



## **THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF TUCSON, ARIZONA**

### **TAX-EXEMPT BOND FINANCING PROCEDURAL POLICIES AND APPLICATION GUIDELINES**

**ADOPTED: March 2023**

#### **MISSION STATEMENT**

The Industrial Development Authority of the City of Tucson, Arizona (“IDA”) enables strategic economic and community development by providing financing and access to capital for projects and programs that benefit a thriving Tucson, Arizona (“City”).

#### **INTRODUCTION**

The IDA is a nonprofit corporation, organized under the provisions of Title 35, Chapter 5, Arizona Revised Statutes, as amended (“Act”), designated a political subdivision of the State of Arizona (“State”). The IDA’s governing body is the Tucson City Council.

The IDA is authorized to issue revenue bonds and loan the proceeds to an applicant (“Applicant”) to assist in financing a qualifying “project” as defined in the Act (“Project”). The IDA does not lend or provide its own money to Applicants for a bond financing. The IDA, instead, is a conduit issuer that provides a formal mechanism through which an Applicant can seek financing from private sources through either a public offering or a private placement of revenue bonds issued by the IDA (“Bonds”).

Prospective Applicants should note that repayment of Bonds issued by the IDA will be the obligation of the Applicant, not the IDA or the City. Bonds issued by the IDA will not be or become a general obligation or liability of either the IDA or the City.

These Procedural Policies and Application Guidelines (“Procedural Policies”) establish the guidelines that are to be followed in applying to the IDA for the issuance of its Bonds. By filing an Application, the Applicant will be deemed to know, understand and accept the IDA’s Procedural Policies.

#### **POLICY STATEMENT**

The IDA is governed by a volunteer Board of Directors (“Board”), appointed by the Mayor and City Council, and managed by a Chief Executive Officer. Board members

have agreed to serve because they believe that their service can aid the general welfare and economic growth of the City and the State. The Board believes that, through the vehicle of tax-exempt bond issuance, a Project can be financed for an Applicant at the lowest possible borrowing costs.

The IDA intends that funds becoming available to it from administrative fees charged by the IDA, or from other sources, will be expended by the IDA to cover its operating expenses and fulfill the IDA's Mission Statement.

## **APPLICATION PROCEDURE AND APPROVALS**

**A. Application.** The IDA requires Applicants to submit a full and complete Application, in accordance with the requirements of these Procedural Policies, prior to consideration of approval by the IDA. The form of the Application is attached as Exhibit A and is available by [clicking here](#). A copy of the Application should be submitted electronically at least **two weeks prior to the date of the Board meeting** at which the Application will be considered. By submitting an Application to the IDA, the Applicant is expected to have disclosed any and all material matters related to approval consideration of the proposed Project financing and Bond issuance.

**B. Board Meetings.** In general, all Applications will be considered at regularly scheduled Board meetings of the IDA. In appropriate circumstances, upon written request, the IDA may hold a special meeting to consider an Application. Regular meetings of the IDA are held electronically and/or in-person on the **3rd Thursday of each month beginning at 3:00 p.m.** (Arizona time), or as otherwise indicated on the meeting's notice and agenda. A representative of the Applicant should plan on attending the Board meeting at which the Application is to be considered in order to make a brief oral presentation of the proposed Project and related financing and to answer any questions asked by the Board or its advisors concerning the Project, the Applicant, or any other related information.

**C. Public Meeting.** The IDA is subject to the State's open meetings laws. The IDA's meetings will be open to the public and duly noticed. Pursuant to Arizona law, the documents, files, and records of the Applicant (and any guarantor) filed with the IDA will be available for inspection by the public. By submitting an Application, the Applicant acknowledges and agrees that any information delivered to the IDA, or its counsel, by or on behalf of the Applicant is not privileged nor confidential and may be disclosed to the public.

**D. Preliminary and Final Approvals.** If requested, the Board will consider and adopt an inducement resolution granting preliminary approval for the financing of a Project. In all other circumstances, the IDA will consider an Application for final approval only. After a review of the legal proceedings, the Board will consider whether to grant final approval and adopt an authorizing resolution for the issuance of the Bonds. If granted, final approval will expire 12 months after the date it is granted by the IDA, unless within that time an extension has been obtained. The IDA may set a different initial expiration date or grant an extension at its discretion on a case by case

basis. The IDA's approval of an Application, the Project and the related Bonds will be at the IDA's absolute discretion.

**E. Document Submission.** The Applicant is required to submit to the IDA for its review copies of the proposed financing documents, including the proposed form of authorizing resolution of the IDA, offering memorandum or official statement, indenture, loan agreement, promissory note, bond purchase contract, security documents and such other documents relative to the financing as the IDA may reasonably request. The IDA expects that drafts of all the major financing documents be made available to it at least **ten calendar days prior** to the date of the Board meeting at which the Application will be considered. Following the IDA's approval of the Project and the Bonds, the execution and delivery of the final versions of the financing documents by the IDA will remain subject to reasonable revisions acceptable to the IDA's counsel.

**F. Approval of Mayor and City Council.** The IDA is required by law to obtain the approval of its Bond proceedings from the City's Mayor and Council before the Bonds may be issued. The IDA will seek approval from the City's Mayor and Council after the IDA grants final approval of the issuance of its Bonds.

**G. Fees and Expenses.** By submitting an Application, Applicant agrees to pay an administrative fee to the IDA related to the issuance of the Bonds and to pay all costs and expenses incurred by the IDA, its staff and counsel in connection therewith.

**H. Notice to the Attorney General.** The IDA is required to deliver a written description of the Project to be bond financed to the Arizona Attorney General, who is given 10 days to determine whether the Project qualifies under the Act. Counsel to the IDA will send the required notice to the Attorney General's office.

**I. TEFRA Hearing.** For certain types of Bonds, Section 147 of the Internal Revenue Code requires that a public hearing (generally known as a TEFRA hearing) be held to allow interested parties to express views on the proposed financing. The IDA's counsel will coordinate with Bond Counsel to prepare and publish public notice and conduct the TEFRA hearing.

**J. Arizona Corporation Commission Filing Requirement.** A "notice of proposed offering" may be required to be filed with the Arizona Corporation Commission, Securities Division, in connection with issues of the IDA offered for public sale by means of an official statement and not specifically exempt pursuant to A.R.S. § 44-1843.01. The filing of the "notice of proposed offering" in Arizona or complying with the registration requirements of other states shall be the joint responsibility of the Applicant and the underwriter or placement agent.

**K. Allocation of Private Activity Bonding.** The Applicant or Bond Counsel shall be responsible for obtaining any required allocation of Volume Cap for the Project financing under A.R.S. § 35-901 *et. seq.*

L. **Agency Approvals.** In connection with any request or proceeding for the issuance of Bonds by the IDA or for approval of a Project, any steps or actions needed to be taken to obtain consents, approvals or permits from any State Agency or City Department shall be the responsibility of the Applicant, not the IDA.

M. **ARS Section 35-726(E) Feasibility Hearing.** In connection with any request or proceeding for the issuance of Bonds by the IDA for a multifamily residential rental project, sanitarium, clinic, medical hotel, rest home, nursing home, skilled nursing facility or life care facility, the financing may be subject to review by the Arizona Housing Authority to determine the feasibility and demand for the project. The IDA's counsel will coordinate with Bond Counsel to request Arizona Housing Authority approval as required by ARS Section 35-726(E).

N. **General.** It is the responsibility of the Applicant to ensure to the satisfaction of Bond Counsel that all legal requirements in connection with the Bond financing have been satisfied and all regulatory approvals have been obtained.

O. **Post-Issuance Compliance Procedures.** Applicant will be required to adopt Post-Issuance Compliance Procedures to ensure continuing compliance with the requirements of the Internal Revenue Code applicable to the Bonds.

## **MISCELLANEOUS**

**Purchaser of Bonds.** If Bonds have not received an investment grade rating from a national rating agency prior to closing, then the IDA must receive from each purchaser an investor letter, in a form acceptable to the IDA and its counsel, that evidences each investor is either a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended ("Securities Act") or an "accredited investor" as defined in Rule 501 of Regulation D promulgated under the Securities Act and is able to bear the economic risks of purchasing the Bonds.

**Transfer of Bonds.** Until an investment grade rating from a national rating agency is obtained, the beneficial ownership interest in Bonds may only be transferred to (i) an accredited investor or qualified institutional buyer, (ii) a bank, savings institution or insurance company (whether acting in a trustee or custodial capacity for any accredited investor or qualified institutional buyer or on its own behalf), or (iii) a trust or custodial arrangement for accredited investors or qualified institutional buyers.

**Bond Opinions.** The final opinion of Bond Counsel (the bond opinion) and any supplemental opinion of Bond Counsel must be addressed to the IDA.

**Indemnification.** The proceedings for the issuance of Bonds by the IDA must contain an indemnification provision binding on the Applicant, as the borrower of Bond proceeds, and any guarantor, in form and content acceptable to the IDA's counsel, indemnifying the IDA, its past, present and future directors, officers, counsel, advisors, employees and agents and the City, its past, present and future elected officials, employees and

agents, individually and collectively, from any liability arising from or related to the Bond issuance.

Conflict of Interest. The IDA, City, Mayor and City Council are governed by the State's conflict of interest law, Arizona Revised Statutes §§ 38-501, *et seq.* Applicant should take every precaution available to it to learn of any possible conflict between itself and each of the directors, officers, elected officials, employees, or agents of the IDA or the City (or any of their "relatives" (as defined in Arizona Revised Statutes § 38-502)) which might prohibit the IDA or the City from completing the financing.

Notice of § 38-511. Each agreement and contract entered into by the IDA must, in accordance with the provisions of Arizona Revised Statutes § 38-511, contain language notifying the reader of the existence of the statute. See example language below.

*Notice of § 38-511 - Cancellation.* Notice is hereby given of the provisions of Arizona Revised Statutes § 38-511. By this reference, the provisions of that statute are incorporated herein to the extent of their applicability to contracts of the nature of this agreement under the laws of the State.

Procedural Policies. These Procedural Policies will be considered to set forth minimum requirements and the IDA reserves the right to add additional requirements on a case-by-case basis. The Board may amend these Procedural Policies at any time. The IDA may, in its sole discretion, waive any requirement set forth herein.

## **COMMUNICATION**

Applicants may discuss Applications with the IDA staff, Chief Executive Officer, and counsel. Any questions concerning the Application or the process of obtaining the Bond financing from the IDA should be directed to:

**Chief Executive Officer**

Dre Thompson

Phone: 520.222.7217

Email: [dre@tucsonida.org](mailto:dre@tucsonida.org)

**Counsel:**

General Counsel:

Chris Ambrosio

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[chris@ambrolaw.com](mailto:chris@ambrolaw.com)

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