

Memorandum:

MEMORANDUM

From: Corey R. Wiktor, Executive Director, CCIDA

To: Crystal J. Abers

Dated: January 22, 2010

Re: Recovery Zone Resolution Request

ACTION REQUESTED.

Adopt a resolution (1) designating Cattaraugus County (the "County") as a Federal Recovery Zone pursuant to the American Recovery and Reinvestment Act of 2009 for the purpose of issuing Recovery Zone Economic Development Bonds in an amount not to exceed \$2,338,000, and (2) assigning the County's Recovery Zone Facility Bond volume cap in the amount of \$3,507,000 to County of Cattaraugus Industrial Development Agency (the "Agency").

BACKGROUND

General:

Federal Stimulus Act. Under the American Recovery and Reinvestment Act of 2009 ("ARRA"), signed into law on February 17, 2009, the Federal government has created two new categories of bonds designed to be used in "recovery zones" – (1) Recovery Zone Economic Development Bonds, and (2) Recovery Zone Facility Bonds. The U.S. Department of Treasury (the "Treasury") and the Internal Revenue Service (the "IRS") issued guidelines regarding the ARRA provisions affecting these types of bonds on April 3, 2009 in Notice 2009-26.

ARRA imposed volume cap limitations on both of these types of bonds. In determining the allocation of funding to cities and counties throughout the United States, the Federal Government used a formula based on increases in a jurisdiction's unemployment rate. Over \$1.2 billion in volume cap was allocated to cities and counties for the Recovery Zone Facility Bond Program and over \$800 million for the Recovery Zone Economic Development Bond Program. Cattaraugus County has been allocated the following shares of the volume cap for these types of bonds:

- \$2,338,000 in Recovery Zone Economic Development Bonds
- \$3,507,000 in Recovery Zone Facility Bonds

Need for Action. On December 29, 2009, ESD/NYS Department of Economic Development (the "State") sent a memorandum to all recipients of volume cap for these types of bonds, indicating that, in order to plan effectively for New York State's Recovery Zone Facility Bond usage, the State requested that those counties and municipalities having received recovery zone bond allocations submit Issuance Plans for Recovery Zone Facility Bonds to the State **no later than January 29, 2010.**

Although the State has not yet enacted legislation allowing the State to seize unused recovery zone bond volume cap, it should be assumed that such legislation will be introduced in the New York State Legislature and passed this spring. It should be further assumed that, under such legislation, cities and counties that do not use their recovery zone bond volume cap (or do not utilize the full portion of

such recovery zone bond volume cap) will be forced to release the recovery zone bond volume cap to the State so that the State can reallocate such recovery zone bond volume cap to cities or counties that did not originally qualify for recovery zone bond volume cap based on the federal government's employment rate formula, or cities or counties who are seeking additional recovery zone bond volume cap.

Designation of Recovery Zone:

A "recovery zone" is defined in ARRA to mean (1) any area of the County designated by the issuer as having significant poverty, unemployment, rate of home foreclosures, or general distress; (2) any area of the County designated as economically distressed by reason of the closure or realignment of a military installation; and (3) any area of the County for which a designation as an "empowerment zone" or "renewal community" is in effect as of the effective date of the ARRA (i.e., 2/17/09).

The entire County may be designated a recovery zone because the County has an unemployment rate exceeding 8.7% in ^{October, 2009}¹, an estimated poverty rate of 15.8% in ^{calendar year 2007}², a rate of home mortgage delinquency that has increased in ^{the third quarter of calendar year 2009}³, and is generally economically distressed by these factors. These conditions are a consequence of the recent housing market collapse, the impact of the national recession, and the fiscal crisis experienced by the State of New York and local communities.

If the County wishes to issue either type of recovery zone bonds, the County Legislature will need to establish the Cattaraugus County Recovery Zone. Since Cattaraugus County was allocated funds based on the Federal Government's formula showing a significant increase in the unemployment rate, Cattaraugus County qualifies as a Recovery Zone. To be designated as a Recovery Zone, the local governing authority must designate the area that bonds will be utilized in as a Recovery Zone and to include the basis for the designation in accordance with ARRA Section 1400-1(b). Since the allocation of Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds described above was given to the County as a whole, we recommend that the County Legislature designate the entire County as the "Cattaraugus County Recovery Zone".

If, as suggested in this memorandum, the County assigns the portion of its recovery zone bond volume cap relating to Recovery Zone Facility Bonds to the Agency, then (1) the County's recovery zone designation would control for purposes of the issuance by the County of Recovery Zone Economic Development Bonds, and (2) the Agency would have to make its own recovery zone designation for purposes of the issuance by the Agency of Recovery Zone Facility Bonds.

Recovery Zone Economic Development Bonds

Governmental bonds. Recovery Zone Economic Development Bonds ("RZEDBs") are taxable "Build America" bonds that allow states and local governments to obtain lower borrowing costs through a new direct federal payment subsidy, equal to 45% of the interest, to finance a broad range of qualified economic development projects. Because RZEDBs are issued for a general governmental purpose, they

¹ Source:

<http://data.bls.gov/map/servlet/map.servlet.MapToolServlet?state=36&datatype=unemployment&year=2009&period=M10&survey=la&map=county&seasonal=u>

² Source: <http://quickfacts.census.gov/qfd/states/36000.html>

³ Source: <http://data.newyorkfed.org/creditconditions/>

are treated under the Internal Revenue Code of 1986, as amended (the "Code") as "governmental bonds" (as opposed to the Recovery Zone Facility Bonds described below, which are bonds issued to benefit a private business, and are treated under the Code as "private activity bonds").

Purposes for which RZEDBs may be issued. RZEDBs may only be issued to finance "Qualified Economic Development Purposes" (defined below). This means 100 percent of the excess of (1) the available project proceeds (sale proceeds of an issue less not more than 2% of sale proceeds used to pay costs of issuance plus investment earnings on those proceeds), over (2) the amounts in a reasonably required reserve fund must be used to finance Qualified Economic Development Purposes.

"Qualified Economic Development Purposes" is defined to mean expenditures for purposes of promoting development or other economic activity in an area that the County has designated as a "recovery zone", including (1) capital expenditures paid or incurred with respect to property located in a recovery zone, (2) expenditures for public infrastructure and construction of public facilities and (3) expenditures for job training and educational programs.

Outside date for issuance. All RZEDBs must be issued by December 31, 2010.

Irrevocable Election. Issuers of Recovery Zone Economic Development Bonds are required by Code Section 54AA(g) to make an irrevocable election to have Code Section 54AA apply to the bonds. The County should make the election to issue the Recovery Zone Economic Development Bonds on its books and records on or before the issue date of the Recovery Zone Economic Development Bonds.

Volume cap. If the County issues RZEDBs, the RZEDBs will be taxable bonds issued by the County. The Federal Government will then reimburse back to the County 45% of the coupon interest paid to investors. As described above, there is a volume cap on RZEDBs, and the local allocation to Cattaraugus County is \$2,338,000. The State can reallocate any unused RZEDB volume cap, but, as indicated above, all RZEDBs must be issued by December 31, 2010.

Recovery Zone Facility Bonds

Private activity bonds. Recovery Zone Facility Bonds ("RZFBs") are a type of tax-exempt bond that may be used by private businesses or non-profits in designated "recovery zones" to finance a broad range of depreciable capital projects. Because RZFBs are issued to benefit a private business, they are treated under the Code as "private activity bonds" (as opposed to the Recovery Zone Economic Development Bonds described above, which are bonds issued for a general governmental purpose, and are treated under the Code as "governmental bonds"). Although as a general rule interest on "private activity bonds" is not exempt from federal income tax, ARRA provides that RZFBs are classified as "exempt facility bonds" for Federal income tax purposes, and accordingly interest on RZFBs is exempt from federal income tax. The RZFB program would thus allow businesses in Cattaraugus County to access low-interest rate, tax-exempt revenue bonds.

Purposes for which RZFBs may be issued. Qualifying businesses include most trades or businesses, except for residential rental facilities and some prohibited uses such as golf courses, massage parlors, gambling facilities, liquor stores, etc. Land acquisition cannot be financed through these bonds.

Outside date for issuance. All RZFBs must be issued by December 31, 2010.

Volume cap. There is a volume cap on RZFBs, and the local allocation to Cattaraugus County is \$3,507,000. The State can reallocate any unused RZFB volume cap, but, as indicated above, all RZFBs must be issued by December 31, 2010.

Need for Assignment to Agency. Because Article 8, Section 1 of the State Constitution generally prohibits the use by the County of the County's borrowing power to benefit a private business, most private activity bonds issued to benefit businesses in Cattaraugus County have been issued by the Agency. For this reason, the Agency requests that the County assign the County's \$3,507,000 in Recovery Zone Facility Bond volume cap to the Agency.

By assigning the County's \$3,507,000 in Recovery Zone Facility Bond volume cap to the Agency, the County will take the first step towards assisting County businesses, as well as allowing the Agency to notify the State that the Agency intends to utilize the County's \$3,507,000 in Recovery Zone Facility Bond volume cap (and thus protect such volume cap from seizure by the State).

ENVIRONMENTAL IMPACT

The State Environmental Quality Review Act ("SEQRA") does not apply to any "Type II action". A "Type II action", as defined under 6 NYCRR Section 617.5(c)(21), includes any activities that constitute preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the County to commence, engage in or approve any such action. The designation of the County as a Federal Recovery Zone does not commit the County to commence, engage in or approve any particular project, and therefore, is a "Type II action" that is not subject to further review under SEQRA.

FISCAL IMPACT

There is no fiscal impact association with this action. The designation as a "recovery zone" does not financially obligate the County in any way. By designating Cattaraugus County as a Federal "recovery zone", the County will have the flexibility to apply the County's \$2,338,000 in Recovery Zone Economic Development Bond volume cap to any County borrowing issued to finance facilities located anywhere in the County whose purposes meet the criteria of "Qualified Economic Development Purposes" described above.

Similarly, by assigning the County's \$3,507,000 in Recovery Zone Facility Bond volume cap to the Agency, local businesses will be eligible to take advantage of the interest rate savings offered under the ARRA. While RZFBs will allow borrowers to access the tax-exempt marketplace to fund their projects, Section 870 of the General Municipal Law provides that bonds of the Agency (including the RZFBs) are not a debt of the State or the County. Rather, bonds of the Agency (including the RZFBs) are limited obligations of the Agency, and the Agency will require that the borrower and the project have a demonstrated ability to repay the bonds of the Agency (including the RZFBs).

Exhibit B:

***Request for Proposals: For Proposed Projects
Seeking Recovery Zone Facility Bond
Financing***

REQUEST FOR PROPOSALS

**FOR PROPOSED PROJECTS SEEKING
RECOVERY ZONE FACILITY BOND FINANCING**

*Proposal Deadline:
April __, 2010*

COUNTY OF CATTARAUGUS INDUSTRIAL DEVELOPMENT AGENCY
3 East Washington Street
Ellicottville, New York 14731
Phone: (716) 699-2005
Fax: (716) 699-2942

February 4, 2010

County of Cattaraugus Industrial Development Agency
REQUEST FOR PROPOSALS

INTRODUCTION:

The County of Cattaraugus Industrial Development Agency (“Agency”) is requesting proposals from qualified Respondents for the use of the Agency’s allocation of Recovery Zone Facility Bonds (as described below) respecting projects located within Cattaraugus County (the “County”) that are “shovel ready”, and are able to demonstrate eligibility for Recovery Zone Facility Bond financing. The intent of this Request for Proposals (“RFP”) is to obtain Proposals for the use of the Recovery Zone Facility Bonds to finance qualifying projects and to achieve the Agency’s objectives as stated in this RFP. The Agency intends to issue up to a total of \$3,507,000 of Recovery Zone Facility Bonds to finance certain qualifying projects, which may include new construction, expansion or substantial rehabilitation of hotels, office buildings, mixed-use projects, business parks, industrial and manufacturing facilities, retail, restaurants, and other types of private commercial use.

Important Note: This program does not provide direct funding, but merely allocates the authority to issue tax-exempt revenue bonds to finance Recovery Zone property.

Recovery Zone Facility Bonds:

The American Recovery and Reinvestment Act, passed by Congress in February, 2009 and signed into law on February 17, 2009, created a new category of tax-exempt bonds called *Recovery Zone Facility Bonds* (“Recovery Zone Facility Bonds”), a type of private activity bond. Recovery Zone Facility Bonds provide lower interest rates because the interest is tax-exempt to the investors for Federal income tax purposes. Pursuant to the American Recovery and Reinvestment Act, the Recovery Zone Facility Bonds must be issued by December 31, 2010.

Recovery Zone Facility Bonds must be used for “Recovery Zone Property”, which is defined in the American Recovery and Reinvestment Act to mean any depreciable property that is:

- A. Constructed, reconstructed, renovated or acquired by purchase by the taxpayer after the date on which the designation of the recovery Zone took effect;
- B. The original use of which in the Recovery Zone commences with the taxpayer; and
- C. Substantially all of the use of which is in the Recovery Zone and is in the active conduct of a “qualified business”.

A “qualified business (or “Qualifying Project” for purposes of this RFP) means any trade or business, except that (a) the rental to others of real property located in the Recovery Zone shall be treated as a qualifying business only if the property is not residential rental property and (b) such term shall not mean any trade or business consisting of the operation of certain prohibited facilities, including any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off-premises.

Permitted uses of the Recovery Zone Facility Bonds include the financing of: (1) new construction; (2) renovation of existing buildings; (3) acquisition of existing buildings, if substantial rehabilitation is performed; (4) new equipment; and (5) used equipment transferred into the Recovery

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Zone. Projects should have secured all municipal and regulatory approvals. Refinancing of existing debt is not an eligible activity.

The Agency will act as conduit issuer of the Recovery Zone Facility Bonds. The developer or owner of the Qualifying Project will be required to repay the loan evidenced by the Recovery Zone Facility Bonds. As with all bonds issued by the Agency, the Recovery Zone Facility Bonds would be revenue bonds backed solely by the assets of the particular project being financed, together with any other security provided by the project proponent (such as, for example, a guaranty by the project proponent, a letter of credit or other credit support from a financial institution, or an assignment of a bankable lease from a credit worthy tenant, etc.). **The Recovery Zone Facility Bonds will NOT be backed by credit or taxing power of the County, and will not be backed by any assets of the Agency (other than the interest of the Agency in the particular project being financed). The Agency has no taxing power.**

The Recovery Zone Facility Bonds are both federal and state tax exempt. Successful Respondents will be required to pay all issuance costs incurred by the Agency in connection with the issuance of the Recovery Zone Facility Bonds. Issuance costs will include the issuance fee of the Agency, as well as the fees and expenses of the Agency's counsel and bond counsel, which costs vary from project to project depending on the complexity of a particular project and particular financing structure. Issuance costs which may be financed out of proceeds of the Recovery Zone Facility Bonds are capped at 2% of the amount of such Recovery Zone Facility Bonds issued for the particular project.

All Respondents should consult a tax attorney to determine whether a specific project is a Qualified Business or a Qualified Project under the American Recovery and Reinvestment Act. The Internal Revenue Service has released Interim Guidance on the use and applicability of the Recovery Zone Facility Bonds, which may be accessed on the internet at: <http://www.irs.gov/pub/irs-drop/n-09-50.pdf>.

The American Recovery and Reinvestment Act provides that Recovery Zone Facility Bonds must be issued before January 1, 2011, and each selected Respondent must demonstrate the ability to secure and complete the financing within such timeframe.

Project with strong financials and which are "shovel ready" will be given priority. Proposals will also be evaluated based on job creation, job retention, local and County taxes generated, and additional local and County benefits. The Agency encourages all eligible projects to be submitted.

Recovery Zone Designation and Volume Cap:

The proceeds of the Recovery Zone Facility Bonds may be used by taxpayers engaged in certain types of businesses to finance the purchase of depreciable business property within a Recovery Zone, provided the taxpayer acquires the property after the area has received the Recovery Zone designation. Some kinds of property specifically do not qualify under this program; including land, rental property, residential rental property and property used for certain kinds of activities such as golf courses, country clubs, and several others listed in federal tax regulations.

Recovery zones are defined as areas designated by state and local governments as having significant poverty, unemployment, home-foreclosure rates or general distress or any area for which a designation as an empowerment zone or renewal community is in effect.

The County received an allocation of \$3,507,000 in volume cap (the "Recovery Zone Facility Bond Volume Cap") to permit the issuance of up to \$3,507,000 in Recovery Zone Facility Bonds. By

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Resolution No. _____ adopted by the Cattaraugus County Legislature (the "County Legislature") on February __, 2010, the County Legislature, among other things, (A) designated the entire County as a "Recovery Zone" for purposes of Recovery Zone Economic Development Bonds issued under the American Recovery and Reinvestment Act and (B) assigned to the Agency the entire Recovery Zone Facility Bond Volume Cap. On February 4, 2010, the Agency adopted a resolution designating the entire County as a "Recovery Zone" for purposes of Recovery Zone Facility Bonds issued by the Agency under the American Recovery and Reinvestment Act

INTENT OF RFP:

It is the intent of the Agency to make available its authorized volume cap allocation of \$3,507,000 for Recovery Zone Facility Bonds that must be used to finance eligible costs for qualified economic development purposes. Respondents are asked to submit proposed projects that are eligible for Recovery Zone Facility Bonds. The Agency is not certain of the number projects this program will assist; it will depend on the proposals received and each Proposal's request for funds. The cap that any one Proposal may request is the Agency's full allocation; however Respondents should only request an amount based on a project's actual need.

The intent of the Agency in issuing this RFP includes, but is not limited to, the following:

- A. To identify Qualifying Projects within the Recovery Zone that the Agency may consider issuing Recovery Zone Facility Bonds in support of.
- B. To identify Qualifying Projects and the developers that demonstrate adequate financial capacity to repay the principal of and interest on Recovery Zone Facility Bonds without any assistance or credit enhancement from the Agency. Respondents will be expected to initiate the funding process with the bank of their choice to facilitate the bond financing through the Agency.
- C. To facilitate Qualifying Projects that create increased employment in the County. The Respondent, if selected, will be required to operate the Project in compliance with the rules and regulations of the Internal Revenue Service associated with Recovery Zone Facility Bonds. The Respondent will be required to make such warranties and guarantees as the Agency shall require to guarantee repayment of the principal and interest on the Recovery Zone Facility Bonds.

If, in the Agency's sole discretion, a Respondent's Project is selected for bond issuance as a result of this RFP, such selection shall be considered provisional. The final decision to issue Recovery Zone Facility Bonds will be contingent upon, among other things, receipt of all required municipal and regulatory approvals. The Respondent, subject to the approval of the Agency, is responsible for obtaining an underwriter, bank or other lender to purchase the Recovery Zone Facility Bonds.

By issuing this RFP, the Agency makes no guarantees or representations, express or implied, that it will issue Recovery Zone Facility Bonds or finance any specific project. The Agency reserves the right to reject some or all Proposals. The Agency also reserves the right to issue Recovery Zone Facility Bonds to provide financing for developers and projects who submit applications subsequent to this RFP process.

PROPOSAL REQUIREMENTS:

Each project identified must be shovel ready within the next two years and must have a financing need of at least \$500,000. Projects must demonstrate their potential for near-term job creation, potential for long term regional economic benefit, and environmental stewardship.

SUBMITTAL REQUIREMENTS:

All submissions shall include the following required items:

- (1) A short cover letter containing a brief narrative description of the proposed project and amount of funds being requested, signed by the potential borrower and dated.
- (2) A detailed Proposal.
- (3) A completed copy of the Agency's standard Application Form (See Attachment A).
- (4) An application deposit fee in the amount of \$_____.

The Agency will not be limited solely to the information provided by the Respondent, but may utilize other sources of information useful in evaluating the capabilities of the Respondent.

Each Respondent must deliver or mail seven (7) original copies of the Proposal Package and one (1) electronic copy of the Cover Letter and the Proposal.

Proposals are to be received at the offices of the Agency, attention Corey R. Wiktor, Executive Director, County of Cattaraugus Industrial Development Agency, 3 East Washington Street, Ellicottville, New York 14731, Telephone (716) 699-2005, fax (716) 699-2942, e-mail corey@cattcoida.com by 3:00 o'clock PM, local time, on _____, April __, 2010.

The Agency is not responsible for late deliveries or other actions of the postal service or private carriers and will not consider proposals that arrive after the deadline. Faxed proposals will not be accepted. Hand carried proposals will be accepted at the above address. It is the responsibility of each Respondent to ensure that its submittal is received in a timely manner.

The Agency reserves the right to request any additional information or documents that may be necessary to evaluate the Proposal or the Application.

The Agency will not be responsible for the costs of preparation of any submittals for any reason.

PROPOSAL FORMAT:

Each proposal, at a minimum, should include the following information:

- (1) Description of the project and current status.
- (2) A statement of project cost and cost to be financed.
- (3) The time required to execute the project.

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- (4) The number of permanent and construction jobs to be created.
- (5) Evidence of financing, and the proposed terms of such financing. Evidence of financing should include a commitment for the bond borrowing in one of two ways:
 - a. By securing credit enhancement for publicly-sold bonds that will cause the bonds to be rated not less than A by Standard and Poor's Corporation or A2 by Moody's' Investor's Service. A letter of credit from a rated commercial bank would be a way to supply such credit enhancement.
 - b. By arranging for the private placement of the bonds to a buyer that is an "Accredited Investor" or "Qualified Institutional Buyer" under federal securities law. Such a purchaser will sign a "sophisticated investor letter" prepared by the County's attorneys which will represent that they are one of the above, are able and qualified to purchase without an official statement (unless one is being prepared as part of the financing in the County's sole discretion), and that they can transfer the placement only in whole, and only to a purchaser able to sign a similar sophisticated investor letter. This requirement would "travel" throughout the life of the placement.
- (6) Proposed debt security and coverage for debt security.
- (7) A Pro Forma for the proposed project.
- (8) Project beneficiaries and benefits to the community.
- (9) Corporate ownership information.

EVALUATION PROCESS:

Project selection is at the sole discretion of the Agency. The Agency presently intends to use the following criteria and process to review Proposals:

The Agency presently intends to review the submitted proposals and assign a tentative ranking to each submitted proposal, based upon the following criteria:

- (A) Evidence that the proposed project is NOT otherwise eligible for tax-exempt financing from either the Agency or its affiliated Capital Resource Corporation;
- (B) The number of permanent full-time and part-time jobs to be created by the proposed project;
- (C) The overall economic impact that the proposed project will have on the city, town or village in which it will be located;
- (D) The overall economic impact that the proposed project will have on the County;
- (E) The number of construction jobs to be created by the proposed project;
- (F) The scope and quality of the Respondent's Proposal;

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- (G) The Respondent's prior project experience;
- (H) The likelihood of successful underwriting and funding of the Recovery Zone Facility Bonds based on the strength of the Project and/or the Respondent; and
- (I) The degree to which the Project is ready to proceed.

Projects located in a low-income census tract, area with a high home foreclosure rate or an area experiencing severe job loss may be given priority.

The proposed projects that are tentatively ranked by the Agency in the top three will be so notified, and invited to submit to the Agency within thirty (30) days evidence that (1) a firm financing commitment indicating that (a) the proposed financing for the proposed project is in place and (b) the proposed financing will be completed and the proposed Recovery Zone Facility Bonds will be purchased on or before October 1, 2010, and (2) immediately upon completion of such proposed Recovery Zone Facility Bond financing, construction of the proposed project will commence in earnest.

Based upon a review of the evidence submitted as described in the preceding paragraph, the Agency will within thirty (30) days arrive at a final ranking of the top three proposed projects, and presently intends to allocate the Agency's Recovery Zone Facility Bond Volume Cap to the such top three proposed projects in such order. The Agency may allocate less than the amount requested by the Respondent if there is insufficient allocation, or if more Proposals are deemed worthy of allocation than the amount of allocation available. A Respondent receiving less than the requested allocation would have to finance the balance of its project in another way (e.g., bank loan or taxable bonds). The Agency is not obligated to select any project under this RFP, and Respondents are solely responsible for all costs incurred in preparing and submitting a submittal.

The Agency reserves the right to recapture any Recovery Zone Facility Bond Volume Cap allocated to a proposed project as described above if, in the judgment of the Agency, the proposed Recovery Zone Facility Bond financing for such proposed project will not close on or before October 1, 2010.

Further Questions:

Questions concerning this RFP should be directed to Corey R. Wiktor, Executive Director, County of Cattaraugus Industrial Development Agency, 3 East Washington Street, Ellicottville, New York 14731, Telephone (716) 699-2005, fax (716) 699-2942.

Addendums:

Should it be necessary to revise any part of this RFP, provide additional information necessary to adequately interpret provisions and requirements of this RFP, or respond to written inquiries concerning this RFP, the Agency reserves the right to issue an Addendum to registered RFP Respondents by posting such Addendum on the Agency's website located at: www.cattcoida.com.

AGENCY FEES:

The following are costs applicable to pay for Agency staff time and expense:

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Acceptance Deposit:

Successful Respondents accepting their allocation would sign an acceptance letter and pay a deposit fee to the Agency of \$_____ within fifteen (15) days of receiving notice of an allocation (the Application Deposit shall be a credit to the Acceptance Deposit). This deposit would be an advance against the Agency's expenses in issuing the bonds (staff costs, issuer counsel fees, bond counsel fees, financial advisory fees, etc.), and may be refundable (or partially refundable) if any funds are unused and no bonds are issued. The Respondent will have until October 1, 2010 to complete the Recovery Zone Facility Bond financing from the date the acceptance letter and deposit is received by the Agency. The Agency may waive or extend this completion date depending on State of New York imposed deadlines for the issuance of Recovery Zone Facility Bonds. The Agency may reallocate any unused allocation to other ranked applicants or initiate a new allocation process for unused or expired amounts.

Issuer Fee:

The Agency as issuer of the Recovery Zone Facility Bonds shall receive an issuer fee of one and one-eighth of one percent (1.125%) of the par amount of Recovery Zone Facility Bonds issued at the bond closing as an administrative fee.

Transaction Professionals:

The Agency has selected and retained issuer counsel and bond counsel. Estimated costs for the above and the Agency's issuer fee will be provided at the beginning of transaction.

The Successful Respondent shall have the right to select and retain other transaction participants, including consultants (if any), rating agency (if any), credit enhancer (if any), financial advisor, underwriter, lender, underwriter/lender/disclosure counsel and trustee.

The Successful Respondent will be responsible for paying all transaction costs. The Successful Respondent's deposit will be an advance on these fees, and the Successful Respondent will enter into a Deposit and Reimbursement Agreement with the Agency with respect to costs.

GENERAL REQUIREMENTS:

A. Conflicts of Interest. Respondents shall make all reasonable efforts to ensure that no Agency officer or employee, whose position in the Agency enables him/her to influence any award of an any competing offer, shall have any direct or indirect financial interest resulting from award of an agreement resulting from this RFP process or shall have any relationship to the Respondent or any officer or employee of the Respondent.

B. Improper Consideration. The Respondent shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the Agency in an attempt to secure favorable treatment regarding this RFP process or the award of any resulting allocation. The Agency, by written notice, may immediately terminate evaluation and the allocation process if the Agency determines that any improper consideration as described in the preceding sentence was offered to any officer, employee or agent of the Agency with respect to the RFP and award process. This prohibition shall apply to any amendment or extension once an allocation has been awarded. In the event of a termination under this section, the Agency is entitled to pursue any available legal remedies. A Respondent shall immediately report any attempt by an Agency officer, employee or

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agent to solicit (either directly or indirectly through an intermediary) improper consideration from Respondent.

C. Inaccuracies or Misrepresentations. If in the course of the RFP process or in the administration of any resulting contract, the Agency determines that the Respondent has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the Agency, the Respondent may be terminated from the RFP process, or in the event an allocation has been awarded, the allocation may be immediately revoked. In the event of a termination under this provision, the Agency is entitled to pursue any available legal remedies.