

GILBERT INDUSTRIAL DEVELOPMENT AUTHORITY

TOWN OF GILBERT, AZ

PROCEDURAL PAMPHLET

9/5/2013

SECTION 1

DEFINITIONS

As used in this Procedural Pamphlet and the Application for Bond Financing, the following terms have the indicated meanings:

- a) "Act" means Arizona Revised Statutes, §§35-701 through 35-761 inclusive, as amended.
- b) "Applicant" means the person or persons seeking to have bonds issued on its behalf to purchase, construct or acquire one or more Projects.
- c) "Authority" means The Industrial Development Authority of the Town of Gilbert, Arizona
- d) "Board" means the Board of Directors of the Authority.
- e) "Bond Counsel" means a law firm selected by the Applicant.
- f) "Carryforward Project" has the meaning set forth in Section 146(f) of the Code, as may hereafter be amended.
- g) "Code" means the Internal Revenue Code of 1986, as amended.
- h) "Council" means the Town Council of the Town of Gilbert.
- i) "Day" means a calendar day.
- j) "Director" means a member of the Board.
- k) "Fee Schedule" means the Authority's schedule of fees, as amended from time to time.
- l) "Guaranty" means either a guaranty of payment or a guaranty of collection.
- m) "Issuer's Counsel" means the law firm retained by the Authority to review the application to determine a Project's legal eligibility for bond financing and to review all documents to be used in the bond financing.
- n) "Legal Proceedings" means such proceedings as are required by the Underwriter, Bond Counsel, Issuer's Counsel, the bond Purchaser or the Authority.
- o) "Meeting" a Regular meeting or Special Meeting.
- p) "Official Statement" means a prospectus or offering statement concerning bonds of the Authority or, where a sale by competitive public bidding is concerned, a notice of the sale of the bonds.
- q) "Project" means any project authorized by the Act. Each phase of a multiphase application or Project may be considered to be a separate Project for all purposes.

- r) "Purchaser" means the Person or Persons who have agreed to purchase some or all of an issue of the Authority's bonds for investment and not with a view to public distribution.
- s) "Regular Meeting" means a regularly scheduled meeting of the Board.
- t) "Regulations" means the Regulations to the Internal Revenue Code of 1986, as amended.
- u) "Special Meeting" means a meeting of the Board not on the Regular Meeting schedule.
- v) "Town" means the Town of Gilbert, Arizona.
- w) "Trustee" means a financial institution, trust company or other entity selected by the Applicant from the Approved Trustee list published on the Authority's web site or such other entity approved by the Authority in writing.
- x) "Underwriter" means any entity which has, directly or indirectly, purchased or plans to purchase the Authority's bonds with a view to public distribution.

SECTION 2

INTRODUCTION

2.1 **Authority Meetings.** Meetings are generally held in at the Gilbert Civic Plaza, 90 East Civic Center Drive, Room 100, Gilbert, Arizona, subject to cancellation, or change in date, time, and location. In addition to its Regular Meeting schedule, the Authority may schedule Special Meetings as necessary.

A Special Meeting may be held on the written request of an Applicant, and at the sole discretion of the Authority.

A representative of the Applicant must attend in person all Meetings at which the application is to be considered, in order to provide a brief presentation of the proposed Project and its financing and to be available to answer questions. The Authority reserves the right to defer consideration of the requested action if an Applicant representative is not present. At the Authorities allow an Applicant to appear via telephone.

2.2 **Approvals.** Application requests for bond financings are required to be brought before the Board for both preliminary and, if required, final approval as described in Section 5. Exceptions may be allowed by the Authority in its sole discretion. Both preliminary and final approvals are subject to such conditions as the Authority, in its sole discretion, may set forth.

After final approval has been granted by the Board, the proposed bond issuance is referred to the Council for approval at the next available regularly scheduled formal meeting of the Council. Council has regularly scheduled formal meetings at 7:00 p.m. on the first and third Thursday of the month, subject to cancellation or change in time. The bond issuance must receive approval from Council prior to closing.

2.3 **Authority's Fees.** The Fee Schedule is attached as Appendix "A".

2.4 **Public Nature of Application Process.** By filing the application, the Applicant agrees that any information submitted to the Authority on its behalf is not privileged or

confidential and may be disclosed to the public.

2.5 Purchase and Sale Documentation. The Applicant and the Purchaser or Underwriter have the responsibility of ensuring that the statements contained in any offering and sale document are true and correct and that they do not contain any material misrepresentations of fact or omit any material information. The Authority shall have no responsibility for the accuracy or content of the disclosure document, except for the sections directly pertaining to the Authority. By filing an application or by agreeing to act as Purchaser or Underwriter, the Applicant and the Purchaser or Underwriter agree to these terms.

The Authority requires that the Applicant covenant to assume that the ongoing disclosure obligations, if any, required by SEC Rule 15c2-12 are in a form and substance satisfactory to the Authority.

With respect to any bonds issued by the Authority, the Applicant must obtain either (a) an investment grade rating from a nationally recognized rating agency or (b) investment letters from the Purchasers in form and substance satisfactory to the Authority.

Any filing with the Securities Division of the Arizona Corporation Commission, required by Arizona Revised Statutes §44-1841 in connection with offering the Authority's bonds for public sale is the responsibility of the Applicant and the Underwriter.

2.6 Questions Concerning Process and Application. Solicitation of Support: Applicants should not initiate contact with Directors for the purpose of soliciting support for or discussing their applications.

Any questions concerning this application, or the process of obtaining financing from the Authority should be directed to the Authority's staff liaison:

The Industrial Development Authority of the Town of Gilbert, Arizona
c/o Dan Henderson, Economic Development Director
90 E Civic Center Drive
Gilbert, Arizona 85296
Telephone: (480) 503-6891
E-mail: dan.henderson@gilbertaz.gov

SECTION 3

ELIGIBLE PROJECTS

The Authority may issue its bonds only to finance a Project that is specifically authorized by the Act. The Authority reserves the right to add additional requirements on a case-by-case basis. Likewise, the requirements stated herein may be waived by the Authority in appropriate circumstances. Council may impose additional requirements.

Until the bonds are issued, the Authority reserves the right, among other things:

- (a) To reject the application or Project in whole or in part for any reason;
- (b) To reject the Applicant's choice of Bond Counsel, Underwriter or Trustee for any reason;

(c) To require corrections, deletions, changes, additions or amendments to any Legal Proceedings;

(d) To impose any other reasonable requirements as conditions precedent to the issuance of its bonds; and

(e) To postpone from time to time consideration of the application.

SECTION 4

APPLICATION PROCEDURE

4.1 **Form of Application and Filing Procedure.** The Applicant must submit a completed application and the application filing fee to the Authority. The Authority will have each application reviewed its staff liaison, Issuer's Counsel and by any other persons it deems necessary. The staff liaison shall present a memorandum and resolution to the Board for consideration of the Applicant's request. Material changes to the application may result in an additional application filing fee.

4.2 **Oral Presentation.** Attendance of Applicant at Meetings. A representative of the Applicant must attend in person; to provide a brief presentation concerning the proposed Project and its financing and to answer questions at each Meeting at which consideration of the Applicant's request will be considered.

4.3 Fees of the Authority. The Fee Schedule is attached as Appendix "A".

SECTION 5

APPROVAL AND ADOPTION OF LEGAL PROCEEDINGS

5.1 **Preliminary Approval by the Authority.** The Board may require consideration of a resolution either conditionally granting or denying preliminary approval with respect to an application. The preliminary approval may be subject to such conditions as the Authority, in its sole discretion, may set forth. Except with respect to a Carryforward Project, the Board's preliminary approval will expire in 180 days or such other time period as the Board may direct in its proceedings unless within that time final approval has been granted by the Board or an extension of preliminary approval (see Section 5.4) has been obtained.

5.2 **Amendments to and Transfers of Preliminary Approval.** The Applicant may request an amendment to preliminary approval by submitting a written request of the amendment to the Authority. Amendments to preliminary approval may be requested in conjunction with a request for final approval provided, however, that all information in support of the amendments is submitted to the Authority as set forth herein.

The Applicant may request a transfer of preliminary approval to another party by submitting a written request to the Authority at which consideration of the transfer is requested, accompanied by:

a) a written request for transfer by the proposed transferee;

- b) a revised Section 2 of the application, setting forth all information regarding the proposed transferee which is required of an original Applicant; and
- c) the Form of Affidavit set forth in Section 8 of the application, signed by the proposed transferee.

The Authority reserves the right to designate as a new application any transfer of preliminary approval which incorporates substantive changes from the size, nature, design, use and/or intent of the Project as originally approved, subject to all fees, policies and requirements applicable to new applications.

A representative of the Applicant and the proposed transferee, where applicable, must attend, in person or by telephone, to provide a brief presentation concerning the proposed amendment or transfer and to answer questions at the Meeting at which the Board will consider such action.

5.3 Final Approval by the Authority. The Board shall adopt a resolution either granting or denying final approval of each application. Current compliance with all applicable provisions of this Procedural Pamphlet is required for consideration by the Board of a request for final approval and adoption of the Legal Proceedings. Except with respect to a Carryforward Project, the Board's final approval will expire on the 90th day following final approval unless the bonds have been issued or an extension of formal approval (see Section 5.4) has been obtained. Applicant must submit to the Authority a written request indicating its readiness to proceed with final approval and all necessary documents prior to the meeting. Final approval may be granted at the Preliminary Meeting if requested by the Applicant and approved by the Authority.

5.4 Extensions of Approval. Except with respect to a Carryforward Project, the Applicant may request an extension of approval by submitting, to the Authority no fewer than 14 days prior to the Meeting at which the extension is requested the Extension Fee set forth in the Fee Schedule, and a written request for such extension setting forth: (a) the date preliminary and/or final approval was granted; (b) the extension period requested; (c) the number of extensions previously granted; and (d) the reasons for the requested extension. The Authority reserves the right to deny requests for extension for any reason.

5.5 Approval by the Council. After final approval has been granted by the Board, the proposed bond issuance will be referred to the Council for its approval at the next available regularly scheduled formal meeting of the Council.

5.6 Carryforward Projects. The Authority will permit an applicant to submit a request for approval of a Project contingent upon obtaining a carryforward allocation in accordance with applicable state and federal law. If the Board grants preliminary approval for the financing of a Carryforward Project, the Applicant shall have until the end of the third calendar year (or such shorter or longer period as may then be provided under federal and state law applicable to Carryforward Projects) following the calendar year in which the carryforward arose to issue the bonds (the "Carryforward Deadline"). The expiration dates with respect to preliminary approval and final approval and the extension provisions with respect to preliminary approval and final approval shall not apply to Carryforward Projects. However Applicants shall be required to submit a status report on the Project to the Authority, together with a \$500 filing fee, at the end of each 180-day period following preliminary approval until final approval is granted. All other provisions of this Procedural Pamphlet that would otherwise apply to a given Project shall apply to a Carryforward Project of the same nature. The Board's preliminary approval with respect to a Carryforward Project shall expire upon the earlier of the Carryforward Deadline or the granting of

final approval by the Board. The Board's final approval with respect to a Carryforward Project shall expire upon the earlier of the Carryforward Deadline or the issuance of the bonds.

5.7 **Site Sign During Construction and Upon Completion.** For all Projects where construction is contemplated or in progress when bonds are issued, a sign must be posted at the Project site, clearly visible from the roadway, indicating that the Project has been authorized through The Industrial Development Authority of the Town of Gilbert, Arizona. For all completed Projects, a sign must be posted at the Project indicating that the Project has been financed through bonds issued by The Industrial Development Authority of the Town of Gilbert, Arizona.

SECTION 6

CLOSING REQUIREMENTS AND CONDITIONS

6.1 **The Closing.** Bond Counsel shall be responsible for coordinating the bond closing.

6.2 **Opinions of Counsel.** All legal opinions shall be in a form and substance acceptable to Issuer's Counsel.

6.3 **Indemnity Agreement.** As a condition to closing, the Applicant and any third- party Guarantor must execute and deliver to the Authority an indemnity agreement acceptable to the Authority.

SECTION 7

MISCELLANEOUS

7.1 **Hiring the Trustee or Paying Agent.** Applicant will be responsible for hiring and paying the fees of any Trustee or Paying Agent.

7.2 **Conflict of Interest.** The Authority and the Board are deemed to be subject to Arizona's Conflict of Interest Law (Arizona Revised Statutes, §38-501 et seq.). The Applicant should take every precaution available to learn of any possible conflict between itself and Directors, officers or employees of the Authority or any "relative" (as defined in the Conflict of Interest Law) of any of the foregoing which might prohibit the Authority from completing the financing, especially where construction or other contracts may be signed before the bonds are authorized or issued.

7.3 **Cancellation of Contract.** A.R.S. §38-511. A.R.S. §38-511 provides that the State of Arizona (the "State"), its political subdivisions (including the Authority) or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the State, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or any extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

Notice of A.R.S. §38-511 shall be included in every contract to which the Authority is a party.

7.4 **Arbitrage Rebate and Yield Restriction.** A qualified rebate consultant (Rebate

Analyst) must be retained by the Applicant. Any tax exemption certificate delivered at closing will require the Applicant to acknowledge that it has reviewed the provisions of the documents relating to arbitrage rebate, yield restriction and rebate requirements of Code Section 148 with Bond Counsel and will comply with those provisions.

7.5 Sale or Lease or Other Change in Use of a Bond Financed Facility. In the case of the sale or lease or other change in use of a bond financed facility, or a portion thereof, the Applicant must notify Bond Counsel and the Authority at least 30 days prior to such action and provide detail as to whether the remedial action provisions of the Code and Regulations may be applicable and if the tax-exempt status of the bonds is affected. Additionally, the Applicant must include a statement in its annual certification that no such sale or lease or other change in use has occurred or, if it has, that it was reported as required.

APPENDIX "A" AUTHORITY

FEE SCHEDULE

As of September 5,2013
{Subject to change without notice}

Application Filing Fee: The non-refundable fee for filing an application is \$3,000. At the time the application is submitted \$1,500 is due with the balance due 10 days after final approval by the Authority.

Carryforward Status Fee: With respect to Carryforward Projects, a \$500 filing fee is payable each time the status report required by Section 5.6 of the Procedural Pamphlet is due.

Closing Fee: At closing, a fee of 2 basis points (.0002) of the aggregate principal amount of bonds issued, with a minimum of \$1,000.

Community Investment Fund Fee: Non-Arizona projects are required to pay a minimum \$25,000 Community Investment Fund Fee in addition to the Closing Fee, due at closing.

Extension Fee: If the Applicant requests an extension of preliminary or final approval pursuant to Section 5.4 of the Procedural Pamphlet, an additional fee of \$500 will become payable at the time such extension is requested. The additional fee is payable each time an extension is requested.

Issuer's Annual Administrative Fee: The annual administrative (issuer's) fee is to be collected in advance by the Trustee and paid to the Authority, initially on the closing date of the bonds in a prorated amount for that calendar year and each year thereafter by January 15. In addition, the bond financing documents executed and delivered to the Authority must contain a covenant of the Applicant to pay an annual administrative fee in an amount equal to 7 basis points (.0007) of the outstanding aggregate principal amount of bonds as of each January 1, with a minimum of \$3,000 per series, without demand. For large transactions the IDA may reduce or waive this fee by action of the board. At the boards discretion the applicant may pay the entire application fee and use the net present value to determine the amount to be paid up front. The interest rate for this calculation should be consistent with long term interest rates.

Unlike other IDA's the Authority does not assess a Special Meeting fee.

Legal Proceedings shall provide that an Applicant's failure to pay such fees within 90 days of the due date shall constitute an event of default.

The Authority's wire instructions for payment of closing fees and administrative fees will be provided to the Applicant prior to the closing date.

The Applicant must also agree to pay on demand all costs and third-party expenses incurred by the Authority relative to the proposed financing, including but not limited to, the fees of Bond Counsel or Issuer Counsel (together "Legal Counsel") relative to the preparation, filing and processing of the application, review of Legal Proceedings and the issuance of the bonds, provided that if the bonds are not funded for any reason outside of the Applicant's reasonable control, the Applicant shall not be obligated to pay these costs. The Applicant should confirm with Legal Counsel and/or any other third-party (ies) any payment terms and retainer requirements of Legal Counsel and/or any other third-party (ies).