

Waynesboro Economic Development Authority
Rules and Procedures for the Authorization, Issuance and Sale of Bonds

ARTICLE I

Section 1.1 Purpose. These Rules shall govern the submission of Applications to the Authority, application and administrative fees, consideration of matters to be brought to the attention of the Authority relating to the authorization, issuance and sale of its Bonds, the adoption of Financing Documents, reports to be submitted to the Authority, and such other matters as are contained herein.

Section 1.2 Scope. These Rules supplement the Act as defined below. In the event of any conflict between the Act and these Rules, the provisions of the Act shall prevail.

ARTICLE II

Section 2.1 Definitions. As used in these rules and procedures, the following terms shall have the meaning as set forth herein, unless the context clearly requires otherwise:

“Act” shall mean the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia, 1950, as amended.

“Applicant” shall mean any individual, person, firm, corporation, partnership or other entity applying for industrial development revenue bond financing, or for whose benefit the Authority has issued its Bonds or who requests the Authority to take any action.

“Application” shall mean the Authority’s application for industrial development revenue bond financing as in effect from time to time.

“Authority” shall mean the Economic Development Authority of the City of Waynesboro, Virginia, a political subdivision of the Commonwealth of Virginia.

“Bonds” shall mean any notes, bonds and other obligations authorized to be issued by the Authority pursuant to the Act.

“Code” shall mean the Code of Virginia, 1950, as amended.

“Financing Documents” shall mean any resolutions, instruments, documents, papers, elections, certificates or financing statements required to be adopted or authorized, executed and delivered by the Authority in connection with the authorization, issuance and sale, of its Bonds.

“IRC” shall mean the Internal Revenue Code of 1986, as amended.

“Project” shall mean any land, improvements, machinery, equipment or property financed by the issuance and sale of the Authority’s Bonds.

“Rules” shall mean these Rules and Procedures of the Authority, as may be in effect from time to time.

ARTICLE III

GENERAL

Section 3.1 Copies to be Provided Applicants. A copy of these rules and procedures shall be furnished by the Authority’s Secretary to each prospective Applicant.

Section 3.2 Compliance with Rules and Procedures. Each Applicant shall comply with these rules and procedures in the submission of its Application or any Financing Documents to the Authority and in requesting that the Authority take any action, including the adoption of Financing Document. Failure to comply with these rules and procedures shall constitute sufficient reason for the Authority to refuse to consider any Application, Financing Documents or any other matter to be brought before the Authority by or on behalf of any Applicant.

Section 3.3 Amendments. These rules and procedures may be changed from time to time by the Authority by the vote of a majority of its Directors present at any meeting of the Authority, provided notice of such change shall have been given to each Director before such meeting. These rules and procedures may, notwithstanding the foregoing, be amended without prior notice upon the affirmative vote of all Directors of the Authority.

Section 3.4 Preparation and Distribution of Agenda and Minutes.

(a) A preliminary agenda for the Authority’s regular meeting shall be prepared and distributed by the Authority’s Secretary no later than five days before the Authority’s regularly scheduled meeting date. In the case of special meetings for the Authority, the agenda shall be included in the call issued for such meeting. When action is to be taken with reference to a Project or the issuance of Bonds, the agenda shall contain a description of the type, nature and location of the project, the name of the Applicant and the nature of the action to be taken by the Authority. The agenda for regular meetings of the Authority shall state that it is a preliminary agenda subject to change at or before the Authority’s meeting.

(b) A copy of the agenda for the Authority’s meeting shall be provided to the following: each officer and director of the Authority and the Authority’s legal counsel, each member of the Waynesboro City Council, the Waynesboro City Manager, the Director of Economic Development, each newspaper regularly published in the City of Waynesboro, Virginia, each person or firm mentioned on the agenda, the Waynesboro City Attorney, and to each person, firm or organization which shall have submitted a written request to the Authority’s Secretary that its name be placed on the mailing list for the agenda of the Authority’s meetings, which request shall include the address of the person, firm or organization submitting a written request to receive copies of the Authority’s agenda. Each person, firm or

organization which shall have submitted a written request to receive copies of the Authority's agenda shall renew such request annually in writing each June. If any request is not so received, such name and address shall be deleted from the mailing list.

(c) Preliminary drafts of the minutes of the Authority's meeting shall, as soon as practicable following the meeting be mailed or delivered to each officer and director of the Authority, each member of the Waynesboro City Council, Waynesboro City Manager, the Director of Economic Development and the Authority's counsel. Each preliminary copy of the minutes so distributed shall be marked to indicate that it is a preliminary draft subject to additions or corrections at the Authority's next meeting. The date of approval of the Authority's minutes shall appear at the foot of the last page of the minutes and shall, when approved, be signed by the Secretary of the Authority.

ARTICLE IV

APPLICATION PROCEDURES, FEES AND REQUIREMENTS

Section 4.1 Applications. Each Applicant shall submit nine (9) fully and accurately completed Applications and an electronic PDF file to the Authority's Secretary at least ten (10) days before the Authority's meeting at which the Application is to be considered. Each Application shall include all requested exhibits and shall include a fiscal impact statement as set forth in 15.2-4907 of the Code of Virginia, 1950, as amended. In the event all requested exhibits are not available nor not to be made part of the public record, a statement of explanation will be attached to the Application. The Authority recommends that each Applicant seek the advice of the Waynesboro Director of Economic Development respecting completion of the Application before submitting it to the Authority.

NOTE: The Authority has regularly scheduled meetings on the second Friday of each month. State law requires the public hearing take place no fewer than six (6) nor more than twenty-one (21) days after the second notice appears in the newspaper. A newspaper notice of the public hearing must be published once a week for two successive weeks.

Section 4.2 Application Fees. The Authority charges an application fee. The application fee is \$1,000 for government, 501 (3) (c), and refunding; \$2,000 for all other business types for bonds up to \$5,000,000; and \$3,000 for bonds over \$5,000,000.

The application fee shall be paid to the Authority prior to consideration of the inducement resolution or any other initial resolution to be adopted on behalf of the Applicant. Application fees, upon acceptance by the Authority, are non-refundable. No interest shall be paid on application fees held by the Authority.

Section 4.3 Administrative Fees.

(a) The Authority charges an annual administrative fee for all projects financed by the Authority. The annual administrative fee is 1/8 of 1% of the outstanding principal amount of the financing, with the outstanding principal amount to be determined as of the anniversary date of the financing closing. The initial payment is to be made within 30 days of the financing closing. The annual administrative fee is to be payable within thirty (30) days of each subsequent anniversary date of the financing closing during the period in which the principal remains outstanding on the financing.

The Authority requires reimbursement of its costs and expenses incurred in connection with the issuance and sale of its Bonds and by virtue of its Bonds being outstanding. (See Section 5.2)

Section 4.4 Transcripts of Proceedings. Each Applicant receiving Bond financing through the Authority shall furnish to the Authority upon the sale and delivery of the Bonds, two complete transcripts of the Financing Documents relating to such Bonds. Bond transcripts shall be hardback bound in library standard quality binders at the cost and expense of the Applicant.

Section 4.5 Bond Validation Proceedings. The Authority may require that before issuance, its Bonds be validated by the Circuit Court of the City of Waynesboro, Virginia, pursuant to the requirements of Article 6, Chapter 26, Title 15.2 of the Code. The costs, expenses and fees incurred in connection with any bond validation proceeding required by the Authority, including attorney's fees, shall be paid by the Applicant.

Section 4.6 Additional Information Required of Applicants.

(a) The Authority may adopt an inducement resolution or other initial resolution conditioned upon the subsequent furnishing of certain information satisfactory to the Authority. All required information shall be promptly furnished to the Authority and failure of any Applicant to furnish such information shall constitute a ground for rescission of any inducement resolution adopted pursuant to such conditions.

(b) The Authority may, at its option, require the furnishing of appraisals, evaluation or reports respecting the Project or any portion thereof. The Authority may retain advisors and consultants to advise it regarding any Project or other action which it is requested to undertake by any Applicant. All costs, fees and expenses of such appraisals, reports, consultants and advisors incurred by the Authority after prior notification to the Applicant shall be paid by the Applicant.

(c) Since the Authority usually acts based upon information furnished to it solely by the Applicant, the Authority reserves the right to require at any time the furnishing of additional information concerning the Applicant, its financial statements, and any other information deemed relevant by the Authority. In instances where the Applicant has undergone changes in form or management or where the security to be given for payment of the Bonds has changed, the Applicant shall report such changes promptly to the Authority.

ARTICLE V

PROVISIONS TO BE INCORPORATED INTO RESOLUTIONS
AND FINANCING DOCUMENTS

Section 5.1 Inducement Resolutions. Each inducement resolution adopted by the Authority shall provide that it shall continue in full force and effect for a period of one year unless specifically extended by the Authority of the Bonds contemplated by the resolution are issued.

Section 5.2 Payment of Authority Expenses. The Financing Documents adopted by the Authority for the benefit of any Applicant shall provide that the Applicant agrees to pay all costs, fees and expenses incurred by the Authority (including attorney's fees) in connection with:

- (a) The authorization, issuance and sale of the Authority's Bonds;
- (b) The ownership, occupation, operation or use of the Project being financed, whether owned by the Authority or the Applicant;
- (c) Prepayment or redemption of the Authority's Bonds;
- (d) Administrative costs and expenses of the Authority, including the fees of attorneys, accountants, engineers, appraisers or consultants, paid or incurred by the Authority by reason of the Bonds being outstanding or pursuant to requirements of the Financing Documents; and,
- (e) Such other fees and expenses of the Authority, not directly related to the Project being financed for the Applicant, but attributable to the Authority's financing of industrial or commercial Projects, including without limitation, a share of costs of the Authority's annual audit as required by Code Section 15.2-4904, determined as follows:
 - (1) All costs and fees relating to the annual audit and directly attributable to a particular Applicant or Project, shall be charged to such Applicant; and
 - (2) Any costs and fees of such audit not directly attributable to any Applicant or Project shall be allocated among all Applicants having Bonds outstanding, pro rata, as the amount of Bonds originally issued for such Applicant bears to the total face amount of Bonds issued by the Authority of which any portion of any issue remains outstanding and unpaid.

Section 5.3 Indemnification of the Authority. Each applicant shall agree to indemnify and save harmless the Authority and its officers, directors, employees and agents (hereinafter the "Indemnities") from and against all liabilities, obligations, claims, damages, penalties, fines, losses, costs and expenses (hereinafter referred to as "Damages"), including without limitation:

(a) All amounts paid in settlement of any litigation commenced or threatened against the Indemnities, if such settlement is effected with the written consent of the Applicant;

(b) All expenses reasonably incurred in the investigation of, preparation for or defense of any litigation, proceeding or investigation of any nature whatsoever, commenced or threatened against the Applicant, the Project or the Indemnities;

(c) Any judgments, penalties, fines, damages, assessments, indemnities or contributions; and,

(d) The reasonable fees of attorneys, auditors, and consultants; provided that the Damages arise out of:

- (1) Failure by the Applicant, or its officers, employees or agents, to comply with the terms of the Financing Documents and any agreements, covenants, obligations, or prohibitions set forth therein;
- (2) Any action, suit, claim or demand contesting or affecting the title of the Project;
- (3) Any breach of any representation or warranty set forth in the Financing Documents or any certificate delivered pursuant thereto, and any claim that any representation or warranty of the Applicant contains or contained any untrue or misleading statement of fact or omits or omitted to state any material facts necessary to make the statements made therein not misleading in light of the circumstances under which they were made;
- (4) Any action, suit, claim, proceeding or investigation of a judicial, legislative, administrative or regulatory nature arising from or in connection with the construction, acquisition, ownership, operation, occupation or use of the Project; or
- (5) Any suit, action, administrative proceeding, enforcement action, or governmental or private action of any kind whatsoever commenced against the Applicant, the Project or the Indemnities which might adversely affect the validity or enforceability of the Bonds, the Financing Documents, or the performance by the Applicant or any Indemnity of any of their respective obligations thereunder.

Section 5.4 Bond Counsel Opinion Required. Before issuing and delivering any of its tax-exempt Bonds, the Authority shall receive an unqualified approving opinion of recognized bond counsel, licensed to practice law in Virginia and approved by the Authority stating, among other things, that the bonds have been duly authorized, executed, issued and delivered, that the interest thereon is exempt from Federal income taxation under the IRC and taxation by the Commonwealth of Virginia, and that the Bonds are exempt from registration requirements

under applicable state and Federal securities laws. Before issuing and delivering any of its taxable Bonds, the Authority shall receive an unqualified approving opinion of recognized bond counsel, licensed to practice law in Virginia and approved by the Authority stating, among other things, that the Bonds have been duly authorized, executed, issued and delivered, and that the interest thereon is exempt from taxation by the Commonwealth of Virginia, if appropriate, and that the Bonds are exempt from registration requirements under applicable state and Federal securities laws.

Section 5.5 Covenants to Preserve Tax Exempt Status of Bonds. All Financing Documents presented for approval by the Authority relating to tax-exempt bonds shall contain appropriate covenants of the Applicant designed to insure compliance with the requirements of the IRC to preserve the tax exempt status of interest on the Bonds, including without limitation, “arbitrage” requirements, capital expenditure limitations and reporting requirements.

Section 5.6 Payments in Lieu of Taxes. In event title to the Project is held by any person or entity not subject to real or personal property taxes, the Applicant and any user of the Project, unless specifically exempted by the Authority, shall enter into an agreement to pay all taxes, levies, assessments, charges or other impositions which may be levied by any taxing authority on the Project as if such Applicant or user held title to the Project or any portion thereof.

ARTICLE VI

REPORTS

Section 6.1 Interim Reports by Applicants. Each Applicant shall file with the Authority a written report describing the status of its proposed financing no later than the last day of the second month after the adoption of an inducement resolution for the Applicant and every three months thereafter until the adoption of any Financing Documents by the Authority. Such written report shall include the proposed purchaser of the Bonds, the proposed terms of the Bonds, the status of Financing Documents, and the current status of the Project. Each Applicant shall promptly notify the Authority of any significant or material changes to any information previously furnished by the Applicant to the Authority.

Section 6.2 Annual Reports of Applicants. Each Applicant, after the issuance and sale of the Authority’s Bonds for the benefit of such Applicant, shall annually report to the Authority within fifteen days of the anniversary date of the issuance the status of the Project, which shall include the outstanding and unpaid balance of Bonds issued for the Project, whether any event of default has occurred under the Financing Documents, and other information relating to the financing of the Project and benefits to the City of Waynesboro.

Section 6.3 Reports by Authority Chairman, Directors, etc. At each regular meeting of the Authority, the Chairman, each Director, the Secretary/Treasurer and the Authority’s counsel shall report any action taken on behalf of the Authority since the last regular meeting, including receipt of reports required under Sections 4.6, 6.1 and 6.2. No later than September 1 of each year, the Chairman of the Authority shall report to the Authority on the status, as of the end of

the Authority's fiscal year, of each active and outstanding inducement resolution of the Authority and the status of each issue of the Authority's Bonds.

ARTICLE VII

ENFORCEMENT

Section 7.1 Enforcement of Provisions. The Authority may refuse to consider or adopt any inducement resolutions, Financing Documents or any other matters presented for its consideration if the Applicant has failed to comply with the requirements of these Rules.

Section 7.2 Repeal of Actions Previously Taken. The Authority may rescind or repeal any inducement resolution previously adopted by it or any other action taken by the Authority because of failure of the Applicant to comply with the provisions of these Rules or because of substantial changes in the management, ownership, Project plan or financial circumstances of the Applicant; provided, however, no inducement resolution or action taken by the Authority shall be repealed or rescinded unless prior written notice of such proposed action shall have been mailed to the Applicant at least three weeks before the date upon which such action is proposed to be taken. Notwithstanding the foregoing, no such action shall be taken by the Authority which will impair or adversely affect the interests of the holders of the Authority's Bonds.

ARTICLE VIII

STATEMENTS OF POLICY

Section 8.1 Construction, Operation and Effect of Rules. These Rules are intended as guidelines to promote and insure the orderly and consistent consideration of Applications, Financing Documents and other matters brought before the Authority. At the sole discretion of the Authority, application of these Rules may be modified and waived upon a case by case basis upon the consent of the Authority. Any action taken by the Authority not in conformity with these Rules shall, nevertheless, be fully effective as if taken in compliance with these Rules. It is, however, the policy of the Authority that each Applicant comply fully and completely with these Rules, and failure to comply with these Rules may constitute grounds for refusal by the Authority to take any action requested.

Section 8.2 Approval of Inducement Resolution not to Constitute an Endorsement of Applicant. The purpose of the Authority, as set forth in the Act, is to promote industry and develop trade by inducing manufacturing, industrial, governmental and commercial enterprises to locate in or remain in the Commonwealth of Virginia. Pursuant to the Act, the Authority's powers shall be exercised for the benefit of the inhabitants of Virginia through the promotion of their safety, health, welfare, convenience or prosperity. Accordingly, the Authority's decision to adopt an inducement resolution or take other action will be based largely upon these factors. Further, the Act prohibits the Authority from operating any enterprise or Project. Since the Authority is a conduit for providing tax exempt financing to promote the commerce and industry of the Commonwealth of Virginia and the City of Waynesboro, and given the express prohibition

against operating enterprises or Project, the Authority believes it is improper for it to inquire into matters relating to the business judgment of the management of any Applicant not relevant to the foregoing factors. The Authority may, however, examine the business decisions and other aspects of management of the Applicant should it deem such matters relevant to the authorization, issuance and sale of its Bonds.

In view of the foregoing limitations, the adoption of an inducement resolution or any other action taken by the Authority is not to be used by any applicant in any manner whatsoever as an endorsement or approval of the Applicant, its policies or its management.

Section 8.3 Security for Payment of Bonds. The Authority will require a showing that any issue of its Bonds is fully and adequately secured. If the bonds are secured by a lien upon or security interest in the Project financed with the proceeds of such Bonds, the Authority may require an appraisal of the Project showing that it is valued in an amount sufficient to pay the outstanding principal amount of the Bonds issued to finance such project.

Section 8.4 Compliance with Rules. These Rules were adopted by the Authority to assist in the orderly and expeditious conduct of its business. As stated in Section 3.2 of these Rules, the Authority has reserved the right to require that any Applicant strictly conform to the requirements of the Rules. Among other things, the Rules require that each Applicant inform the Authority of any new developments or material changes in information which has been submitted to the Authority, either orally or in writing. Matters concerning the structure of the financing, the prospective purchasers of the Bonds and the security for payment of the Bonds are items of particular interest to the Authority; however, the Authority expects to be kept informed of all material changes to information submitted to it.

By submitting an Application to the Authority, the Applicant agrees to abide by these Rules. Thus, the burden is placed upon the Applicant to review and to comply with these Rules. The principal sanction which may be applied by the Authority against any Applicant for failure to comply with the Rules would be a refusal to take any action requested by the applicant. Such a refusal might result in embarrassment to or considerable financial expense on the part of the Applicant. To avoid such embarrassment or expense, the Authority urges each Applicant to keep the Authority fully informed of any new developments or material changes to information previously submitted to the Authority, including in particular, changes in the contemplated financing structure or the proposed security for the Bonds. As noted above, the burden is upon the Applicant to convey this information to the Authority in a timely manner. What constitutes "timely" depends upon the circumstances of each case; however, each Applicant is urged to provide all such information before considerable time and expense is incurred upon matters which may prove unacceptable to the Authority. Any such communications should be made directly to the Authority's officers, directors and counsel.