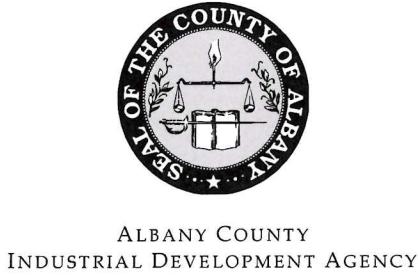


WILLIAM M. CLAY
CHAIRMAN
ANTON DRESLIN
TRAVON T. JACKSON
MARLENE MCTIGUE
PAUL NYLIN
MICHAEL PAPARIAN
DOUGLAS ROETHER



ALBANY COUNTY
INDUSTRIAL DEVELOPMENT AGENCY

COUNTY OFFICE BUILDING
111 WASHINGTON AVE
SUITE 100
ALBANY, NEW YORK 12207-2021
(518) 447-7707

AGENDA

Meeting: Wednesday June 21st, 2023

5:30 P.M.

1. Roll Call.
2. Executive Session.
3. Approval of the minutes of the March 22, 2023 meeting.
4. Public Comment
5. Chair Report
6. Reports of Committee
 - a. Audit Committee
 - b. Finance Committee
 - i. Financial Report
 - c. Governance Committee
7. Unfinished business.
8. New business.
 - a. **Housekeeping Resolution**
 - b. **Resolution regarding Amendments to Agency Policies**
 - c. **Resolution regarding Administrative Contract with the Alliance**
10. Adjournment.

**ALBANY COUNTY
INDUSTRIAL DEVELOPMENT AGENCY
MEETING MINTUES
March 22nd, 2023
112 State Street
Room 740
Albany, NY 12207**

Attending: Hon. William Clay, Chairman; Michael Paparian, Treasurer; Anton Dreslin, Asst. Secretary; Paul Nylin, Member.

Also Present: Walter Forman, Esq, Agency Counsel; William F. Murphy Jr. CEO; Allen F. Maikels, CPA, CFO; A. Joseph Scott, III, Esq., Bond Counsel. Kevin O'Connor Albany County Economic Development Director & Advance Albany County Alliance. Rosemary McHugh, Economic Development Coordinator, Albany County Alliance. Doug McClaine, Plug Power.

Excused: Marlene McTigue; Travon Jackson; Douglas Rosther.

Call to Order:

Chairman Clay called the meeting of the ACIDA to order at 5:33 pm

Public Comments:

None

Approval of the Minutes.

Chairman Clay asked for a Motion to Approve the minutes.

Mr. Nylin asked if the Quarterly Job Report was included, Mr. Forman stated that there would be an amendment made to the minutes to reflect the Quarterly Job report.

Motion by Mr. Paparian and Seconded by Mr. Nylin.

Vote: 4-0 All Aye

Approval of the Financials:

Presented by Mr. Maikels. And Mr. Paparian discussed banking deposits.

Chairman Clay made a motion to approve the Financials.

Motion by Mr. Paparian and Seconded by Mr. Nylin.

Vote: 4-0 All Aye

Unfinished Business:

None.

New Business:

Plug Power. Mr. Forman open discussion of the ongoing project with Plug Power. Turned it over to Joe Scott to explain the amendments to the prior resolution due to the increase of project cost. Increase in sales tax exemption that the ACIDA will be granting.

Mr. Paparian asked if there was a closing schedule, Mr. Scott stated that should close in a couple weeks.

Chairman Clay asked for a Motion to approve the resolution for Plug Power.

Motion by Mr. Dreslin and Seconded by Mr. Nylin.

Vote: 4-0 All Aye.

Advance Albany County Alliance Management Agreement. Mr. Forman introduced the agreement. Chairman Clay pointed out that the ACIDA will be moving locations, Moving the agreement long giving the Chair and Mr. O'Connor permission to finalize the agreement.

Chairman Clay asked for a Motion to approve the resolution for a proposed agreement with the Alliance.

Motion by Mr. Paparian and Seconded by Mr. Dreslin.

Vote: 4-0 All Aye

Chairman Clay asked for a motion to appoint assistant Secretary to the Board. Mr. Dreslin volunteered to be the Assistant Secretary.

Motion by Mr. Paparian and Seconded by Mr. Nylin.

Vote: 4-0 Aye

Chairman Clay asked for a motion to adjourn the Meeting.

Motion by Mr. Dreslin and Seconded by Mr. Nylin.

Vote: 4-0 All Aye

Meeting adjourned @ 6:24 p.m.

ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY
Balance Sheet
As of May 31, 2023

	<u>May 31, 23</u>
ASSETS	
Current Assets	
Checking/Savings	
201-50 · Trustco CD 4466 0.10% 5/16/23	824,504.02
202-50 · Trustco CD 4433.10% 8/11/23	119,001.31
204-00 · REG CHECKING TRUSTCO	2,528,922.84
205-50 · Cash Trustco CD	2,500,000.00
	<hr/>
Total Checking/Savings	5,972,428.17
Other Current Assets	
480-00 · PREPAID EXPENSES	1,958.14
	<hr/>
Total Other Current Assets	1,958.14
	<hr/>
Total Current Assets	5,974,386.31
Fixed Assets	
104-00 · Office Furniture & Equipment	10,118.37
105-00 · Accumulated Depreciation	-10,118.37
	<hr/>
Total Fixed Assets	0.00
	<hr/>
TOTAL ASSETS	5,974,386.31
LIABILITIES & EQUITY	
Equity	
909-00 · Retained Earnings	6,034,561.23
Net Income	-60,174.92
	<hr/>
Total Equity	5,974,386.31
	<hr/>
TOTAL LIABILITIES & EQUITY	5,974,386.31

ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY
Profit & Loss
January through May 2023

	<u>Jan - May 23</u>
Income	
2401-00 · INTEREST AND EARNINGS	337.58
Total Income	<u>337.58</u>
Gross Profit	337.58
Expense	
6461-00 · PERSONAL SERVICES	30,321.49
6464-00 · OPERATING EXPENSES	19,440.00
6468-00 · EMPLOYEE BENEFITS	10,751.01
Total Expense	<u>60,512.50</u>
Net Income	<u>-60,174.92</u>

**ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY
RESOLUTION APPROVING CONTRACT WITH
ADVANCE ALBANY COUNTY ALLIANCE - 2023**

A regular meeting of the Albany County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located in Room 740 of 112 State Street in the City of Albany, Albany County, New York on June 21, 2023 at 5:30 o'clock p.m., local time.

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

PRESENT:

Hon. William M. Clay	Chairman
Michael Paparian	Treasurer
Marlene McTigue	Secretary
Anton Dreslin	Assistant Secretary
Travon T. Jackson	Member
Douglas Roether	Member
Paul Nylin	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Kevin O'Connor	Chief Executive Officer
Amy Thompson	Chief Financial Officer
Rosemary McHugh	Economic Development Coordinator
A. Joseph Scott, III, Esq.	Counsel

The following resolution was offered by _____, seconded by _____, to wit:

Resolution No. 0623-_____

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A
CONTRACT WITH ADVANCE ALBANY COUNTY ALLIANCE TO PROVIDE
PROFESSIONAL AND ADMINISTRATIVE SERVICES FOR THE AGENCY.**

WHEREAS, Albany County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 178 of the 1975 Laws of New York, as amended, constituting Section 903-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the

purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, under Section 858 of the Act, the Agency has the power to approve certain administrative matters; and

WHEREAS, the members of the Agency desire to enter into a contract with the Advance Albany County Alliance Local Development Corporation (“AACa”) to provide certain professional and administrative services for the Agency; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on March 22, 2023 (the “Preliminary Resolution”), the members of the Agency authorized the Chairman with the assistance of Agency Special Counsel, to review and finalize a contract for execution by the Agency and AACa for the provision of professional and administrative services (the “Professional Services Contract”); and

WHEREAS, pursuant to the Preliminary Resolution, Agency Special Counsel has reviewed and finalized the Professional Services Contract for consideration by the Chairman and the members of the Agency; and

WHEREAS, the Agency has reviewed the Professional Services Contract and the proposed terms thereof, which such Professional Services Contract has been presented to the members of the Agency for review and consideration, in connection with the Procurement Policy of the Agency (the “Policy”); and

WHEREAS, pursuant to Section 505(A) of the Policy, the Agency is authorized, in the sole discretion of the members of the Agency, to forego the requirements of Section 504 of the Policy with respect to the solicitation of alternative proposals, when the solicitation of alternative proposals or quotations will not be in the best interest of the Agency due to (a) the special or technical skill, training or expertise required to provide the services, and (b) the accountability, reliability, responsibility, skill, conflict of interests, reputation, education and training, judgement, integrity, continuity of service and moral worth of selected firm; and

WHEREAS, the Agency desires to make special findings determining that the solicitation of alternative proposals or quotations related to the Professional Services Contract is not in the best interest of the Agency; and

WHEREAS, subject to the special findings outlined in this resolution, the Agency desires to authorize the Chairman of the Agency to execute and deliver the Professional Services Contract on behalf of the Agency; and

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

Section 1. The Agency hereby finds and determines that the execution and delivery of the Professional Services Contract requires special and technical skill, training or expertise, pursuant to Section 505(A) of the Policy, based on the following factors:

(A) Provision of the services by AACa under the Professional Services Contract requires special skills and expertise that is possessed by AACa;

- (B) Provision of the services by AACA will improve the level of coordination among the Albany County Legislature, the office of the County Executive, and the Agency; and
- (C) Provision of the services by AACA will result in increased and improved coordination of economic development efforts in Albany County, and contracting with AACA for such professional services is critical to advancing such efforts.

Section 2. Based on the determinations made in Section 1 hereof, the Agency hereby further finds and determines that the solicitation of alternative proposals or equipment for the Professional Services Contract will not be in the best interest of the Agency, and therefore takes the following actions:

- (A) Approves and confirms the selection of AACA for provision of the Professional Services Contract for the Agency; and
- (B) Authorizes and directs the Chairman, with the assistance of Agency Special Counsel, to execute and deliver the Professional Services Contract by and between the Agency and AACA for the provision of professional and administrative services.

Section 3. All action taken by the Chairman, Agency Special Counsel, or Staff of the Agency with respect to the Professional Services Contract is hereby ratified and confirmed.

Section 4. The Chairman of the Agency is hereby authorized to execute and deliver the Professional Services Contract, and, where appropriate, the Secretary of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the form thereof presented to the members of the Agency, with such changes, variations, omissions and insertions as the Chairman shall approve, the execution thereof by the Chairman to constitute conclusive evidence of such approval.

Section 5. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Professional Services Contract, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Professional Services Contract binding upon the Agency.

Section 6. This Resolution shall take effect immediately.

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

Hon. William M. Clay	VOTING	_____
Michael Paparian	VOTING	_____
Marlene McTigue	VOTING	_____
Anton Dreslin	VOTING	_____
Travon T. Jackson	VOTING	_____
Douglas Roether	VOTING	_____
Paul Nylin	VOTING	_____

The resolution was thereupon declared duly adopted.

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

I, the undersigned (Assistant) Secretary of the Albany County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on June 21, 2023 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this day of June, 2023.

(Assistant) Secretary

(SEAL)

DRAFT FOR DISCUSSION PURPOSES ONLY
DATED: JUNE 13, 2023

PROFESSIONAL SERVICES AGREEMENT
between
ADVANCE ALBANY COUNTY ALLIANCE LOCAL DEVELOPMENT CORPORATION
and the
ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY

This Agreement ("Agreement"), effective as of _____, 2023, is between the ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY ("IDA"), a public benefit corporation with a place of business at _____ and the ADVANCE ALBANY COUNTY ALLIANCE LOCAL DEVELOPMENT CORPORATION ("AACa"), a not for profit corporation having a place of business at 111 Washington Avenue, Albany, New York, 12210 ("AACa"):

WITNESSETH:

WHEREAS, the AACa has offered to provide professional economic development management and administrative support services to the IDA; and

WHEREAS, the IDA has accepted the offer of the AACa for such professional services; and

WHEREAS, the IDA and the AACa wish to enter into a formal agreement for the provision of and payment for said professional services;

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY COVENANT AND AGREE AS FOLLOWS:

ARTICLE 1 -SERVICES TO BE PERFORMED

The AACa shall perform the professional and administrative support services set forth under Article 2 entitled "SCOPE OF PROFESSIONAL SERVICES" during the period commencing on _____, 2023 and, subject to earlier termination as provided below, continuing until December 31, 2025. In the performance and acceptance of the services herein, the parties understand, acknowledge and agree that the AACa is assuming no managerial role, nor undertaking any oversight responsibilities with regard to the powers and duties of the IDA or the actions or non-actions of its Board of Directors. Nothing in this Agreement should be construed to transfer governance, oversight or fiduciary responsibilities from the IDA to AACa.

ARTICLE 2 - SCOPE OF PROFESSIONAL SERVICES

During the period of this Agreement, the AACa agrees to provide staffing, office equipment, utilities, phone and computer networking to perform the administrative, managerial, accounting, marketing, compliance, and project development functions of the IDA, as further described in Article

12 below. AACAA shall be responsible for the services described on Schedule A attached. The AACAA shall provide professional staff time towards fulfillment of this Agreement, including all administrative clerical, secretarial, accounting, compliance, and information technology support as required.

ARTICLE 3 - PROFESSIONAL SERVICES FEE

In consideration of the terms and conditions of this Agreement, the IDA agrees to pay and the AACAA agrees to accept, as full compensation for all services rendered under this Agreement the amount of \$ _____.

ARTICLE 4 - METHOD OF PAYMENT

The IDA will pay AACAA its professional services fee referenced under Article 3 of this Agreement in twelve (12) equal monthly installments of \$ _____ due and payable no later than the fifteenth (15th) day of each month.

ARTICLE 5 - TERMINATION

This Agreement may be terminated at any time by either AACAA or the IDA for any reason upon thirty (30) days prior written notice to the other party (the "Notice"). In the event of termination, AACAA shall be entitled to compensation for all work performed pursuant to this Agreement to the date of termination. For purposes of this Article, the "date of termination" shall be the thirtieth (30th) day following dispatch of the Notice.

ARTICLE 6 – NOTICES

All notices given to either AACAA or the IDA pursuant to or in connection with this Agreement shall be in writing, and shall be delivered by hand, by certified or registered mail, return receipt requested, by e-mail, or by Federal Express, Express Mail, or other nationally recognized overnight carrier. Such notices shall be sent to the addresses indicated on the first page of this Agreement, or such other address as either AACAA or the IDA may indicate by at least thirty (30) days prior written notice to the other party. Copies of any such notice shall be delivered in writing to counsel to the IDA and AACAA.

ARTICLE 7 – INSURANCE

The IDA shall provide to AACAA proof of or exemption from statutory workers' compensation and disability coverage, and proof of directors and officers (D&O) liability insurance. Such D&O policy shall name AACAA as an additional insured. Upon request by the IDA, AACAA shall provide proof of insurance coverage to the IDA and if required, shall name the IDA as additional insured with respect to general liability.

ARTICLE 8 - MUTUAL INDEMNIFICATION

- a. AACAA shall defend, indemnify and hold harmless the IDA and its members/directors, officers and employees from and against claims, damages, losses, liabilities, costs and expenses, including, but not limited to reasonable attorneys' fees and costs of litigation and/or settlement, whether incurred as a result of a claim by a third party or any other person or entity, arising out of or resulting from AACAA's performance of the tasks detailed in this Agreement, except if such claims, damages, losses or expenses are caused by IDA's negligence or willful misconduct.
- b. IDA shall defend, indemnify and hold harmless AACAA and its members/directors, officers and employees from and against claims, damages, losses, liabilities, costs and expenses, including, but not limited to reasonable attorneys' fees and costs of litigation and/or settlement, whether incurred as a result of a claim by a third party or any other person or entity, arising out of or resulting from IDA's performance of the tasks detailed in this Agreement, except if such claims, damages, losses or expenses are caused by AACAA's negligence or willful misconduct.

ARTICLE 9 – INDEPENDENT CONTRACTOR

Each of AACAA and the IDA Agrees to be solely responsible for all matters relating to compensation of its employees, including compliance with local, state and federal laws governing its personnel, including workers' compensation, Social Security, withholding and payment of any and all federal, state and local personal income taxes, disability insurance, unemployment, and any other taxes for such persons, including any related employer assessment or contributions required by law, and all other regulations governing such matters, and the payment of all salary, vacation and other employee benefits.

ARTICLE 10 - EQUAL EMPLOYMENT OPPORTUNITY

AACAA shall comply with all Federal, State, and Local equal employment opportunity laws, rules, and regulations relating, to all matters contained in this Agreement.

ARTICLE 11 - ACCOUNTING AND IDA RECORDS

Proper and full accounting records, including time sheets, shall be maintained by AACAA for all services provided pursuant to this Agreement. All IDA records held by AACAA shall be available for inspection or audit by the IDA if required by applicable law or if requested by the IDA.

ARTICLE 12 –IDA OFFICE AND OFFICE FACILITIES

On or before _____, 2023, the IDA shall move its office to be co-located with the AACAA offices at 111 Washington Avenue, Albany, New York. AACAA shall be responsible for the provision of office facilities described on Schedule B attached.

ARTICLE 13 – NO ARBITRATION

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed thereto in writing by both AACa and the IDA, but must instead only be heard in the Supreme Court of the State of New York (the “State”), with venue in Albany County or, if appropriate, in the Federal District Court with venue in the Northern District of New York, Albany Division.

ARTICLE 14 – NO ASSIGNMENT

Neither AACa nor the IDA may assign its rights, interests, and/or obligations under this Agreement.

ARTICLE 15 – GOVERNING LAW

This Agreement and the performance of AACa and the IDA hereunder shall be governed by and construed in accordance with the laws of the State. AACa and the IDA agree to comply with all applicable federal, state and local laws and regulations.

ARTICLE 16 – MODIFICATIONS TO BE IN WRITING

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by both AACa and the IDA. Changes in the Scope of Professional Services, identified on Schedule A attached hereto, shall not be binding, unless prior to the performance of any such services, AACa and the IDA execute an amendment or modification to this Agreement, which amendment or modification shall specifically set forth the scope of such extra or additional services, the amount of compensation, and extension of time for performance, if any, for any such services. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such amendment or modification.

ARTICLE 17 – DUTY OF LOYALTY/NO CONFLICTS

AACa agrees that it owes a duty of loyalty to the IDA and it will not disclose any confidential information obtained in connection with the performance of its duties to the IDA under this Agreement to any other parties, including any parties it has or enters into contracts with. AACa agrees to enter into a non-disclosure agreement with the IDA, if requested by the IDA, and to meet with the Governance Committee of IDA to disclose any interests that may create an appearance of competition or a conflict of interest.

ARTICLE 18 – RETURN OF FILES

Upon the termination of this Agreement, the AACa will return all files, documents and client records to the IDA. Such files, documents and client records will be returned to the IDA in the format that they currently exist, namely, hard copies of materials will be returned in hardy copy format and electronic copies of materials will be returned in electronic copy format. AACa will return such files,

documents and client records within thirty (30) days of such termination, together with a certificate, in a form satisfactory to the IDA, containing an inventory detailing and describing the materials held by AACCA on behalf of the IDA, together with an index providing for access to such materials, and confirming the delivery of such materials to the IDA.

ARTICLE 19 – TRANSITION

Upon termination of this Agreement, AACCA will provide for and cooperate with the IDA to ensure an orderly transition of the operations of the IDA back to the IDA and/or the successor to AACCA. All files, documents and client records will be returned in accordance with the provisions of Article 18 above. Regarding the operations of the IDA, AACCA will make available to the IDA, and/or the successor to AACCA, the primary staff person providing the services under this Agreement. Such staff person will be made available for transition questions and to address transition issues for a period not to exceed two (2) hours/week for a four (4) week period following the termination of this Agreement. The IDA may, in its absolute discretion, withhold the final payment due to AACCA pursuant to Article 4 above and instead make such payment following the completion of the transition period described in this article.

ARTICLE 20 – ENTIRE AGREEMENT

The rights and obligations of AACCA and the IDA and their respective agents, successors and assignees shall be subject to and governed by this Agreement, which supersedes any other understandings or writings between or among AACCA and the IDA.

[remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**ADVANCE ALBANY COUNTY ALLIANCE
LOCAL DEVELOPMENT CORPORATION**

By: _____
Name: Kevin O'Connor
Title: Chief Executive Officer

**ALBANY COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: William M. Clay
Title: Chairman

SCHEDULE A DESCRIPTION OF SERVICES

1. Implementation, execution and compliance with all IDA Policies and Procedures, and provide advice on amendments and revisions to existing policies and creation of new policies to advance the mission of the IDA.
2. Provide for the deposit and investment of the funds of IDA in accordance with the IDA Investment Policy.
3. Provide for the preparation of reports of the deposit and investment of the funds of IDA in the IDA Investment Policy.
4. Ensure that procurement of goods or services complies with the IDA Procurement Policy.
5. Prepare an annual budget of IDA and the filing of such budget in accordance with the Public Authorities Law.
6. Provide for the preparation of financial statements and reports of the IDA, including the PARIS Report, and the filing of such materials with appropriate State offices in accordance with the Public Authorities Law.
7. Report on questions involving potential conflicts of interest under the IDA Code of Ethics.
8. Consult with IDA Counsel regarding membership and proper appointment of IDA members.
9. In consultation with IDA Counsel, act as Records Access Officer with regard to any requests for information pursuant to the Freedom of Information Law.
10. Consult with IDA Counsel regarding proper notice of IDA meetings.
11. Prepare, organize, and distribute minutes, agendas, resolutions and related meeting materials of each IDA meeting (in consultation with IDA Counsel) in accordance with IDA Policies and Procedures and State law including the Open Meetings Law.
12. Coordinate the scheduling and noticing of public hearings and the delivery of notification letters in accordance with the Open Meetings Law and the IDA Statute.
13. Organize and maintain files relating to SEQRA compliance.
14. Maintain and update the IDA's website.
15. Monitor and maintain files regarding the Uniform Tax Exemption Policy of IDA,

including ensuring that any required filings are completed.

16. Provide for the preparation and distribution of Applications submitted by applicants.
17. Meet with potential applicants for IDA assistance and coordinate such meetings.
18. Prepare a proposed structure for the granting of IDA assistance for applicants, consistent with IDA policies, including the IDA Uniform Tax Exemption Policy, for consideration by the IDA.
19. Prepare and review the cost/benefit analysis for proposed IDA projects.
20. Attend IDA board and committee meetings, and prepare and present reports on administrative matters, potential IDA projects and economic development marketing efforts.
21. Review draft IDA documents prepared by IDA Counsel to confirm IDA documents contain approved IDA assistance.
22. Monitor and provide for the volume cap of IDA.
23. Monitor and maintain files regarding the collection of administrative fees for the IDA.
24. Monitor compliance with IDA requirements relating to the exemptions from certain sales and use taxes, real property taxes, real property transfer taxes, mortgage recording taxes, job creation, job retention and job reporting.
25. Provide guidance in connection with any proposed assignment of an existing PILOT Agreement.
26. Ensure that applicants are utilizing local labor in accordance with IDA Policy.
27. Monitor project applicants to ensure that each applicant is not subject to recapturing of benefits or other corrective action in accordance with IDA Policy, and prepare recommendations for consideration by the IDA.
28. Follow the IDA media relations policy.
29. Provide uniform criteria for the evaluation of projects in accordance with IDA Policy.
30. Review, organize, monitor and maintain policies and files relating to the requirements imposed on the IDA relating to the Public Authorities Accountability Act ("PAAA") and the Public Authorities Reform Act ("PARA"), including, but not limited to, working with IDA Counsel and IDA Bond Counsel with respect to such policies.

31. Subject to IDA Board approval, it is intended that the IDA Officers shall be elected and/or appointed from among the members of the AACCA staff.

SCHEDULE B
OFFICE FACILITIES

1. A conference room of sufficient size to host IDA board meetings, conference meetings and meetings with potential project applicants.
2. Subject to availability, parking for members to attend meetings (both during normal business hours and outside business hours).
3. Storage space on site for IDA files.
4. IT support to provide for live streaming of IDA meetings and committee meetings.
 1. IT support to provide for conference call/zoom (or equivalent, as necessary) meetings.

C-1

012014.00006 Business 23910510v1

DRAFT FOR DISCUSSION PURPOSES ONLY
DATED: JUNE 13, 2023

PROFESSIONAL SERVICES AGREEMENT
between
ADVANCE ALBANY COUNTY ALLIANCE LOCAL DEVELOPMENT CORPORATION
and the
ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY

This Agreement ("Agreement"), effective as of _____, 2023, is between the ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY ("IDA"), a public benefit corporation with a place of business at _____ and the ADVANCE ALBANY COUNTY ALLIANCE LOCAL DEVELOPMENT CORPORATION ("AACa"), a not for profit corporation having a place of business at 111 Washington Avenue, Albany, New York, 12210 ("AACa"):

WITNESSETH:

WHEREAS, the AACa has offered to provide professional economic development management and administrative support services to the IDA; and

WHEREAS, the IDA has accepted the offer of the AACa for such professional services; and

WHEREAS, the IDA and the AACa wish to enter into a formal agreement for the provision of and payment for said professional services;

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY COVENANT AND AGREE AS FOLLOWS:

ARTICLE 1 -SERVICES TO BE PERFORMED

The AACa shall perform the professional and administrative support services set forth under Article 2 entitled "SCOPE OF PROFESSIONAL SERVICES" during the period commencing on _____, 2023 and, subject to earlier termination as provided below, continuing until December 31, 2025. In the performance and acceptance of the services herein, the parties understand, acknowledge and agree that the AACa is assuming no managerial role, nor undertaking any oversight responsibilities with regard to the powers and duties of the IDA or the actions or non-actions of its Board of Directors. Nothing in this Agreement should be construed to transfer governance, oversight or fiduciary responsibilities from the IDA to AACa.

ARTICLE 2 - SCOPE OF PROFESSIONAL SERVICES

During the period of this Agreement, the AACa agrees to provide staffing, office equipment, utilities, phone and computer networking to perform the administrative, managerial, accounting, marketing, compliance, and project development functions of the IDA, as further described in Article

12 below. AACAA shall be responsible for the services described on Schedule A attached. The AACAA shall provide professional staff time towards fulfillment of this Agreement, including all administrative clerical, secretarial, accounting, compliance, and information technology support as required.

ARTICLE 3 - PROFESSIONAL SERVICES FEE

In consideration of the terms and conditions of this Agreement, the IDA agrees to pay and the AACAA agrees to accept, as full compensation for all services rendered under this Agreement the amount of \$ _____.

ARTICLE 4 - METHOD OF PAYMENT

The IDA will pay AACAA its professional services fee referenced under Article 3 of this Agreement in twelve (12) equal monthly installments of \$ _____ due and payable no later than the fifteenth (15th) day of each month.

ARTICLE 5 - TERMINATION

This Agreement may be terminated at any time by either AACAA or the IDA for any reason upon thirty (30) days prior written notice to the other party (the "Notice"). In the event of termination, AACAA shall be entitled to compensation for all work performed pursuant to this Agreement to the date of termination. For purposes of this Article, the "date of termination" shall be the thirtieth (30th) day following dispatch of the Notice.

ARTICLE 6 - NOTICES

All notices given to either AACAA or the IDA pursuant to or in connection with this Agreement shall be in writing, and shall be delivered by hand, by certified or registered mail, return receipt requested, by e-mail, or by Federal Express, Express Mail, or other nationally recognized overnight carrier. Such notices shall be sent to the addresses indicated on the first page of this Agreement, or such other address as either AACAA or the IDA may indicate by at least thirty (30) days prior written notice to the other party. Copies of any such notice shall be delivered in writing to counsel to the IDA and AACAA.

ARTICLE 7 - INSURANCE

The IDA shall provide to AACAA proof of or exemption from statutory workers' compensation and disability coverage, and proof of directors and officers (D&O) liability insurance. Such D&O policy shall name AACAA as an additional insured. Upon request by the IDA, AACAA shall provide proof of insurance coverage to the IDA and if required, shall name the IDA as additional insured with respect to general liability.

ARTICLE 8 - MUTUAL INDEMNIFICATION

- a. AACAA shall defend, indemnify and hold harmless the IDA and its members/directors, officers and employees from and against claims, damages, losses, liabilities, costs and expenses, including, but not limited to reasonable attorneys' fees and costs of litigation and/or settlement, whether incurred as a result of a claim by a third party or any other person or entity, arising out of or resulting from AACAA's performance of the tasks detailed in this Agreement, except if such claims, damages, losses or expenses are caused by IDA's negligence or willful misconduct.
- b. IDA shall defend, indemnify and hold harmless AACAA and its members/directors, officers and employees from and against claims, damages, losses, liabilities, costs and expenses, including, but not limited to reasonable attorneys' fees and costs of litigation and/or settlement, whether incurred as a result of a claim by a third party or any other person or entity, arising out of or resulting from IDA's performance of the tasks detailed in this Agreement, except if such claims, damages, losses or expenses are caused by AACAA's negligence or willful misconduct.

ARTICLE 9 – INDEPENDENT CONTRACTOR

Each of AACAA and the IDA Agrees to be solely responsible for all matters relating to compensation of its employees, including compliance with local, state and federal laws governing its personnel, including workers' compensation, Social Security, withholding and payment of any and all federal, state and local personal income taxes, disability insurance, unemployment, and any other taxes for such persons, including any related employer assessment or contributions required by law, and all other regulations governing such matters, and the payment of all salary, vacation and other employee benefits.

ARTICLE 10 - EQUAL EMPLOYMENT OPPORTUNITY

AACAA shall comply with all Federal, State, and Local equal employment opportunity laws, rules, and regulations relating to all matters contained in this Agreement.

ARTICLE 11 - ACCOUNTING AND IDA RECORDS

Proper and full accounting records, including time sheets, shall be maintained by AACAA for all services provided pursuant to this Agreement. All IDA records held by AACAA shall be available for inspection or audit by the IDA if required by applicable law or if requested by the IDA.

ARTICLE 12 –IDA OFFICE AND OFFICE FACILITIES

On or before _____, 2023, the IDA shall move its office to be co-located with the AACAA offices at 111 Washington Avenue, Albany, New York. AACAA shall be responsible for the provision of office facilities described on Schedule B attached.

ARTICLE 13 – NO ARBITRATION

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed thereto in writing by both AACa and the IDA, but must instead only be heard in the Supreme Court of the State of New York (the “State”), with venue in Albany County or, if appropriate, in the Federal District Court with venue in the Northern District of New York, Albany Division.

ARTICLE 14 – NO ASSIGNMENT

Neither AACa nor the IDA may assign its rights, interests, and/or obligations under this Agreement.

ARTICLE 15 – GOVERNING LAW

This Agreement and the performance of AACa and the IDA hereunder shall be governed by and construed in accordance with the laws of the State. AACa and the IDA agree to comply with all applicable federal, state and local laws and regulations.

ARTICLE 16 – MODIFICATIONS TO BE IN WRITING

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by both AACa and the IDA. Changes in the Scope of Professional Services, identified on Schedule A attached hereto, shall not be binding, unless prior to the performance of any such services, AACa and the IDA execute an amendment or modification to this Agreement, which amendment or modification shall specifically set forth the scope of such extra or additional services, the amount of compensation, and extension of time for performance, if any, for any such services. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such amendment or modification.

ARTICLE 17 – DUTY OF LOYALTY/NO CONFLICTS

AACa agrees that it owes a duty of loyalty to the IDA and it will not disclose any confidential information obtained in connection with the performance of its duties to the IDA under this Agreement to any other parties, including any parties it has or enters into contracts with. AACa agrees to enter into a non-disclosure agreement with the IDA, if requested by the IDA, and to meet with the Governance Committee of IDA to disclose any interests that may create an appearance of competition or a conflict of interest.

ARTICLE 18 – RETURN OF FILES

Upon the termination of this Agreement, the AACa will return all files, documents and client records to the IDA. Such files, documents and client records will be returned to the IDA in the format that they currently exist, namely, hard copies of materials will be returned in hardy copy format and electronic copies of materials will be returned in electronic copy format. AACa will return such files,

documents and client records within thirty (30) days of such termination, together with a certificate, in a form satisfactory to the IDA, containing an inventory detailing and describing the materials held by AACCA on behalf of the IDA, together with an index providing for access to such materials, and confirming the delivery of such materials to the IDA.

ARTICLE 19 – TRANSITION

Upon termination of this Agreement, AACCA will provide for and cooperate with the IDA to ensure an orderly transition of the operations of the IDA back to the IDA and/or the successor to AACCA. All files, documents and client records will be returned in accordance with the provisions of Article 18 above. Regarding the operations of the IDA, AACCA will make available to the IDA, and/or the successor to AACCA, the primary staff person providing the services under this Agreement. Such staff person will be made available for transition questions and to address transition issues for a period not to exceed two (2) hours/week for a four (4) week period following the termination of this Agreement. The IDA may, in its absolute discretion, withhold the final payment due to AACCA pursuant to Article 4 above and instead make such payment following the completion of the transition period described in this article.

ARTICLE 20 – ENTIRE AGREEMENT

The rights and obligations of AACCA and the IDA and their respective agents, successors and assignees shall be subject to and governed by this Agreement, which supersedes any other understandings or writings between or among AACCA and the IDA.

[remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**ADVANCE ALBANY COUNTY ALLIANCE
LOCAL DEVELOPMENT CORPORATION**

By: _____

Name: Kevin O'Connor
Title: Chief Executive Officer

**ALBANY COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____

Name: William M. Clay
Title: Chairman

SCHEDULE A DESCRIPTION OF SERVICES

1. Implementation, execution and compliance with all IDA Policies and Procedures, and provide advice on amendments and revisions to existing policies and creation of new policies to advance the mission of the IDA.
2. Provide for the deposit and investment of the funds of IDA in accordance with the IDA Investment Policy.
3. Provide for the preparation of reports of the deposit and investment of the funds of IDA in the IDA Investment Policy.
4. Ensure that procurement of goods or services complies with the IDA Procurement Policy.
5. Prepare an annual budget of IDA and the filing of such budget in accordance with the Public Authorities Law.
6. Provide for the preparation of financial statements and reports of the IDA, including the PARIS Report, and the filing of such materials with appropriate State offices in accordance with the Public Authorities Law.
7. Report on questions involving potential conflicts of interest under the IDA Code of Ethics.
8. Consult with IDA Counsel regarding membership and proper appointment of IDA members.
9. In consultation with IDA Counsel, act as Records Access Officer with regard to any requests for information pursuant to the Freedom of Information Law.
10. Consult with IDA Counsel regarding proper notice of IDA meetings.
11. Prepare, organize, and distribute minutes, agendas, resolutions and related meeting materials of each IDA meeting (in consultation with IDA Counsel) in accordance with IDA Policies and Procedures and State law including the Open Meetings Law.
12. Coordinate the scheduling and noticing of public hearings and the delivery of notification letters in accordance with the Open Meetings Law and the IDA Statute.
13. Organize and maintain files relating to SEQRA compliance.
14. Maintain and update the IDA's website.
15. Monitor and maintain files regarding the Uniform Tax Exemption Policy of IDA,

including ensuring that any required filings are completed.

16. Provide for the preparation and distribution of Applications submitted by applicants.
17. Meet with potential applicants for IDA assistance and coordinate such meetings.
18. Prepare a proposed structure for the granting of IDA assistance for applicants, consistent with IDA policies, including the IDA Uniform Tax Exemption Policy, for consideration by the IDA.
19. Prepare and review the cost/benefit analysis for proposed IDA projects.
20. Attend IDA board and committee meetings, and prepare and present reports on administrative matters, potential IDA projects and economic development marketing efforts.
21. Review draft IDA documents prepared by IDA Counsel to confirm IDA documents contain approved IDA assistance.
22. Monitor and provide for the volume cap of IDA.
23. Monitor and maintain files regarding the collection of administrative fees for the IDA.
24. Monitor compliance with IDA requirements relating to the exemptions from certain sales and use taxes, real property taxes, real property transfer taxes, mortgage recording taxes, job creation, job retention and job reporting.
25. Provide guidance in connection with any proposed assignment of an existing PILOT Agreement.
26. Ensure that applicants are utilizing local labor in accordance with IDA Policy.
27. Monitor project applicants to ensure that each applicant is not subject to recapturing of benefits or other corrective action in accordance with IDA Policy, and prepare recommendations for consideration by the IDA.
28. Follow the IDA media relations policy.
29. Provide uniform criteria for the evaluation of projects in accordance with IDA Policy.
30. Review, organize, monitor and maintain policies and files relating to the requirements imposed on the IDA relating to the Public Authorities Accountability Act ("PAAA") and the Public Authorities Reform Act ("PARA"), including, but not limited to, working with IDA Counsel and IDA Bond Counsel with respect to such policies.

31. Subject to IDA Board approval, it is intended that the IDA Officers shall be elected and/or appointed from among the members of the AACB staff.

SCHEDULE B
OFFICE FACILITIES

1. A conference room of sufficient size to host IDA board meetings, conference meetings and meetings with potential project applicants.
2. Subject to availability, parking for members to attend meetings (both during normal business hours and outside business hours).
3. Storage space on site for IDA files.
4. IT support to provide for live streaming of IDA meetings and committee meetings.
1. IT support to provide for conference call/zoom (or equivalent, as necessary) meetings.

**ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY
RESOLUTION APPROVING AMENDMENTS TO POLICY MANUAL**

A regular meeting of Albany County Industrial Development Agency (the "Agency") was convened in public session in Room 740 at 112 State Street in the City of Albany, Albany County, New York on June 21, 2023 at 5:30 o'clock p.m., local time.

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

PRESENT:

Hon. William M. Clay	Chairman
Michael Paparian	Treasurer
Marlene McTigue	Secretary
Anton Dreslin	Assistant Secretary
Travon T. Jackson	Member
Douglas Roether	Member
Paul Nylin	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Kevin O'Connor	Chief Executive Officer
Amy Thompson	Chief Financial Officer
Rosemary McHugh	Economic Development Coordinator
A. Joseph Scott, III, Esq.	Counsel

The following resolution was offered by _____, seconded by _____, to wit:

Resolution No. 0623-_____

**RESOLUTION APPROVING AMENDMENTS TO THE POLICY MANUAL OF THE
ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY.**

WHEREAS, Albany County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 178 of the 1975 Laws of New York, as amended, constituting Section 903-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity

and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, under Section 858 of the Act, the Agency has the power to approve certain administrative matters; and

WHEREAS, the Agency has previously adopted various administrative policies (the "Agency Policy Manual"); and

WHEREAS, the members of the Agency desire to approve certain amendments to the Agency Policy Manual;

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

Section 1. The Agency hereby takes the following actions:

(A) Approves and confirms the amendments to the Agency Policy Manual, as shown in Schedule A attached, and as further described in the memorandum attached hereto as Schedule B.

Section 2. The Agency hereby authorizes the Chairman, Chief Executive Officer and Agency Special Counsel to take all steps necessary to implement the matters described in Section 1.

Section 3. This Resolution shall take effect immediately.

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

Hon. William M. Clay	VOTING	_____
Michael Paparian	VOTING	_____
Marlene McTigue	VOTING	_____
Anton Dreslin	VOTING	_____
Travon T. Jackson	VOTING	_____
Douglas Roether	VOTING	_____
Paul Nylin	VOTING	_____

The resolution was thereupon declared duly adopted.

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

I, the undersigned (Assistant) Secretary of Albany County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on June 21, 2023 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law") except as modified by Executive Order 202.1, as supplemented, said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this day of June, 2023.

(Assistant) Secretary

(SEAL)

SCHEDULE A

AMENDMENTS TO THE
AGENCY POLICY MANUAL

- SEE ATTACHED -

DRAFT FOR DISCUSSION PURPOSES ONLY
DATED: ~~JANUARY 20~~JUNE 21 ~~2020~~2023

AGENCY POLICY MANUAL

***ALBANY COUNTY
INDUSTRIAL DEVELOPMENT AGENCY***

~~012014.00001 Business 19010765v1~~012014.00001 Business 19010765v2

PREAMBLE

This Policy Manual of the Albany County Industrial Development Agency reflects an effort by the members and staff of the Agency to reorganize the administrative procedures of the Agency (1) to respond to requirements contained in Chapters 356 and 357 of the Laws of 1993 and the subsequent amendments to Title 1 of Article 18-A of the General Municipal Law (collectively, the "IDA Reform Legislation") and (2) to respond to requirements contained in Chapter 766 of the Laws of 2005 and Chapter 506 of the Laws of 2009 (collectively, the "Public Authorities Accountability Act").

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

APPENDIX 2A

As of 01/01/2023 02:35PM, the Law database is current through 2023
Chapters 1-103

General Municipal

§ 80-184. Albany county industrial development agency. For the benefit of the county of Albany and the inhabitants thereof, an industrial development agency to be known as the ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, is hereby established for the accomplishment of any or all of the purposes specified in title one of article eighteen-A of this chapter. It shall constitute a body corporate and politic, and its purpose in creation, it shall have the powers and duties now or hereafter conferred by title one of article eighteen-A of this chapter upon industrial development agencies, and provided that the exercise of the powers by such agency with respect to the acquisition of real property whether by purchase, condemnation or otherwise, shall be limited to the corporate limits of the county of Albany, and said agency shall take into consideration the local zoning and planning regulations as well as the regional and local comprehensive land use plans. It shall be organized in the manner prescribed by and be subject to the provisions of title one of article eighteen-A of this chapter. Its members shall be appointed by the governing body of the county of Albany. The agency, its members, officers and employees and contractors and agents shall in all respects be governed by the provisions of title one of article eighteen-A of this chapter.

* N.Y. Agency commences §§ 85 and 852

2A-1

~~012014.00001 Business 10010765~~ 1012014.00001 Business 10010765v2

any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and (3) fairly presents in all material respects the financial condition and results of operations of the Agency as of, and for, the periods presented in the financial statements.

Section 3. Additional Personnel. The Agency may from time to time employ such personnel as it deems necessary to exercise its statutory powers, duties and functions. The selection and compensation of all personnel shall be determined by the Agency. The Agency shall have the power to appoint Agency Counsel, Bond Counsel or other Counsel by resolution (collectively, "Counsel"). The compensation for such Counsel shall be determined by the Agency from proceeds derived from the issuance of bonds, or other manner consistent with law. Private consultants for professional and technical assistance and advice may be employed by the Agency as required.

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

Section 5. Bonding of Officers and Employees. The officers of the Agency (Chairman, Secretary and Treasurer), and if necessary the Chief Executive Officer and the Chief Financial Officer, and such other officers as the Agency may require, shall execute bonds conditioned upon the faithful performance of the duties of their offices, the amount and sufficiency of which shall be specified by the Agency and the premiums therefor shall be paid by the Agency.

ARTICLE V

INDEMNIFICATION OF DIRECTORS AND OFFICERS

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

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

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

Section 3. Availability and Interpretation. To the extent permitted under applicable law, the rights of indemnification and to the advancement of expenses provided in this Article V (A) shall be available with respect to events occurring prior to the adoption of this Article V, (B) shall continue to

<u>Estimated Amount of Public Works Contract</u>	<u>Method</u>
\$2,501-\$5,000	3 verbal quotations
\$5,001 - \$35,000	3 written/fax quotations or written request for proposals

(B) Number of Proposals or Quotations. A good faith effort shall be made to obtain the required number of proposals or quotations. If the purchaser is unable to obtain the required number of proposals or quotations, the purchaser will document the attempt made at obtaining the proposals. In no event shall the failure to obtain the proposals be a bar to the procurement.

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

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

SECTION 505. CIRCUMSTANCES WHERE SOLICITATION OF ALTERNATIVE PROPOSALS AND QUOTATIONS NOT IN BEST INTEREST. Pursuant to General Municipal Law Section 104-b(2)(f), the procurement policy may contain circumstances when, or types of procurements for which, in the sole discretion of the members of the Agency, the solicitation of alternative proposals or quotations will not be in the best interest of the Agency. In the following circumstances, it may not be in the best interests of the Agency to solicit quotations or document the basis for not accepting the lowest bid:

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

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

PART 6
ANNUAL BUDGET

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

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

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

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

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

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

(1) One copy of the proposed budget shall be mailed or delivered to the Chairman of the County Legislature of Albany County, accompanied by a letter in substantially the form of Appendix 6B (the "Enclosure Letter") and a public notice in substantially the form of Appendix 6C (the "Public Notice");

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

(3) One copy of the Public Notice will be posted on a prominent bulletin board located at the Albany County Office Building, 112 State Street, Albany, New York; and

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

(F) Adoption of Budget. After waiting at least twenty (~~10~~20) days after the mailing or delivery of the proposed budget described in Subsection (E)(1) and (2) above, the members of the Agency shall consider the adoption of a budget for the forthcoming fiscal year.

APPENDIX 6B

FORM OF ENCLOSURE LETTER

[LETTERHEAD OF ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY]

_____, _____

Hon. _____
County Executive
112 State Street
Albany, New York 12207

Hon. _____
Chairman
County Legislature
112 State Street
Albany, New York 12207

RE: Albany County Industrial Development Agency
Proposed Budget

Gentlemen:

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

1. The proposed budget of Albany County Industrial Development Agency (the "Agency") for the fiscal year commencing _____, ____; and

2. A public notice relating to same.

Pursuant to the provisions of the Act, to allow for a period of public comment, this budget will not be adopted until at least tentwenty (~~10~~20) days subsequent to the date of this letter. Any comments on this proposed budget should be made in writing, addressed to the Chairman of the Agency at _____, Albany, New York _____.

6B-1

012014.00001 Business 19010765v1 012014.00001 Business 19010765v2

PART 7
BOND COUNSEL DISCLOSURE

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

SECTION 702. DISCLOSURE STATEMENT. (A) General. Any attorney seeking to be appointed as bond counsel for a project must file with the Agency a written statement (a "Disclosure Statement") in which the attorney (1) identifies each party to the transaction which such attorney and his or her firm represents and (2) affirms that attached to such Disclosure Statement is a true and correct copy of the engagement letter or other summary of the method by which such attorney expects to charge for legal services. Each Disclosure Statement shall be substantially in the form of Appendix 7A to this Part.

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

(C) Time of Filing. ~~(1) Prior to the appointment by the Agency of bond counsel for a particular project, a timely Disclosure Statement must be on file with the Agency relating to said project. A Disclosure Statement shall be deemed timely if it is dated not more than sixty (60) days prior to the date of adoption of the resolution of the Agency appointing such attorney as bond counsel with respect to such project. It is timely filed if executed and delivered no later than the closing date for the transaction.~~

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

SECTION 703. FINANCIAL DISCLOSURE. Since case law has determined that the legal fees of bond counsel are a public record, each Disclosure Statement filed pursuant to Section 702(C)(1) of this Part shall be accompanied by a copy of the engagement letter or other summary of the method by which such attorney expects to charge for bond counsel services.

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

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

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

- (1) either directly or indirectly, solicit, accept or receive any gift having a value of seventy-five dollars (\$75.00) or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended as a reward for any official action on his or her part, or that it was intended to or could reasonably be expected to influence him or her in the performance of his or her official duties;
- (2) disclose confidential information acquired in the course of his or her official duties or use such information to further his or her personal interests;
- (3) receive or enter into any express or implied agreement for compensation for services to be rendered in relation to any matter before the Agency; or
- (4) receive or enter into any express or implied agreement for compensation for services to be rendered in relation to any matter before the Agency whereby his or her compensation is to be dependent or contingent upon any action by such Agency with respect to that matter; provided, however, that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

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

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

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

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

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

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

- (1) the date and identification of a request for records, together with a copy of such request;
- (2) the date of denial of access, together with a copy of such denial;
- (3) the records that were denied; and
- (4) the name and return address of the appellant.

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

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

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

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

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

- (1) inform the person who requested the exception of the Agency's intention to determine whether such exception should be granted or continued;

PART 15
CONDUCT AND NOTIFICATION OF PUBLIC HEARINGS

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

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

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

(B) Location. The public hearing shall be held in the town or village where the project is to be located.

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

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

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

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

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

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

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

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

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

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

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

(C) The Hearing Officer shall read the public notice and indicate the publication in which it was published and when it was published. At the discretion of the Hearing Officer, the Hearing Officer may waive reading of the complete public notice. In any event, the public notice shall be entered into the record of the public hearing.

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

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

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

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

INSTRUCTIONS

1. The Agency will not consider an environmental assessment form complete unless in the judgment of the Agency said environmental assessment form contains sufficient information upon which to base a decision as to whether the action which is the subject of this environmental assessment form (the "Action") may or will not have a significant effect upon the environment.
2. Fill in all blanks, using "none" or "not applicable" or "N/A" where the question is not appropriate to the project which is the subject of this environmental assessment form (the "Project").
3. If an estimate is given as the answer to a question, put "(est)" after the figure or answer which is estimated.
34. If more space is needed to answer any specific question, attach a separate sheet.
5. This environmental assessment form is designed to assist in determining whether the proposed Action may have a significant effect on the environment. Please complete the entire environmental assessment form. Answer to these questions will be considered as part of the application for approval and may be subject to further verification and public review.
6. It is expected that completion of this environmental assessment form will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.
7. When completed, return one (1) hard copy and one (1) electronic copy of this environmental assessment form to the Agency at the address indicated on the first page of this environmental assessment form.
48. Please note that Article 6 of the Public Officers Law declares that all records in the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the applicant feels that there are elements of the Project which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the applicant's competitive position, the applicant may identify such elements in writing and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law.

FOR AGENCY USE ONLY

1. Project Number	
2. Date environmental assessment form ("EAF") received	, 20
3. Date copy of EAF mailed to members	, 20
4. Date notice of Agency meeting on EAF posted	, 20
5. Date notice of Agency meeting on EAF published	, 20
6. Date of Agency meeting to determine significance	, 20
7. Date Notice of No Significance mailed	, 20
8. Date Notice of Significance mailed	, 20

17A-3

012014-00001 Business 19010765v1 012014.00001 Business 19010765v2

(B) Exceptions. ~~Although the Agency has never deviated from~~ The Agency intends to follow the general policy enunciated under subsection (A) of this Section, ~~the absent special circumstances~~. The Agency reserves the right to deviate from such policy in special circumstances. In determining whether special circumstances exist to justify such a deviation, the Agency may consider factors which make the project unusual, which factors might include but not be limited to the following factors: (1) the magnitude and/or importance of any permanent private sector job creation and/or retention related to project; (2) whether the affected tax jurisdictions will be reimbursed by the project occupant if the project does not fulfill the purposes for which tax exemption was granted; (3) the impact of the project on existing and proposed businesses and/or economic development projects; (4) the amount of private sector investment generated or likely to be generated by the project; (5) demonstrated public support for the project; (6) the estimated value of the tax exemptions requested; and (7) the extent to which the proposed project will provide needed services and/or revenues to the affected tax jurisdictions. In addition, the Agency may consider the other factors outlined in Section 874(4)(a) of the Act.

(C) Application. No request for a tax exemption shall be considered by the Agency unless an application and environmental assessment form are filed with the Agency on the forms prescribed by the Agency pursuant to the rules and regulations of the Agency. Such application shall contain the information requested by the Agency, including a description of the proposed project and of each tax exemption sought with respect to the project, the estimated value of each tax exemption sought with respect to the project, the proposed financial assistance being sought with respect to the project, the estimated date of completion of the project, an analysis of the costs and benefits of the project, and whether such financial assistance is consistent with this part.

SECTION 1804. SALES AND USE TAX EXEMPTION. (A) General. State law provides that purchases of tangible personal property by the Agency or by an agent of the Agency, and purchases of tangible personal property by a contractor for incorporation into or improving, maintaining, servicing or repairing real property of the Agency, are exempt from sales and use taxes imposed pursuant to Article 28 of the Tax Law. The Agency has a general policy of abating sales taxes applicable only to the initial acquisition, construction, reconstruction and/or equipping of each project with respect to which the Agency grants financial assistance. The Agency has no requirement for imposing a payment in lieu of tax arising from the exemption of a project from sales and/or use taxes applicable to the initial acquisition, construction, reconstruction and/or equipping of such project, except (1) as described in subsection (E) below or (2) in the circumstance where (a) a project is offered sales tax exemption on the condition that a certain event (such as the issuance of bonds by the Agency with respect to the project) occur by a certain date and (b) such event does not occur, in which case the Agency may require that the applicant make payments in lieu of sales tax to the New York State Department of Taxation and Finance.

(B) Period of Exemption. Except as set forth in subsection (A) above, the period of time for which a sales tax exemption shall be effective (the "tax exemption period") shall be determined as follows:

(1) General. Unless otherwise determined by the Agency, the tax exemption for sales and use taxes shall be for the tax exemption period commencing with the issuance by the Agency of bonds, notes or other evidences of indebtedness with respect to the project and ending on the date of completion of the project.

(2) Early Commencement. The tax exemption period may, at the discretion of the Agency, commence earlier than (i) the date of issuance by the Agency of the Agency's debt relating to the project or (ii) the execution and delivery of the straight lease transaction, provided that (a) the Agency has complied with the requirements of Section 859-a of the Act, (b) the

for the purpose of refinancing prior debt issued by the Agency, and on any modifications, extensions and renewals thereof, so long as the Agency fees relating to the same have been paid.

(C) Non-Agency Projects. In the event that the Agency does not hold title to a project, it is the policy of the Agency not to join in a mortgage relating to that project and not to abate any mortgage recording taxes relating to that project.

(D) Non-Agency Financings. Occasionally, a situation will arise where the Agency holds title to a project, the project occupant needs to borrow money for its own purposes (working capital, for example), and the lender will not make the loan to the project occupant without obtaining a fee mortgage as security. In such instances, the policy of the Agency is to consent to the granting of such mortgage and to join in such mortgage, so long as the following conditions are met:

(1) the documents relating to such proposed mortgage make it clear that the Agency is not liable on the debt, and that any liability of the Agency on the mortgage is limited to the Agency's interest in the project;

(2) the granting of the mortgage is permitted under any existing documents relating to the project, and any necessary consents relating thereto have been obtained by the project occupant; and

(3) the payment of the Agency fee relating to the same.

(E) Exemption Affidavit. The act of granting a mortgage recording tax exemption by the Agency is confirmed by the execution by an authorized officer of the Agency of an exemption affidavit relating thereto. A sample exemption affidavit is attached as Appendix 18D.

(F) PILOT Payments. If the Agency is a party to a mortgage that is not to be granted a mortgage recording tax exemption by the Agency (a "non-exempt mortgage"), then the applicant and/or project occupant or other person recording same shall pay the same mortgage recording taxes with respect to same as would have been payable had the Agency not been a party to said mortgage (the "normal mortgage tax"). Such mortgage recording taxes are payable to the County Clerk of the County, who shall in turn distribute same in accordance with law. If for any reason a non-exempt mortgage is to be recorded and the Agency is aware that such non-exempt mortgage may for any reason be recorded without the payment of the normal mortgage tax, then the Agency shall prior to executing such non-exempt mortgage collect a PILOT equal to the normal mortgage tax and remit same within thirty (30) days of receipt by the Agency to the affected tax jurisdiction in accordance with Section 874(3) of the Act.

SECTION 1806. REAL ESTATE TRANSFER TAXES. (A) Real Estate Transfer Tax. Article 31 of the Tax Law provides for the imposition of a tax upon certain real estate transfers. Section 1405(b)(2) of the Tax Law provides that transfers into the Agency are exempt from such tax, and the New York State Department of Taxation and Finance has ruled that transfers of property by the Agency back to the same entity which transferred such property to the Agency are exempt from such tax. The general policy of the Agency is to impose no payment in lieu of tax upon any real estate transfers to or from the Agency.

(B) Required Filings. It shall be the responsibility of the applicant and/or project occupant to ensure that all documentation necessary relative to the real estate transfer tax are timely filed with the appropriate officials.

(5) Local Approval. Prior to entering into any proposed PILOT Agreement, the Agency shall, in its sole and absolute discretion, attempt to obtain written consent of the PILOT Agreement from all of the affected tax jurisdictions. Any such approval shall be evidenced by a resolution of the governing boards of each town, village and school district in which the Project is located, and the County Executive with respect to the County, in each case, in form and substance satisfactory to the Agency. In the event that the Agency is not able to obtain the consents of all the affected tax jurisdictions to the proposed PILOT Agreement, the Agency may enter into such PILOT Agreement without the consents of such affected tax jurisdictions.

(D) Required Filings. As indicated in subsection (B) above, pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, no real estate tax exemption with respect to a particular project shall be effective until an exemption form is filed with the assessor of each county, city, town, village and school district in which such project is located (each, a "Taxing Jurisdiction"). Once an exemption form with respect to a particular project is filed with a particular Taxing Jurisdiction, the real property tax ~~exception~~exemption for such project does not take effect until (1) a tax status date for such Taxing Jurisdiction occurs subsequent to such filing, (2) an assessment roll for such Taxing Jurisdiction is finalized subsequent to such tax status date, (3) such assessment roll becomes the basis for the preparation of a tax roll for such Taxing Jurisdiction, and (4) the tax year to which such tax roll relates commences.

(E) Real Property Appraisals. Since the policy of the Agency stated in subsection (C)(1) is to base the value of a project for payment in lieu of tax purposes on a valuation of such project performed by the Assessor of the applicable Taxing Jurisdiction, normally a separate real property appraisal is not required. However, the Agency may require the submission of a real property appraisal if (1) the assessor of any particular Taxing Jurisdiction requires one or (2) if the valuation of the project for payment in lieu of tax purposes is based on a value determined by the applicant or by someone acting on behalf of the applicant, rather than by an assessor for a Taxing Jurisdiction or by the Agency. If the Agency requires the submission of a real property appraisal, such appraisal shall be prepared by an independent MAI certified appraiser acceptable to the Agency.

(F) PILOT Expiration. Pursuant to Section 858(15) of the Act, as amended, the Agency shall deliver a notification to the affected tax jurisdictions regarding the termination of each PILOT Agreement (1) two (2) years prior to the schedule expiration of the PILOT Agreement or (2) immediately upon any early termination of the PILOT Agreement.

SECTION 1808. PROCEDURES FOR DEVIATION. (A) General. In the case where the Agency shall determine that any policy of the Agency as herein established is inappropriate or unfair, the Agency may determine:

(1) the amount of the tax exemption, the amount and nature of the PILOT, the duration of the exemption and of the PILOT and whether or not an exemption of any kind shall be granted and shall impose such terms and conditions as shall be just and proper; and

(2) the Agency shall give written notice of the proposed deviation from the policy set forth herein to each affected Taxing Jurisdiction setting forth the terms and conditions of the deviation and the reasons therefor. Such notice to the affected tax jurisdictions shall be given to the chief executive officer of each affected tax jurisdiction ~~at least thirty (30) days prior to the meeting of the Agency at which the Agency shall consider whether to approve such deviation via certified mail, return receipt requested, or via an electronic correspondence with a read-receipt. With respect to any school districts, the chief executive officer shall include (a) the president of~~

the board of education of the school district (b) the superintendent of the school district, and (c) the district clerk of the school district. Prior to taking any final action on a proposed deviation, the Agency shall review and respond to any correspondence received from any affected tax jurisdiction regarding the proposed deviation and allow any representative of an affected tax jurisdiction present at such meeting to address the Agency regarding the proposed deviation.

(B) Troubled Projects. Where a project is owned and operated by the Agency or has been acquired by the Agency for its own account after a failure of a project occupant, the project shall at the option of the Agency be exempt from all taxes in accordance with law.

(C) Unusual Projects. Where a project is unusual in nature and requires special considerations related to its successful operations as demonstrated by appropriate evidence presented to the Agency, the Agency shall consider the granting of a deviation from the established exemption policy in accordance with the procedures provided in the title. The Agency may authorize a minimum payment in lieu of tax or such other arrangement as may be appropriate.

SECTION 1809. ANNUAL REVIEW OF POLICIES. (A) General. At least annually, the Agency shall review its tax exemption policies to determine relevance, compliance with law, effectiveness, and shall adopt any modifications or changes that it shall deem appropriate. Unless otherwise provided by resolution, such annual review shall take place at the regular June meeting of the Agency, notice for comments on such policies shall be circulated ~~at least thirty (30) days prior to such meeting to as provided by law for input from~~ Albany County and all the other affected tax jurisdictions, and adoption of any changes shall take effect upon approval by the Agency. The Chairman shall be responsible for conducting an annual review of the tax exemption policy and for an evaluation of the internal control structure established to ensure compliance with the tax exemption policy which shall be submitted to the Agency for approval. ~~The thirty (30) day comment period shall not apply to the adoption of the original policies of the Agency which said policies shall become effective as herein provided.~~

the Chairman of the Agency at the principal office of the Agency, presently located at 112 State Street, Room 740, Albany, New York 12207.

(H) Form of Transmission. All materials submitted to the Agency must be submitted in "hard" copy form. The Agency will not accept e-mail transmissions unless expressly authorized by the Agency or expressly requested by the Agency. The Agency reserves the right to request e-mail transmissions of documents and communications.

SECTION 1903. PROCEDURES FOR PROCESSING PROJECTS.

(A) Distribution. In advance of the meeting where the application will be considered, the Chief Executive Officer of the Agency shall examine same to determine compliance with the requirements of Section 1902 of this Part. If the application appears to substantially comply with such requirements, the Chief Executive Officer of the Agency shall distribute one copy of the summary of the application and the documentation accompanying same (together with a memorandum describing any deviations from the requirements of Section 1902 of this Part, if any) to each of the following:

- (1) the Chairman of the Agency;
- (2) counsel to the Agency;
- (3) each of the members of the Agency; and
- (4) the parties described in Section 1102 of Part 11.

(B) Preliminary Agency Action. (1) Once the application has been distributed pursuant to Section 1903(A) hereof, Bond Counsel/Special Counsel to the Agency shall contact counsel to the applicant (or Agency staff will contact the applicant) to discuss, subject to approval by the members of the Agency, to a time schedule whereby the Agency will consider the application, entertain resolutions and provide the financial assistance requested in the application. Except as otherwise determined by the Agency, prior to the Agency taking any preliminary action with respect to an application, the Agency staff shall first submit the application to the Finance Committee of the Agency for preliminary review and consideration. Once the Finance Committee has reviewed the application and has made a recommendation to the full board of the Agency that the Agency take preliminary action with respect to the application, the Agency staff will then submit the application for consideration by the full board of the Agency. Preliminary action by the Agency shall consist of the adoption by the Agency of (a) a preliminary official action resolution (the "Preliminary Inducement Resolution") approving the execution and delivery of a preliminary agreement describing the financial assistance to be granted by the Agency for projects involving the issuance of bonds, and (b) public hearing resolution for projects involving "straight lease" transactions (the "Public Hearing Resolution," and, collectively with the Preliminary Inducement Resolution, the "Preliminary Resolution"). Bond Counsel/Special Counsel shall be responsible for preparing the preliminary official action resolution or the public hearing resolution, as the case may be, and filing same with the Agency in conformance with the deadlines described in (E) below.

(2) Pursuant to Section 859-a(1-a) of the Act, the Agency shall deliver a copy of the Preliminary Resolution via certified mail, return receipt requested or an electronic correspondence with a read-receipt to the chief executive officer of each affected tax jurisdiction. For purposes of this section, the chief executive officer of each school district shall include (a) the president of the board of education of the school district (b) the superintendent of the school district, and (c) the district clerk of the school district.

(C) Subsequent Agency Action. Any subsequent action by the Agency with respect to an Agency Project shall typically consist of SEQR resolutions and final approval/bond resolutions. Bond Counsel/Special Counsel shall be responsible for preparing such resolutions, and filing same with the Agency in conformance with the deadlines described in (E) below.

(D) Term of Preliminary Resolution. Any preliminary agreement authorized by a preliminary official action resolution shall have a term of twelve (12) months. If the Project has not closed within the twelve (12) month period provided in the preliminary agreement, the applicant must provide a written report to the Agency regarding the status of the Project. The term of the preliminary agreement may be renewed for one additional twelve (12) month period. If the Project has not closed within the second twelve (12) month period, the preliminary agreement will terminate and the applicant must re-apply to the Agency for any financial assistance.

(E) Filing Deadline. Except as otherwise determined by the Agency and except as otherwise provided in Section 1903(B) hereof, an application will not be considered at a meeting of the Agency unless it is filed and meets the requirements of Section 1902 of this Part at least fifteen (15) calendar days before the next scheduled meeting of the Agency. Any and all resolutions must also be filed with the Agency at least six (6) calendar days before the next scheduled meeting of the Agency. The applicant or Bond Counsel/Special Counsel must submit at least one (1) copy of all resolutions to the Agency. The applicant and Bond Counsel/Special Counsel are responsible for conferring with the Agency staff to ensure that all applications and resolutions are delivered timely to the Agency. The regular meeting schedule of the Agency is the first Wednesday of each month. The regular meeting schedule of the Finance Committee of the Agency is the [_____] of each month.