

AMENDED AND RESTATED ELIGIBLE PROJECT POLICY

COUNTY OF CATTARAUGUS INDUSTRIAL DEVELOPMENT AGENCY

ELIGIBLE PROJECT POLICY

SECTION 1. PURPOSE AND AUTHORITY. (A.) Purpose of the Agency. The purpose of the County of Cattaraugus Industrial Development Agency (the “Agency”) is to retain, promote, attract and develop job and business opportunities and economically sound commerce and industry in cities, towns and villages in the County of Cattaraugus (the “County”). The Agency strives to assist and promote growing industry in the County by helping business to be competitive and profitable by offering:

- (1) financial assistance, including business incentives, tax exemptions and proceeds of bonds;
- (2) improved utilization and development of local infrastructure
- (3) creation of investment, employment and wealth in the County; and
- (4) recruitment of new business.

The Agency gives preference to those businesses that have a market for products or services extending beyond the County, including “back office” operations and regional or national headquarters. The Agency will consider assisting companies selling their product or service in the County when it is clear their primary competition is from outside of the County.

(B) Authorized Projects Under the Act. Pursuant to Title One of Article 18-A of the General Municipal Law, as amended (the “Act”), the Agency is authorized to offer “financial assistance”, as defined in the Act (“Financial Assistance”), to various types of projects. The Act authorizes an industrial development agency to undertake numerous types of projects, including, but not limited to, manufacturing, warehousing, research, commercial, industrial, industrial pollution control, recreation, cultural, horse racing and railroad facilities. The Act also has from time to time contained legislature prohibitions on providing Financial Assistance to certain types of projects, such as retail facilities, allowing exceptions for tourist destination facilities, projects that otherwise will move out of state, or projects in highly distressed areas.

(C) Agency Policy. In an attempt to be consistent with the purposes of the Agency outlined in Section 1(A) above, the Agency has in the past undertaken manufacturing, industrial, warehousing, commercial, research, office, not-for-profit, railroad, recreation and tourism destination projects, but has in the past declined to undertake projects that the Agency has felt were not consistent with the purposes of the Agency outlined in Section 1(A) above, including certain big-box retail projects and certain condominium projects.

(D) Purpose of this Policy. The purpose of this eligible project policy (the “Eligible Project Policy”) is to set forth in a single place the policies that the Agency has been following to determine the types of projects that the Agency will consider granting Financial Assistance to. Note that the fact that Agency will consider granting Financial Assistance to a particular type of project does **not** mean that the Agency will in fact grant Financial Assistance to a particular project, even if that particular project is of a type that the Agency will consider granting Financial Assistance to. Under the Act and the policies of the Agency, the Agency must consider the application and related materials relating to a particular project, as well as input

from the public and from the state-mandated environmental review process, before making a determination whether to grant Financial Assistance to a particular project.

(E) Date of Enactment. This Eligible Project Policy was adopted pursuant to a resolution enacted by the members of the Agency on June 7, 2011, and last amended by pursuant to a resolution enacted by the members of the Agency on February 2, 2021.

SECTION 2. DEFINITIONS. All words and terms used herein and defined in the Act shall have the meanings assigned to them in the Act, unless otherwise defined herein or unless the context or use indicates another meaning or intent. The following words and terms used herein shall have the respective meanings set forth below, unless the context or use indicates another meaning or intent:

(A) “Act” means Title One of Article 18-A of the General Municipal Law, as amended.

(B) “Adaptive Reuse Project” means a project that will benefit the County by adapting old structures or sites for new purposes, including potentially a mix of business and commercial uses, and/or market rate housing, but excluding hotel and motel uses except as otherwise permitted within this Policy. Such a project may include redeveloping a blighted site or structure, promoting infill development utilizing existing infrastructure, creating new economic activity at difficult sites and buildings thus helping to eliminate neighborhood slum and blight, promoting re-use of existing buildings and sites, and/or helping to maintain a neighborhood’s fabric.

(C) “Affected Tax Jurisdiction” shall have the meaning assigned to such term in the Act.

(D) “Agency” shall mean County of Cattaraugus Industrial Development Agency.

(E) “County” shall mean the County of Cattaraugus.

(F) “Financial Assistance” shall have the meaning assigned to such term in the Act.

(G) “Municipality” shall mean each city, town and village located within the County.

(H) “Small Business” shall mean any business which is a recipient of a small business loan from the Cattaraugus County Business Development Corporation.

(I) “Tourism Destination Facility” means a retail facility in the County that the Agency determines (1) will attract and/or service a significant number of Tourists (either due to the nature of the project, or as demonstrated by an appropriate market analysis), (2) will entice more Tourists to come to the County, (3) is linked to other Tourism Destination Facilities in the County, and (4) will agree to pay sales taxes and occupancy taxes related to the operation of said facility and (b) if not operated by a not-for-profit corporation or entity, real estate taxes and/or Pilot payments related to such facility. The Agency will also consider venues relating to arts, entertainment and recreation - examples include: Hotels/Motels, performing arts, theater companies, sports arenas, museums, historical sites, camp grounds, amusement and theme parks, themed typed destination restaurants, golf courses, skiing facilities, all open to the general public.

(J) “Tourist” means a project customer that is expected to come from outside the County.

SECTION 3. TYPES OF ELIGIBLE PROJECTS. Subject to compliance with all the requirements of the Act, proposed projects and/or projects with occupants whose businesses fall within the following categories are hereby determined to be eligible for Financial Assistance from the Agency:

“Commercial Projects” - Any commercial project approved by the Agency that is not a Manufacturing Project, a Warehousing Project, a Research Project, a Tax-Exempt Project, a Small Alternate Energy Project, a Wind Farm Project, a Commercial Solar Project or a Small Business Equipment Project. This term includes, but is not limited to, the following:

(1) **“Retail Projects”** – As a general rule, the Agency has traditionally refrained from assisting retail projects and for-profit medical facilities (such as doctor’s offices, clinics and laboratories) unless such projects were both permitted by the Act and were deemed by the Agency to provide sufficient public benefits to offset whatever public detriments might arise as a result of such project. Factors influencing whether the Agency will consider granting Financial Assistance to a particular retail/commercial project include, but are not necessarily limited to, the following:

(a) Whether the project is permitted under the Act (At times, the Act has prohibited retail projects unless some of the following conditions are met; the project: (i) is a Tourism Destination Facility; (ii) is operated by a not-for-profit corporation; (iii) will locate outside of the State without assistance from the Agency; (iv) is located in a highly distressed area; (v) makes available goods or services not otherwise reasonably accessible; and (vi) preserves or increases permanent private-sector jobs. Although these provisions of the Act may have expired, the Agency is inclined to follow these retail restrictions);

(b) Whether the project is a critical part of a larger, planned development in the community;

(c) Whether the project has been endorsed by the local municipal chief executive officer or the local municipal governing body; and

(d) Whether the project is located in an economic development zone, Empire Zone or similar zone targeted for additional local or state financial assistance.

(2) **“Medical Projects”**- As indicated in Section 3(H)(1) above, medical facilities (such as doctor’s offices, clinics and laboratories) generally are not eligible for Financial Assistance from the Agency, with the following exceptions to this general restriction: (a) a medical facility operated by a not-for-profit corporation; (b) a Tourism Destination Facility; and (c) for-profit medical facilities meeting the criteria for an exception pursuant to Section 3(H)(1) above, including but not limited to (i) a back office medical support facility, if regional in nature and if a significant portion of its operations support activities outside of the County, (ii) a medical facility that provides leading edge technology facilities, with a demonstrated commercialization potential or associated local research component, (iii) a medical facility that provides medical services that are generally not available (provided that an appropriate market analysis confirming such unavailability is provided), or (iv) a medical facility with a demonstrated need, backed up with a qualified study outlining the need for the new facility or for the retention of the existing facility within the County.

(3) **“Residential Project”** – As a general rule, the Agency has traditionally refrained from providing Financial Assistance to residential projects unless such projects were both permitted by the Act and were deemed by the Agency to provide sufficient public benefits to offset whatever public detriments might arise as a result of such project. The Agency will consider providing Financial Assistance to multi-tenant facilities, if such facilities can

demonstrate a need in the college, university, commercial or manufacturing sector or otherwise promote employment opportunities and prevent economic deterioration, as confirmed by an appropriate expert study or other or a written analysis by a government official with appropriate expertise, and such a determination is made by the Agency based upon all of the relevant facts.

(4) **“Distributive Service Project”** – The Agency will consider providing Financial Assistance to a project that is primarily composed of facilities for distributive services, including but not limited to the following: (a) wholesaling durable and non-durable merchandise; (b) air, rail, water, truck transportation and support activities; (c) warehousing and storage; (d) publishing; broadcasting and telecommunications; (e) distribution centers; and (f) information services and data processing.

(5) **“Business Services Project”** – The Agency will consider providing Financial Assistance to a project that is primarily composed of facilities for business services, including but not limited to the following: (a) finance; (b) international trade; (c) accounting; (d) engineering; (e) management services; (f) back office facilities in support of customer service, sales and marketing, and technical assistance; (g) specialized training services; (h) machinery & equipment repair; (i) space research; (j) national security; and (k) real estate rental.

(6) **“Recreation Project”** – Any project that is composed primarily of facilities that qualify for financial assistance under the Act as recreation facilities. This term includes horse racing facilities and other similar facilities.

(7) **“Adaptive Reuse Project”** – In order to prevent economic deterioration and promote employment opportunities in the County, the Agency will consider providing Financial Assistance to an Adaptive Reuse Project. Factors influencing whether the Agency will consider granting Financial Assistance to a particular Adaptive Reuse Project include the following: (a) the age of the structure and the challenges to its redevelopment; (b) time period during which the structure has been vacant or underutilized; (c) whether the structure is generating significant rental income; (d) whether the proposed Adaptive Reuse Project is compliant with the investment and growth criteria of the local master plan; (e) appropriate evidence indicating financial obstacles to the development of the project without Financial Assistance from the Agency or other public assistance; (f) evidence of local governmental support; (g) whether the structure or site presents a significant public safety hazard or its re-use would involve significant environmental remediation costs; (h) whether the site or structure is located in a distressed census tract; (i) whether the structure presents significant costs associated with building code issues; (j) whether the site or structure is presently delinquent in property tax payments; and (k) such additional criteria as may be developed by the Agency from time to time.

“Commercial Solar Project” means a group of solar panels and related facilities in the same location intended to be used for the production of electric power to be sold to third parties, but shall not include a Small Alternate Energy Facility. In the event of a question whether a solar facility is a Small Alternate Energy Facility or a Commercial Solar Project, the determination of the Agency on that subject shall be final. A Commercial Solar Project includes all related equipment determined by the Agency to be necessary or desirable for collecting such electric energy and delivering same to the electric grid, but shall not include the land and improvements that were included on the tax rolls of the Affected Tax Jurisdictions prior to the commencement of such Commercial Solar Project. As a general rule, (1) the Agency will not hold a public hearing with respect to a Commercial Solar Project unless (a) the Agency first sends a copy of the application received by the Agency with respect to said project to the chief executive officer (or officers) of the Project Municipality (or Project Municipalities) and a letter indicating that the Agency intends to hold a public hearing with respect to said project unless the Agency receives a written objection to the

Agency proceeding to process the application relating to said project within 15 days' after the date of mailing said letter from said chief executive officer (or officers), and (b) within 15 days' after the date of mailing said application and letter from the Agency to the chief executive officer (or officers) of the Project Municipality (or Project Municipalities), the Agency does not receive such written objection, and (2) the Agency will not approve said Commercial Solar Project unless the Agency receives (a) a letter of support for such project from the Project Municipality (or Project Municipalities), and (b) evidence that the project beneficiary has entered into a decommissioning agreement in favor of the Project Municipality (or Project Municipalities), the Landowner and the County, designed to afford the Project Municipality (or Project Municipalities), the Landowner and the County a level of financial protection related to the decommissioning of the project and restoration of the project site, said agreement, at a minimum, to provide as follows:

(i) the project beneficiary is to create a decommissioning fund (the "Solar Decommissioning Fund"), to be held in a third party escrow account with a third party escrow agent acceptable to the Agency (which may be the Treasurer of the County), to guarantee that monies are available to perform the facility decommissioning and restoration of the project site, said Solar Decommissioning Fund to be initially capitalized at the Agency's current estimated costs of decommissioning the project and restoring the project site (without offset for salvage value), and increased yearly thereafter by an additional annual deposit at least equal to an additional 2.5% of the previous balance to keep up with inflation and expected decommissioning and site restoration costs (Note - The Agency in December, 2020 then estimated the costs to decommission a 2 MWac commercial solar project to be \$65,000, based on guidance from the New York State Energy Research & Development Authority and other sources, the salvage values of recyclable materials not being factored into said costs);

(ii) the Solar Decommissioning Fund shall be funded as follows: (A) with cash furnished by the project owner, with interest credited to the project owner; or (B) if acceptable to the Agency, with one of the following forms of financial security:

(I) Performance Bond – a Performance Bond (w) issued by a surety company in good standing with, and authorized to issue surety bonds by, the New York State Department of Financial Services and having a rating of "A" or better pursuant to the latest rating publication of Surety Companies by A.M. Best Company, (x) in an amount equal to the amount then required to be in the Solar Decommissioning Fund, increasing annually as provided above, (y) for a term of at least three years, and shall provide that such term shall be continuously renewed or extended, so that it remains in effect for the remaining term of the Solar Decommissioning Fund or until the secured decommissioning obligations are satisfied, whichever occurs sooner, and (z) providing that, upon default by the project owner with respect to its decommissioning obligations with respect to the solar facility, the surety shall perform such obligations for the benefit of the Project Municipality (or Project Municipalities), the Landowner and the County; or

(II) Letter of Credit – an irrevocable letter of credit (w) issued by a bank whose long-term debt is rated "A" or better by a nationally recognized rating service, (x) in an amount equal to the amount then required to be in the Solar Decommissioning Fund, increasing annually as provided above, (y) for a term of at least one year, and shall provide that shall be continuously renewed, extended, or replaced, so that it remains in effect for the remaining term of the Solar Decommissioning Fund or until the secured decommissioning obligations are satisfied, whichever occurs sooner, and (z) providing that, upon default by the project owner with respect to its decommissioning obligations with respect to the solar facility, the Project Municipality (or Project Municipalities), the

Landowner or the County, or its designees, shall be authorized under the letter of credit to make one or more sight drawings thereon upon certification to the issuing bank that the then project owner shall have failed to perform its decommissioning obligations when due;

(iii) a plan for decommissioning the project (the “Plan”), which Plan shall include activities related to (W) disconnecting the solar facility from the electrical grid, (X) the dismantling and the removal of all solar facility components to a depth of four feet below grade (including photovoltaic modules, panel racking and supports, inverter units, battery storage, transformers and other electrical equipment, wiring cables, perimeter fence, and concrete foundations) in accordance with any applicable regulations and manufacturer recommendations, (Y) the restoration of the project site to a state similar to its pre-construction condition based upon best management practices and procedures (and in compliance with the most recent guidance from the New York State Department of Agriculture and Markets, which in December, 2020 was a release entitled “Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands”, revision dated 10/18/2019), and (Z) the management of materials and waste;

(iv) the project to be decommissioned under the following conditions; (W) the project beneficiary decides to retire the solar facility; (X) commercial operation of the solar facility has not commenced within three years of commencement of construction of the solar facility; (Y) the solar facility ceases to be operational for more than two years; or (Z) the project is delinquent for a period of two years or more in the payment of real estate taxes or payments in lieu of real estate taxes;

(v) the County shall have access to the project site to effect or complete decommissioning, and shall have access to the Solar Decommissioning Fund for the expressed purpose of completing such decommissioning, if (X) decommissioning is not completed by the project beneficiary, the Landowner, or the Project Municipality (or Project Municipalities) within six (6) months of the end of project life or facility abandonment, or (Y) for any reason the County is the holder of tax title to the project; and

(vi) if, following decommissioning, there are any funds remaining in the Solar Decommissioning Fund, such funds shall be returned to the project beneficiary or such other person or entity entitled to same.

“Industrial Project” – This term includes manufacturing and industrial projects allowed under the Act, including industrial pollution control projects. The Agency targets the industrial sector because of the quality of the jobs this sector creates and because it is unlikely applicants will be competing with other businesses in the County. The Agency defines “industrial” very broadly to include computer software, agri-business, and printing and publishing.

“Landowner” means the owner of the land upon which a particular project is located.

“Project Municipality” means the city, town or village in which a particular project is proposed to be located.

“Research Project” – Any project which qualifies for financial assistance under the Act as a research project. This term includes research and development facilities and other similar facilities.

“Small Alternate Energy Facility” means a facility (1) that is determined by the Agency to be a facility described in Section 487(1) of the Real Property Tax Law (including solar or wind energy equipment,

a solar or wind energy system, farm waste electric generating equipment, and a farm waste energy system), (2) that is installed or to be installed in a residence, a farm or a small business located within the County and (3) that is not a Wind Farm Facility or a Commercial Solar Facility.

“Small Business Equipment Project”- Any project that (1) is to be undertaken by the Agency for the benefit of a Small Business, (2) is intended to extend only a sales tax benefit to such Small Business and (3) is to be comprised of equipment only.

“Tax-Exempt Project” – Any project which qualifies for tax-exempt financing by the Agency under the Internal Revenue Code of 1986, as amended, provided that such project is permitted under the Act.

“Warehousing Project” - Any project which qualifies for financial assistance under the Act as a warehousing project. This term includes distribution facilities and other similar facilities.

“Wind Farm Project” – Any project that is primarily composed of a group of wind turbines and related facilities in the same location intended to be used for the production of electric power to be sold to third parties, including all related equipment determined by the Agency to be necessary or desirable for collecting such electric energy and delivering same to the electric grid, but shall not include the land and improvements that were included on the tax rolls of the Affected Tax Jurisdictions prior to the commencement of the project of which such Wind Farm Facility is a part (see Section 7(D)(1) of the Agency’s Uniform Tax Exemption Policy). As a general rule, (1) the Agency will not hold a public hearing with respect to, or approve, a Wind Farm Project unless the Agency receives letters of support for such project from both the Cattaraugus County Legislature and the Project Municipality (or Project Municipalities), (2) in processing the application for said Wind Farm Project, the Agency will take into consideration the viewpoints expressed to the Agency by municipalities contiguous to the Project Municipality (or Project Municipalities), and (3) the Agency will not approve said Wind Farm Project unless the Agency receives (a) a letter of support for such project from the Project Municipality (or Project Municipalities), and (b) evidence that the project beneficiary has entered into a decommissioning agreement in favor of the Project Municipality (or Project Municipalities), the Landowner and the County, designed to afford the Project Municipality (or Project Municipalities), the Landowner and the County a level of financial protection related to the decommissioning of the project and restoration of the project site, said agreement, at a minimum, to provide as follows:

(i) the project beneficiary is to create a decommissioning fund (the “Wind Decommissioning Fund”), to be held in a third party escrow account with a third party escrow agent acceptable to the Agency (which may be the Treasurer of the County), to guarantee that monies are available to perform the facility decommissioning and restoration of the project site, said Wind Decommissioning Fund to be initially capitalized at the Agency’s current estimate of the full amount of the projected costs of the decommissioning the project and restoring the project site (without offset for salvage value), and increased yearly thereafter by an additional annual deposit at least equal to an additional 2.5% of the previous balance to keep up with inflation and expected decommissioning and site restoration costs (Note - The Agency in February, 2021 then estimated the costs to decommission a 68 turbine 242 MW wind farm project to be \$10,200,000, or approximately \$150,000 per turbine, based on a review of recent decisions by the New York State Board on Electric Generation Siting and the Environment and other sources, the salvage values of recyclable materials not being factored into said costs);

(ii) the Wind Decommissioning Fund shall be funded as follows: (A) with cash furnished by the project owner, with interest credited to the project owner; or (B) if acceptable to the Agency, with one of the following forms of financial security:

(I) Performance Bond –a Performance Bond (w) issued by a surety company in good standing with, and authorized to issue surety bonds by, the New York State Department of Financial Services and having a rating of “A” or better pursuant to the latest rating publication of Surety Companies by A.M. Best Company, (x) in an amount equal to the amount then required to be in the Wind Decommissioning Fund, increasing annually as provided above, (y) for a term of at least three years, and shall provide that such term shall be continuously renewed or extended, so that it remains in effect for the remaining term of the Wind Decommissioning Fund or until the secured decommissioning obligations are satisfied, whichever occurs sooner, and (z) providing that, upon default by the project owner with respect to its decommissioning obligations with respect to the wind farm facility, the surety shall perform such obligations for the benefit of the Project Municipality (or Project Municipalities), the Landowner and the County; or

(II) Letter of Credit –an irrevocable letter of credit (w) issued by a bank whose long-term debt is rated “A” or better by a nationally recognized rating service, (x) in an amount equal to the amount then required to be in the Wind Decommissioning Fund, increasing annually as provided above, (y) for a term of at least one year, and shall provide that shall be continuously renewed, extended, or replaced, so that it remains in effect for the remaining term of the Wind Decommissioning Fund or until the secured decommissioning obligations are satisfied, whichever occurs sooner, and (z) providing that, upon default by the project owner with respect to its decommissioning obligations with respect to the wind farm facility, the Project Municipality (or Project Municipalities), the Landowner or the County, or its designees, shall be authorized under the letter of credit to make one or more sight drawings thereon upon certification to the issuing bank that the then project owner shall have failed to perform its decommissioning obligations when due;

(iii) a plan for decommissioning the project (the “Plan”), which Plan shall include activities related to (W) disconnecting the wind farm facility from the electrical grid, (X) the dismantling and the removal of all wind farm facility components to a depth of four feet below grade (including transformers and other electrical equipment, wiring cables, perimeter fence, and concrete foundations) in accordance with any applicable regulations and manufacturer recommendations, (Y) the restoration of the project site to a state similar to its pre-construction condition based upon best management practices and procedures (and in compliance with the most recent guidance from the New York State Department of Agriculture and Markets, which on April 19, 2018 was a release entitled “Guidelines for Agricultural Mitigation for Wind Power Projects”, revision dated 4/19/2018), and (Z) the management of materials and waste;

(iv) the project to be decommissioned under the following conditions; (W) the project beneficiary decides to retire the wind farm facility; (X) commercial operation of the wind farm facility has not commenced within three years of commencement of construction of the wind farm facility; (Y) the wind farm facility ceases to be operational for more than two years; or (Z) the project is delinquent for a period of two years or more in the payment of real estate taxes or payments in lieu of real estate taxes;

(v) the County shall have access to the project site to effect or complete decommissioning, and shall have access to the Wind Decommissioning Fund for the expressed purpose of completing such decommissioning, if (X) decommissioning is not completed by the project beneficiary, the Landowner, or the Project Municipality (or Project Municipalities) within

six (6) months of the end of project life or facility abandonment, or (Y) for any reason the County is the holder of tax title to the project; and

(vi) if, following decommissioning, there are any funds remaining in the Wind Decommissioning Fund, such funds shall be returned to the project beneficiary or such other person or entity entitled to same.

SECTION 4. PROCEDURES FOR DEVIATION. In a case where the Agency shall determine that special circumstances may exist that may justify a deviation pursuant to Section 3(B) of this Lease Policy, the Agency may determine to deviate from the provisions of this Eligible Projects Policy provided that the Agency adopts a resolution (A) setting forth, with respect to the proposed deviation, the reasons for the proposed deviation and (B) imposing such terms and conditions thereon as the Agency shall deem just and proper.

SECTION 5. ANNUAL REVIEW OF POLICY. At least annually, the Agency shall review this Eligible Projects Policy to determine relevance, compliance with law, effectiveness, and shall adopt any modifications or changes that it shall deem appropriate. The Chief Executive Officer of the Agency shall be responsible for conducting an annual review of this Eligible Projects Policy and for an evaluation of the internal control structure established to ensure compliance with this Eligible Projects Policy, which review shall be submitted to the Agency for consideration by the Agency.