

JOINT INDUSTRIAL DEVELOPMENT AUTHORITY OF NORTHAMPTON COUNTY AND ITS
INCORPORATED TOWNS

Rules and Procedures

ARTICLE I PURPOSE AND SCOPE

Section 1.1 Purpose. These Rules shall govern the submission of Applications to the Authority, application and administrative fees, consideration of matters to be brought to the attention of the Authority relating to the authorization, issuance and sale of its Bonds, the adoption of Financing Documents, reports to be submitted to the Authority, and such other matters as are contained herein.

Section 1.2 Scope. These Rules are supplementary to the Authority's Bylaws and the Act. In the event of any conflict between the Authority's Bylaws, the Act and these Rules, the provisions of the Bylaws and the Act shall prevail.

ARTICLE II DEFINITIONS

Section 2.1 Definitions. As used in these rules and procedures, the following terms shall have the meaning as set forth herein, unless the context clearly requires otherwise:

"Act" shall mean Chapter 49, Title 15.2, Code of Virginia of 1950, as amended.

"Applicant" shall mean any individual, person, firm, corporation, partnership or other entity applying for revenue bond financing, or for whose benefit the Authority as issued its Bonds, or who requests the Authority to take any action.

"Application" shall mean the Authority's application for revenue bond financing as in effect from time to time.

"Authority" shall mean the Joint Industrial Development Authority of Northampton County and Its Incorporated Towns, a political subdivision of the Commonwealth of Virginia.

"Bonds" shall mean any notes, bonds and other obligations authorized to be issued by the Authority pursuant to the Act.

"Code" shall mean the Code of Virginia of 1950, as amended.

"Financing Documents" shall mean any resolutions, instruments, documents, papers, elections, certificates or financing statements required to be adopted or authorized, executed and delivered by the Authority in connection with the authorization, issuance and sale of its Bonds.

"IRC" shall mean the Internal Revenue Code of 1986, as amended.

“Project” shall mean any land, improvements, machinery, equipment or property financed by the issuance and sale of the Authority’s Bonds.

“Rules” shall mean these Rules and Procedures of the Authority, as may be in effect from time to time.

ARTICLE III GENERAL

Section 3.1 Copies to be Provided Applicants. A copy of these rules and procedures shall be furnished by the Authority’s Secretary to each prospective Applicant.

Section 3.2 Compliance with Rules and Procedures. Each Applicant shall comply with these rules and procedures in the submission of its Application to any Financing Documents to the Authority and in requesting that the Authority take any action, including the adoption of Financing Documents. Failure to comply with these rules and procedures shall constitute sufficient reason for the Authority to refuse to consider any Application, Financing Documents or any other matter to be brought before the authority by or on any Applicant.

Section 3.3 Amendments. These rules and procedures may be changed from time to time by the authority by the vote of a majority of its Directors presents at any meeting of the Authority, provided notice of such change shall have been given to each Director before such meeting. These rules and procedures may, notwithstanding the foregoing, be amended without prior notice upon the affirmative vote of all Directors of the Authority.

Section 3.4 Preparation and Distribution of Agenda and Minutes.

- (a) A preliminary agenda for the Authority’s meetings shall be prepared and distributed by the Authority’s Secretary no later than five days before the Authority’s scheduled meeting date. When action is to be taken with reference to a Project or the issuance of Bonds, the agenda shall contain a description of the type, nature and location of the project, the name of the Applicant and the nature of the action to be taken by the Authority. The agenda may state that it is a preliminary agenda subject to change at or before the Authority’s meeting.
- (b) A copy of the agenda of the Authority’s meeting shall be provided to the following: each office and director of the Authority, and to each person, firm or organization which shall have submitted a written request to the Authority’s Secretary that its name be placed on the mailing list for the agenda of the Authority’s meetings, which request shall include the address of the person, firm or organization submitting a written request to receive such notice. Each person, firm or organization submitting a written request to receive copies of the Authority’s agenda shall renew such request in writing every six months during the months of June and December for the next succeeding six month period. If any request is not so received, such name and address shall be deleted from the mailing list.
- (c) Preliminary drafts of the minutes of the Authority’s meeting shall, as soon as practicable following the meeting, be mailed or delivered to each office and director of the Authority and the Authority’s counsel. Each preliminary draft subject to additions or corrections at the Authority’s next meeting. The date of approval of the Authority’s minutes shall appear

at the foot of the last page of the minutes and shall, when approved, be signed by the Chairman and Secretary of the Authority.

ARTICLE IV APPLICATION PROCEDURES, FEES AND REQUIREMENTS

Section 4.1 Applications. Each Applicant shall submit one (1) original and twelve (12) copies of a fully and accurately completed Application to the Authority's Executive Director and one (1) copy to its counsel at least twenty-one (21) days before the Authority's meeting at which the Application is to be considered. Each Application shall include all requested exhibits. In the event all requested exhibits are not available or not to be made part of the public record, a statement of explanation will be attached to the Application. The authority recommends that each Applicant seek the advice of the Authority's Counsel respecting completion of the Application before submitting it to the Authority.

Section 4.1 Application Fees. The Authority charges an application fee equal to Three Hundred Fifty dollars (\$350.00). The fee shall be paid to the Authority upon submission of an Application to the Authority. Fees, upon acceptance by the Authority, are non-refundable. No interest shall be paid on fees held by the Authority.

Section 4.3 Administrative Fees. The Authority charges an annual administrative fee not less than one eight of one percent ($1/8^{\text{th}}$ of 1 percent) of the outstanding balance of the Bonds payable on each June 30 following closing on the bonds, provided that the first payment shall be prepaid upon closing on the Bonds.

Section 4.4 Costs and Expenses. The Authority requires reimbursement of its costs and expenses incurred in connection with the issuance and sale of its Bonds and by virtue of its Bonds being outstanding. (See Section 5.2)

Section 4.5 Modification Fee; Transaction Fee.

(a) The Authority may, in its discretion, require payment of a \$200.00 modification fee by any Applicant requesting the Authority to approve any modification or amendment to its Bonds or the applicable Financing Documents. The modification fee shall be due and payable on or before the date of execution and delivery of the modification or amendment

(b) The Authority may, in its discretion, charge a transaction fee in the amount of \$200.00 to any Applicant requesting the Authority to take any action, regardless of whether the Authority has Bonds outstanding for the benefit of the Applicant. The transaction fee will be in addition to any other fees required hereunder.

Section 4.6 Transcripts of Proceedings. Each Applicant receiving Bond financing through the Authority shall furnish to the Authority upon the sale and delivery of the Bonds, two complete transcripts of the Financing Documents relating to such Bonds. Bond transcripts shall be hardback bound in library standard quality binders at the cost and expense of the Applicant.

Section 4.7 Bond Validation Proceedings. The Authority may require that before issuance, its

Bonds be validated by the Circuit Court of the County of Northampton, Virginia, pursuant to the requirements of Article 6, Chapter 26, Title 15.2 of the Code. The costs, expenses and fees incurred in connection with any bond validation proceeding required by the Authority, including attorneys' fees, shall be paid by the Applicant.

Section 4.8 Additional Information Required of Applicants.

(a) The Authority may adopt an inducement resolution conditioned upon the subsequent furnishing of certain information satisfactory to the Authority. All required information shall be promptly furnished to the Authority and failure of any Applicant to furnish such information shall constitute a ground for rescission of any inducement resolution adopted pursuant to such conditions.

(b) The Authority may, at its option, require the furnishing of appraisals, evaluations or reports respecting the Project or any portion thereof. The Authority may retain advisors and consultants to advise it regarding any Project or other action which it is requested to undertake by any Applicant. All costs, fees and expenses of such appraisals, reports, consultants and advisors incurred by the Authority after prior notification to the Applicant shall be paid by the Applicant.

(c) Since the Authority usually acts based upon information furnished to it solely by the Applicant, the Authority reserves the right to require at any time the furnishing of additional information concerning the Applicant, its financial statements, and any other information deemed relevant by the Authority. In instances where the Applicant has undergone changes in form or management or where the security to be given for payment of the Bonds has changed, the Applicant shall report such changes promptly to the Authority.

Section 4.9 Notice of Public Hearing. The Applicant shall publish a notice of public hearing with respect to each Application for which a public hearing is required by the Code once a week for two successive weeks, to be published in a newspaper having general circulation in the County of Northampton, Virginia and in such other newspapers as may be required. The notice shall be in a form approved by the Authority's Counsel and Bond Counsel. The second publication shall be not less than six nor more than twenty one days before the Authority's meeting at which the Application is to be considered. Persons who are interested in speaking at any public hearing held by the Authority are encouraged to submit their comments in writing. The Authority shall publish such additional notice or notices and hold such additional public hearings with respect to each Application as may be required by law or recommended by Counsel to the Authority.

Section 4.10 Projects Outside the County of Northampton, Virginia. Any Application to finance a Project located outside the County of Northampton, Virginia shall be accompanied by evidence satisfactory to the Authority that the governing body of the county, city or town in which the Project is proposed to be located approves the proposed financing of the Project by the Authority. Following the adoption of an inducement resolution for such Project, the Applicant shall furnish to the Authority a certified copy of a resolution duly adopted by the governing body of such county, city or town stating that such governing body concurs with the inducement resolution adopted by the Authority.

The Authority may also require additional evidence concerning the impact or effect of the

Project on the area where it will be located, whether the Project has received appropriate local approvals or permits, and whether the Project is acceptable to the inhabitants where it will be located.

ARTICLE V

PROVISIONS TO BE INCORPORATED INTO RESOLUTIONS AND FINANCING DOCUMENTS

Section 5.1 Inducement Resolutions. Each inducement resolution adopted by the Authority shall provide that it shall continue in full force and effect for a period of two years unless specifically extended by the Authority.

Section 5.2 Payment of Authority Expenses. The Financing Documents adopted by the Authority for the benefit of any Applicant shall provide that the Applicant agrees to pay all costs, fees and expenses incurred by the Authority (including attorney's fees) in connection with:

- (a) the authorization, issuance and sale of the Authority's Bonds;
- (b) the ownership, occupation, operation or use of the Project being financed, whether owned by the Authority or the Applicant;
- (c) prepayment or redemption of the Authority's Bonds;
- (d) administrative costs and expenses of the Authority, including the fees of attorneys, accountants, engineers, appraisers or consultants, paid or incurred by the Authority by reason of the Bonds being outstanding or pursuant to requirements of the Financing Documents; and
- (e) Such other fees and expenses of the Authority, not directly related to the Project being financed for the Applicant, but attributable to the Authority's financing of industrial or commercial Projects, including without limitation, a share of costs of the Authority's annual audit as required by Code Section 2.1-164, determined as follows:
 - (1) All costs and fees relating to the annual audit and directly attributable to a particular Applicant or Project, shall be charged to such Applicant; and
 - (2) Any costs and fees of such audit not directly attributable to any Applicant or Project shall be allocated among all Applicants having Bonds outstanding, pro rata, as the amount of Bonds originally issued for such Applicant bears to the total face amount of Bonds issued by the Authority of which any portion of any issue remains outstanding and unpaid.

Section 5.3 Indemnification of the Authority. Each Applicant agrees to indemnify and save harmless the Authority, the County, the Board of Supervisors of the County and their officers, directors, employees and agents (hereinafter the "Indemnitees") from and against all liabilities, obligations, claims, damages, penalties, fines, losses, costs and expenses (hereinafter referred to as "Damages"), including without limitation:

(a) all amounts paid in settlement of any litigation commenced or threatened against the Indemnitees, if such settlement is effected with the written consent of the Applicant;

(b) all expenses reasonably incurred in the investigation of, preparation for or defense of any litigation, proceeding or investigation of any nature whatsoever, commenced or threatened against the Applicant, the Project or the Indemnitees;

(c) any judgments, penalties, fines, damages, assessments, indemnities or contributions; and

(d) the reasonable fees of attorneys, auditors, and consultants;

provided that the Damages arise out of:

(i) failure by the Applicant, or its officers, employees or agents, to comply with the terms of the Financing Documents and any agreements, covenants, obligations, or prohibitions set forth therein;

(ii) any action, suit, claim or demand contesting or affecting the title of the Project;

(iii) any breach of any representation or warranty set forth in the Financing Documents or any certificate delivered pursuant thereto, and any claim that any representation or warranty of the Applicant contains or contained any untrue or misleading statement of fact or omits or omitted to state any material facts necessary to make the statements made therein not misleading in light of the circumstances under which they were made;

(iv) any action, suit, claim, proceeding or investigation of a judicial, legislative, administrative or regulatory nature arising from or in connection with the construction, acquisition, ownership, operation, occupation or use of the Project; or

(v) any suit, action, administrative proceeding, enforcement action, or governmental or private action of any kind whatsoever commenced against the Applicant, the Project or the Indemnitees which might adversely affect the validity or enforceability of the Bonds, the Financing Documents, or the performance by the Applicant or any Indemnitee of any of their respective obligations thereunder.

Section 5.4 Bond Counsel Opinion Required. Before issuing and delivering any of its Bonds, the Authority shall receive an unqualified approving opinion of recognized bond counsel licensed to practice law in Virginia and approved by the Authority stating, among other things, that the Bonds have been duly authorized, executed, issued and delivered, that the interest thereon is exempt from Federal income taxation under IRC 3103 (or other applicable provision of law) and taxation by the Commonwealth of Virginia (if the interest on such Bonds is intended to be tax-exempt), and that the Bonds are exempt from registration requirements under applicable state and Federal securities laws.

Section 5.5 Covenants to Preserve Tax Exempt Status of Bonds. All Financing Documents with respect to Bonds, the interest on which is intended to be tax-exempt, presented for approval by the Authority shall contain appropriate covenants of the Applicant designed to

insure compliance with the requirements of IRC 3103 to preserve the tax exempt status of interest on the Bonds, including without limitation, "arbitrage" requirements, capital expenditure limitations and reporting requirements.

Section 5.6 Restriction on Advertising. The Applicant and any purchaser or underwriter of the Authority's Bonds shall not publish any advertisement, tombstone or other information with respect to the Authority's Bonds unless (a) such advertisement has been approved by the Chairman or Vice Chairman of the Authority and Counsel to the Authority and (b) such advertisement contains the statement set forth below with respect to the limited nature of the obligations. Any bond purchase agreement entered into in connection with the Authority's Bonds shall contain a covenant in substantially the following form which shall be binding on the Applicant, any purchaser and any underwriter of such bonds:

The undersigned agree that no advertisement, tombstone or other information with respect to the Bonds shall be published in any newspaper or other publication unless such advertisement (a) is approved by the Chairman or Vice Chairman of the Authority and Counsel to the Authority and (b) clearly states that the Bonds are limited obligations of the Authority payable solely from revenues and that neither the Commonwealth of Virginia nor any political subdivision thereof, including the Authority and the County of Northampton, Virginia, shall be obligated to pay the principal of or the interest or premium, if any, on the Bonds and neither the faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the County of Northampton, is pledged to payment of the Bonds.

ARTICLE VI REPORTS

Section 6.1 Interim Reports by Applicants. Each Applicant shall file with the Authority a written report describing the status of its proposed financing no later than the last day of the second month after the adoption of an inducement resolution for the Applicant and every three months thereafter until the adoption of any Financing Documents by the Authority. Such written report shall include the proposed purchaser of the Bonds, the proposed terms of the Bonds, the status of Financing Documents, and the current status of the Project. Each Applicant shall promptly notify the Authority of any significant or material changes to any information previously furnished by the Applicant to the Authority, including specific descriptions of new or changed plans for the placement of the bonds and the security to be offered.

Section 6.2 Annual Reports of Applicants. Each Applicant, after the issuance and sale of the Authority's Bonds for the benefit of such Applicant shall annually report to the Authority no later than June 30 the status of the Project, which shall include the outstanding and unpaid balance of Bonds issued for the Project, whether any event of default has occurred under the Financing Documents, and other information relating to the financing of the Project and benefits to the County of Northampton, Virginia.

Section 6.3 Reports by Authority Chairman, Directors, etc. At each meeting of the Authority, the Chairman, each Director, the Secretary, the Treasurer and the Authority's Counsel shall report any action taken on behalf of the Authority since the last meeting, including receipt of reports required under Sections 4.7, 6.1 and 6.2:

ARTICLE VII ENFORCEMENT

Section 7.1 Enforcement of Provisions. The Authority may refuse to consider or adopt any inducement resolutions, Financing Documents or any other matters presented for its consideration if the Applicant has failed to comply with the requirements of these Rules.

Section 7.2 Repeal of Actions Previously Taken. The Authority may rescind or repeal any inducement resolution previously adopted by it or any other action taken by the Authority because of failure of the Applicant to comply with the provisions of these Rules or because of substantial changes in the management, ownership, Project plan or financial circumstances of the Applicant; provided, however, no inducement resolution or action taken by the Authority shall be repealed or rescinded unless prior written notice of such proposed action shall have been mailed to the Applicant at least three weeks before the date upon which such action is proposed to be taken.

Notwithstanding the foregoing, no such action shall be taken by the Authority which will impair or adversely affect the interests of the holders of the Authority's Bonds.

ARTICLE VIII STATEMENTS OF POLICY

Section 8.1 Construction, Operation and Effect of Rules. These Rules are intended as guidelines to promote and insure the orderly and consistent consideration of Applications, Financing Documents and other matters brought before the Authority. For good cause, application of these Rules may be modified and waived upon a case by case basis upon the consent of the Authority. Any action taken by the Authority not in conformity with these Rules shall, nevertheless, be fully effective as if taken in compliance with these Rules. It is, however, the policy of the Authority that each Applicant comply fully and completely with these Rules, and failure to comply with these Rules may constitute grounds for refusal by the Authority to take any action requested.

Section 8.2 Approval of Inducement Resolution not to Constitute an Endorsement of Applicant. The purpose of the Authority, as set forth in the Act, is to promote industry and develop trade by inducing manufacturing, industrial, governmental, commercial and non-profit enterprises to locate in or remain in the Commonwealth of Virginia. Pursuant to the Act, the Authority's powers shall be exercised for the benefit of the inhabitants of Virginia through the promotion of their safety, health, welfare, convenience or prosperity. Accordingly, the Authority's decision to adopt an inducement resolution or take other action will be based largely upon these factors. Further, the Act prohibits the Authority from operating any enterprise or Project. Since the Authority is a conduit for providing tax exempt financing to promote the commerce and industry of the Commonwealth of Virginia and the County of Northampton, Virginia, and given the express prohibition against operating enterprises or Projects, the Authority believes it is improper for it to inquire into matters relating to the business judgment of the management of any Applicant not relevant to the foregoing factors. The Authority may, however, examine the business decisions and other aspects of management of the Applicant should it deem such matters relevant to the authorization, issuance and sale of its Bonds.

In view of the foregoing limitations, the adoption of an inducement resolution or any other action taken by the Authority is not to be used by any Applicant in any manner whatsoever as an endorsement or approval of the Applicant, its policies or its management.

Section 8.3 Security for Payment of Bonds. The Authority will require showing that any issue of its Bonds is fully and adequately secured. If the Bonds are secured by a lien upon or security interest in the Project financed with the proceeds of such Bonds, the Authority may require an appraisal of the Project showing that it is valued in an amount sufficient to pay the outstanding principal amount of the Bonds issued to finance such Project.

Section 8.4 Compliance with Rules. These Rules were adopted by the Authority to assist in the orderly and expeditious conduct of its business. As stated in Section 3.2 of these Rules, the Authority has reserved the right to require that any Applicant strictly conform to the requirements of the Rules. Among other things, the Rules require that each Applicant inform the Authority of any new developments or material changes in information which has been submitted to the Authority, either orally or in writing. Matters concerning the structure of the financing, the prospective purchasers of the Bonds and the security for payment of the Bonds are items of particular interest to the Authority; however, the Authority expects to be kept informed of all material changes to information submitted to it.

By submitting an Application to the Authority, the Applicant agrees to abide by these Rules. Thus, the burden is placed upon the Applicant to review and to comply with these Rules. The principal sanction which may be applied by the Authority against any Applicant for failure to comply with the Rules would be a refusal to take any action requested by the applicant. Such a refusal might result in embarrassment to or considerable financial expenses on the part of the Applicant. To avoid such embarrassment or expense, the Authority urges each Applicant to keep the Authority fully informed of any new developments or material changes to information previously submitted to the Authority, including in particular, changes in the contemplated financing structure or the proposed security for the Bonds. As noted above, the burden is upon the Applicant to convey this information to the Authority in a timely manner. What constitutes "timely" depends upon the circumstances of each case; however, each Applicant is urged to provide all such information before considerable time and expense is incurred upon matters which may prove unacceptable to the Authority. Any such communications should be made directly to the Authority's officers, directors and counsel.