

**SEMINOLE COUNTY
INDUSTRIAL DEVELOPMENT AUTHORITY**

**BACKGROUND, GUIDELINES AND PROCEDURES FOR THE
ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS**

INTRODUCTION

This document has been prepared to assist members of the Seminole County Industrial Development Authority (the “Authority”) in considering and acting upon applications for the issuance of the Authority's industrial development revenue bonds and to assist applicants in preparing and submitting applications for the issuance of the Authority's industrial development revenue bonds.

I. Background: Creation and Purposes of the Authority. The Authority is an Industrial Development Authority created as a public body corporate and politic for the purpose of financing and refinancing capital projects as defined in, for the public purposes described in, and in the manner and with the powers provided by, Florida Statutes, Chapter 159, Part 11 Florida Industrial Development Financing Act, and Part III Industrial Development Authorities, collectively subsections 159.25-159.53 (the “Act”). The Authority was authorized to transact business and exercise the powers upon the adoption by the county commission of Seminole County (the “County”) of a resolution declaring a need for the Authority to function in the County. Among the powers granted to the Authority under the Act is the power to issue industrial development revenue bonds. The issuance of each issue of industrial development revenue bonds by the Authority is subject to the approval or disapproval of the county commission of the County (the “County Commission”).

II. Industrial Development Revenue Bonds. Under the Act, the Authority is authorized to issue industrial development revenue bonds for the purpose of financing the cost of projects, which are consistent with the criteria and requirements set forth in the Act.

(a) Definition of project for purposes of the Act. The power of the Authority to issue industrial development bonds is limited to the issuance of industrial development bonds for the purpose of financing the cost of “projects” as defined in the Act. The term “project” as defined in the act may include an industrial or manufacturing plant, a research and development park, an agricultural processing or storage facility, a warehousing or distribution facility, a headquarters facility, a tourism facility, an educational facility, a commercial project in an enterprise zone, a health care facility, or any one of a number of other types of facilities which are listed in the Act. While the federal Internal Revenue Code (the “Code”) does not permit the financing of many of these types of projects with “tax exempt” bonds, the Authority is also permitted by the Taxable Bond Act of 1987, Florida Statutes, Chapter 159, Part VII, subsections 159.821-159.8291, to issue taxable bonds.

(b) Definition of “cost” for purposes of the Act. The proceeds from the sale of industrial development bonds issued by the Authority may only be used to finance the “cost” of a project. As defined in the Act, the term “cost,” as applied to any project, generally includes the cost of construction, the cost of acquisition of property, both real and personal, the cost of demolishing, removing, or relocating any buildings or structures on acquired lands, the cost of machinery and equipment, certain financing charges, consultant's and legal fees, and certain other costs.

In connection with the approval by the Authority of an issue of industrial development revenue bonds, the Authority is required to draw certain conclusions and make certain findings of fact

with respect to its determination that the bonds are being issued to finance “costs” of a “project” within the meaning of the Act. Because the terms “project” and “cost” for purposes of the Act and the determination of tax treatment under the Code are subject to substantial legal and factual complexities, members of the Authority are permitted to, and must necessarily, place considerable reliance upon the interpretation of those terms by the bond counsel who is to issue the legal opinions to be delivered in connection with the issuance of subject bonds.

(c) Criteria and Requirements. In connection with the financing any project with industrial development revenue bonds the Authority, the Act requires that the Authority shall be guided by and shall observe the certain criteria and requirements; provided, however, that the determination of the Authority as to compliance with such criteria and requirements shall be final and conclusive. Consistent with such criteria and requirements, with respect to any financing approved by the Authority, the Authority must determine to its satisfaction that:

(1) The project is appropriate to the needs and circumstances of, and shall make a significant contribution to the economic growth of the County; shall provide or preserve gainful employment; shall protect the environment; or shall serve a public purpose by advancing the economic prosperity, the public health, or the general welfare of the State of Florida and its people as set forth in the Act (which generally includes economic development and promotion, improving education, health care and economic opportunity, while providing for protection of the environment, etc.);

(2) The financing agreement for the project is to be entered into with a party that is financially responsible and fully capable and willing to fulfill its obligations under the financing agreement, including the obligations to make payments in the amounts and at the times required; to operate, repair, and maintain at its own expense the project; and to serve the purposes of the Act and such other responsibilities as may be imposed under the financing agreement. In determining the financial responsibility of such party, consideration shall be given to the party's ratio of current assets to current liabilities; net worth; earning trends; coverage of all fixed charges; the nature of the industry or activity involved; its inherent stability; any guarantee of the obligations by some other financially responsible corporation, firm, or other person; and other factors determinative of the capability of the party, financially and otherwise, to fulfill its obligations consistently with the purposes of the Act;

(3) The County will be able to cope satisfactorily with the impact of the project and will be able to provide, or cause to be provided when needed, the public facilities, including utilities and public services, that will be necessary for the construction, operation, repair, and maintenance of the project and on account of any increase in population or other circumstances resulting therefrom;

(4) Adequate provision has been made for the operation, repair and maintenance of the project at the expense of the party for whom the project is financed and for the payment of the principal of and interest on the bonds; and

(5) The costs to be paid from the proceeds of the bonds shall be costs within the meaning of the Act, except for payments included in the purposes for which revenue bonds may be issued under the Act.

In reaching its determination with respect to the findings set forth above members of the Authority are required to consider relevant information and exercise prudent business judgment. In their determination Authority members are entitled to rely on information in the application and the presentation by the representatives of the applicant, input from the public at any public hearing concerning the application, input from bond counsel and legal counsel to the Authority, the results of the review of the application by the staff of the Orlando Economic Partnership (the "OEP") under the OEP's Management Agreement with the Authority, and any other information which the members, in good faith, believe to be relevant and reliable.

(d) Required Approval by the County Commission. Pursuant to the provisions of the Act and Florida Statutes, Chapter 125, subsection 125.01(1)(z), any issue of industrial development revenue bonds by the Authority is subject to the prior approval or disapproval of the County Commission. The foregoing approval is required whether the bonds to be issued are taxable or tax-exempt and whether or not the subject bond issue is subject to a required allocation under the Florida Private Activity Bond Allocation Act, Florida Statutes, Chapter 159, Part VI, subsections 159.801-159.816 (the "Allocation Act").

(e) Private Activity Bonds Requiring an Allocation. The issuance by the Authority of any issue of industrial development bonds, which require an allocation under Section 146 of the Code, shall be subject to the obtaining of such allocation under the Allocation Act.

(f) Bond Counsel. The guidance of bond counsel is extremely important in the determination of "projects" and "costs" which are eligible for financing with industrial development bonds issued by the Authority whether such bonds are to be taxable or tax exempt. In addition, bond counsel is to be principally responsible for the drafting of the relevant financing agreements and other documentation with respect to the bond issue. For these reasons, among others, it is most important that an applicant for bond financing retain experienced and qualified bond counsel to participate in the preparation of the application for financing and that such counsel be present at the time the Authority meeting at which the application is to be considered.

GUIDELINES

I. Bond Proceeds to Finance Cost of Capital Projects. In accordance with the statutes of the State of Florida pertaining to the authorization, issuance and sale of industrial development revenues bonds, the proceeds from the sale of such bonds shall be utilized to finance only the cost of capital projects including, but not limited to, the following:

- (a) The cost of construction;
- (b) The cost of acquisition of property including rights in land and other property, both real and personal, improved and unimproved;
- (c) The cost of demolishing, removing or relocating any building or structures on lands so acquired;
- (d) The cost of all machinery and equipment, financing charges, interest prior to and during construction, the cost of engineering and architectural surveys, plans and specifications; and;
- (e) The cost of consultant and legal services, other expenses necessary or incident to determining the feasibility or practicality of constructing the project, administrative and other expenses necessary or incident to the construction of the project, and the cost of securing the financing for the project.

In general, the costs as defined above which can be financed with the proceeds of industrial development revenue bonds include land and depreciable capital expenses incurred after the effective date of the inducement resolution only. No working capital financing or non-depreciable expenditures (other than land) can be included.

II. Encouragement and Consideration of Projects. The Authority will study the advantages, facilities, resources, projects, attractions and conditions of and in the County with relation to the encouragement of industry and business to locate in the County, and shall use such means and media as the Authority deems advisable, including the issuance of their industrial development revenue bonds, to encourage desirable industry to locate in the County. In carrying out these purposes, the Authority shall cooperate and work with industrial development agencies, chambers of commerce and other local, state and federal agencies, as well as private companies, financial institutions, attorneys and investment bankers having responsibilities in the field of industrial development and financing.

The Authority will be guided by and will observe the following criteria and requirements in approving any project, the cost of which is to be financed by bonds issued by the Authority:

- (a) The project, in the determination of the Authority, will make a significant contribution to the economic growth of the County, will provide gainful employment, and will serve the public purpose of advancing the economic prosperity and general welfare of the County, the State of Florida and its people.
- (b) No project will be financed for any company or individual who is not financially responsible and fully capable and willing to fulfill its obligations to pay the lease, installment sales or other payments in the amounts and at the times required and fulfill its obligation to operate, repair and maintain the project at its own expense, including such other responsibilities as may be imposed under the required agreements. In determining financial responsibility of the applicant, consideration will be given to the applicant's ratio of current assets to current liabilities, net worth, earning trends, coverage of all fixed charges, the nature of the industry or business involved, its inherent stability, and any guaranty of the obligations by some other financially responsible corporation, firm or person, and other factors relating to the capability of the applicant, financially and otherwise, to fulfill its obligations consistently with the provisions of Florida law.
- (c) The ability of the County to cope satisfactorily with the impact of the project and its ability to provide, or cause to be provided when needed, the public facilities, including utilities and public services that will be necessary for the construction, operation, repair and maintenance of the project or due to an increase in population or other circumstances resulting from the project.
- (d) Adequate provision has been made, in the determination of the Authority, for the operation, repair and maintenance of the project at the expense of the party for whom the project is financed and for the payment of the principal and interest on the bonds.
- (e) Any other matter, which in the opinion of the Authority relates to the viability of the project, the financing, the applicant or the security of the bonds, includes the method of sale of the bonds and the purchaser or purchasers of the bonds.

III. Financing. As outlined above, it is the intent of the Authority to review the financial soundness of each application for bonds. In addition to these financial considerations, the following requirement shall apply.

- (a) The agreements required in financing projects shall include such types of financing agreements as the Authority may approve with such security instruments or trust agreements, as it shall deem adequate.
- (b) The applicant will pay all expenses, including reasonable Authority expenses and fees, incurred or incident to the processing of the application and issuance of the bonds if not otherwise paid from the proceeds of the sale of the bonds. Currently the Authority fees include a non-refundable \$1,500 application fee due and payable to the OEP with the application for the issuance of the Authority's industrial development revenue bonds. Additionally, a financing fee of one-half (1/2) of one (1%) percent of the first \$4,000,000 and one-fourth (1/4) of one (1%) percent of the remainder of the face amount of the bond issue, due and payable from the bond proceeds on the date of the bond issue closing. In addition, the applicant will pay all costs and expenses of the Authority's counsel associated with the bond issue. Should the amount of the authority fees be insufficient to cover all expenses of the Authority, the Authority will require an additional payment prior to proceeding further with the application. Applicant will provide a check in the amount of \$250, payable to the State of Florida, Department of General Services, Division of Bond Finance, if the inducement resolution is passed.
- (c) The Authority will not approve or participate in a "best efforts" underwriting for the sale of the industrial development revenue bonds.

PROCEDURES

- I. Application.** Application for the issuance of industrial development revenue bonds will be prepared in nine (9) copies. Each copy will be bound so that there are no loose materials (single metal clips are not acceptable). These applications will be forwarded to the following address:

Tracy Turk, Secretary
Seminole County Industrial Development Authority
c/o Orlando Economic Partnership
301 East Pine Street, Suite 900
Orlando, Florida 32801

- II. Applications must be received three (3) weeks prior to the scheduled meeting for proper processing.** Late arrivals will be scheduled for the following month. Each application will be on company letterhead and will include and demonstrate the following information and facts:

- (a) Company name, including business address and telephone number, parent company name, names of principal operating officers, company counsel, underwriter's name (if used) and bond counsel.
- (b) A short history of the company and its state and date of incorporation, including a description of its products, markets, major customers and suppliers, and its competition.

- (c) Specific amount of U.S. dollars being requested to be financed by the issuance of industrial development revenue bonds and name of the guarantor.
- (d) A specific statement of the uses to which the bond proceeds will be put in terms of number of acres of land anticipated, number of square feet of building constructed, equipment, etc. A legal description of the property or specific geographical location (i.e., corner of 1st Street and "B" Avenue).
- (e) Statements demonstrating that the proposed project will make a significant contribution to the economic growth of the County, will provide gainful employment and will serve a public purpose by advancing the economic prosperity and the general welfare of the State of Florida and its people. List number of new jobs.
- (f) The applicant will furnish sufficient information to allow the Authority to determine if local government will be able to cope satisfactorily with the impact of the project and will be able to provide, or cause to be provided when needed, the public facilities, including utilities and public services, that will be necessary for the construction, operation, repair and maintenance of the project or due to any increases in population or other circumstances resulting from the project. The applicant must also show that the project meets all applicable codes and zoning regulations of the County.
- (g) A description, if any, of process discharges to air or water or solid waste disposal requirements of the proposed facility.
- (h) Evidence indicating that the proposed project will be used by an entity, which is financially responsible and fully capable and willing to fulfill its obligation to pay lease, installment or other payments in the amounts and at the time required; the obligation to operate, repair and maintain the project at its own expense, the obligation to serve the purposes of the Act, and such other responsibilities as may be imposed under the agreement executed in connection with the issuance of the bonds.
- (i) Certified statements of the applicant's financial condition and company performance for the preceding five (5) years including a copy of the applicant's latest interim statements. A statement from potential bond purchaser, if applicable.
- (j) Securities and Exchange Commission Form 10-K, if applicable.
- (k) The applicant, in concert with bond counsel and counsel for the Authority; will furnish to the counsel for the Authority a proposed form of inducement agreement and resolution. Bond counsel will be a recognized authority in bond matters who is acceptable to the Authority.

- (l) An application fee in the amount of \$1,500.00 no part of which shall be refundable shall accompany the application.

The application for industrial revenue bonds will be received and reviewed by the Secretary of the Authority. The secretary shall conduct, or cause to be conducted, an analysis of the application and will prepare, or cause to be prepared, a report to the Authority commenting specifically upon the following items:

- (a) Accuracy of application.
- (b) A brief assessment of the soundness of both the applicant's proposed project and the applicant's financial condition.
- (c) Legal conformance of the project with applicable federal, state or local statutes, policies and guidelines.

When complete, the report and the application will be presented to the Authority for consideration at a public meeting. If the proposed project is to be financed with "tax exempt" bonds, the Authority will call a public hearing on the application, which public hearing may be held in conjunction with the Authority's public meeting. Notice of the Authority's public meeting will be given in accordance with the requirements of Florida law. Notice of any public hearing shall be published not less than fourteen (14) days before the scheduled date of the hearing and shall identify the applicant, describe the proposed issuance of the bonds, the amount of the proposed bond issue and the location and nature of the proposed facility to be financed thereby.

III. Public Hearing. At the public meeting, which may be held in conjunction with any public hearing, the Authority will give preliminary consideration to the application. If the Authority votes not to give further consideration to the application, the public hearing will not be held. If the Authority votes to give further consideration to the application, and the proposed project is to be financed with tax-exempt bonds ("Tax-Exempt Bonds"), the Authority shall conduct a public hearing on that application. The Chairman, Vice Chairman or other officer of the Authority shall conduct the public hearing, and shall provide a reasonable opportunity for persons with differing views on both issuance of the bonds and the location and nature of the proposed facility to be heard.

At the public meeting, and if the proposed project is to be financed with Tax-Exempt Bonds, following the public hearing, the Authority shall determine, after considering the application, the purposes of the Authority, the Act, the Code, the public input at the hearing and such other information as the Authority deems relevant:

- (i) if the proposed project is consistent with the purposes of the Authority and the applicable statutes, including the criteria for industrial development bonds set forth therein; and
- (ii) if the public hearing has provided the affected public an opportunity to comment on the use of tax-exempt financing for the project and if, based upon the public input, if any, and such other information as is available to the Authority, there will be a substantial public benefit from issuance of the bonds.

If the Authority makes an affirmative determination with respect to all of the matters set forth in clauses (i) and (ii) of the preceding sentence of this paragraph, the Authority shall take official

action adopting an appropriate form of resolution of inducement approving the application and providing for the issuance of the bonds subject, however, to approval by the County Commission. Following approval of the application, the Authority shall submit a request to the County Commission for the approval of the Authority's resolution in accordance with the provisions of Section IV of these Procedures.

In the event the Authority votes not to give further consideration to the application, the Authority shall so advise the applicant. In the event the Authority proceeds with a public hearing, but is unable to make the affirmative determinations required for approval of the application, it shall so advise the applicant and in so doing shall advise the applicant with respect to whether the action by the Authority is final or whether additional consideration of the application shall be undertaken by the Authority, including the circumstances of such additional consideration, if any.

IV. Approval by the County Commission. Following the adoption of the inducement resolution by the Authority providing conditional approval for the issuance of bonds, the Authority shall submit a request for approval by the County Commission, of the Authority's resolution. The request for approval shall include a report of the Authority's action, a summary of the proceedings of the public hearing, and such other information as the County Commission deems necessary. Based upon the foregoing, the County Commission shall determine whether to adopt a resolution approving the Authority's resolution. The Clerk of the County Commission shall advise the Authority of the action taken by the County Commission.

V. Final Action by the Authority. Following the adoption of a resolution by the County Commission approving the Authority's resolution, in accordance with the provisions of Section IV of these Procedures, the Authority will consider and act on a final bond resolution providing for the issuance and sale of the bonds. The final form of bond resolution shall be prepared and reviewed by bond counsel, counsel for the applicant, and counsel for the Authority, and shall include the necessary finding required by the Act, approval of the bond documents, and such other matters as shall be deemed advisable by the Authority or its counsel. Following adoption of the bond resolution, the Authority shall proceed with the issuance and sale of the bonds without any requirement of further approval by any governmental unit or agency unless expressly provided for in the bond resolution.

In the event the County Commission shall not have approved the Authority's resolution, the Authority shall notify the applicant of the Board's action and of such further actions, if any, as are required of the Authority and/or the applicant. If the action of the County Commission in denying the Authority's resolution is final, members of the Authority and the applicant shall be so advised and no further action by the Authority with respect to the application shall be required.

VI. Bond Validation. If deemed desirable or necessary by the Authority, the Authority's counsel or other parties to the bond issue, the bonds may be validated in the manner prescribed by appropriate Florida Statutes. Validation proceedings, if instituted, shall be instituted at such time after approval by the Authority of the inducement resolution as the Authority, its counsel and bond counsel shall deem appropriate.

VII. Tax Compliance for Tax-Exempt Bonds.

- (i) If Tax-Exempt Bonds are to be issued, all borrowers of proceeds of the Authority's Tax-Exempt Bonds will enter into an agreement or certificate (a "Tax Exemption Agreement") setting forth the factual basis and the Authority's and such borrower's expectations with respect to the related Tax-Exempt Bonds that support the

exclusion from gross income of interest on such Tax-Exempt Bonds from federal income tax.

- (ii) All Tax Exemption Agreements executed by the Authority in connection with the issuance of its Tax-Exempt Bonds shall contain provisions that:
- a. require the applicable borrower to adopt written procedures to ensure monitoring of and continuing compliance with Federal tax requirements applicable to the Authority's Tax-Exempt Bonds and policies and procedures adopted by conduit borrowers of proceeds of Tax-Exempt Bonds (the "Continuing Requirements");
 - b. require the applicable borrower to monitor and comply with the Continuing Requirements; and
 - c. require the applicable borrower to notify the Authority of a failure to comply with the Continuing Requirements and to take appropriate remedial action in a timely manner in accordance with the Code and Treasury Regulations thereunder.

VIII. Amendment and Waiver. The Authority reserve the right to amend, waive, modify or add to any of the above Guidelines and Procedures in the exercise of the Authority's discretion, provided, however, that such amendment, waiver, modification or addition shall be consistent with the provisions of Florida law and, if applicable, the Code relating to the issuance of industrial development revenue bonds.

IX. Database Information Sheet. At the closing upon the issuance and sale of an issue of bonds, the borrower of the bond proceeds shall provide, or cause to be provided, to the Authority a database information sheet in the form prescribed by the Authority ("IDA Database Information Sheet"). The IDA Database Information Sheet shall include a reference number which shall be the same as the Resolution Number assigned by the Authority to the final bond resolution authorizing the issuance and sale of the bonds. The IDA Database Information Sheet shall be mailed immediately upon the closing of the bond issue to the following address:

Tracy Turk, Secretary
Seminole County Industrial Development Authority
c/o Orlando Economic Partnership
301 East Pine Street, Suite 900
Orlando, Florida 32801

For each year following the issuance and sale of bonds during which any of such bonds is outstanding the borrower shall provide or cause to be provided, an annual IDA Database Information Sheet providing updated information for the Authority's use in reporting to federal and state regulatory authorities. The annual updated IDA Database Information Sheet must be forwarded by not later than August 15th of the subject year to the following address:

Tracy Turk, Secretary
Seminole County Industrial Development Authority
c/o Orlando Economic Partnership
301 East Pine Street, Suite 900
Orlando, Florida 32801

X. **Wire Information.** The following wire instructions should be for payments or fees due to the Authority.

INCOMING WIRES - INTERNATIONAL:

BENEFICIARY BANK: WELLS FARGO BANK, N.A.
11 PENN PLAZA
NEW YORK, NY 10038
SWIFT: PNBPUS33
ABA: 026005092

BENEFICIARY ACCOUNT #: 2000027101197
NAME: ORLANDO ECONOMIC PARTNERSHIP
ADDRESS: 301 EAST PINE ST., SUITE 900
ORLANDO, FL 32801
ABA: 063000021

INCOMING WIRES – DOMESTIC:

BENEFICIARY BANK: WELLS FARGO BANK, N.A.
214 N. HOGAN STREET
JACKSONVILLE, FL 32202
ABA: 063000021

ACCOUNT #: 2000027101197
NAME: ORLANDO ECONOMIC PARTNERSHIP
301 E. PINE STREET, SUITE 900
ORLANDO, FL 32801

ACH INFORMATION FOR NON-CONTROL DISBURSEMENT ACCOUNTS

ABA: 063107513
ACCOUNT #: 2000027101197