New Rochelle Industrial Development Agency

City Hall - Department of Development

515 North Avenue

New Rochelle, New York 10801

Uniform Tax Exemption Policy

Adopted March 21, 2016 and Revised April 27, 2017, June 28, 2017, December 20, 2017 and December 22, 2020

NEW ROCHELLE
IDEALLY YOURS

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<u>Uniform Tax Exemption Policy (UTEP)</u>
<u>New Rochelle Industrial Development Agency</u>

"UTEP" stands for Uniform Tax Exemption Policy, which is a policy "blueprint" designed to outline the types of development incentives offered by the City of New Rochelle (the "City") through its Industrial Development Agency, prescribe how these incentives will be applied, and dictate when and how they may be expanded upon should the public objectives of the City be pursued or modified, suspended and/or recaptured.

<u>SECTION 1 - MISSION AND OVERVIEW</u>

NRIDA Mission

The mission of the New Rochelle Industrial Development Agency (the "NRIDA") is to provide business support through financial assistance and tax incentives to eligible projects in order to promote economic vitality and prosperity, as well as recreational opportunities for the entire New Rochelle community.

Statutes Authorizing IDAs

Industrial Development Agencies ("IDAs") are formed under and governed by Article 18-A of the New York State General Municipal Law (the "IDA Act") as public benefit corporations. IDAs, as local authorities, actively promote, encourage, attract and develop job and recreational opportunities and economically sound commerce and industry in cities, towns, villages and counties throughout New York State. The NRIDA is further authorized under the Charter of the City.

State Statute Authorizing UTEPs

Section 874 of the IDA Act requires an industrial development agency to establish a Uniform Tax Exemption Policy (the "UTEP") applicable to grants of financial assistance and providing guidelines for the claiming of real property, mortgage recording, and sales tax exemptions. IDAs are also required to establish a procedure for deviation from the UTEP for projects not meeting the standard criteria.

Policy

The policy of the NRIDA is to grant applicants exemptions from sales and use taxes, mortgage recording taxes and real estate tax abatements, as described below. The NRIDA may, as part of its standard policy, grant enhanced benefits on a case-by-case basis, after following the process for deviation, for projects expected to have a significant economic impact on the City, as determined by the NRIDA's members. The NRIDA acknowledges that previous models of development, e.g., heavy manufacturing projects, may no longer be likely in the City, but the NRIDA can assist in achieving other development goals such as housing, commercial, retail, adaptive re-use projects, etc., that might be a better fit for the City's economic, land use and zoning needs and landscape, as a first-tier, inner ring suburban community.

The UTEP seeks to address the goals and objectives of the City by giving greater consideration to projects that adhere to the tenets of its policy documents, such as the:

- City’s Comprehensive Plan, as the same may be updated, amended or supplemented;
- Local Waterfront Revitalization Plan, as the same may be updated, amended or supplemented;
- HUD Consolidated Plan;
- GreeNR Sustainability Plan;
- Arts and Cultural District Master Plan;
- Zoning Code, including the Downtown Overlay Zone and the Cultural District Extension Overlay Zone (a/k/a “New Rochelle Arts and Cultural District”); and
- Others enacted, approved or ratified by the New Rochelle City Council.

As the Comprehensive Plan creates a blueprint for the future development and preservation of a community, the UTEP is intended to assist the City in attaining these goals through financial assistance measures. It is important to ensure that the City has the tools in place to reflect current conditions. The UTEP supports and helps implement projects that have been vetted by the City’s boards, committees and City Council, that have gone through the State Environmental Quality Review process and that complement the Comprehensive Plan as a policy guide which ascertains that investments made in neighborhoods help residents lead safe, affordable, and productive lives; that the buildings we invest in are energy efficient; and that the growth of our region strengthens the local economy and provides opportunities for all residents.

UTEP Policy & Purpose – designed to carry out NRIDA mission

Program Objectives

The purpose of the NRIDA is to serve as an economic development tool—often in conjunction with other financing and economic development programs--to provide support to projects for industrial, commercial, research, qualified retail, rental residential (including artist live/work space), educational, health-related, tourism, cultural and other businesses in order to offer economic incentives to New Rochelle businesses. It furthermore seeks to stimulate desirable economic development in the City in order to create and retain quality employment opportunities and to strengthen the local tax base. Its support consists of serving as a vehicle for medium and long term, low interest, financial assistance for capital projects through the issuance of Industrial Revenue Bonds (IRBs) and other incentives. Eligible costs include: acquisition, construction, expansion, rehabilitation, and purchase of equipment.

Financial Assistance

IDAs provide four basic forms of financial assistance (collectively, “Financial Assistance”) through tax incentives to qualified applicants in order to promote the economic welfare, prosperity and recreational opportunities for residents of a municipality:

- Mortgage recording tax exemption;
- Sales and use tax exemption (as related to the construction of a project);
- Real property tax reduction via a payment-in-lieu-of-taxes (“PILOT”) phased in to full assessment over the duration of the project term; and

- Lower interest rates for debt incurred as part of the Project.

All four instruments will be evaluated to assist the NRIDA in optimizing the incentive package not solely for the applicant, but also for the City (e.g., sales tax exemption may be less costly than a PILOT; mortgage recording tax exemption may be less costly to City than other incentives but still offer value to an applicant).

SECTION 2 - STANDARD INCENTIVE PROGRAM

Standard Incentive Program for Commercial and Residential Rental Development/Minimum Thresholds

In making the discretionary decision to provide any Financial Assistance, the NRIDA will first:

- Determine if there is a qualified project ("Project") according to the IDA Act eligible categories (e.g., industrial development such as manufacturing, re-manufacturing, assembly, processing, product research and non-industrial development such as warehouse, wholesale/distribution, qualified retail, office, hotel, general commercial, rental residential (including artist live/work space), etc.) which is consistent with the City's Zoning Code definitions (see Glossary Appendix); and

- Consider the following criteria to determine if a standard incentive program has been met:

  1. an assessment by the NRIDA of all material information included in connection with the NRIDA's Uniform Application for financial assistance, as necessary to afford a reasonable basis for the decision by the NRIDA to provide financial assistance for the Project;

  2. a written cost-benefit analysis by the NRIDA that identifies the extent to which a Project will create or retain permanent, private sector jobs; the estimated value of any tax exemptions to be provided; the amount of private sector investment generated or likely to be generated by the proposed Project; the likelihood of accomplishing the proposed Project in a timely fashion; and the extent to which the proposed Project will provide additional sources of revenue for municipalities and school districts; and any other public benefits that might occur as a result of the Project;

  3. a statement by the applicant that the Project, as of the date of the application, is in substantial compliance with all provisions of the IDA Act, including, but not limited to, the provisions of Section 859-a and Section 862(1) thereof;

  4. if the Project involves the removal or abandonment of a facility or plant within the state, notification by NRIDA to the chief executive officer or officers of the municipality or municipalities in which the facility or plant was located;

5. whether Financial Assistance is required to induce the Project and "but for" such assistance, the Project could not move forward, or a statement from the applicant as to why the NRIDA should provide Financial Assistance;

6. geographic location of Project (e.g., downtown, transit-oriented-development radius, distance within urban interstate highway (I-95) exit, West End, waterfront, Urban Renewal Area, Community Development Block Grant Target Area, New Rochelle Arts and Cultural District);

7. the estimated value of any other benefits that the City may be providing;

8. the impact of the proposed Project on existing and proposed businesses and economic development projects in the vicinity;

9. the effect of the proposed Project on the environment;

10. the extent to which the proposed Project will require the provision of additional services, including, but not limited to, additional educational, transportation, police, emergency medical or fire services;

11. the extent to which the proposed Project will provide additional sources of revenue for municipal and school district;

12. whether the Project will use an apprenticeship program approved by the New York State Department of Labor;

13. the financial feasibility of the Project;

14. where the Project involves an industry or activity which the City seeks to develop, retain and foster in accordance with the City's policy documents; and

15. public support for, or opposition to, the proposed Project.

SECTION 3 - FINANCIAL ASSISTANCE TOOLS

Mortgage Recording Tax Exemption

Whenever a county clerk records a mortgage in New York State, the mortgagor must pay a .75% to 1.5% (of the mortgaged amount) mortgage recording tax. The NRIDA may, however, in its discretion qualify an applicant for a mortgage recording tax exemption. As of the date of adoption of this UTEP, the mortgage recording tax in Westchester County is 1.30% of the principal amount of the mortgage. *Please note, however,* that as of July 1, 2017, the NRIDA will no longer be able to grant an exemption for that portion of the mortgage recording tax which is payable to the Metropolitan Transportation District (the "MTA"). As of the date of adoption of this UTEP, the MTA portion of the mortgage recording tax is 0.30%.

Sales and Use Tax Exemption

The sales and use tax in New York State generally ranges from 7% to 8.75% (as of the date of adoption of this UTEP, the sales and use tax in the City is 8.375%). Under Section 874 of the IDA Act, all purchases made by an IDA or its agents are exempt from the sales and use tax. The exemption is generally limited to the construction, reconstruction or installation period and cannot cover ongoing operational costs. Depending on the size of the project, the cost savings for the applicant under this arrangement can be significant. The NRIDA may, in its discretion, qualify an applicant for an exemption from sales and use taxes and/or limit, increase or decrease the amount thereof.

Real Property Tax Abatement

In New York State, property owners pay a real property tax based on the assessed value of the land and of the improvements to a site. Any real property owned or controlled by an IDA is not subject to ad valorem real property taxes. However, real property owned or controlled by an IDA continues to be subject to special assessments and user fees. When an IDA takes title to or a leasehold interest in real property, the property becomes 100% exempt from ad valorem real property taxes. To accommodate the needs of the local taxing jurisdictions, however, the NRIDA generally negotiates a Payment-In-Lieu-Of-Tax Agreement ("PILOT Agreement") with the applicant. Each Project receiving an abatement will be subject to a PILOT Agreement in a form acceptable to the NRIDA. The NRIDA will then direct, or receive and forward, these payments-in-lieu-of-taxes ("PILOT") to the affected taxing jurisdictions. IDAs generally limit the period an exemption is in effect with the assumption that the abatement generally results in more revenue for the taxing jurisdictions than was generated by the property before the IDA's involvement. The NRIDA may require the establishment of a PILOT mortgage ("PILOT Mortgage") as a condition in order to secure the position of the PILOT payments versus other secured and unsecured claims. The purpose of a PILOT Mortgage is to secure unpaid PILOT payments with a lien against the real estate, thus making the PILOT Agreement a secured obligation. The NRIDA may negotiate alternative forms of collateral to insure payments under the PILOT Agreement.

Terms

It is the NRIDA's standard policy to limit PILOT terms as follows:

Projects Located Outside Downtown Overlay District

- 10-year PILOT Agreement term for all commercial, mixed-use or large residential rental projects; and
- 15-year PILOT Agreement term for affordable, rental housing projects (consistent with the length of tax credit financing requirements).

The NRIDA's basic policy provides for a graduated schedule of abatement applicable to County, City and School taxes. The NRIDA will consider Project factors when determining the amounts to be paid under the PILOT Agreement but in no event will the payments under the PILOT Agreement be less in amount than the aggregate County, City and School taxes immediately prior to entering into the PILOT Agreement. The NRIDA reserves the right in its sole discretion to refuse to grant any abatement of County, City and School taxes and to require payments under the PILOT Agreement equal to one hundred percent (100%) of the amount that would otherwise be due and payable for County, City and School taxes.

Projects Located Within Downtown Overlay District

From and after the adoption of this UTEP by the NRIDA, at any time the NRIDA adopts final resolutions approving Projects totaling up to, but not exceeding, five million rentable square feet (5,000,000 rsf) in the aggregate within the Downtown Overlay District, the NRIDA's basic policy provides for:

- a PILOT Agreement term of either fifteen (15) years or twenty (20) years following the City's issuance of a temporary certificate of occupancy for a Project, as the NRIDA may in its discretion determine, for residential rental and commercial Projects; and
- a graduated schedule of abatement applicable to County, City and School taxes with respect to residential rental and commercial Projects, respectively, as set forth in Schedule A attached to and made a part of this UTEP.

From and after the adoption of this UTEP by the NRIDA, at any time the NRIDA adopts final resolutions approving Projects totaling in excess of five million rentable square feet (5,000,000 rsf) in the aggregate within the Downtown Overlay District, the NRIDA's basic policy provides for:

- a term of ten (10) years following the City's issuance of a temporary certificate of occupancy for residential rental and commercial Projects; and
- a graduated schedule of abatement applicable to County, City and School taxes with respect to residential rental and commercial Projects, respectively, as set forth in Schedule A attached to and made a part of this UTEP.

The NRIDA reserves the right in its sole discretion to (i) in lieu of the foregoing schedule(s) of abatement, grant an abatement applicable to County, City and School taxes consistent with the schedule of abatements set out in New York Real Property Tax Law Section 485-b (and provide for corresponding payments under the PILOT Agreement) as set forth in Schedule A attached to and made a part of this UTEP, or (ii) refuse to grant any abatement of County, City and School taxes and to require payments under the PILOT Agreement equal to one hundred percent (100%) of the amount that would otherwise be due and payable for County, City and School taxes. In no event will the payments under the PILOT Agreement be less in amount than the aggregate County, City and School taxes immediately prior to entering into the PILOT Agreement.

Residential Rental Projects That Include Artist Live/Work Space Located Within the New Rochelle Arts and Cultural District

The New Rochelle City Council adopted the Cultural District Extension Overlay Zone in November, 2016 to complement to the Downtown Master Plan goals through the support and growth of an arts community that will add to the cultural and economic activity within the City. The Cultural District Extension Overlay Zone (or the New Rochelle Arts and Cultural District) provides use flexibility as well as modest density and parking bonuses for projects that accommodate artists and makers. This extends the focus on the arts beyond the area covered by the Downtown Master Plan.

This UTEP, in addition to providing for Financial Assistance in the form of mortgage recording tax and sales and use tax exemptions (as hereinbefore described), also provides for an enhanced real property tax abatement schedule for a "Qualified Live/Work Space Project", as hereinafter defined, within the New Rochelle Arts and Cultural District in order to encourage the development of such qualified projects. This UTEP recognizes that the potential artist live/work space is likely to be highly unique in occurrence and characteristics and perhaps may only arise a handful of times over the course of the upcoming decade. The intent of the live/work space is to address the need for permanently affordable rental housing units that will enable artists and makers to contribute to the goals of the Cultural District Plan and Downtown Master Plan for many years.

In recognition of the unique characteristics and economic challenges presented by proposed live/work projects, the NRIDA's basic policy provides for:

- a PILOT Agreement term of twenty (20) years following the City's issuance of a temporary certificate of occupancy for a Qualified Live/Work Space Project; and

- a graduated schedule of abatement applicable to County, City and School taxes with respect to residential rental and commercial Projects, respectively, as set forth in Schedule B attached to and made a part of this UTEP.

As used in this UTEP, a "Qualified Live/Work Space Project" means a residential rental housing project in which either (i) twenty percent (20%) of housing units, and/or (ii) twenty-five percent (25%) or more of net leasable area in the Project is dedicated to either affordable artist live/work space and/or uses identified in the Arts and Cultural District Master Plan. The required level of twenty percent (20%) of housing units dedicated to live/work is inclusive of those affordable housing units otherwise required by inclusionary zoning and must establish rents affordable to residents with eighty percent (80%) or below area median income ("AMI"). Priority for occupancy of the housing units dedicated to live/work must be given to those who are "Certified Artists" pursuant to the Arts and Cultural District Master Plan; *provided however*, to the extent that Certified Artists are not available, or otherwise decline, to occupy any housing unit dedicated to live/work, such unit or units must then be made available to income-qualified households (i.e., households with incomes of eighty percent (80%) or below AMI). To the extent that a Qualified Live/Work Space Project consists of twenty-five percent (25%) or more of net leasable area in the Project, such common area and non-residential spaces must be utilized and made available to artists and makers for uses identified in the Arts and Cultural District Master Plan such as, by way of example, gallery and other common area needs of artists. User fees for artist/maker use of common areas and/or other non-residential spaces shall not exceed thirty percent (30%) of a Project's net income.

Financial Assistance can, at the Agency's discretion, also be afforded to Qualified Live/Work Space Projects that meet the requirements of the low income housing tax credit program established by section 42 of the Internal Revenue Code (26 USC sec. 42), and (b) Title I of the Housing and Community Development Act of 1974 (Public Law 93-387) as amended ("LIHTCs"). In addition to providing assistance in the form of mortgage recording tax and sales and use exemptions, the IDA can also provide a PILOT for a term not to exceed the term of the Project's affordability requirement under the terms of the LIHTCs. In such an event, the PILOT would be initially established at an amount equal to ten percent (10%) of annual gross Shelter Rents and would be increased annually by two percent (2%) during the term of the PILOT Agreement. As used in this UTEP, "Shelter Rent" is defined as income received from and/or on behalf of tenants of the Qualified Live/Work Space Project, including any rent supplements or subsidies received from any federal or state government agency on behalf of such tenants, less utilities (including water, sewer, electricity, gas, fuel oil, cable and telecommunications).

The Agency acknowledges in this UTEP the unique characteristics, economic challenges and idiosyncratic financing issues often confronted by Qualified Live/Work Space Projects as well as the importance to the City and its resident of artists, makers, and their needs. Accordingly, notwithstanding the provisions of Section 5 of this UTEP, but subject to "but-for" analysis, the Agency retains the discretion, and has the willingness, to review and consider customized requests for structuring of Financial Assistance for specific Qualified Live/Work Space Projects that may constitute deviations from this UTEP. Furthermore, if additional subsidies are available in the New Rochelle Affordable Housing Fund, those funds could potentially be used to supplement live/work projects if needed.

Qualified Affordable Residential Rental Projects

This UTEP, in addition to providing for Financial Assistance in the form of mortgage recording tax and sales and use tax exemptions (as hereinbefore described), also provides for an enhanced real property tax abatement schedule for those developments located in the City (including, but not limited to, the Downtown Overlay District and the Cultural District Extension Overlay Zone) that meet the requirements of (a) the low income housing tax credit ("LIHTC") program established by section 42 of the Internal Revenue Code (26 USC sec. 42), and (b) Title I of the Housing and Community Development Act of 1974 (Public Law 93-387), as amended ("Qualified Affordable Residential Rental Projects"), and that do not otherwise constitute Qualified Live/Work Space Projects (as hereinbefore defined).

Financial Assistance can, at the Agency's discretion, be afforded to Qualified Affordable Residential Rental Projects. In addition to providing assistance in the form of mortgage recording tax and sales and use exemptions, the IDA can also provide a PILOT for a term not to exceed the lesser of (a) the term of the Project's affordability requirement under the terms of the LIHTCs, or (b) the amortization period of the first mortgage encumbering the Project. In such an event, the PILOT would be initially established at an amount equal to ten percent (10%) of annual gross Shelter Rents and would be increased annually by two percent (2%) during the term of the PILOT Agreement. As used in this UTEP, "Shelter Rent" is defined as income received from and/or on behalf of tenants of the Qualified Affordable Residential Rental Project, including any rent supplements or subsidies received from any federal or state government agency on behalf of such tenants, less utilities (including water, sewer, electricity, gas, fuel oil, cable and telecommunications).

The Agency acknowledges in this UTEP the unique characteristics, economic challenges and idiosyncratic financing issues often confronted by Qualified Affordable Residential Rental Projects as well as the importance to the City and its residents of the needs of such Projects and its residents. Accordingly, notwithstanding the provisions of Section 5 of this UTEP, but subject to “but-for” analysis, the Agency retains the discretion, and has the willingness, to review and consider customized requests for structuring of Financial Assistance for specific Qualified Affordable Residential Rental Projects that may constitute deviations from this UTEP. Furthermore, if additional subsidies are available in the New Rochelle Affordable Housing Fund, those funds could potentially be used to supplement affordable residential rental projects if needed.

Adaptive Reuse of Ground Floor Space of Older Commercial Buildings

This UTEP also provides Financial Assistance in the form of mortgage recording tax and sales and use tax exemptions as permitted by applicable law (as hereinbefore described), together with a real property tax abatement schedule hereinafter set forth, to incentivize capital improvements to, and facilitate the adaptive reuse and activation of, the ground floor of older commercial buildings to create a more vibrant downtown, leverage historic assets and provide assistance in tenanting commercial spaces that have proven to be difficult to lease (“Ground Floor Commercial Space Projects”).

Financial Assistance can, at the Agency’s discretion, be afforded to Ground Floor Commercial Space Projects that (i) are located in a “highly distressed area” as such term is defined in Section 854(18) of the IDA Act, and (ii) constitute ground floor retail spaces that meet a baseline capital improvement investment threshold of $100 per rentable square foot (the “Baseline Investment Threshold”). While the IDA retains the right, on a case by case basis, but subject to “but-for” analysis, to deviate from the Baseline Investment Threshold and consider at its discretions granting Financial Assistance to a Ground Floor Commercial Space Project with a lower Baseline Investment Threshold, the Agency cannot deviate from the requirement that the Ground Floor Commercial Space Project be located in a “highly distress area” as set forth above. In addition to providing Financial Assistance in the form of mortgage recording tax exemption (to the extent permitted by applicable law) and sales and use tax exemption, the Agency can also provide a PILOT for a term of ten (10) years in which (i) current real property taxes on the Ground Floor Commercial Space Project would be abated by fifty percent (50%) for the first five (5) years of the PILOT schedule, and (ii) one hundred percent (100%) of the real property taxes on the capital improvements made to the Ground Floor Commercial Space Project would be exempted for the full ten (10)-year term of the PILOT schedule. For the avoidance of doubt, the above exemptions will only be authorized for the ground floor retail space of commercial buildings. Therefore, with a multi-story mixed-use building, the above exemptions will be allocated to the pro rata share, on a rentable square foot basis, of the ground floor commercial space of the building.

The Agency acknowledges in this UTEP the unique characteristics and economic challenges often confronted by older commercial buildings with underperforming or vacant ground floor space as well as the importance to the City and its residents of the needs of Ground Floor Commercial Space Projects and its business occupants. Accordingly, notwithstanding the provisions of Section 5 of this UTEP, but subject to “but-for” analysis, the Agency retains the discretion, and has the willingness, to review and consider customized requests for structuring of Financial Assistance for specific Ground Floor Commercial Space Projects that may constitute deviations from this UTEP.

SECTION 4 - TRANSFERS OF PAYMENT-IN-LIEU-OF-TAX (“PILOT”) AGREEMENTS

The NRIDA shall have the right to terminate the PILOT Agreement prior to the expiration of its term in the event the company sells, transfers, conveys or assigns the Project or any part thereof (except residential unit leases and leases of the commercial space in the ordinary course which comply with the requirements, if any, of the NRIDA final resolution) or any person or entity that "controls" (as hereinafter defined) the company sells, transfers, conveys or assigns its interests in whole or in part, unless the company complies in each and every instance with the following terms and conditions.

Notwithstanding the foregoing, provided no breach of terms and conditions of NRIDA transaction documents has occurred which has not been cured within any applicable cure period, the company may sell, transfer, convey or assign the Project or any part thereof, and in connection therewith transfer the PILOT Agreement, upon at least two (2) months' prior written notice to (but without the requirement of the consent of) the NRIDA to an "Affiliate" which shall agree in writing satisfactory to the Agency to assume all of the obligations, undertakings, liabilities, indemnities and responsibilities of the company thereunder. As used herein, "Affiliate" shall mean any person or entity which directly or indirectly, or through one or more intermediaries, "Controls" or is "Controlled by" or is under "Common Control with" the company. Such notice shall be accompanied by such documentation as the NRIDA may require evidencing such affiliation and control. Any Affiliate that succeeds to the interest of the company in and to the Project, or any portion thereof, shall thereafter be deemed to be the company and shall be subject to the provisions of this Section 4. "Controls" "Controlled by" or is under "Common Control with" shall mean the ownership of a majority of the legal and beneficial interest in the entity or the company, as the case may be, or the ability to direct the management, affairs and operations thereof, or both.

Transfers to "Qualified Transferee"

With respect to any Project consisting of (i) a housing project of seventy-five (75) units or less, (ii) a mixed use project of 75,000 rentable square feet or less, or (iii) a commercial and/or industrial project of 50,000 rentable square feet or less (and provided no breach of terms and conditions of NRIDA transaction documents has occurred and remains uncured within any applicable cure period):

- The company must notify the NRIDA and its counsel in writing (the "Transfer Notice and Request") no later than two (2) months prior to the proposed date of sale, transfer, assignment or conveyance that the company intends to sell, convey, assign or otherwise transfer the Project, or any controlling interest therein, and/or that any person or entity that controls such company, intends to sell, convey, assign or otherwise transfer any of his, her or its interests in and to the company, and in connection with any such sale, transfer or conveyance, request that the PILOT Agreement be transferred or otherwise remain in full force and effect in accordance with it terms. "Controlling interest" means, with respect to the Project, the sale, conveyance, assignment or other transfer of more than forty-nine (49%) of the fee title and/or leasehold interest in and to the Project. "Controls" shall mean the ownership of a majority of the legal and beneficial interest in the company, together with the ability to direct the management, affairs and operations thereof;

- The Transfer Notice and Request must contain a representation and warranty from (i) the Purchaser (as hereinafter defined), and (ii) the company, to the best of its knowledge based solely upon the information and documentation provided to it by the Purchaser (but the company has no actual knowledge of the inaccuracy or incompleteness of any of the same) that each proposed purchaser, transferee or assignee, or the entity or person that controls such purchaser, transferee or assignee (collectively, the "Purchaser"), is a qualified transferee and must be accompanied by such information and documentation as the NRIDA, acting by and through its Chairman or Executive Director, may require to substantiate such representation and warranty. "Controls" shall mean the ownership of a majority of the legal and beneficial interest in such purchaser, transferee or assignee, together with the ability to direct the management, affairs and operations thereof. The Purchaser shall constitute a "qualified transferee if the NRIDA determines in its reasonable judgment that:

    1. The Purchaser has successfully and continuously owned and operated projects of similar size, scope and use to that of the Project over the then-preceding ten (10) years;

    2. The Purchaser has demonstrated that it has a net worth sufficient to fund the successful ongoing operation and maintenance of the Project;

    3. The Purchaser is current on the payment of all real estate taxes, levies, charges, fees and assessments due and owing to the City;

    4. The Purchaser is current on the payment of all PILOT payments due and owing to the NRIDA;

    5. The Purchaser has no outstanding cases or proceedings, without a judicially mandated settlement agreement, in the New Rochelle Building Court;

    6. The Purchaser is current on the payment of all federal, New York State and Westchester County taxes and has made all filings of all required returns; and

    7. The purchaser has furnished to the NRIDA at least two (2) banking references.

Transfers to "Qualified Institutional Grade Investor"

With respect to any Project consisting of (i) a housing project of greater than seventy-five (75) units, (ii) a mixed use project of greater than 75,000 rentable square feet, or (iii) a commercial and/or industrial project of greater than 50,000 rentable square feet (and provided no breach of terms and conditions of NRIDA transaction documents has occurred and remains uncured within any applicable cure period):

- The company must notify the NRIDA and its counsel in writing (the "Transfer Notice and Request") no later than two (2) months prior to the proposed date of sale, transfer, assignment or conveyance that the company intends to sell, convey, assign or otherwise transfer the Project, or any controlling interest therein, and/or that any person or entity that controls such company, intends to sell, convey, assign or otherwise transfer any of his, her or its interests in and to the company, and in connection with any such sale, transfer or conveyance, request that the PILOT Agreement be transferred or otherwise remain in full force and effect in accordance with it terms. "Controlling interest" means, with respect to the Project, the sale, conveyance, assignment or other transfer of more than forty-nine (49%) of the fee title and/or leasehold interest in and to the Project. "Controls" shall mean the ownership of a majority of the legal and beneficial interest in the company, together with the ability to direct the management, affairs and operations thereof;

- The Transfer Notice and Request must contain a representation and warranty from (i) the Purchaser (as hereinafter defined), and (ii) the company, to the best of its knowledge based solely upon the information and documentation provided to it by the Purchaser (but the company has no actual knowledge of the inaccuracy or incompleteness of any of the same) that each proposed purchaser, transferee or assignee, or the entity or person which controls such purchaser, transferee or assignee (collectively, the "Purchaser"), is a qualified institutional grade investor and must be accompanied by such information and documentation as the NRIDA, acting by and through its Chairman or Executive Director, may require to substantiate such representation and warranty. "Controls" shall mean the ownership of a majority of the legal and beneficial interest in such purchaser, transferee or assignee, together with the ability to direct the management, affairs and operations thereof. The Purchaser shall constitute a qualified institutional grade investor if the NRIDA determines in its reasonable judgment that the Purchaser has extensive experience financing, constructing and operating projects of the type(s) as the Project which shall be satisfied by fulfilling any one (1) of the following three tests:

  1. Net assets of Twenty-Five Million Dollars ($25,000,000) or greater as presented in the Purchaser's most recent fiscal year audited financial statement;

  2. Property currently owned and/or under management in excess of One Million Five Hundred Thousand (1,500,000) rentable square feet, or

  3. Property developed in last ten (10) years in excess of One Million Five Hundred Thousand (1,500,000) rentable square feet.

SECTION 5 - PILOT DISCOUNT ("DEVIATION")

PILOT Discount ("Deviations")

The NRIDA can exercise flexibility in allowing for other incentives in the discounting of property taxes and can go beyond or below its standard term of years, based a project consistency with the City's policy documents, plans and development studies and the determination on a case-by-case basis of significant impact and public achievement.

In addition to or in lieu of the foregoing the NRIDA may determine, on a case-by-case basis, to deviate from the standards outlined above or provide enhanced benefits for a project expected to have significant impact in the locality where the project will be located. The NRIDA may consider any or all of the following factors in making such determination and may provide enhanced or diminished benefits from this suggested tax exemption policy, no single one of which is determinative. In so doing, the NRIDA will set forth in writing the reasons for any deviation and notify the affected taxing jurisdictions.

Deviations for consideration based on the following types of development and conditions:

The NRIDA may in its discretion "deviate" from the standard PILOT policy thus increasing or decreasing the level of public subsidy and/or the term it is in effect depending upon whether or not an applicant's business and/or development program includes, among other things:

- Nature of Deal
    - Expanding business
    - Relocation of business
    - New development
    - Complementary Development
        - Providing a sustainable mix of uses (e.g., increasing supply of office and/or retail space balancing residential in the downtown)
- Type of Development
    - Residential Rental
    - Commercial Development in Targeted Geographic Areas
        - Mixed-Use
        - Retail as part of mixed-use
        - Affordable Housing Component
        - Transit-Oriented Development (T-O-D)
            - Positively impacts health and community, the environment and economy. Providing a mix of uses near housing can increase foot traffic to local businesses. Rising demand for housing and commercial space in highly walkable or transit-accessible areas can also decrease car use, result in higher tenancy rates and higher retention of property values, even in tough economic time.
        - Parking
            - Project provides municipal/public parking or exceeding parking requirements of the applicable zone.

- Green Building & Energy-Related Investments
    - Places less stress on municipal infrastructure
- Employment Impact
    - Number of permanent jobs
    - Percentage New Rochelle resident hires
    - Percentage minority hires
    - Comparable to current state-wide norms for cost/job average
- Tourism/Cultural Destination
- Adaptive Re-use/In-fill/Revitalization/Vacant/Underutilized
- Architecturally Significant
- Local Partnerships (e.g., Municipal Housing Authority, college, etc.)
- Other Investment/Matching dollars

Any deviations from the NRIDA's standard policy will be made only with the specific approval of its members based on the factors listed in this Section 5 and those, if any, described in Section 874 of the IDA Act. The NRIDA will set forth in writing its reasons for approving any deviation and will notify the affected taxing jurisdictions of the proposed deviation from such policy and the reasons therefor.

Depth of Subsidies

The NRIDA may, in accordance with this Section 5 and Section 874 of the IDA Act, deviate from the standard policy with respect to the number of years for a PILOT and its amount.

Cost-Benefit Analysis

In the event of a proposed increase in the amount or terms of its financial assistance, the NRIDA will conduct a cost-benefit analysis to determine the need for any such deviation and total PILOT value, which shall include:

- Financial documentation including a comparison of standard vs. proposed abatement;
- An explanation of the financial assumptions used in the analysis;
- Operational budget vs. capital cost of project;
- Additional documentation relating to whether "but for" such assistance, the Project could not move forward ; and
- Public infrastructure costs and impacts (e.g., school district).

If tax incentives are offered as deviations from the standard PILOT policy, amounts established shall be based on said cost-benefit analysis of public costs and the return on municipal investment must exceed the break-even point between costs and benefits during the duration of a specific term of years unless the NRIDA makes an express determination that the proposed Project is of material significance to the City and requires an even greater or lesser amount of Financial Assistance in the form of greater deviations from the standard PILOT policy.

General Financial Information Necessary to Apply

- Composition of applicant's current real estate portfolio at the time of pre-application (including type of project and number of square feet or units owned and/or managed).

- Applicant's recent history in obtaining financing commitments for real estate development projects, detailing type of project, financing source and amounts committed.

- Bank references for the applicant and financial equity partner.

- Financial statements for the past three (3) years prior to the time of pre-application from the applicant and each participating principal, partner, or co-venturer that includes the value of assets each participant would contribute to the applicant and verifications that such assets are available. The financial statement may also include any additional information that will be useful in evaluating the applicant's financial reliability and past ability to finance projects. (If audited financial statements are not available, please provide certified financial statements. All statements, audited or certified, should be in accordance with generally accepted accounting principles consistently applied).

- For applicant and its development team, a statement regarding any debarments, suspensions, bankruptcy or loan defaults on real estate development projects and/or government contracts.

- A statement describing the expected equity requirements and sources, the anticipated sources of working capital, and the anticipated sources for financing the project, including its construction.

SECTION 6 - CLAWBACK GUIDELINES

The NRIDA board reserves the right to annually review and re-set project policy parameters based on return on investment and market conditions for the length of a project contract. The NRIDA may choose to assist or scale-back project benefits in various ways recognizing fluctuating levels and percentage of activity completion and realization of public benefits in relation to target value within the life cycle of a project vs. external economic realities. PILOT, mortgage recording tax and use and sales tax exemptions or discounts shall be directly tied to suspension, discontinuance and/or recapture. In addition, PILOT agreements may be modified to require increased payments. Such suspension, discontinuance, recapture and modification are collectively referred to as "Clawback".

Project Agreement

The Project Agreement provides, among other things for the suspension, discontinuance and/or recapture recapture of some or all of the financial assistance consisting of real property tax abatements, sales and use tax exemptions and mortgage recording tax exemptions granted by the NRIDA. The Project Agreement and/or the PILOT agreement also provides for the modification of the PILOT agreement to require increased payments.

Clawback Principles

Benefits may be recaptured or suspended upon the occurrence and continuation of a Clawback trigger event as listed below. Clawbacks may be based on project performance of established benchmarks. Conversely, the NRIDA retains the ability to charge additional fees if investment is greater than initially projected. If the NRIDA determines to provide for the recapture with respect to a particular project, the NRIDA also shall, in its sole discretion and on a case-by-case basis, determine the timing and percentage of recapture.

Clawback Trigger Events

1. Sale (except as expressly permitted pursuant to this UTEP) or closure of a facility within the time period the applicant receives NRIDA benefits;

2. Departure of the business or organization from the City;

3. Material employment reductions or material failure to meet stated employment creation or retention goals in any particular tax year to the extent, if any, that such goals are set forth in the PILOT Agreement or other NRIDA transaction documents;

4. Significant change in use of facility or in business activities by Project applicant or operator

5. Significant diminution of the business or organization's activities in the City;

6. Ceasing to be an eligible "project" under and as defined in the IDA Act;

7. Material noncompliance with or breach of terms and conditions of NRIDA transaction documents or breach of any zoning, land use or federal, state or local environmental laws or regulations, material obligations by the project occupant to the United States, New York State, any of its political subdivisions, the affected taxing jurisdictions in which obligations were imposed in connection with the Project;

8. Decrease in projected revenues and/or projected economic benefits from the Project in any given year to the extent, if any, that any such projected revenues and/or economic benefits are set forth in the PILOT Agreement or other NRIDA transaction documents; or

9. Failure to comply with annual reporting requirements or provide the NRIDA with the requested information

Underwriting & Independent Verification

Applicants shall be required to provide documentation such as bank commitment letters to show financial stability and real estate appraisals for expert and independent opinions.

SECTION 7 - APPLICATION PROCESS

Environmental Compliance Before undertaking any project, an IDA must comply with the New York State Environmental Quality Review Act.

Preliminary Meeting Project owner and financial officer meet with the NRIDA

Executive Director and Assistant Secretary to review the eligibility requirements.

Introduction of NRIDA Counsel Discussions with NRIDA Counsel as to eligibility under IDA Act and IRS Code.

Underwriter/Lender Meeting Project owner and financial officer meet with investment bankers/lender to underwrite or finance potential financing and/or bond issue.

Application Submittal Project owner submits completed application to the NRIDA

Executive Director (see Appendix).

- Review by staff
- Independent, third-party cost-benefit analysis
- Presentation to NRIDA (or its subcommittee)

IDA Inducement Resolution Project is induced by initial resolution allowing IDA Executive Director, Assistant Secretary and Chief Financial Officer to continue negotiations with the project owner relating to issues concerning bond issues and/or sales/use, mortgage and property related tax benefits.

Public Hearing Notification Public hearing notice summarizing the details of the project and the financial assistance is published in the official newspaper with 10 days' notice prior to hearing date.

Public Hearing Meeting Applicant/proponent of the Project must make a presentation at each public hearing scheduled in connection with the Project.

NRIDA Final Authorizing Resolution NRIDA counsel will prepare authorizing resolution for the board to vote on.

Forms of Security Underwriter/lender will arrange a letter of credit or other form of security for bond issues or financing.

Bond Offering	If bond issue, underwriter and NRIDA Counsel coordinate preparation of bond offering documents.
Closing	Contracts and other documents necessary to consummate transaction with are executed by the company, NRIDA, lender, underwriter and any other interests. Bond or loan funds may be escrowed and will be available for disbursement to the company.