applicant and the IDA (and, if applicable, any taxing authorities).
14. Preliminary Private Placement Memorandum (private placement) or Preliminary Official Statement (public offering).
15. Private Placement Memorandum (private placement) or Official Statement (public offering).
16. Bond Resolution of the IDA.
17. Closing Certificate of the IDA.
18. Closing Certificate of the applicant (with typical attachments being the applicant’s organizational documents, authorizing resolutions, and evidence of the required insurance coverage).

19. Closing Certificate of any guarantor (with typical attachments being the guarantor's organizational documents and authorizing resolutions).
20. Closing Certificate of any sublessee (if applicable and if required by Bond Counsel, as when, for example, the sublessee is a party to the Environmental Compliance and Indemnification Agreement).
21. Certificate of trustee.
22. Request and Authorization of IDA to trustee to authenticate and deliver the bonds.
23. Trustee's Certificate of receipt and delivery of bonds.
24. Placement agent's or underwriter's, as applicable, receipt for the bonds.
25. Rating Agency Letter, if bonds are to be rated.
26. Letter of representations and eligibility questionnaire to the Depository Trust Company, if bonds are book-entry-only.
27. Opinion of Agency Counsel.
28. Opinion of Company Counsel.
29. Opinion of counsel to any guarantor.
30. Opinion of Bond Counsel.
31. Opinion of trustee's counsel.
32. Blue Sky memorandum (outlining the ability to sell the bonds in various states) (if placement agent or underwriter requests).
33. Legal investment survey (outlining the legality for the bonds investment for certain types of institutions) (if placement agent or underwriter requests).
34. Notice of Lending.
35. Application for Real Property Tax Exemption (Form RP-412-a) (filed with Town Assessor and all affected tax jurisdictions with a copy of the PILOT Agreement within 15 days after PILOT Agreement is signed).
36. Title Policy.
37. Survey.
38. UCC Financing Statements.
39. Notice and Minutes of Public Hearing.

If the transaction involves a single bond purchaser and no trustee, item 5 will be a bond purchase agreement among the bond purchaser, the IDA and the applicant, items 7, 10 and 11 will run to the bond purchaser instead of the trustee, the bond purchaser will be a party to item 12, items 8, 14, 15, 21, 22, 23, 31, 32 and 33 generally will not apply, and the bond purchaser will execute item 24.

If the bonds are secured by a letter of credit, the following additional documentation normally will be present, which the letter of credit bank's counsel will prepare:

1. Reimbursement Agreement;
2. Letter of Credit; and
3. Any additional documentation the letter of credit bank requires.

The letter of credit bank also may be named as a party to the Mortgage and the Guaranty.

Q. TAX-EXEMPT BONDS

Although tax-exempt bonds generally carry a more favorable interest rate and better marketability than taxable bonds, they also require compliance with more conditions and impose greater restrictions on use of proceeds and use of the project than do taxable bonds.

In a tax-exempt bond transaction, the IDA issues its tax-exempt bonds to provide all or part of the costs of acquiring, constructing and/or renovating and equipping the project. The IDA contemporaneously enters into a Lease Agreement or Installment Sale Agreement to lease or sell the project to the applicant. The Lease Agreement or Installment Sale Agreement obligates the applicant to make certain basic payments (i.e., the payments to be used to pay the principal of, premium, if any, and interest on the bonds as and when the same shall be due and payable). The applicant is entitled to acquire from the IDA title to the project for an aggregate amount equal to the amount required to retire the bonds, plus certain additional amounts. In some transactions, the applicant subleases all or part of the project to a related entity or an unrelated third party.

One financial advantage to the applicant of a tax-exempt bond is the availability of the bond proceeds to pay project costs. Other financial advantages include exemption from sales and use taxes for equipment, machinery, building materials and other personal property acquired or used in connection with the construction and equipping of the project and real property tax abatements provided pursuant to a PILOT Agreement. The real property tax abatements under the PILOT Agreement cannot extend beyond the term of the Lease Agreement or Installment Sale Agreement.

The IDA pledges and assigns to the trustee or the bond purchaser, as applicable, its rights under the Lease Agreement or Installment Sale Agreement (except certain enumerated unassigned rights, such as indemnities), and the applicant makes payments directly to the trustee or bond purchaser. Payment of the principal, redemption premium, if any, and interest on the bonds generally is secured by a mortgage on the real property, which generally also encompasses a security interest in the equipment and personal property that is part of the project or, if the transaction involves equipment only, a security agreement covering the equipment. The IDA, as fee owner, is a party to any mortgage, which permits the recording of the mortgage without payment of mortgage recording tax.

The applicant, and often its principal shareholders or its parent corporation (or analogous principals), also generally is required to execute a guaranty of payment of principal, redemption price, if any, and interest on the bonds and performance by the applicant of its obligations under the various financing documents. The guaranty often includes certain negative and affirmative covenants relating to, for example, maintenance of defined financial ratios and lien free completion of the project.

The bond purchaser or the provider of any credit enhancement such as a letter of credit or bond insurance may require additional collateral, depending of the creditworthiness of the applicant, including pledges of accounts receivable and inventory, assignments of life insurance proceeds and assignments of sublease rentals. If the bonds are to be rated, the rating agency may impose certain requirements as well.

The applicant is responsible for arranging for the purchase of the bonds. This may be accomplished by identifying a single purchaser (such as a financial institution or a related company), working with a placement agent to arrange a private placement of the bonds, or working with an underwriter to arrange for a public offering of the bonds.

The applicant will be required to submit a Bond Counsel Questionnaire at the initial stage of the transaction so that Bond Counsel can determine whether and to what extent tax-exempt bonds can be used to finance all or part of the project. The applicant and the IDA will be required to sign a Tax Compliance Agreement (“TCA”) that contains extensive covenants and representations designed to ensure compliance with all the relevant provisions of the Internal Revenue Code (the “Code”). The TCA contains covenants and representations with respect to authorization and public approval, use and investment of bond proceeds, certain activities of “Related Persons,” compliance with limitations as to amounts of issues, maturity of bonds, federal guarantees and other relevant tax concerns.

The usual documentation in a fixed-rate tax-exempt bond transaction, with a trustee and no credit enhancement, is listed below. After the transaction closes, Bond Counsel will prepare a “closing book” for all parties containing this documentation. With the exception of the sublease agreement, if any (which Company Counsel prepares); the instrument survey and the title report, which the applicant provides; the bond purchase agreement or bond placement agreement, as applicable, the preliminary and final official statement or private placement memorandum, as applicable, the Blue Sky memorandum and the legal investment survey, which underwriter’s or placement agent’s counsel prepares; and the PILOT Agreement, which Agency Counsel prepares, Bond Counsel prepares the documents listed:

Typical Tax-Exempt Bond Documents

1. IDA’s Inducement Resolution.
2. Inducement Agreement between applicant and IDA.
3. Deed from the applicant to the IDA relating to the real property conveyed.
4. Bill of Sale from the applicant to the IDA relating to the personal property conveyed.
5. Indenture of Trust between the IDA and the trustee, with form of bond.
6. Lease Agreement (or Installment Sale Agreement) between IDA and applicant (and a Memorandum of Lease or Memorandum of Installment Sale which is the summary document that is recorded with the County Clerk).
7. Pledge and Assignment from IDA to trustee, with acknowledgment by the applicant.
8. Bond Placement Agreement or Bond Purchase Agreement among the applicant, the IDA and the underwriter or placement agent outlining the parties’ respective obligations relating to the sale of the bonds.
9. Sublease Agreement between the applicant and any sublessee, if applicable.

10. Mortgage and Security Agreement (or, in an equipment-only deal, Security Agreement) from the IDA (and in some cases, the applicant as well) to the trustee.
11. Guaranty from the applicant and any other guarantors to the trustee.
12. Environmental Compliance and Indemnification Agreement among the IDA, the trustee, the applicant, and any other party the IDA may require (such as a parent corporation or a sublessee).
13. Tax Compliance Agreement signed by the IDA and the applicant.
14. PILOT Agreement between the applicant and the IDA (and, if applicable, any taxing authorities).
15. Preliminary Private Placement Memorandum (private placement) or Preliminary Official Statement (public offering).
16. Private Placement Memorandum (private placement) or Official Statement (public offering).
17. Bond Resolution of the IDA with all elections necessary with respect to bonds.
18. Closing Certificate of the IDA.
19. Closing Certificate of the applicant (with typical attachments being the applicant's organizational documents, authorizing resolutions, and evidence of the required insurance coverage).
20. Closing Certificate of any guarantor (with typical attachments being the guarantor's organizational documents and authorizing resolutions).
21. Closing Certificate of any sublessee (if applicable and if required by Bond Counsel, as when, for example, the sublessee is a party to the Environmental Compliance and Indemnification Agreement).
22. Certificate of trustee.
23. Request and Authorization of IDA to trustee to authenticate and deliver the bonds.
24. Trustee's Certificate of receipt and delivery of bonds.
25. Placement agent's or underwriter's, as applicable, receipt for the bonds.
26. Rating agency letter, if bonds are to be rated.
27. Letter of representations and eligibility questionnaire to the Depository Trust Company, if bonds are book-entry-only.
28. Opinion of Agency Counsel.
29. Opinion of Company Counsel.
30. Opinion of counsel to any guarantor.
31. Opinion of Bond Counsel, including opinion regarding excludability of interest on the bonds from gross income for federal income tax purposes.
32. Opinion of trustee's counsel.
33. Blue Sky memorandum (outlining the ability to sell the bonds in various states) (if placement agent or underwriter requests).
34. Legal investment survey (outlining the legality for the bonds investment for certain types of institutions) (if placement agent or underwriter requests).
35. Notice of Lending.

36. Application for Real Property Tax Exemption (Form RP-412-a) (filed with Town Assessor and all affected tax jurisdictions with a copy of the PILOT Agreement within 15 days after PILOT Agreement is signed).
37. Title Policy.
38. Survey.
39. UCC Financing Statements.
40. Notice and Minutes of Public Hearing.
41. Evidence of Public Approval (by Applicable Elected Representative).
42. IDA's Volume Cap Allocation Information (if applicable).
44. IRS Form 8038 Information Return.

If the transaction involves a single bond purchaser and no trustee, item 5 will be a Bond Purchase Agreement between the bond purchaser, the IDA and the applicant, items 7, 10 and 11 will run to the bond purchaser instead of the trustee, the bond purchaser will be a party to item 12, items 8, 15, 16, 22, 23, 24, 32, 33 and 34 generally will not apply, and the bond purchaser will execute item 25.

If the bonds are secured by a letter of credit, the following additional documentation normally will be present, which the letter of credit bank's counsel will prepare:

1. Reimbursement Agreement;
2. Letter of Credit; and
3. Any additional documentation the letter of credit bank requires.

The letter of credit bank also may be named as a party to the Mortgage and the Guaranty. Any additional collateral the letter of credit bank requires may pose tax issues, and should be identified to Bond Counsel as early as possible in the course of the transaction.

R. CERTAIN RESTRICTIONS ON TAX EXEMPT SMALL ISSUE MANUFACTURING BONDS

This list is intended to be a preliminary guide to help the IDA and the applicant identify early certain factors that may preclude tax-exempt financing for a small issue manufacturing project. It is not exhaustive, and Bond Counsel may subsequently determine that other factors preclude the use of tax-exempt bonds. This summary relates to tax-exempt small issue manufacturing bonds. If your project will involve tax-exempt 501(c)(3) bonds or other tax-exempt bonds, additional or different considerations may apply.

- No more than 25% of bond proceeds may be used for the purchase of land.
- Bond proceeds may not be used to acquire existing buildings unless the rehabilitation expenses with respect to the building to be incurred within three years equal or exceed 15% of the portion of the cost of acquiring the building that is financed with tax-exempt bond proceeds. Rehabilitation does not include any amount expended on new construction (additions or expansions).
- No more than 2% of the bond proceeds can be used to pay costs of issuance (e.g., underwriter's fees, bond counsel fees, company counsel fees, agency counsel fees, accountant's fees or printing costs).
- Average maturity of the bonds cannot exceed 120% of the average reasonably expected economic life of the facility being financed.
- No portion of proceeds of the bonds may be used to provide any airplane, skybox or other private luxury box, any health club facility, facility primarily used for gambling or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.
- Bond amount may not exceed \$10,000,000 (provided IDA elects to have \$10,000,000 limitation apply, otherwise bond amount may not exceed \$1,000,000).
- Capital expenditures paid or incurred during the 6 year period beginning 3 years before the date of the bond issue and ending 3 years after the bond issue date with respect to the facility being financed and any other facility located in the same incorporated municipality or the same county, the principal user of which is or will be the applicant or 2 or more related persons count toward determining whether the \$10,000,000 limit is exceeded.
- Any expenditures the applicant has made before the inducement date must be discussed with Bond Counsel to determine whether and to what extent they can be reimbursed out of bond proceeds.

- No more than 25% of the net proceeds of the bonds may be used to provide a facility the primary purpose of which is one of the following: retail food and beverage services, automobile sales or service or the provision of recreation or entertainment.
- No portion of the proceeds of the bonds may be used to provide any of the following: any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skate boarding and ice skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility or racetrack.
- 95% of the net proceeds of the bonds must be used for (a) the acquisition, construction, reconstruction or improvement of land or depreciable property, or (b) for the redemption of all or a portion of a prior issue or a prior refunding issue.
- The project to be financed with bond proceeds must be a manufacturing facility used in the manufacturing or production of tangible personal property. A manufacturing facility is deemed to include facilities that are ancillary and directly related to a manufacturing facility (for example, certain warehousing facilities) if they are located on the same site as the manufacturing facility and no more than 25% of the net proceeds of the bond issue are used to provide such ancillary facilities.
- The face amount of the bonds, together with the outstanding principal balance of all other tax exempt bonds issued for the benefit of the same applicant, cannot exceed \$40,000,000.

S. POST CLOSING REQUIREMENTS

After the transaction has closed, the applicant will be required to provide periodic information to the IDA for purposes of monitoring the goals and objectives of the applicant and for the purpose of complying with reporting requirement under the laws of New York State. Typically, these items would include the amount of debt outstanding, the total amount of tax exemptions received and the number and type of jobs retained and/or created. Failure of the applicant to comply with these requirements may result in default under the agreements between the IDA and the applicant. This could result in a revocation of the tax exemptions.

