

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING dated as of July 1, 2005, by and among TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY, TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY, TOWN OF CONCORD INDUSTRIAL DEVELOPMENT AGENCY, TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY, TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY, and ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (individually, an "IDA", and collectively, the "IDAs").

RECITALS:

A. In late 2001 and early 2002, each of the IDAs adopted a Countywide Eligibility Policy (the "Countywide Policy") to govern the provision of financial assistance (as such term is defined in the New York General Municipal Law) by each IDA for proposed projects to be located within Erie County, New York.

B. Over the course of the past 3+ years, some issues and questions have arisen with regard to the intent behind certain provisions of the Countywide Policy. Accordingly, representatives of each IDA (along with representatives of Buffalo Niagara Partnership and other interested parties) have met as an ad hoc "IDA Policy Task Force" in an effort to reach a common understanding with regard to how such issues and question should be addressed.

C. The IDA Policy Task Force has issued a certain Statement of Clarifications with regard to the Countywide Policy, along with certain suggested additional uniform procedures to be followed by each IDA, which has been approved by each of the IDAs with certain minor technical modifications. A copy of the Statement of Clarifications and Proposed Procedures, which includes all of the technical modifications, is attached hereto as Schedule A (the "Statement").

D. The IDAs desire to memorialize their approval of the Statement and their intention to implement the proposed procedures set forth therein, through the execution of this Memorandum of Understanding.

NOW, THEREFORE, the parties hereby set forth their intentions, as follows:

1. Each IDA hereby confirms its approval of the Statement and its intention to implement the procedures set forth therein, effective as of the date of this Memorandum of Understanding.

2. Each IDA hereby confirms its understanding that the procedures set forth in the Statement will be implemented in such a manner as to not result in any additional or duplicative processing time with regard to applications to IDAs for financial assistance.

3. Each IDA hereby confirms its intention to continue to work together to develop uniform documentation with regard to the provision of financial assistance. It is anticipated that

a uniform application for financial assistance will be developed first, with other uniform documentation to follow as appropriate.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the date first written above.

TOWN OF AMHERST
INDUSTRIAL DEVELOPMENT AGENCY

By: _____

TOWN OF CLARENCE, ERIE COUNTY,
INDUSTRIAL DEVELOPMENT AGENCY

By: _____

TOWN OF CONCORD
INDUSTRIAL DEVELOPMENT AGENCY

By: _____

TOWN OF HAMBURG
INDUSTRIAL DEVELOPMENT AGENCY

By: _____

TOWN OF LANCASTER
INDUSTRIAL DEVELOPMENT AGENCY

By: _____

ERIE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____

SCHEDULE A

Statement of Clarifications



IDA Policy Task Force Statement of Clarifications and Proposed Procedures July 1, 2005

OVERVIEW

In late 2001 and early 2002, the Town of Amherst Industrial Development Agency, the Town of Clarence, Erie County, Industrial Development Agency, the Town of Concord Industrial Development Agency, the Town of Hamburg Industrial Development Agency, the Town of Lancaster Industrial Development Agency and the Erie County Industrial Development Agency (the "IDAs") adopted a Countywide IDA Eligibility Policy (the "Countywide Policy") to govern the provision of financial assistance (as such term is defined in the New York General Municipal Law) by each IDA for proposed projects to be located within Erie County, New York. A copy of the Countywide Policy is attached hereto as Exhibit A.

It was and continues to be the goal of the IDAs to implement the Countywide Policy on a uniform basis. Over the course of the past 3+/- years, some issues and questions have arisen with regard to the intent behind certain provisions of the Countywide Policy. Representatives of each IDA (along with representatives of Buffalo Niagara Partnership and other interested parties) have met as an ad hoc "IDA Policy Task Force" over the past several months in an effort to reach a common understanding with regard to how such issues and questions should be addressed. Having completed this process, the IDA Policy Task Force hereby proposes the following statements of clarifications with regard to the Countywide Policy, along with certain suggested additional uniform procedures to be undertaken by each IDA, which are hereby unanimously recommended to the Boards of each IDA for their ratification and approval:

1. NAICS CODES

The Countywide Policy provides that certain companies with operations falling within certain North American Industry Classification System ("NAICS") 2-digit groupings are eligible for financial assistance. While these 2-digit groupings are a general indicator of eligibility for financial assistance, 2-digit NAICS groupings are further subdivided into multiple subgroups. Companies with operations falling within some of the subgroups that are associated with the "eligible" 2-digit NAICS groupings were not intended to be eligible for IDA financial assistance. In order to clarify the Countywide Policy, the following is a list of NAICS subgroups which are determined to be generally eligible for IDA financial assistance:

Agriculture, Forestry, Fishing & Hunting:

All subgroups

Mining

All subgroups

Utilities

All subgroups

Manufacturing

All subgroups

Wholesale Trade

All subgroups

Transportation and Warehousing

481-484230; 486-486990; 488-488999; 493-493190

Information

511-512120; 51219-519190

Finance and Insurance

522293-522390; 524-524130; 525-525990

Real Estate and Rental and Leasing

53112-531120

Management of Companies and Enterprises

All subgroups

Administrative and support and Waste Management and Remediation Services

561-561499; 5619-561990

Educational Services

All subgroups eligible for not-for-profit corporations only

Other Services

813-814110 (eligible for not-for-profit corporations only); 811219-811310; 812331-812332; 812921

Public Administration

All subgroups eligible for not-for-profit corporations only

The following is a list of NAICS subgroups which are determined to be generally ineligible for IDA financial assistance:

Construction

All subgroups

Retail Trade

All subgroups

Transportation and Warehousing

485-485999; 487-487990; 491-492210

Information

51213-512132

Finance and Insurance

521-522212; 523-523999; 5242-524210

Real Estate Rental and Leasing

531-5311; 53113-533110

Administrative and Support and Waste Management and Remediation Services

5615-561790; 562-562998

Educational Services

All subgroups ineligible for "for-profit" companies

Arts, Entertainment and Recreation

All subgroups

Other Services

813-814110 (ineligible for “for Profit” companies only); 811-811213; 8114-81233; 8129-81292; 812922-812990

Public Administration

All subgroups ineligible for “for profit” companies only.

Companies with operations that fall within other NAICS subgroups, which are identified below, have not been designated by the Countywide Policy to be generally eligible or ineligible, but may be considered for financial assistance by an IDA in its discretion.

Finance and Insurance

52429-524298

Real Estate and Rental and Leasing

53111-531110

Professional, Scientific and Technical Services

All subgroups

2. **HOTEL PROJECTS**

The Countywide Policy limits the eligibility of hotel/motel projects for financial assistance to capital costs associated with the renovation or rehabilitation of existing facilities. The Countywide Policy is hereby clarified to confirm the following:

- i. A hotel constructed in connection with a new convention center, or in connection with a major regional destination attraction, would be eligible for financial assistance;
- ii. A conference center constructed in connection with or as a part of a new hotel would be eligible for financial assistance, provided that the center has stand alone food service facilities and provides state of the art conference center amenities (i.e., modern computer, teleconferencing, audio visual and speaking equipment) and

provided further that an appropriate market analysis demonstrates that a significant portion of the center's customers would come from outside of Erie County, with any financial assistance to apply only to the conference center component of the overall project; and

- iii. Renovation of existing hotels will remain eligible for financial assistance as stated in the Countywide Policy.

3. **MEDICAL PROJECTS:**

Pursuant to the Countywide Policy, medical facilities (such as doctor's offices, clinics and laboratories) are designated as generally not eligible for IDA financial assistance. The Countywide Policy is hereby clarified to recognize the following exceptions to this general restriction:

- i. Back office medical support facilities, if regional in nature and if a significant portion of its operations support activities outside of Erie County, would be eligible for financial assistance;
- ii. Projects that provide leading edge technology facilities, with a demonstrated commercialization potential or associated local research component, would be eligible for financial assistance; and
- iii. Facilities that provide medical services that are generally not available, provided that an appropriate market analysis confirming such unavailability is provided, would be eligible for financial assistance.

4. **PROJECTS INVOLVING PROFESSIONAL SERVICES:**

The Countywide Policy is hereby clarified to provide that projects which involve the delivery of professional services are generally not eligible for IDA financial assistance, and to recognize an exception to this general restriction for back office operations in support of professional services if they are regional in nature and a significant portion of such operations support activities outside of Erie County.

5. **RETAIL PROJECTS:**

The Countywide Policy recognizes that retail projects are generally not eligible for IDA financial assistance. The IDAs reaffirm this general restriction and confirm the following with regard to retail projects:

- i. **Street Level Retail Projects**, consisting of local retail businesses that serve and impact a local market, are generally

not eligible for financial assistance unless located in a “highly distressed area” as defined in General Municipal Law §854(18);

- ii. **Destination Retail Projects**, consisting of retail operations that are a regional destination for out of county customers or a tourism attraction, may be eligible for financial assistance provided an appropriate market analysis demonstrates that a significant portion of their business would come from outside of Erie County; and
- iii. **Regional Quality of Life Retail Projects**, consisting of cultural and recreational facilities which are retail but add to the quality of life in the county, may be eligible if an appropriate market analysis demonstrates that a significant portion of their customers are from outside of Erie County and the facility serves to add to the quality of life of the region (i.e.: Buffalo Zoo, Philharmonic, destination golf resort, etc.).

6. **NEIGHBORHOOD REDEVELOPMENT AREAS**

The Countywide Policy provides that in an effort to revitalize and renovate neighborhood business districts throughout Erie County which are exhibiting economic decline, the IDAs will consider retail projects (including medical facilities) for financial assistance if they are located in or contemplate relocating to areas of Erie County that are designated, by the respective municipal legislatures, as “Neighborhood Redevelopment Areas”.

The Countywide Policy is hereby clarified to confirm that in order for an area to qualify as a Neighborhood Redevelopment Area, such area must be documented to exhibit one or more of the following criteria:

- i. Declining property values, over and above the typical rates experienced in similar districts in the county/town;
- ii. High vacancies/abandonment, over and above the typical rates experienced in similar districts in the county/town;
- iii. A cycle of disinvestment over a prolonged period of time; and/or
- iv. Distress, slum and blight, as defined by census tract.

IDA financial assistance for projects to be located in a Neighborhood Redevelopment Area would be available for capital improvements which abate or positively impact criteria i-iv above. These improvements would be eligible for sales tax benefits and mortgage recording tax benefits through the Neighborhood Redevelopment Area program. Also, facilities qualifying for

assistance in a Neighborhood Redevelopment Area would be eligible to receive a partial abatement from real property taxes equivalent to the abatement permitted under Real Property Tax Law §485-b. Local municipalities are encouraged to adopt a “targeted” RPTL §485-b program and to have an Industrial and Commercial Incentive Board established to make determinations as to the location of any Neighborhood Redevelopment Areas and the types of projects that are to be eligible for IDA financial assistance.

The IDAs intend to re-examine the Countywide Policy with regard to Neighborhood Redevelopment Areas after the “Framework for Regional Growth” has been issued and approved by all appropriate parties. It is the intention of the IDAs that the Countywide Policy, particularly as it pertains to Neighborhood Redevelopment Areas, be consistent and in harmony with the Framework for Regional Growth.

7. INTERMUNICIPAL MOVEMENT – UNIFORM PROCEDURES

In order to ensure input from all interested parties and to fully document compliance by an IDA with the requirements of New York State law, the procedures outlined below will be followed by each IDA when a project applicant proposes to relocate from one municipality within Erie County (the “Current Municipality”) to a different municipality also within Erie County (the “Proposed Municipality”), or when an applicant proposes to close or significantly reduce its operations within the Current Municipality and increase operations within the Proposed Municipality (with any significant reduction to be measured by the proposed movement of work force, relocation of fixed assets, or other like criteria). In connection with such a proposed project, the applicable IDA will proceed only after complying with the following procedures:

A. The IDA will forward a written notice to the chief elected officers of the Current Municipality and the Proposed Municipality (along with their respective economic development designees), which notice shall include (i) the name, address and telephone number of the applicant along with the name of a contact person, (ii) the location within the Proposed Municipality that the applicant proposes to relocate to, and (iii) such other information or documentation with regard to the proposed relocation as the IDA may be in possession of (including a copy of the application for financial assistance, if completed). Such notice shall be sent by the IDA as soon as possible, but in no event later than 5 working days after receipt by the IDA of an application for financial assistance.

B. The application form to be used by each IDA will include questions soliciting information with regard to whom the applicant met with from the Current Municipality and a list of sites located in the Current Municipality that were considered by the applicant, along with the reasons for rejecting site(s) in the Current Municipality. If the applicant declines to respond to such questions or indicates that they have not met with representatives of the Current

Municipality, the applicant will be strongly urged by IDA representatives to do so prior to submission to the IDA of the application for financial assistance.

C. Unless it is demonstrated that the applicant has contacted Buffalo Niagara Enterprise, local economic development agencies, municipal officials, local realtors and/or other appropriate sources and has reviewed potential sites located in the Current Municipality, at the earliest possible moment IDA personnel will request that Buffalo Niagara Enterprise provide the IDA with a list of sites located within the Current Municipality that may be suitable for the applicant's purposes. IDA personnel will forward that list to the applicant and will send a copy of such transmittal to the chief elected officers of the Current Municipality and the Proposed Municipality (along with their respective economic development designees).

D. A written response or acknowledgement from the chief elected officer of the Current Municipality will be sought with regard to the application for financial assistance, and any such response or acknowledgement will be included in the record to be considered by the IDA Board when an approval of financial assistance is sought. This need not be a "sign off" or an approval of the relocation. The chief elected officers of the Current Municipality and the Proposed Municipality (and their respective economic development designees) will be invited to address the IDA Board when it considers any such application for financial assistance.

E. IDA staff shall provide a written certification (along with copies of appropriate back-up documentation) to the applicable IDA Board that items A-D have been complied with, at the time that the Board considers any application for financial assistance.

F. If the Current Municipality is the City of Buffalo and the applicant proposes to relocate to another municipality within Erie County, any application for financial assistance shall be processed and acted upon by the Erie County Industrial Development Agency ("ECIDA"). If the Proposed Municipality is the Town of Amherst, the Town of Clarence, the Town of Concord, the Town of Hamburg or the Town of Lancaster, (i) the Chairperson of the IDA for such Proposed Municipality (or his/her designee) will be invited to submit written comments to ECIDA with regard to the proposed project and to address the ECIDA Board when it considers such application for financial assistance, and (ii) administrative fees arising from such transactions will be payable at the rates charged by the IDA for the Proposed Municipality and split equally between ECIDA and the IDA for the Proposed Municipality. Any extraordinary requirements that ECIDA may require as a condition of its approval of such project would only be imposed after consultation by ECIDA with the IDA for the Proposed Municipality.

G. With regard to proposed projects involving removal of a facility or plant from one area of New York State to another area of New York State, or in the abandonment of one or more plants or facilities in New York State, an IDA will make one or both of the determinations specified in General Municipal Law §862(1) (which permit the provision of financial assistance) only after having developed sufficient documentary evidence to support such determination(s) and only after having received a written certification from such IDA's staff that the statutory requirements have been satisfied. IDA staff are urged to review applications with counsel as soon as possible when it appears that the proposed project may involve a removal of a facility or plant from one area of New York State to another area of New York State or an abandonment of one or more plants or facilities in New York State, in order that appropriate data can be sought from the applicant on a timely basis so an IDA may consider whether either statutory determination may be appropriate.

8. **IDA LEADERSHIP COUNCIL**

To encourage further collaborative efforts among the IDAs, to facilitate the uniform implementation of the Countywide Policy (as hereby clarified), and to provide a forum to address other common concerns with regard to economic development in Erie County, a Leadership Council of the IDAs will be established. Each IDA will designate one or more representatives to participate in the meetings of such Leadership Council, which are contemplated to occur on a quarterly basis. The Leadership Council will, through the consensus of its members, consider and resolve any concerns raised by an IDA with regard to the interpretation of the Uniform Policy, and will coordinate other joint activities of the IDAs to promote a countywide program of economic development.



Countywide IDA Eligibility Policy

*Final Draft
October 12, 2001*

Countywide IDA Eligibility Policy
Final Draft

October 12, 2001

The purpose of Industrial Development Agencies in Erie County is to promote economic development through the creation of jobs and the expansion and diversification of the County's tax base. To do this, the IDAs of Erie County encourage the construction, acquisition, retention and/or expansion of the following types of projects through the tax abatement of mortgage tax, sales tax, and real property taxes. Subject to compliance with all the requirements of Article 18-A of the New York General Municipal Law, proposed projects with occupants whose businesses fall within the following categories are hereby determined to be eligible for IDA tax abatement, in accordance with the County Wide Industrial Development Agency Payment in Lieu of Tax (PILOT) Policy.

Eligible firms and corresponding North American Industry Classification System (NAICS) groupings are as follows:

12. **Traditional Manufacturing – Examples include: agricultural production; natural resource exploration, processing and manufacturing; generation and distribution of utility services; transformation of materials into new products; etc.**

North American Industry Classification System Sectors:	
11 Agriculture, Forestry, Fishing & Hunting	22 Utilities
21 Mining	31-33 Manufacturing

13. **Distributive Services - Examples include: wholesaling durable and non-durable merchandise; air, rail, water, truck transportation and support activities; warehousing and storage; publishing; motion picture and sound; broadcasting and telecommunications; information services and data processing; etc.**

North American Industry Classification System Sectors:	
42 Wholesale Trade	51 Information
48-49 Transportation & Warehousing	

14. **Business Services** - Examples include: finance; international trade; accounting; engineering; research & development; management services; back office facilities in support of customer service, sales & marketing, and technical assistance; specialized training services; machinery & equipment repair; space research; national security; etc.

North American Industry Classification System Sectors:	
52 Finance & Insurance	56 Administrative & Support and Waste Management & Remediation Services
53 Real Estate and Rental & Leasing	61 Educational Services
54 Professional, Scientific & Technical Services	81 Other Services
55 Management of Companies & Enterprises	92 Public Administration

Arts, Entertainment and Recreation - Examples include: performing arts, theater companies, sports arenas, museums, historical sites, amusement and theme parks, casinos, golf courses, skiing facilities, all open to the general public.

North American Industry Classification System Sectors:
71 Arts, Entertainment and Recreation

Projects also deemed eligible for IDA assistance are as follows:

- **Venture and/or Multi-tenant Facilities** - Facilities having more than one project occupant, providing that two-thirds of the tenants are of the categories of eligibility listed above. Failure to maintain eligibility will result in the reconveyance of the facility and the loss of IDA benefits.
- **Long-Term Care Facilities** - Facilities including elderly housing, nursing homes, adult homes and assisted and/or assistive living centers. To be determined eligible for assistance, projects must prove a demonstrable need for such facilities within Erie County. Additionally, an application for assistance must be accompanied by a certificate of need, if required by State law, and must be in compliance with any and all other requirements mandated by state or local law.
- **Civic Facilities**- Facilities owned or occupied by a not-for-profit corporation authorized to conduct activities in New York State. Civic facilities may include: (a) dormitories for

- educational institutions; (b) facilities as defined in article twenty- eight of the public health law; and (c) housing facilities primarily designed to be occupied by individuals sixty years of age or older. Such facilities must be in compliance with all necessary requirements under state law and may not exceed \$20 million.
- **Hotels/ Motels-** IDA assistance to hotels and motel will be restricted to capital costs associated with the renovation or rehabilitation of existing hotel/ motel properties within Erie County. The hospitality industry is encouraged to develop a comprehensive, strategic tourism development plan. Upon completion of such a plan, the IDAs will reconsider this policy.

Neighborhood Revitalization/ Redevelopment Projects

As a general rule, IDAs are restricted in assisting retail projects (**NAICS Sectors 44-45 Retail Trade**) and medical facilities such as doctor's offices, clinics and laboratories (**NAICS Sector 62 Health Care and Social Assistance**). However, in an effort to revitalize and renovate the numerous neighborhood business districts throughout Erie County, the IDAs of Erie County will consider such projects for assistance if they are located in or contemplating relocating to areas of the County that are designated, by the respective municipal legislatures, as **Neighborhood Redevelopment Areas**. It should be noted that in order to qualify for eligibility, the various municipalities within the County must develop a neighborhood redevelopment strategy and designate those areas for which IDA assistance may be made available. It is further contemplated that such municipal redevelopment plans will be coordinated Countywide to create a comprehensive Erie County Neighborhood Redevelopment Strategy.

The statutory restrictions of **§862 of General Municipal Law, Article 18-A** are outlined below:

STATUTORY RESTRICTIONS

It should also be noted that pursuant to **General Municipal Law §862**, the above project classifications are restricted as follows:

1. No financial assistance of the agency shall be used in respect of any project if the completion thereof would result in the removal of a facility or plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application

before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a

location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

2. (a) Except as provided in paragraph (b) of this subdivision, no financial assistance of the agency shall be provided in respect of any project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost. For the purposes of this article, retail sales shall mean: (i) sales by a registered vendor under article twenty-eight of the tax law primarily engaged in the retail sale of tangible person property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or (ii) sales of a service to such customers. Except, however, that tourism destination projects and projects operated by not-for-profit corporations shall not be prohibited by this subdivision. For the purpose of this paragraph, "tourism destination" shall mean a location or facility which is likely to attract a significant number of visitors from outside the economic development region as established by section two hundred thirty of the economic development law, in which the project is located.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, financial assistance may, however, be provided to a project where facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services constitute more than one-third of the total project cost, where (i) the project occupant would, but for the assistance provided by the agency, locate the related jobs outside the state, or (ii) the predominant purpose of the project would be to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the city, town, or village within which the proposed project would be located because of a lack of reasonably accessible retail trade facilities offering such goods or services, or (iii) the project is located in a highly distressed area.

(c) With respect to projects authorized pursuant to paragraph (b) of this subdivision, no project shall be approved unless the agency shall find after the public hearing required by section eight hundred fifty-nine-a of this chapter that undertaking the project will serve the public purposes of this article by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the state. Where the agency makes such a finding, prior to providing financial assistance to the project by the agency, the chief

executive officer of the municipality for whose benefit the agency was created shall confirm the proposed action of the agency.

3. No funds of the agency shall be used for the purpose of preventing the establishment of an industrial or manufacturing plant, nor shall any funds of the agency be given to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within this state nor shall such funds be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media.