

**CITY OF MOUNT VERNON
INDUSTRIAL DEVELOPMENT AGENCY**

UNIFORM FINANCIAL ASSISTANCE AND BENEFITS RECAPTURE POLICY

**ARTICLE I
INCENTIVE PROGRAM**

Section 1.1 General.

Section 874 of Title I, Article 18-A of the General Municipal Law (the “IDA Act”) requires an industrial development agency to establish a Uniform Tax Exemption Policy (the “UTEP”) applicable to grants of financial assistance and to provide guidelines for the claiming of real property, mortgage recording, and sales and use tax exemptions. Industrial Development Agencies (“IDAs”) are also required to establish a procedure for deviation from the UTEP for projects not meeting the standard criteria.

The policy of the City of Mount Vernon Industrial Development Agency (the “Agency”) is to grant applicants exemptions from sales and use taxes and mortgage recording taxes, and to grant real property tax abatements, as more fully described below. The Agency may, as part of its standard policy, grant enhanced benefits on a case-by-case basis, after following the process for deviation, for projects expected to have a significant economic impact on the City of Mount Vernon (the “City”), as determined by the Agency’s members. The Agency can assist the City in achieving community development goals such as housing, commercial, retail, adaptive re-use projects, etc., that reflect the City’s economic, land use and zoning needs and position as a top-tier, inner-ring, suburban community.

IDAs provide four basic forms of financial assistance (collectively, “Financial Assistance”) through tax incentives to qualified applicants in order to promote the economic welfare, prosperity, and recreational opportunities for residents of a municipality:

- Mortgage recording tax exemption;
- Sales and use tax exemption (related to the construction of a project);
- Real property tax reduction via a payment-in-lieu-of-taxes (“PILOT”) phased in to full assessment over the duration of the project term; and
- Lower interest rates on debt incurred as part of the Project.

Section 1.2 Discretionary Project Factors.

Agency decision-making to provide any Financial Assistance is in the Agency’s sole discretion. In conducting its evaluation, the Agency will:

A. Determine if there is a qualified project (“Project”) according to the IDA Act eligible categories (e.g., industrial development such as manufacturing, re-manufacturing, assembly, processing, product research, and non-industrial development such as warehouse,

wholesale/distribution, qualified retail, office, hotel, general commercial, or rental residential, consistent with the City's zoning code); and

B. Consider the following criteria to determine if a standard incentive program has been met:

1. an assessment by the Agency of all material information included in connection with the Agency's Uniform Application ("Uniform Application") for financial assistance, that it is both complete and necessary to afford a reasonable basis for the decision by the Agency to provide financial assistance for the Project;
2. a written cost-benefit analysis by the Agency that identifies the extent to which a Project will create or retain permanent, private sector jobs; the estimated value of any tax exemptions to be provided; the amount of private sector investment generated or likely to be generated by the proposed Project; the likelihood of accomplishing the proposed Project in a timely fashion; the extent to which the proposed Project will provide additional sources of revenue for municipalities and school districts; and any other public benefits that might occur as a result of the Project;
3. a statement by the applicant, or a special purpose entity to be formed by the applicant (collectively, the "Company"), that the Project as of the date of the application, is in substantial compliance with all provisions of the IDA Act, including, but not limited to, the provisions of Section 859-a and Section 862(1) thereof;
4. if the Project involves the removal or abandonment of a facility or plant from another area of the state, notification by the Agency to the chief executive officer or officers of the municipality or municipalities in which the facility or plant was located;
5. whether Financial Assistance is required to induce the Project and "but for" such assistance, the Project could not move forward, or a statement from the Company as to why the Agency should provide Financial Assistance;
6. the estimated value of any other benefits that the City may be providing;
7. the impact of the proposed Project on existing and proposed businesses and economic development projects in the vicinity;
8. the extent to which the proposed Project will require the provision of additional services, including, but not limited to, additional educational, transportation, police, emergency medical or fire services;
9. whether the Project will use an apprenticeship program approved by the New York State Department of Labor;
10. the financial feasibility of the Project;

11. where the Project involves an industry or activity which the City seeks to develop, retain and foster; and
12. public support for, or opposition to, the proposed Project.

Section 1.3 Special School District Requirements for Residential Projects Seeking PILOT Agreements.

Every Company seeking a PILOT agreement (“PILOT Agreement”) agreement involving the construction of a new Residential or Affordable Housing Project, shall provide a copy of its public school enrollment projections to the Agency for the benefit of the City of Mount Vernon School District (the “District”). The District shall thereafter be given the opportunity to comment on the enrollment projections and to provide a statement, within thirty (30) days of the Uniform Application date, of the District’s position relative to the school’s capacity to accommodate the projected enrollment and any other anticipated burdens upon the District presented by the proposed Residential or Affordable Housing Project. In its sole, but reasonable discretion, the Agency may negotiate benefits for the District, which may include, but are not be limited to, cash payments to the District based upon the number of students residing in such buildings, or such other remuneration or benefits for the District. Such benefits may include educational opportunities, internships, scholarships, capital fund contributions or other educational benefits.

**ARTICLE II
FINANCIAL ASSISTANCE AVAILABLE**

Section 2.1. Mortgage Recording Tax Exemptions.

A. Exemption Amount. This exemption may be available for all State of New York (“State”), Westchester County (“County”) and City mortgage recording tax that would otherwise be due.

B. Duration of Exemption. This exemption is a one-time up-front exemption for entire mortgage tax amount. The exemption does not include an exemption for re-financings of the original mortgage loan unless such re-financing was contemplated in the original application for financial assistance and approved by the Agency or a new application for re-financing is filed and approved by the Agency in its sole discretion.

C. Types of Projects For Which Exemption May Be Claimed. This exemption may be available for all projects eligible for financial assistance under the IDA Act for which mortgage loan financing is being obtained and which is not otherwise exempt from payment of mortgage recording tax under applicable tax law.

Section 2.2. Sales and Use Tax Exemptions.

A. Exemption Amount. This exemption may be available for all State, County and City sales and use taxes that would otherwise be due with respect to Eligible Items. Sales and use tax exemptions will not be granted for Ineligible Items. For a list of Eligible Items and Ineligible Items, see Schedule A attached hereto.

B. Duration of Exemption. Sales and use tax exemptions are available only during the period beginning with the execution and delivery of the Sales Tax Exemption Agreement by the Agency and ending upon the earlier of (i) the first anniversary of the execution and delivery of the Sales Tax Exemption Agreement, unless extended; and (ii) the date of issuance of a temporary Certificate of Occupancy for the Project.

C. Types of Projects For Which Exemption May Be Claimed. This exemption may be available for all projects eligible for “financial assistance” under the IDA Act for which materials, goods, personal property and similar items and services subject to sales tax are to be purchased, leased or used in development of the Project, if it is not otherwise exempt from paying sales or use tax under the tax law.

Section 2.3. Payments In Lieu of Taxes Benefits.

In New York State, property owners pay a real property tax based on the assessed value of the land and of the improvements on it. Any real property owned or controlled by an IDA is not subject to ad valorem real property taxes; however, real property owned or controlled by an IDA continues to be subject to special assessments and user fees. When an IDA takes title to or a leasehold interest in real property, the property becomes 100% exempt from ad valorem real property taxes. To accommodate the needs of the local taxing jurisdictions, however, the Agency generally negotiates a PILOT Agreement with the Company. Each Project receiving an abatement will be subject to a PILOT Agreement in a form acceptable to the Agency. The Agency will then direct, or receive and forward, the payments made under the PILOT to the affected taxing jurisdictions. IDAs generally limit the period an exemption is in effect on the assumption that the abatement generally results in more revenue for the taxing jurisdictions than was generated by the property before the IDA's involvement. The Agency may require the Company to give the Agency a PILOT mortgage or pay into escrow of one year's PILOT payment (the “PILOT Mortgage”) in order to secure the position of the PILOT payments with respect to other secured and unsecured claims. The purpose of a PILOT Mortgage is to secure unpaid PILOT payments with a lien against the real property, thus making the PILOT Agreement a secured obligation. The Agency may negotiate alternative forms of collateral to insure payments under the PILOT Agreement.

A. Payment In Lieu of Taxes Amount.

The Agency's base policy provides for a graduated schedule of a 35% real property tax abatement applicable to County, City and District taxes with respect to residential housing, other than Affordable Housing (“Market Residential”) and non-residential, commercial facility (“Commercial”) Projects. Those Projects meeting the requirements of the low income housing tax credit program established by section 42 of the Internal Revenue Code (26 USC §42) (“Affordable Housing”) shall be eligible to receive a PILOT that would be initially established at an amount equal to at least ten percent (10%) of annual gross Shelter Rent and would increase two percent (2%) per year during the term of the PILOT Agreement. Notwithstanding the foregoing, the Agency may, in its sole discretion, elect to provide a greater abatement, not exceed forty five (45%) of the full taxes. As used in this UTEP, “Shelter Rent” is defined as income received from and/or on behalf of tenants of the affordable housing project, including any rent supplements or subsidies received from any federal or state government agency on

behalf of such tenants, less utilities (including water, sewer, electricity, gas, fuel oil, cable and telecommunications).

Except for Shelter Rent PILOT Agreements, the abatement shall be based upon a percentage of full taxes (e.g., *year one, 60% abatement of Full Taxes, year two, 55% abatement of Full Taxes, Year 3 50% abatement of Full Taxes etc.*). “Full Taxes” shall mean all real property taxes, not including special district charges, special ad valorem levies, or special assessments, payable with respect to the facility in the amount equal to the amount that would have been paid if the Agency were not in fee title or leasehold and no exemption was available. PILOT payments shall be no less than the Full Taxes paid in the City/School Tax year and County Tax year immediately preceding the City/School tax year and the County tax year in which the exemption is to take effect under the PILOT Agreement.

The Agency will consider Project factors when determining the amounts to be paid under the PILOT Agreement but in no event shall the payments under the PILOT Agreement be less than the aggregate County, City, and District taxes due and payable immediately prior to entering into the PILOT Agreement. The Agency reserves the right in its sole discretion to refuse to grant any abatement of County, City, and District taxes and to require payments under the PILOT Agreement be equal to 100% of the amount that would otherwise be due and payable for County, City, and District taxes.

B. PILOT Payment Start Date.

PILOT payment amounts are calculated on an annual basis. For properties that are currently on the tax rolls, PILOT payments begin coming due and payable during the calendar year, beginning on January 1, immediately following the most recent Taxable Status Date (May 1 of each year) and following the delivery of a copy of the executed PILOT Agreement and applicable State tax form RP-412a to the City Assessor and to the other affected taxing jurisdictions. For properties that are currently exempt properties, PILOT payments begin immediately upon execution of the PILOT Agreement. At the Agency's discretion, PILOT payments with respect to new construction may include a period during construction when payments are based on valuation of the land as undeveloped property until such time as a certificate of occupancy (whether temporary or final) is issued.

C. Intentionally Omitted.

D. Duration of Exemption (measured from date PILOT payments begin to be due and payable).

1. *Commercial and Residential (Non-Affordable Housing) Properties.* PILOT term not to exceed 15 years of benefits (subject to Section 2.3(E)).

2. *Affordable Housing.* The period of exemption begins on the date determined as set forth in Section 1.3 (B), and may extend for a term up to the greater of (i) 15 years; or (ii) the term of the applicable mortgage or secured financing.

E. Enhanced PILOT Term For Certain Properties. A PILOT term not to exceed 20 years may be granted for properties subject to leases between the Agency and the

Company, if the Company agrees to invest not less than \$30 million in developing the property and to maintain operations at such location for the full 20 years.

Section 2.4. Tax Exempt Bonds

A. Amount. Tax exempt bond financing will be made available to all projects that request such financing, are eligible projects under the IDA Act, and are approved by the Agency. The amount of tax exempt bond financing shall be in an amount approved by the Agency and subject to volume cap allocations. Operating costs will not be financed by the Agency. The amount of tax exempt bond financing available for a project will be subject to applicable federal and state law requirements, including availability of State volume cap allocation, completion of a statutorily required notice and a public hearing, approval by the Mayor for tax purposes, and other typical financing requirements. *The project costs being financed must be eligible for tax exempt financing under federal tax law and will be subject to review by bond counsel to the Agency.*

B. Term of Bonds. The term of the bonds may not exceed the useful life of the assets being financed, as defined by the Internal Revenue Service, and are subject to such other limitations as may be applicable under federal tax law.

C. Redemption Provisions. The bonds will be subject to such redemption provisions as the Project operator and the purchaser or underwriter of the bonds agree upon, subject to review and approval by the Agency. Tax exempt bonds may also be subject to mandatory redemption, at the discretion of the Agency, upon the bonds becoming taxable. Bonds may be subject to redemption at the direction of the Agency upon the project lessee or operator being in default under the lease or sublease agreement, as applicable.

D. Offering of Bonds. Bonds may be offered to publicly or privately funded Projects, subject to compliance with applicable federal and state securities laws, and subject to such additional restrictions as may be directed by the Agency in its sole discretion.

E. Taxable Bonds. Bonds may be issued on a taxable basis, subject to the limitations as to amount, term, redemption and offering, as set forth above.

F. State Bond Issuance Charge. Bonds issued by the Agency shall be subject to a State bond issuance charge to the extent required by State law. Such charge shall be payable at closing by the Company.

ARTICLE III
CONDITIONS OF FINANCIAL ASSISTANCE GENERALLY

Section 3.1. Cost Benefit Analysis

A. Assessment of Costs and Benefits. The Company must demonstrate to the Agency that the benefits to be derived from the Project justify the level of financial assistance being requested. At the sole cost of the Company, the Agency shall prepare, or direct the preparation of, a written cost-benefit analysis by the Agency or by a competent third

party that identifies the extent to which a Project will create or retain permanent, private sector jobs; the estimated value of any tax exemptions to be provided; the amount of private sector investment generated or likely to be generated by the Project; the likelihood of accomplishing the Project in a timely fashion; and the extent to which the Project will provide additional sources of revenue for municipalities and school districts; and any other public benefits that may occur as a result of the Project.

B. Local Employment Opportunities. Project operators must agree that they will provide job opportunities to residents of the City, as more fully described below.

1. Employment of City Residents. The Project operator must agree that it will (i) contact the City of Mount Vernon Human Resources Department and such other City departments or local and regional workforce development organizations including but not limited to a Workforce Development Board, as the Agency may direct, to obtain resumes of City residents who are seeking employment and who are likely to have such qualifications and skills as may be required by the Project operator for the category of job for which an employee is being sought, and (ii) offer interviews to such City residents as may reasonably meet the Company's qualifications. The Project operator must agree to make offers for such positions first to those City residents applying for the job position that meet the Project operator's requirements.

2. Quarterly Employment Reporting Requirements. Following completion of construction and issuance of a certificate of occupancy, within 30 days following the end of each calendar quarter, the Company shall deliver to the Agency a report setting forth the number of persons employed at the Project (full-time and full-time equivalent) and identifying the number of full time equivalent employees that are City residents. If a Company quarterly report does not demonstrate that at least 30% of all employees working at the Project (on a full time equivalent basis) are City residents, the Company must also detail the efforts that it is undertaking to hire City residents.

ARTICLE IV BENEFITS RECAPTURE POLICY

Section 4.1. Mortgage Recording Tax Exemptions.

A. Benefits Recapture Trigger.

- Sale of the mortgaged property before end of benefits term.
- Change in the nature or scope of the business occupying the mortgaged property from that approved by the Agency (subject to agency discretion).
- For mortgaged property occupied by unaffiliated or unrelated third party tenant, departure of tenant or change in the nature or scope of the tenant business and failure of owner to use good faith efforts to replace the

tenant. Leases should have default provision for failure to maintain approved business activity.

- Default under the Lease Agreement.

B. Benefits Recapture Amount. Entire amount of exemption previously granted.

C. Waiver. The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Company for any reason.

Section 4.2. Sales Tax Exemptions.

A. Benefits Recapture Trigger.

- The project realty is not maintained in useable condition and good repair.
- Equipment or furnishings, prior to the end of its useful life, are sold, abandoned, discarded, traded or given away, not maintained in useable condition or good repair, or is no longer maintained at the project site (collectively "Equipment Transfers").
- Default under the Lease Agreement.

B. Benefits Recapture Amount.

- For failure to maintain Project realty in useable condition and good repair, the benefits recapture amount is 100% of such benefits until the fifth anniversary of the issuance of a permanent certificate of occupancy, then declining thereafter over the next 10 years, in 10 equal increments to zero at the end of 15 years (i.e. year 6 would require a recapture of 90% of benefits, year 7 would be recapture of 80% of benefits, etc.).
- For Equipment Transfers, 100% of such benefits until the fifth anniversary of the issuance of a certificate of occupancy (whether temporary or permanent) for the facility where the equipment is to be located, then declining over a period ending on the earlier to occur of the 15th anniversary of the issuance of such certificate of occupancy or the end of the useful life of the equipment (assuming the equipment is properly operated and maintained in accordance with general industry standards) in equal amounts over the applicable period. The recapture amount would be reduced to zero upon the 15th anniversary of the date of issuance of the certificate of occupancy or the end of the useful life of the equipment, whichever is earlier.

C. Waiver. The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Company for any reason.

Section 4.3. Payment in Lieu of Taxes Benefits.

A. Benefits Recapture Trigger.

- the Lease Agreement is terminated prior to the originally stated termination date for any reason or there is a default under the Lease Agreement;
- the Company fails to cause the Project to be completed by the Project completion deadline;
- the Company liquidates all or substantially all of its operating assets or ceases all or substantially all of its operations;
- the Company transfers all or substantially all of its employees to a location outside of the City;
- Change in the nature or scope of the business occupying the mortgaged property from that approved by the Agency (subject to agency discretion).; or
- The Company has sold, leased or otherwise disposed of all or substantially all of the Project property.
- Notwithstanding the foregoing, a benefits recapture shall not occur if the trigger arose as a direct, immediate result of: (i) a taking or condemnation by governmental authority of all or substantially all of the Project; or (ii) the inability of the Company to rebuild, repair, restore or replace the Project after the occurrence of a loss event.
- The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Company for any reason.

B. Benefits Recapture Amount.

All PILOT benefits received with respect to the Project during the 5-year period preceding the date of the Benefits Recapture Trigger shall be subject to recapture. The amount of the benefits shall be measured by the difference between the amount of property taxes (County, City and District) that would have been due had the Project remained as taxable property on the tax rolls and the amount of the PILOT Payments that were actually paid during the corresponding period.

**ARTICLE V
DEVIATIONS FROM POLICY**

Section 5.1 Deviations From Policy.

The Agency may in its discretion deviate from the uniform PILOT policy, and increase or decrease the level of public subsidy and/or the term of the benefits, depending upon whether the Company's business and/or development program includes, among other things:

- Nature of Deal
 - Expanding business
 - Relocation of business
 - New development
 - Complementary Development
 - Providing a sustainable mix of uses (e.g., increasing supply of office and/or retail space balancing residential)
- Type of Development
 - Residential Rental
 - Mixed-Use
 - Retail as part of mixed-use
 - Transit-Oriented Development (TOD)
 - Positively impacts health and community, the environment and economy. Providing a mix of uses near housing can increase foot traffic to local businesses. Rising demand for housing and commercial space in highly walkable or transit-accessible areas can also decrease car use, result in higher tenancy rates and higher retention of property values.
 - Parking
 - Project provides municipal/public parking or exceeding parking requirements of the applicable zone.
- Green Building & Energy-Related Investments
 - Places less stress on municipal infrastructure
- Employment Impact
 - Number of permanent jobs
 - Percentage of Mount Vernon resident hires

- Percentage of women, minority, and veteran hires
- Comparable to current state-wide norms for cost/job average
- Tourism/Cultural Destination
- Adaptive Re-use/In-fill/Revitalization/Vacant/Underutilized
- Architecturally Significant
- Local Partnerships
- Other Investment/Matching dollars

Any deviations from the Agency's uniform policy will be made only with the specific approval of its members based on the factors listed in this Section 5 and those, if any, described in Section 874 of the IDA Act. The Agency will set forth in writing the reasons for approving any deviation and will notify the affected taxing jurisdictions of the proposed deviation from such policy and the reasons therefor.

Section 5.2. Notification of Affected Taxing Jurisdictions.

The Agency shall set forth in writing the reasons for deviation from the policy set forth herein, and shall notify the affected local taxing jurisdictions of the proposed deviation from such policy and the reasons therefor.

**SCHEDULE A
SALES AND USE TAX EXEMPTIONS**

Eligible Items

Eligible Item means the following items of personal property or services, excluding any Ineligible Items, with respect to which the Company and any Subagent shall be entitled to claim sales and use tax exemptions in connection with the Project:

- (ii) purchase of materials, goods, personal property, fixtures, or supplies that will be incorporated into and made an integral component part of the Project;
- (iii) purchase or lease of any materials, goods, machinery, equipment, furniture, furnishings, trade fixtures, or other tangible personal property having a useful life of one year or more and to be installed in or exclusively used in the Project;
- (iv) with respect to the Eligible Items identified in clause (ii): freight, installation, maintenance, or repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (v) purchase of materials, goods, and supplies that are to be used and substantially consumed in the course of construction or renovation of the Project, but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed;
- (vi) lease of machinery or equipment solely for temporary use in connection with the construction or renovation of the Project;
- (vii) certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam); and
- (viii) motor vehicle or tangible personal property installed in a qualifying motor vehicle, provided that such motor vehicle is garaged at the Project and is used exclusively for delivery of materials or products to and from the Project and has been identified by the Project operator in the application for financial assistance and related materials and has been approved by the Agency.

As an agent of the Agency, the Company agrees that it will, and will cause each subagent to, present to each seller or vendor a completed and signed New York State Tax Form ST-123 ("Form ST-123") or its equivalent for each contract, agreement, invoice, bill or purchase order entered into by the Company or by any subagent, as agent for the Agency, for the purpose of undertaking the Project.

Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Project facility on each bill of sale or invoice for purchases and indicate on the bill of sale or invoice that the Company or subagent as agent of the Agency, was the purchaser. Each bill of sale or invoice should state:

“I, [NAME OF COMPANY OR SUBAGENT], certify that I am a duly appointed agent of the CITY OF MOUNT VERNON INDUSTRIAL DEVELOPMENT AGENCY and that I am purchasing the tangible personal property or services for use in the _____ Project located at _____, City of Mount Vernon, New York (or at any lands located in the City of Mount Vernon, New York, and occupied by license or easement during construction or improved by third parties for the benefit of the IDA Project), being IDA OSC Project Number [5507-__-__]”.

Where the vendor does not print on each invoice the acknowledgment as described in the prior sentence, an invoice rider with the acknowledgement language may be utilized for record keeping purposes. The Company shall retain copies of all such contracts, agreements, invoices, bills of sale and purchase orders for a period of not less than six (6) years from the date thereof. Failure by the Company and/or any subagent to include such language may disqualify the agent status and sales and use tax exemption granted by the Agency.

Ineligible Items

Ineligible Item means any of the following items of personal property and services with respect to which the Company or any subagent shall not be entitled to claim sales and use tax exemption in connection with the Project:

- (i) motor vehicles or tangible personal property installed in qualifying motor vehicles, other than those permitted by clause (vii) of the definition of 'Eligible Items';
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) fine art and other similar decorative items;
- (v) plants, whether potted or landscaped;
- (vi) ordinary office supplies such as pencils, paper clips and paper;
- (vii) any materials or substances that are consumed in the operation of machinery;
- (viii) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed;

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- (ix) replacement of parts that contain materials or substances that are consumed in the operation of such property where such parts must be replaced whenever the substance is consumed; and
- (x) inventory or items used in the trade or business.