FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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POLICY 14: UNIFORM TAX EXEMPTION POLICY

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SECTION 1: PURPOSE AND AUTHORITY:

Industrial Development Agencies (IDA) are formed under and governed by Article 18-A of NYS's General Municipal Law (the "Act") as public benefit corporations. The New York Industrial Development Agencies Reform Act of 1993 created a new General Municipal Law Section 874 that requires IDA's to establish a Uniform Tax Exemption Policy. This written policy shall:

a. Provide guidelines for granting of real property, sales tax and mortgage recording tax exemptions.
b. Be applicable to the provision of any financial assistance of more than one hundred thousand dollars ($100,000) to any project as required by Section 859-a of the Act.

SECTION 2: DEFINITIONS:

"Administrative Fee" shall mean a charge imposed by the Agency to an Applicant for the administration of Project.

"Adaptive Reuse Project" shall mean a qualified project that involves adapting, restoring or rehabilitating old sites or structures for new purposes that promotes development of existing infrastructure, creates new economic activity and helps eliminate neighborhood blight.

"Affected Tax Jurisdiction" means, with respect to a particular project, the City, Town, Village, County or School District in which a Project is located and will fail to receive real property tax payments that would otherwise be due with respect to such Project due to a Tax Exemption obtained by reason of involvement of the Agency in such Project. This does not include special taxing jurisdictions.

"Affordable Housing Project" shall mean a qualified project whereby the purchase price or rent of the housing is determined by income levels in the region and involves subsidies or government assistance.

"Agency" or **"IDA"** shall mean the Fulton County Industrial Development Agency.

"Agency Fee" shall mean the normal charges imposed by the Agency to an Applicant or a Project occupant to compensate the Agency for the Agency's participation in the Project. The term "Agency Fee" shall include not only the Agency's normal Administrative Fee, but also may include:

(a) Reimbursement of the Agency's expenses, including but not limited to legal fees and publication fees.
(b) Rent imposed by the Agency for use of the property of the Agency, and
(c) Other similar charges imposed by the Agency.

"Applicant" shall mean an applicant for financial assistance.

“Brownfield Project” shall mean a qualified project which involves the redevelopment of a site listed by the NYS Department of Environmental Conservation on its Environmental Site Remediation Database.

“County” shall mean the County of Fulton.

“Housing” shall mean all types of housing including single-family, patio homes, semi-detached, multi-family, apartments, townhouses, condominiums, Co Ops, or modular.

“Market Rate Housing Project” shall mean a qualified project whereby the purchase price or rent of the housing is based on the area’s market values and does not include the use of subsidies or government assistance.

“Patio Home” shall mean either a small freestanding structure very close to an adjoining structure or part of several small structures with shared walls with exterior maintenance and landscaping provided through an Association.

“Payment in Lieu of Tax Agreement” (PILOT) shall mean a written agreement between the Agency AND Applicant whereby the Applicant shall make payments to Affected Tax Jurisdictions.

“PILOT Payment” shall mean any payment made to any Affected Tax Jurisdiction equal to all or a portion of the real property taxes or other taxes which would have been levied by or on behalf of an Affected Tax Jurisdiction with respect to a project but for the tax exemption obtained by reason of the involvement of the Agency in such project. Such term shall not include Agency fees.

“Project” shall mean an activity which is undertaken by the Agency for the benefit of an Applicant which either (1) has been or will be financed by the issuance by the Agency of bonds, notes or other evidences of indebtedness with respect thereto, or (2) is a straight lease transaction (as defined under Section 845(15) of the Act) which the Agency has determined to undertake, or (3) lease – lease back projects, or (4) sales tax only projects.

“Project Operator” shall mean the developer and/or beneficial user of a Project Facility as designated by the Agency.

“Qualified Project” shall mean a project eligible for financial assistance (as defined by Section 854(14) of New York General Municipal Law) and shall include such industrial projects (i.e., manufacturing, re-manufacturing, assembly, processing, product research and development, etc.) and non-industrial projects (i.e., warehouse, distribution, qualified retail, commercial, office, housing, hotel, tourist destination, brownfield, adaptive reuse, etc.

"Senior Housing" shall mean any type of housing, including single-family, patio homes, multi-family apartments, townhomes and condominiums, that are specifically designed for and rented or sold to seniors. Senior housing may include age restrictions and may include perks such as laundry and housekeeping services, spas, fitness centers and more.

"Tax Exemption" shall mean any financial assistance granted to a Project which is based upon all or a portion of the taxes which would otherwise be levied and assessed against a Project but for the involvement of the Agency, including but not limited to sales tax, mortgage recording tax and real property tax exemptions.

"Tourist Destination Project" shall mean a qualified project that is likely to attract a significant number of visitors from outside the economic development region as established by Section 230 of Economic Development Law in which the project is located.

SECTION 3: GENERAL PROVISIONS:

a. General Policies:

1. The Agency may grant tax exemptions as hereinafter set forth to any Qualified Project which has been or will be assisted by the Agency pursuant to a straight lease transaction (as defined under Section 854(15) of the Act) or financed by the issuance of Agency bonds, notes or other evidences of indebtedness with respect thereto including:

   a. All projects authorized under the Act.
   b. All types of housing contingent upon the Agency issuing two (2) findings:
      1. The proposed housing project will create employment opportunities in the County.
      2. The proposed housing project will prevent economic deterioration in the County.
   c. All types of commercial projects including Brownfields and Adaptive Reuse Projects,
   d. Tourist Destination Projects.
   e. All other projects the Agency is authorized or empowered to provide tax exemptions to.

2. In order to receive any tax exemptions, the Agency will have the right, in its sole discretion and in accordance with applicable provisions of the New York State General Municipal Law, (GML), to determine whether a project is a qualified project. When evaluating whether a project is qualified for financial assistance, the Agency may consider the criteria set forth in GML Section 874 (https://www.nysenate.gov/legislation/laws/GMU/874) in addition to the references below:

   a) The nature of the project.
   b) The nature of the property before the project begins.
   c) The economic condition of the area at the time of application and the economic impact the project will have on the community.
   d) The number of jobs to be created/retained, and the level of wages paid.
   e) The economic impact of the project and the proposed tax exemptions on affecting taxing jurisdictions.
   f) The extent to which the project will provide a benefit (economic or otherwise) to the municipality in which the project is located.

g) The extent to which the project enhances the quality of life of people in the community (recreation, removal of blight, brownfield redevelopment, housing).

3. No real property tax exemptions shall be granted to a Project that would result in the relocation of an industrial or manufacturing facility from one area of New York State to another, unless the relocation, closure or abandonment is, as determined by the Agency, necessary to enable the Project to maintain its competitive position within its industry.
4. Subject to the prior written approval by the IDA, tax exemptions may be transferable by the Project Operator only if the transferee of the Project retains the same or similar use of the Project within the same parameters of the original Project Operator.

b. <u>Deviation Policy</u>

1. The Agency reserves the right to deviate from any provision in this Uniform Tax Exemption Policy in special circumstances. In determining whether special circumstances exist to justify a deviation, the Agency may consider factors, which include but not be limited to the following:

   a. The magnitude and/or importance of any permanent private sector job creation and/or retention of existing jobs related to the Project;
   b. The impact of the Project on existing and proposed businesses and/or economic development projects;
   c. The amount of private sector investment generated or likely to be generated by the Project;
   d. Demonstrated public support/opposition for the Project;
   e. The estimated value of the tax exemptions requested; and
   f. The extent to which the proposed Project will provide needed services and/or revenues to Affected Tax Jurisdictions.
   g. Other factors outlined in Section 874(4)(a) of the Act.

2. If the Agency is going to deviate from any provision of the Uniform Tax Exemption Policy, the Agency shall adopt a resolution that:

   a. Identifies the deviation provided.
   b. Identifies the reasons for the deviation.
   c. Identifies such terms and conditions as the Agency shall deem just and proper.

c. <u>Application:</u>

1. No request for a tax exemption shall be considered by the Agency unless a Project Application, which includes an Application for Tax Exemption, is filed with the Agency on the forms prescribed by the Agency.
2. Such Application shall contain the information requested by the Agency, including a description of the proposed Project and of each tax exemption sought with respect to the Project, the estimated value of each tax exemption sought with respect to the Project, the proposed financial assistance being sought with respect to the Project, the estimated date of completion of the Project, and whether such financial assistance is consistent with this Policy.

SECTION 4: REAL PROPERTY TAX EXEMPTION:

a. General:

1. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, property owned by or under the jurisdiction, supervision or control of the Agency is exempt from real estate taxes, but not exempt from special assessments and special ad valorem levies.
2. It is the general policy of the Agency that, notwithstanding the foregoing, the Project Operator of every non-governmental Project shall be required to enter into a Payment In Lieu of Tax Agreement ("PILOT") with the Agency, either separately or as part of the Project documents. Such PILOT Agreement shall require payment of PILOT payments in accordance with the provisions set forth in this Policy.
3. The project documents shall provide that, if the Agency and the Project Operator have entered into a PILOT Agreement, the terms of the PILOT Agreement shall control the amount of PILOT payments until the expiration or sooner termination of such PILOT Agreement.

b. Filing Requirements:

1. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law as amended, no real property tax exemption shall be effective until a New York State Department of Taxation and Finance, Division of Equalization and Assessment Form EA-412-a (an "Exemption Form") is filed with the assessor of each Affected Tax Jurisdiction.
2. The Agency will not file an Exemption Form with respect to the Project until a PILOT Agreement is executed and the Project documents stipulate that the Applicant and/or the Project Operator shall be required to make PILOT payments in such amounts as would result from taxes being levied on the Project by the Affected Taxing Jurisdictions as if the Project were not owned by or under the jurisdiction, supervision or control of the Agency.
3. Once an Exemption Form is filed with a particular Affected Tax Jurisdiction, the real property tax exemption for such project does not take effect until:

   a) The next taxable status date for such Affected Tax Jurisdiction occurs subsequent to such filing.
   b) An assessment roll for such Taxing Jurisdiction is finalized subsequent to such tax status date.
   c) Such assessment roll becomes the basis for the preparation of a tax roll for such Affected Tax Jurisdiction, and
   d) The tax year to which such tax roll relates commences.

c. Property Assessments:

1. It is the general policy of the Agency to have the City, Town or Village Assessor establish the assessed value of a Project owned by or under the jurisdiction, supervision or control of the Agency.
2. Commencing in the first taxable year after execution of the PILOT, the Assessor for the Affected Taxing Jurisdiction in which the Project is located shall assess the Project Facility in the same manner and using the same valuation method as other similar properties in the general area of the Project Facility.
3. The Project Operator shall be entitled to prompt written notice of the initial Assessed Value and of any change in the Assessed Value. If the Project Operator is dissatisfied with the amount of the Assessed Value of the Project Facility as initially established or as changed, the Project

Operator shall have the right to contest the Assessed Value of the Project Facility made for the purposes of determining any payments due under the PILOT Agreement and to seek a refund of any such payments made.

4. The Project Operator's challenge to the Assessed Value of the Project Facility and its determination to seek a refund of any payments made hereunder shall be made in accordance with New York Real Property Tax Law.

d. <u>Payment in Lieu of Tax (PILOT) Agreement:</u>

1. The Agency shall make available to Project Operators a PILOT Agreement modeled after Section 485-b of the New York State's Real Property Tax Law, as shown below, for all projects except those identified in 2-5 below:

Tax Fiscal Year	Percentage of Exemption
1	50%
2	45%
3	40%
4	35%
5	30%
6	25%
7	20%
8	15%
9	10%
10	5%
11 and thereafter	0%

2. The Agency shall make available to Project Operators of **<u>Brownfield Projects</u>** a PILOT Agreement as follows:

Tax Year	Exemption
1-7	100%
8	75%
9	50%
10	25%
11	Pilot Ends

3. The Agency shall make available to Project Operators of **<u>Adaptive Reuse Projects</u>** a PILOT Agreement as follows:

Tax Year	Exemption
1-6	100%
7	80%
8	60%
9	40%
10	20%
11	Pilot Ends

4. The Agency shall make available to Project Operators of **Tourist Destination Projects** a PILOT Agreement as follows:

Tax Year	Exemption
1-2	100%
3-4	80%
5-6	60%
7-8	40%
9-10	20%
11	Pilot Ends

5. The Agency shall make available to Project Operators of **Housing Projects** PILOT's developed on case by case basis with the maximum term being 30 years.

6. The Agency may grant enhanced Real Property Tax Exemptions on a case-by-case basis for projects expected to have significant economic impacts, in accordance with the Deviation Policy set forth herein
7. If a Project Operator incurs a default, under the terms of a PILOT Agreement, the Project Operator shall be responsible to:

   a) Reimburse all of the Agency's legal costs to pursue remedying the default.
   b) Pay the Agency a $1,000 fee for each default.

8. If a Project Operator requests an early termination of a PILOT Agreement with the Agency, the Project Operator shall be responsible for issuing a payment to the Agency of $1,000/year for each year the PILOT Agreement was in effect as well as pay the Agency's legal and other fees associated with processing a request for early termination..

e. Special District Taxes:

1. The Agency is not exempt from special assessment and special ad valorem levies. As a result, these amounts are not subject to tax exemptions by reason of ownership of the Project by the Agency.
2. The Project Operator shall be responsible for the payment of all special district taxes and ad valorem levies imposed by all Affected Taxing Jurisdictions.

f. PILOT Payments:

1. Unless otherwise determined by resolution of the Agency, all PILOT payments payable to an Affected Tax Jurisdiction shall be paid directly to the Affected Tax Jurisdiction by the Project Operator within thirty (30) calendar days of the receipt of a PILOT invoice.
2. The Project Operator shall, upon submitting all PILOT payments to affected taxing jurisdictions, submit a copy of said payments along with the invoice from the affected taxing jurisdiction to the Agency.
3. If a PILOT payment is not received by an Affected Taxing Jurisdiction within thirty (30) calendar days of the receipt of a PILOT invoice, a late payment penalty of five percent (5%) of the amount due shall be paid to the Affected Tax Jurisdictions. For each month a PILOT payment remains delinquent, interest shall accrue to and be paid to affected taxing jurisdictions on the total amount due plus a late payment penalty in the amount of 1% per month until the payment is made.

g. Reporting Requirements:

1. If the Agency grants a real estate tax exemption under this Section, the Project Operator shall be required to annually file, or cause to be filed, with both New York State and the Agency, reports regarding the number of people employed at the project site, the annual and/or hourly salary for all full and part-time employees and provide other information as may be required by New York State or the Agency.
2. The Agency shall annually send the Project Operator a report to complete and return requesting information for the Agency to utilize to monitor the project for compliance with all project requirements. The Project Operator shall complete and return this Annual Report within the timeframe stipulated by the Agency. Failure to submit these reports may be considered a default under the PILOT.

h. Enforcement:

1. An Affected Tax Jurisdiction which has not received a PILOT payment due to it under a PILOT Agreement may exercise its remedies under Section 874(6) of the Act or such other available remedies.
2. In addition, such Affected Tax Jurisdiction may petition the Agency to exercise whatever remedies that the Agency may have under the Project documents to enforce payment. If such Affected Tax Jurisdiction indemnifies the Agency and agrees to pay the Agency's costs incurred in connection therewith, the Agency may take action to enforce the PILOT Agreement.
3. If the Agency's approval of a particular Project is predicated upon achievement by the Project Operator of certain minimum goals, i.e. creating and/or maintaining certain minimum employment levels, the PILOT Agreement may provide for the reduction or elimination of PILOT benefits, if, in the sole judgment of the Agency, the Project has failed to fulfill such minimum requirements.
4. If the Project Operator, after reasonable notice, fails to comply with Project reporting required by the Agency including, but not limited to, annual verification of proper insurance coverage, employment reporting as required under the Act, the Agency may in its sole judgment terminate the PILOT Agreement and make no real estate tax exemption available.

i. Real Property Appraisals:

1. Since the policy of the Agency is to base the value of a Project for payment in lieu of tax purposes on a valuation of such Project performed by the local Assessor, normally a separate real property appraisal is not required. However, the Agency may require the submission of a real property appraisal if,

   a. The assessor of any particular Affected Tax Jurisdiction requires one, or
   b. If the valuation of the Project for payment in lieu of tax purposes is based on a value determined by the Project Operator, rather than by an assessor for a Taxing Jurisdiction or by the Agency.

2. If the Agency requires the submission of a real property appraisal, such appraisal shall be prepared by an independent MAI certified appraiser acceptable to the Agency.
3. The Project Operator shall be responsible for paying for the cost of hiring said appraiser.

j. Recapturing Real Property Tax Exemptions:

1. Basis to Pursue Recapturing Benefits:

a. It shall be the policy of the Agency to consider recapturing benefits (Financial Assistance) for a project if any of the following conditions apply:

1) Sale or closure of the facility and departure of the company from the County(Notwithstanding any of the terms set forth herein, this occurrence shall result in the immediate termination of Financial Assistance).

2) Significant change in the use of the facility and/or the business activities of the company.

3) Significant employment reductions not reflective of the company's (normal) business cycle and/or local and national economic conditions.

4) Failure to comply with any periodic and/or annual reporting requirements of the Agency, State or Federal governmental agency.

5) Failure to meet or comply with specified Material Factors, as determined by the Agency at the time of the acceptance of the project for Financial Assistance and as set forth in the Inducement Resolution and/or Preliminary/Project Agreement. Material Factors may include but not be limited to the following (each project is not required to include all of the Material Factors listed below, as Material Factors are determined on a project-to-project basis)

a) Create or Retain Jobs
If the company meets 85% of its projection, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored by annual reporting by the company to the Agency.

b) Private Sector Investment
If the company meets 85% of its total project cost, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored by the completion of an affidavit from the company to the Agency at the time of the project completion detailing the total project cost.

c) Local Labor Construction
If the company meets 85% of its estimated usage of local labor forces, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored on a one time basis by the completion of an affidavit from the company to the Agency at the time of the project completion detailing the usage of local labor forces.

d) Wage Rates
If the company meets 85% of its projection, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored by annual reporting by the company to the Agency.

e) Increased Property Value
If the company meets 85% of its projected increased total assessed value at the time of projection completion, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored on a one time basis by a review of the assessed value of the project facility upon completion of the project.

f) Increased Revenue to Local Taxing Jurisdictions
If the company meets 85% of its projected increased revenues, as confirmed in the Inducement Resolution, Preliminary/Project Agreement, this shall constitute compliance with this Material Factor. This Material Factor shall be monitored on by annual reporting by the company to the Agency of consisting of data relative to the revenues generated by the project.

[NOTE: Each project will not be required to include all the Material Factors listed above. The Agency shall determine for each project what Material Factors shall apply to each project.]

6) For a project that failed to comply with a material term or condition to use property or services in the manner required by any and all provisions of the agreements that the company has entered into with the Agency.

b. Recapturing Real Property Tax Benefits:

1. For companies receiving real property tax abatements, the Agency's schedule for recapturing real property tax benefits shall be (applicable to the real property tax abatements) as follows:

   Years 1-5 of PILOT: 100% of the real property tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

   Years 6-7 of PILOT: 75% of the real property tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

   Years 8-9 of PILOT: 50% of the real property tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

   Year 10 of PILOT: 25% of the real property tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

   Years 11+ of PILOT: 0% of the real property tax exemptions granted shall be repaid to the affected taxing jurisdictions.

2. The recapture shall be applicable to the time periods above are from the effective date of the PILOT Agreement.

3. Any real property tax exemptions recovered, recaptured, received or otherwise obtained shall be payable to the appropriate taxing jurisdictions, unless otherwise agreed to in writing by the taxing jurisdiction.

c. Recapture Procedures:

1. In the event that the Agency determines that there exists a basis for recapture as set forth in paragraph j(1) herein, the Agency shall notify the company, in writing, that the Agency has determined that a basis exists for recapture. The company shall be given a reasonable timeframe within which to remedy the violation, such timeframe being commensurate to the violation.

2. The company shall provide information and a written explanation as to why the violation has occurred or the Material factor has not been achieved, as the case may be.

3. If requested by the Agency, the company shall make a presentation to the Agency concerning this default.

4. Thereafter, the Agency may pursue recapturing pursuant to this Recapture Policy. Imposition of any recapture is at the sole discretion of the Agency and is reviewed/considered on a case by case basis.

5. In lieu of imposing the above recapture penalties and for good cause shown by the company, the Agency, at its sole discretion, may make a determination to:

   a. Discontinue the Financial Assistance in its entirety, per the provisions set forth the in the Lease Agreement;
   b. Suspend the Financial Assistance for a specific stated period of time in order for the company to correct or comply with the material term or Material Factor being breached;
   c. In the case of real property taxes exemptions, modify the PILOT Agreement to decrease the exemption and increase the payments due for the remaining term of the PILOT Agreement.

SECTION 5: SALES TAX EXEMPTION:

a. General:

1. New York State law provides that purchases of tangible personal property by the Agency or by an agent of the Agency and purchases of tangible personal property by a contractor for incorporation into or improving, maintaining, servicing or repairing real property of the Agency are exempt from sales taxes.
2. Purchases of construction materials and project related equipment during initial construction and equipping of the Project Facility shall be made as agent for the Agency and are therefore afforded full exemption from all sales taxes.
3. A Project Operator's failure to complete the Project or close on a bond issuance within a timeframe set forth by the Agency or as such timeframe may be extended by the approval of the Agency, may require the repayment of all sales tax previously exempted. In the event that there be such a failure, the Agency may notify the New York State Department of Taxation and Finance of sales tax due.

b. Tax Exemption Period:

1. The Agency and Project Operator shall enter into a Sales Tax Exemption Agreement which shall include an expiration date to act as the Project Operator for the Agency, which shall be based upon the estimated completion date plus an additional time period to allow for possible delays and equipping.
2. Extension of the expiration date shall require formal approval of the Agency.

c. Percentage of Exemption:

1. The sales tax exemption shall be equal to one hundred percent (100%) of the sales taxes that would have been levied if the Project were not exempt by reason of the Agency's involvement in the Project.

d. Confirmation Letter:

1. The granting of a sales tax exemption by the Agency shall be confirmed by the execution by an authorized officer of the Agency of a Confirmation Letter by the Agency.
2. Each Confirmation Letter shall describe the scope and term of the sales tax exemption granted.

e. Required Filings:

1. The New York State Department of Taxation and Finance requires that proper forms and supporting materials be filed with a vendor to establish a purchaser's entitlement to a sales tax exemption.
2. It shall be the responsibility of the Project Operator to ensure that all required documentation shall be filed with each vendor to obtain any sales and use tax exemptions authorized by the Agency.

f. Required Reports and Records:

1. Pursuant to Section 874(9) of the Act:
   a. The Agency is required to file Form ST-60 with the New York State Department of Taxation and Finance within thirty (30) days of the date that the Agency designates a Project Operator to act as agent of the Agency.
   b. The Project Operator/ shall be required to annually file with the New York State Department of Taxation and Finance Form ST-340 identifying the value of all sales and use tax exemptions claimed under the Act by the Project Operator/Agent, subcontractors and consultants thereof.
   c. The Project Operator shall, concurrently upon filing Form ST-340 with the State, also file a copy with the Agency.

2. At the end of the Tax Exemption Period, the Project Operator shall prepare and submit to the Agency a report identifying:
   a. All of the expenditures incurred on the project for which sales tax exemption benefits were received during the Tax Exemption Period.
   b. The total sales tax exemption benefits accrued during the Tax Exemption Period.

   This report shall be filed with the Agency within 30 days of the end of the Tax Exemption Period.

g. Approving Resolutions and Project Documents:

1. All Agency approving resolutions and project documents shall include:
   a. All provisions of Section 5 of this Uniform Tax Exemption Policy.
   b. A statement stipulating that, as a Project Operator appointed by the IDA, it shall cooperate with the Agency when the Agency seeks to recapture sales tax benefits.
   c. A statement stipulating that if a Project Operator fails to cooperate with the Agency, the Agency shall commence a legal action/proceeding to recapture unauthorized sales tax exemption benefits.
   d. A statement stipulating to a Project Operator that:
      1) They shall be required to annually file with both the NYS Department of Taxation and Finance and the Agency a copy of Form ST-340 "Annual Report of Sales and Use Tax Exemptions Claimed by aProject Operator of an IDA."
      2) Form ST-340 shall be filed with both the NYS Department of Taxation and Finance and Agency by February 28th of each year.

3) They will be required to file with the Agency, within 30 days of the end of the Tax Exemption Period, a report summarizing all expenditures incurred on the project for which sales tax exemption benefits were received and the total amount of sales tax benefits received during the Tax Exemption Period.

e. A statement stipulating to a Project Operator that their failure to file Form ST-340 by February 28th of each year could result in:
   1) The Project Operator losing their authority to act as the Project Operator of the Agency.
   2) The Project Operator losing sales tax benefits in subsequent years.

h. Recapturing Sales Tax Exemptions:

1. Pursuant to Section 875 of the Act, the Agency shall recapture unauthorized New York State and local sales and use tax benefits whenever the benefits were:
   - Not entitled or authorized to be taken;
   - In excess of the amounts authorized;
   - For unauthorized property or services; or
   - For property or services not used according to the terms of the project agreement with the Agency.

2. When the Agency determines that unauthorized sales tax exemption benefits were taken, the Agency shall notify the Project Operator, in writing, that:
   a. Unauthorized sales tax benefits were taken by the Project Operator.
   b. Identify the amount of unauthorized sales tax exemption benefits taken that is being recaptured.
   c. Identify the date when the amount of unauthorized benefits shall be repaid to the Agency.
   d. The consequences for not repaying the unauthorized sales tax benefits.

3. The failure by a Project Operator to repay the Agency the unauthorized sales tax exemption benefits received shall be grounds for the New York State Tax Commissioner to assess and determine State sales and use taxes due from the Project Operator under article twenty-eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.
4. When the Agency recovers or recaptures unauthorized or excessive sales tax exemptions, the Agency shall, within thirty (30) days, remit said sales tax to the Commissioner of the NYS Department of Taxation and Finance using Form ST-65 IDA Report of Recaptured Sales and Use Tax Benefits.
5. The Agency shall:
   a. Keep records of the New York State and local sales tax exemptions provided to each project, with such records available to the New York State Tax Commissioner upon request.
   b. Report within thirty (30) days of providing any financial assistance in the form of a sales and use tax exemption, the project, the estimated amount of the exemption and other information as may be required by the New York State Tax Commissioner (Form ST-60).
   c. The Agency shall file an annual report Form ST-62 with the New York State Tax Commissioner detailing its terms and conditions and its activities in recapturing any unauthorized New York State sales and use tax exemptions.

SECTION 6: MORTGAGE RECORDING TAX EXEMPTION:

1. Mortgages executed by industrial development agencies in furtherance of their lawful activities are exempt from payment of the New York State Mortgage Recording Tax pursuant to General Municipal Law Section 874.
2. The Agency's policy shall be to impose no mortgage recording taxes on projects involving mortgages.

SECTION 7: REAL ESTATE TRANSFER TAX EXEMPTION:

1. Article 31 of the Tax Law provides for the imposition of a tax upon certain real estate transfers. Section 1405(b)(2) of the Tax Law provides that transfers into the Agency are exempt from such tax, and the New York State Department of Taxation and Finance has ruled that transfers of property by the Agency back to the same entity which transferred such property to the Agency are exempt from such tax.
2. The general policy of the Agency is to impose no tax upon any real estate transfers to or from the Agency.

SECTION 8: COMMERCIAL SOLAR POLICY:

1. It shall be the policy of the IDA to offer certain incentives for commercial solar projects that provide renewable energy to residential, commercial and industrial customers.

2. The types of solar projects eligible to receive incentives include:
    a. Community distributed solar/shared solar.
    b. Off-site solar generation projects that have a wholesale Power Purchase Agreement with 1 or more users.
    c. Solar and energy storage facilities
    d. Projects that are 10 megawatts or less.

3. This policy shall offer two (2) incentives to eligible solar projects:
    a. Sales Tax Exemptions to be offered in accordance with this UTEP.
    b. Mortgage Recording Tax Exemption to be offered in accordance with this UTEP.

4. Real Property Tax Policy:

    a. Background:
        1. New York State's Real Property Tax Law Section 487, adopted in 1977 and amended on April 12, 2019, provides a 15-year real property tax exemption for solar, wind and farm waste energy systems.
        2. These energy generating systems are classified as capital improvements to real property.
        3. Section 487 was intended to encourage the construction of these energy systems.
        4. Section 487 affords local governments the opportunity to "opt out" of this real property tax exemption.
        5. By opting out, these energy projects would be required to pay property taxes to the local governments that opt out.

    b. Fulton County Board of Supervisors' Local Law 3 of 2019:
        1. In September 2019, the Fulton County Board of Supervisors adopted Local Law 3 of 2019 titled "Opting out of Section 487 of NYS Real Property Tax Law Exemptions for Solar Energy System, Wind Energy System and Farm Waste Energy System Projects."
        2. As a result, no real property exemption under Section 487 shall be applicable to Fulton County taxes with respect to solar or wind energy systems and farm waste energy systems.

    c. IDA Policy:
        1. It shall be the policy of the IDA to also not grant real property tax exemptions to solar or wind energy system and farm waste to energy system projects.

SECTION 9: REVIEW OF POLICY:

1. The Agency shall on a regular and ongoing basis review this Uniform Tax Exemption Policy to determine relevance, compliance with law, effectiveness, and shall adopt any modifications or changes that it shall deem appropriate.
2. In addition, the Executive Director shall continually review this Uniform Tax Exemption Policy and evaluate the internal control structure established to ensure compliance with the tax exemption policy. The Executive Director shall submit recommended changes to the Agency for approval.

SECTION 10: FEES:

1. All Project Operators and Applicants shall be responsible for paying to the Agency all fees as identified and described in the Agency's Fee Schedule, a copy of which is attached hereto and made a part of this Policy.

Adopted:	February 1994
Revised:	April 20, 1999
Revised:	August 23, 2012
Revised:	June 7, 2016
Revised:	April 9, 2019
Revised:	January 14, 2020
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