

INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF  
NEWPORT NEWS, VIRGINIA

Industrial Revenue Bonds

INDUSTRIAL DEVELOPMENT AUTHORITY  
OF THE CITY OF NEWPORT NEWS, VIRGINIA

Rules and Procedures

ARTICLE I

PURPOSE AND SCOPE

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

**Section 1.2. Scope** These Rules are supplementary to the NNIDA charter and the Act. In the event of any conflict between NNIDA's charter, and Act and these Rules, the provisions of the Charter 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 726, Acts of Assembly of the Commonwealth of Virginia of 1972, as amended.

**"Applicant"** shall mean any individual, person, firm, corporation, partnership or other entity applying for industrial development revenue bond financing, or for whose benefit NNIDA has issued its Bonds, or who requests NNIDA to take any action.

**"Application"** shall mean NNIDA's application for bond financing as in effect from time to time.

**"NNIDA"** shall mean the Industrial Development Authority of the City of Newport News, Virginia, a political subdivision of the Commonwealth of Virginia.

**"Bonds"** shall mean any notes, bonds or other obligations authorized to be issued by NNIDA pursuant to the Act and NNIDA's charter.

**"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 NNIDA in connection with the authorization, issuance and sale of its Bonds.

**"IRC"** shall mean the Internal Revenue Code of 1954, as amended.

**"Project"** shall mean any land, improvements, machinery, equipment, or property financed by the issuance and sale of NNIDA's Bonds.

**"Rules"** shall mean these Rules and Procedures of NNIDA, 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 NNIDA'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 or any Financing Documents to NNIDA and in requesting that NNIDA take any action, including the adoption of Financing Documents. Failure to comply with these rules and procedures shall constitute sufficient reason for NNIDA to refuse to consider any Application, Financing Documents or any other matter to be brought before NNIDA by or on behalf of any Applicant.

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

## ARTICLE IV

### APPLICATION PROCEDURES, FEES, AND REQUIREMENTS

**Section 4.1 Applications** Each Applicant shall submit a fully and accurately completed Application to the NNIDA Secretary-Treasurer in one original and thirteen (13) copies at least seven (7) days before the NNIDA 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. Assistance will be made available to each Applicant from the Secretary-Treasurer of NNIDA or NNIDA's Counsel respecting completion of the Application before submitting it to NNIDA.

### Section 4.2 Application Fees

Various fees will be charged for processing of the Revenue Bond issuance. These fees are to be included in the "total project costs" and could, within federal limitations, be included under the same interest rate available for other portions of the project. Fees are subject to change from time to time and the Applicant is advised to consult NNIDA staff for current fee schedule.

- (A) A non-refundable fee of \$400.00 is required for the Authority's direct costs and overhead in processing the application. Any additional costs associated with advertising fees for public hearing notification are to be paid by Applicant.
- (B) The Applicant is responsible for the fee charged by his own Bond Counsel.
- (C) The Authority's general counsel's fee shall also be the responsibility of the Applicant and the amount will vary depending on the extent of the required services and the complexity of the Revenue Bond issuance.
- (D) If the Applicant finds that he needs the assistance of an underwriter or broker in the placement or sale of the Bonds, he can anticipate paying up to ten percent of the total issuance for this service.
- (E) The Bond purchaser or subscriber serving as the "trustee" may charge a fee for his participating in the issuance.
- (F) The Authority assesses a \$200.00 fee at all closings.

- (G) The Authority assesses an Administrative Fee: One half of one percent (.005%) of amounts up to \$5,000,000 plus one tenth of one percent (.001%) on amounts over \$5,000,000; minimum fee \$1,250.

Examples are provided for clarification:

One Half of 1% and Minimum of \$1,250

<u>Issue Amount</u>	<u>Fee</u>	
\$ 250,000	\$ 1,250	
500,000	2,500	
750,000	3,750	
1,000,000	5,000	
5,000,000	25,000	
over 5,000,000	25,000	plus 1/10 of 1% for amounts over \$5,000,000

Optional Administrative Fee: The borrower may choose to pay a fee of 1/8 of 1 percent annually on the declining principal balance over the term of the issue. If the Annual Fee structure is elected, the borrower will be required to sign a promissory note. Note: The annual Administrative Fee will be billed on the full face amount of the bond until all construction disbursements are made and principal reductions have begun.

- (H) Amendment to an existing NNIDA issue - this may include interest rate change, name change, term change or waiver. The Authority will charge \$250.00.
- (I) Refinancing/refunding an existing NNIDA issue - this may include change in amount of issue, bond holder or bond beneficiary. Because this is similar to a new issue and may require a public hearing, advertising, Authority approval and subsequent Council approval, NNIDA will charge a non-refundable fee of \$400.00 prior to the public hearing and a refunding fee of

.375% on the first \$5,000,000 of reissue  
.050% on amounts above \$5,000,000

at the time of closing, along with a \$200.00 closing fee. Any additional costs associated with advertising fees for public hearing notification are to be paid by Applicant.

- (J) For Inducement Resolutions extended beyond the normal one-year approval period, a \$250.00 extension fee will be required.
- (K) Any action by the Authority which requires a special meeting to accommodate the needs of a bond recipient or bond applicant shall cause an additional fee of \$700.00 to be charged to the Applicant.

It should be noted that all fees are subject to the Certificate of Non-Arbitrage which is issued by each respective Bond Counsel.

**Section 4.3 Transcripts of Proceedings** Each Applicant receiving Bond financing through NNIDA shall furnish to NNIDA 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 4.4 Bond Validation Proceedings** NNIDA may require that before issuance, its Bonds be validated by the Circuit Court of the City of Newport News, Virginia pursuant to the requirements of Article 6, Chapter 5, Title 15.1 of the Code. The costs, expenses and fees incurred in connection with any bond validation proceeding required by NNIDA, including attorney's fees, shall be paid by the Applicant.

#### **Section 4.5 Additional Information Required of Applicants**

- (A) NNIDA may adopt an inducement resolution conditioned upon the subsequent furnishing of certain information satisfactory to NNIDA. All required information shall be promptly furnished to NNIDA and failure of any Applicant to furnish such information shall constitute grounds for rescission of any inducement resolution adopted pursuant to such conditions.
- (B) NNIDA may, at its option, require the furnishing of appraisals, evaluations or reports respecting the Project or any portion thereof. NNIDA 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 NNIDA after prior notification to the Application shall be paid by the Applicant.
- (C) Since NNIDA usually acts based upon information furnished to it solely by the Applicant, NNIDA 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 NNIDA. 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 NNIDA.

### ARTICLE V PROVISIONS TO BE INCORPORATED INTO RESOLUTIONS AND FINANCING DOCUMENTS

**Section 5.1 Inducement Resolutions** Each inducement resolution adopted by NNIDA shall provide that it shall continue in full force and effect for a period of two (2) years unless specifically extended by NNIDA.

**Section 5.2 Payment of NNIDA Expenses** The Financing Documents adopted by NNIDA for the benefit of any Applicant shall provide that the Applicant agrees to pay all

costs, fees and expenses incurred by NNIDA (including attorney's fees) in connection with:

- (A) the authorization, issuance and sale of NNIDA Bonds;
- (B) the ownership, occupation, operation or use of the Project being financed, whether owned by NNIDA or the Applicant;
- (C) prepayment or redemption of NNIDA Bonds;
- (D) administrative costs and expenses of NNIDA including the fees of attorneys, accountants, engineers, appraisers or consultants, paid or incurred by NNIDA by reason of the Bonds being outstanding or pursuant to requirements of the Financing Documents; and
- (E) such other fees and expenses of NNIDA, not directly related to the Project being financed for the Applicant, but attributable to NNIDA's financing of industrial or commercial Projects, including without limitation, a share of costs of the NNIDA annual audit as required by Code Section 15.1-1377, 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 NNIDA of which any portion of any issue remains outstanding and unpaid.

**Section 5.3 Indemnification of NNIDA** Each Applicant shall agree to indemnify and save harmless NNIDA and its 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 Indemnities, 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 Indemnities;
- (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:
  - (1) 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 herein;
  - (2) any action, suit, claim or demand contesting or affecting the title of the Project;
  - (3) 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 facts or omits or omitted to state any material facts necessary to make the statements therein not misleading in light of the circumstances under which they were made;
  - (4) 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

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

**Section 5.4 Bond Counsel Opinion Required** Before issuing and delivering any of its Bonds, NNIDA shall receive an approving opinion of bond counsel, approved by NNIDA stating, among other things, that the Bonds have been duly authorized, executed, issued and delivered, and that the interest thereon is exempt from Federal income taxation under IRC® 103 (or other applicable provision of law) and taxation by the Commonwealth of Virginia.

**Section 5.5 Covenants to Preserve Tax Exempt Status of Bonds** All Financing Documents presented for approval by NNIDA shall contain appropriate covenants of the Applicant designed to insure compliance with the requirement of IRC® 103 to preserve the tax exempt status of interest on the Bonds, including without limitation, "arbitrage" requirements, capital expenditure limitations and reporting requirements.

## ARTICLE VI

### REPORTS

**Section 6.1 Interim Reports by Applicants** Each Applicant shall file with NNIDA 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 NNIDA. 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 NNIDA of any significant or material changes to any information previously furnished by the Applicant to NNIDA.

**Section 6.2 Annual Reports of Applicants** Each Applicant, after the issuance and sale of NNIDA's Bonds for the benefit of such Applicant, shall annually report to NNIDA 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 City of Newport News.

**Section 6.3 Reports by NNIDA Chairman, Directors, etc.** At each regular meeting of NNIDA, the Chairman, each Director, the Secretary-Treasurer and NNIDA's counsel shall report any action taken on behalf of NNIDA since the last regular meeting, including receipt of reports required under Sections 4.6, 6.1 and 6.2. No later than September 1 of each year, the Chairman of NNIDA shall report in writing to NNIDA on the status, as of the end of NNIDA's fiscal year, of each active and outstanding inducement resolution of NNIDA and the status of each issue of NNIDA's Bonds.

## ARTICLE VII

### ENFORCEMENT

**Section 7.1 Enforcement of Provisions** NNIDA 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** NNIDA may rescind or repeal any inducement resolution previously adopted by it or any other action taken by NNIDA 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 NNIDA shall be repealed or rescinded unless prior written notice of such proposed action shall have been mailed to the Applicant at least three (3) weeks before the date upon which such action is proposed to be taken. Notwithstanding the foregoing, no such action shall be taken by NNIDA which will impair or adversely affect the interests of the holders of NNIDA 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 NNIDA. For good cause, application of these Rules may be modified and waived on a case-by-case basis upon the consent of NNIDA. Any action taken by NNIDA 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 NNIDA that each Applicant comply fully and completely with these Rules, and failure to comply with these Rules may constitute grounds for refusal by NNIDA to take any action requested.

**Section 8.2 Approval of Inducement Resolution not to Constitute an Endorsement of Applicant** The purpose of NNIDA, as set forth in the Act and its Charter, is to promote industry and develop trade by inducing manufacturing, industrial, and governmental enterprises to locate in or remain in the Commonwealth of Virginia. Pursuant to the Act, NNIDA'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, NNIDA's decision to adopt an inducement resolution or take other action will be based largely upon these factors. Further, the Act prohibits NNIDA from operating any enterprise or Project. Since NNIDA is a conduit for providing tax exempt financing to promote the City of Newport News, Virginia and given the express prohibition against operating enterprises or Projects, NNIDA believes it is improper for it to inquire into matters relating to the business judgment of the management of any Applicant not relevant to any of the foregoing factors. NNIDA 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 sales of its Bonds.

In view of the foregoing limitations, the adoption of an inducement resolution or any other action taken by NNIDA 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 of Payment of Bonds** NNIDA will require a 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, NNIDA 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.