

AGENDA and MEETING NOTICE

**Industrial Development Agency
Governance and Uniform Policies and
Guidelines Committee Meeting
8:30 a.m. IDA Conference Room
September 28, 2017**

Members: Arthur Nastre, Chairman
Eric Mallette, John Ferretti, Florestano Girardi

- Adoption of Recapture and Termination Policy with changes requested by the Committee at the August meeting.
- Adoption of Agency Fee Schedule

9/14/17

RECAPTURE AND TERMINATION POLICY
TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY
EFFECTIVE July 1, 2016

Pursuant to Sections 874(10) and (11) of Title 1 of Article 18-A of the New York State General Municipal Law (the “**Act**”), the Town of Hempstead Industrial Development Agency (the “**Agency**”) is required to adopt policies (i) for the discontinuance or suspension of any ~~financial~~ Financial Assistance (defined below) provided by the Agency to a project or the modification of any payment in lieu of tax agreement and (ii) for the return of all or part of the ~~financial~~ Financial assistance-Assistance (defined below) provided by the Agency to a project. This Recapture and Termination Policy was adopted pursuant to a resolution enacted by the members of the Agency on July ~~27~~24, 2016, 2016~~2017~~.

I. Termination or Suspension of Financial Assistance

The Agency, in its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so) to terminate or suspend the Financial Assistance (defined below) provided to a project upon the occurrence of an Event of Default, as such term is defined and described in the Lease Agreement entered into by the Agency and a project applicant (the “**Applicant**”) or any other document entered into by such parties in connection with a project (the “**Project Documents**”). Such Events of Default may include, but shall not be limited to, the following:

- 1) Sale or closure of the Facility (as such term is defined in the Project Documents);
- 2) Failure by the Applicant to pay or cause to be paid amounts specified to be paid pursuant to the Project Documents on the dates specified therein;
- 3) Failure by the Applicant to create and/or maintain at least 80% of the FTEs as provided in the Project Documents;
- 4) A material violation of the terms and conditions of the Project Agreements; and
- 5) A material misrepresentation contained in the application for Financial Assistance, any Project Agreements or any other materials delivered pursuant to the Project Agreements;
- 6) Significant change in the use of the Facility as described in the Project Documents, without the consent of the Agency;
- 7) Significant change or reduction in the business activities of the project applicant or operator; and
- 8) Failure to provide any information concerning the projects, the project applicant or any project operator requested by the Agency.

The decision of whether to terminate or suspend Financial Assistance and the timing of such termination or suspension of Financial Assistance shall be determined by the Agency, in its sole discretion, on a case-by-case basis, and shall be subject to the notice and cure periods provided for in the Project Documents.

For the purposes of this policy, the term “**Financial Assistance**” shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived

solely from the Agency's participation in the transaction contemplated by the Project Agreements including, but not limited to:

- (i) any exemption from any applicable mortgage recording tax with respect to the Facility on mortgages granted by the Agency on the Facility at the request of the Applicant;
- (ii) sales tax exemption savings realized by or for the benefit of the Applicant, including and savings realized by any agent of the Applicant pursuant to the Project Agreements in connection with the Facility; and
- (iii) real property tax abatements granted under the Project Agreements.

II. Recapture of Financial Assistance

The Agency, in its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so) to recapture all or part of the Financial Assistance provided to a project upon the occurrence of a Recapture Event, as such term is defined and described in the Project Documents. Such Recapture Events may include, but shall not be limited to the following:

- 1) Sale or closure of the Facility (as such term is defined in the Project Documents);
- 2) Failure by the Applicant to pay or cause to be paid amounts specified to be paid pursuant to the Project Documents on the dates specified therein;
- 3) Failure by the Applicant to create and/or maintain the FTEs as provided in the Project Documents; provided that (a) if the Applicant fails to create and/or maintain at least 80% of the FTE's as provided in the Project Documents, the Agency may recapture all of the Financial Assistance; and (b) if the Applicant fails to create and/or maintain 100% of the FTE's (but higher than 80% of the FTE's) as provided in the Project Documents, the Agency may recapture a proportionate share of the Financial Assistance or adjust the PILOT in accordance with Section III of this policy.
- 4) A material violation of the terms and conditions of the Project Agreements; and
- 5) A material misrepresentation contained in the application for Financial Assistance, any Project Agreements or any other materials delivered pursuant to the Project Agreements;
- 6) Significant change in the use of the Facility as described in the Project Documents, without the consent of the Agency;
- 7) Significant change or reduction in the business activities of the project applicant or operator; and
- 8) Failure to provide any information concerning the projects, the project applicant or any project operator requested by the Agency.

Formatted: Indent: Left: 0.5", Hanging: 0.25"

~~The timing of the recapture of the Financial Assistance shall be determined by the Agency, in its sole discretion, on a case-by-case basis, and is subject to the notice and cure periods provided for in the Project Documents. The timing and percentage of such Financial Assistance to be recaptured, consistent with the Agency's Uniform Tax Exemption Policy Section IV.A., shall be determined by the provisions of the Project Documents.~~

All recaptured amounts of Financial Assistance shall be redistributed to the appropriate affected taxing jurisdiction, unless agreed to otherwise by any local taxing jurisdiction.

For the avoidance of doubt, the Agency may determine to terminate, suspend and/or recapture Financial Assistance in its sole discretion. Such actions may be exercised simultaneously or separately and are not mutually exclusive of one another.

III. Modification of Payment In Lieu of Tax Agreement

In the case of any Event of Default or Recapture Event, in lieu of terminating, suspending or recapturing the Financial Assistance, the Agency may, in its sole discretion, adjust the payments in lieu of taxes due under the Project Agreements, so that the payments in lieu of taxes payable under the Project Agreements are adjusted upward retroactively and/or prospectively for each tax year until such time as the Applicant has complied with the provisions of the Project Agreements. The amount of such adjustments shall be determined by the provisions of the Project Documents.

Adopted: July ~~27~~²⁴, 2016~~2017~~

Resolution No: 038-2016_____

**TOWN OF HEMPSTEAD
INDUSTRIAL DEVELOPMENT AGENCY
FEE SCHEDULE**

Effective November 1, 2016 October 2017

APPLICATION FEE:

The Town of Hempstead Industrial Development Agency (HIDA) will charge a non-refundable Application Fee of \$3,000.00 to be paid at the time of submitting the formal application. The application fee **will not** be applied to the final administrative fee.

ADMINISTRATIVE FEE:

HIDA will charge an Administrative Fee as follows:

-Taxable Bonds, Tax Exempt Bonds and Straight Lease Transactions.
The minimum fee will be on (i) the amount of the bonds; or (ii) in the case of a straight lease, the total projects costs or amount of the increased value of the assets plus the amount of all anticipated capital improvements and/or equipment to be purchased for which the applicant will receive benefits from HIDA, such fees will be calculated as follows:

<u>Value</u>	<u>Minimum Fee</u>
Up to <u>\$25,000,000.00</u>	<u>.60 of 1%</u>
In Excess <u>\$25,000,000.00</u>	<u>1/10 of 1%</u>

-Special Straight Lease. A transaction less than \$1,500,000 in total (all project costs) **may** be considered for a "Special" Straight-Lease which would have an agency fee of \$7,000.00 or less.

ANNUAL COMPLIANCE FEES:

HIDA will charge an initial compliance fee of \$3,000.00 and an Annual Compliance Fee of \$1,500.00 for the term of the bonds or straight lease for any project that closes after November 1, 2016. This non-refundable fee will be paid yearly in advance on January 1st. This fee will cover the cost of annual reporting and monitoring of the transaction. This fee is subject to periodic review and can be adjusted at the discretion of HIDA.

AGENCY COUNSEL:

The fee for Agency Counsel is the responsibility of the applicant and is 1/10th of 1% of (i) the amount of the bonds, or (ii) under a straight lease, the amount of the total project costs or the amount of the increased value of the assets plus the amount of all anticipated capital improvements and/or equipment to be purchased for which the applicant will receive benefits from HIDA. **The fee structure may be adjusted for a “Special” Straight-Lease only.** For terminations, consents, second mortgages and other financings, Agency Counsel shall bill at the prevailing hourly rate.

BOND/TRANSACTION COUNSEL:

The fee of Bond/Transaction Counsel also is the responsibility of the applicant. Upon request, the applicant shall receive an estimate of the fee prior to the inducement resolution. The applicant will receive an engagement letter along with inducement package.

MISCELLANEOUS FEES:

<u>TYPE</u>	<u>MINIMUM AMOUNT</u>
Document Processing	\$1,000-\$2,000
Assignments and assumption Of IDA Lease Agreements and Installment Sale Agreements Up to \$25,000,000.00 In Excess of \$25,000,000.00	.60 of 1% 1/10 of 1%
Extension of Inducement	\$500.00
Amendments, waivers leases and subleases, etc.*	\$750.00-\$1,500.00
Consent, 2 nd Mortgages and other Financings	Set by Board on a case to case basis. Regular Fee Schedule For new Money
Refinancing of Bonds*	.60 of 1% of the outstanding bonds, plus the applicable Administrative Fee as scheduled above for new money

Assumption of Outstanding Bonds*	1/8 of 1% of the outstanding bonds plus the applicable Administrative Fee as scheduled above for new money
Termination Fee	\$1,000.00

**Each transaction is reviewed for its complexity and these fees are subject to an adjustment at the discretion of HIDA.*

EXPENSES:

All expenses incurred by HIDA (i.e. notices, court recorders, meeting rooms, etc.) shall be for the account of the applicant. All underwriting, trustee, legal, etc. expenses for the issuing of the bonds, notes, or straight leases shall be for the account of the applicant.

9/16

Adopted: 10/26/16

Resolution Number: 043-2016