**THE INDUSTRIAL DEVELOPMENT AUTHORITY**

**OF THE COUNTY OF MARICOPA**

**PROCEDURAL POLICIES AND FINANCING APPLICATION GUIDELINES**

Adopted July 17, 2018

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1. **Introduction and Legislative Intent**

The Industrial Development Authority of the County of Maricopa (the “Authority”) is a nonprofit corporation, organized under the provisions of Title 35, Chapter 5, Arizona Revised Statutes, as amended, which has been designated a political subdivision of the State of Arizona (the “State”). The Authority’s governing body is the Maricopa County Board of Supervisors (the “Board of Supervisors”), which approved the formation of the Authority.

The Authority is authorized to issue revenue bonds, which are sold either pursuant to a public offering or a private placement, the proceeds of which are then loaned to qualified entities to finance a project as such is defined in ARS § 35-701 (“Project”). The Authority does not provide its own money to Applicants. The Authority, instead, is a conduit that provides a formal mechanism through which an Applicant can seek financing from private sources.

An Applicant should note that principal and interest on any bonds issued by the Authority will be paid entirely from revenues generated by or for the benefit of the Project. Bonds issued by the Authority will not be or become a general obligation or liability of either the Authority or the County, nor will the bonds result in a charge against the general credit or taxing power of either the Authority or Maricopa County. The Authority has no taxing power.

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

1. **Policy Statement**

The Authority is governed by a volunteer Board of Directors (“Board”), appointed by the Board of Supervisors and managed by an Executive Director. Authority Board members have agreed to serve because it is their belief that their service can aid the general welfare and economic growth of Maricopa County and the State. Through the Board’s efforts it is hoped that a qualifying Applicant may locate or improve a Project in Maricopa County or elsewhere in the State. The Board believes that, through the vehicle of industrial development bonds, a Project can be financed for an Applicant at the lowest possible borrowing costs.

The Authority intends that funds that may become available to the Authority from annual administrative fees charged by the Authority or from other sources will be expended by the Authority to cover its operating expenses and fulfill the Authority’s Mission Statement:

“To create and maintain jobs within Maricopa County and to achieve a better standard of living and way of life.”

1. **Financing Procedures**
	1. **Application and Filing Fee**. The process for the approval of bonds begins with the Applicant submitting to the Authority a full and complete verified Financing Application, together with the applicable filing fee. The form of Financing Application to be completed and submitted is attached. One (1) copy of the Financing Application is to be submitted electronically, and three (3) hard copies of the Financing Application are to be filed with the Authority at least ten (10) business days prior to the date of the Board’s meeting at which the Financing Application will be considered. By filing a Financing Application, the Applicant will be deemed to know, understand and accept the Board’s Procedural Policies and Fee Schedule.
	2. **Board Meetings.** Representatives of the Applicant should appear before the Board at one or more of its meetings to discuss the Project and answer any questions by the Board or its advisors concerning the Project, the issuance of the bonds, the information contained in the financial statements, or any other documents deemed pertinent. Any guarantor or an officer of the guarantor should also appear before the Board at the same meeting.
	3. **Public Meeting.** The Authority is a public body, and all meetings and proceedings of the Board are required by law to be duly noticed and open to the public pursuant to A.R.S. § 35-431 et. seq. The files and records of the Applicant filed with the Authority will be available for inspection and copying by the public upon a request made pursuant to law. By filing a Financing Application, the Applicant acknowledges and agrees that any information delivered to the Authority by or on behalf of such Applicant is not privileged and may be disclosed to the public.
	4. **Preliminary and Final Approvals.** In certain circumstances, if requested, the Board can consider and adopt a resolution granting preliminary approval for the financing of a Project. After a review of the legal proceedings, the Board can consider whether to grant final approval and adopt an authorizing resolution for the issuance of the bonds. The Authority prefers to have all aspects of the financing determined at the time of giving final approval for the issuance of bonds. However, the Authority will entertain the giving of final approval and adoption of all legal proceedings containing “not to exceed” limits on the following items: interest rate, amount of issue, discount, and maximum life of the bonds.
	5. **Approval of Board of Supervisors**. The Authority is required by law to obtain the approval of its proceedings from the Board of Supervisors before the bonds may be issued. The Authority will seek approval from the Board of Supervisors after the Authority grants final approval of the issuance of its bonds.
	6. **Notice to the Attorney General**. The Authority is required to deliver a written description of the Project to be financed by bonds to the Arizona Attorney General, who is given 10 days to determine whether the Project qualifies under the Authority’s enabling legislation.
	7. **TEFRA Hearing**. For certain types of bonds, Section 147 of the Internal Revenue Code requires that a public hearing (generally known as a TEFRA hearing) be held to allow interested parties to express views on the proposed financing. Bond Counsel will coordinate with the Authority’s counsel to prepare and publish public notice and conduct the TEFRA hearing.
	8. **Arizona Corporation Commission Filing Requirement**. A “notice of proposed offering” may be required to be filed with the Arizona Corporation Commission, Securities Division, in connection with issues of the Authority offered for public sale by means of an official statement and not specifically exempt pursuant to § 44‑1843.01. The filing of the “notice of proposed offering” in Arizona or complying with the registration requirements of other states shall be the joint responsibility of the Applicant and the underwriter or placement agent.
	9. **Allocation of Private Activity Bonding**. The Applicant or Bond Counsel shall be responsible for obtaining any required allocation of Volume Cap for the Project financing under A.R.S. §35-901 et.seq.
	10. **Agency Approvals**. In connection with any request or proceeding for the issuance of bonds by the Authority or for approval of a Project, any steps or actions need to be taken to obtain consents, approvals or permits from the Arizona Department of Housing or any other Agency or Department of the State of Arizona shall be the responsibility of the Applicant and not the Authority.
	11. **Post-Issuance Compliance Procedures**. Applicant will be required to adopt the Authority’s Post-Issuance Compliance Procedures.
2. **Reservation of Rights**

Until bonds are issued, the Board reserves the right to:

* 1. Reject a Financing Application in whole;
	2. Reject a Financing Application as being incomplete;
	3. Reject an Applicant’s choice of accountant, underwriter, placement agent or Bond Counsel;
	4. Reject the Project in whole or in part;
	5. Require corrections, deletions, changes, additions or amendments to any legal proceedings or disclosure or offering documents; and
	6. Impose any other requirements or conditions precedent to the issuance of bonds, including but not limited to any public purpose conditions.
1. **Private Placements**

If a private placement is desired and the Applicant wishes to dispense with an Official Statement, the following will apply and will be provided for in the legal proceedings:

* 1. **Due Diligence.** The bond purchaser must waive due diligence on the part of the Authority and its Board and must rely solely on statements and representations of the Applicant and bond purchaser’s own investigation of the facts and circumstances relating to the financing. Bond purchaser must waive any claims it may have against the Authority, its Board members, the members of the Board of Supervisors and Maricopa County regarding the authorization, issuance or sale of the bonds or in any statement or representation regarding the bonds.
	2. **Restriction on Resale.** The bond purchaser must stipulate that the bonds will not, except as herein provided, be resold without approval of the Authority’s Board. Notwithstanding the foregoing, privately placed bonds may be transferred to a subsidiary of the bond purchaser; to an affiliate with the same or substantially the same parent corporation as the purchaser or to the parent of the initial purchaser; to entities resulting from merger or consolidation; to transferees by operation of law including sale at execution or foreclosure or divestiture caused by governmental action such as may be required by a divestiture judgment order or consent decree growing out of any antitrust action; or to a receiver or a trustee in bankruptcy when the holder of the bonds shall be the debtor placed in a receivership or bankruptcy. In addition, the bond purchaser may sell the bonds to “qualified institutional buyers” or “accredited investors” as those terms are commonly defined in applicable federal securities laws. In a private placement transaction, a bond purchaser will be expected to execute an investor letter or equivalent instrument in a form approved by the Authority’s legal counsel.
1. **Accuracy of Data**
	1. **Official Statements or Other Disclosure Instruments**. The Applicant must disclose any and all matters material to the proposed financing. Accuracy of any Official Statement or other disclosure instrument will be the joint responsibility of the Applicant and the underwriter or placement agent. Responsibility for the drafting of any parts of the Official Statement or other disclosure instrument will be determined by the underwriter or placement agent and when determined, Bond Counsel will notify each person or entity responsible for the respective part.

The underwriter, placement agent or the primary purchaser of the bonds shall have the responsibility of assuring itself that the statements attributed to the Applicant in any Official Statement or private placement sale agreement are substantially true and correct and that there are no material misrepresentations of facts contained in, or omission of material facts from, the Official Statement. By agreeing to act as underwriter or placement agent, the underwriter or placement agent shall be deemed to know of and have read the Procedural Policies and have agreed to its terms.

1. **Closing**
	1. **Closing**. All costs of closing (including travel and hotel for out of town closings) will be borne by the Applicant or paid from bond proceeds. The Applicant and Underwriter, Placement agent or other purchaser must decide among themselves who shall have responsibility for ordering and printing the bonds.
	2. **Bond Opinions**. In addition to the usual contents, the final opinion of Bond Counsel shall state that no filing or registration of the bonds, the underlying security (including any Guaranty) or the trust indenture is required by the 1933 Act, the 1934 Act or the 1939 Act or the Arizona Blue Sky Law (or if such filing or registration is required, it has been done in full accordance with the referenced act or acts). The final opinion of Bond Counsel (the bond opinion) and any supplemental opinion of Bond Counsel must be addressed to the Authority. In private placements, Bond Counsel’s opinion will be addressed to the Authority and the purchaser. If a guaranty agreement is an integral part of the bond security, the guarantor’s counsel must render an opinion stating that the Guaranty is in all respects binding upon the guarantor (including that good and sufficient consideration exists for the guaranty) and that no SEC or “Blue Sky” registration of the Guaranty is required, or if required, it has been done in full accordance with the referenced act or acts.
	3. **Indemnification**. The proceedings for the issuance of bonds by the Authority must contain an indemnification provision binding on the Applicant, as the borrower of bond proceeds, and any guarantor, in form and content acceptable to the Authority’s legal counsel, indemnifying the Authority, its past, present and future directors, officers, Executive Director, legal counsel, advisors and agents and Maricopa County, its past, present and future members of the Board of Supervisors and its employees and agents, individually and collectively, from any liability arising from or related to the bond issuance.
2. **Fees**
	1. **Fee Schedule.** The Financing Application fee, as set forth in the Authority’s Fee Schedule, is nonrefundable and shall be paid at the time a Financing Application is submitted. As a condition to the issuance of the bonds, an Applicant must agree to pay an Annual Administrative Fee to the Authority during the period the bonds are outstanding in accordance with Authority’s Fee Schedule published on the Authority’s website. Additional Fees are set forth on the Fee Schedule. The Authority shall not assess or bill any Applicant for any amount which would violate any covenant relating to arbitrage.
	2. **Other Fees and Costs.** By submitting a Financing Application the Applicant agrees to pay all costs and expenses incurred by the Authority, its Board or staff advisors, legal counsel and financial advisors (if any) related to the issuance of the bonds, regardless of whether the bonds are issued or sold. The Board may, at the expense of an Applicant, refer the Financing Application to a financial advisor and such other advisors as it deems necessary for review. The Applicant will be responsible for the retention and charges of any trustee or paying agent; however, the trustee or paying agents may agree to be paid from bond proceeds or revenues payable to the Authority by the Applicant. Multifamily projects generally require quarterly compliance reports and annual reviews at Applicant’s expense.
3. **Miscellaneous**
	1. **Procedural Policies**. These Procedural Policies will be considered to set forth minimum requirements and the Authority reserves the right to add additional requirements on a case‑by‑case basis. The Board may amend these Procedural Policies at any time. The Authority may, in its sole discretion, waive any requirement set forth herein.
	2. **Communication with the Authority**. Applicant may discuss the proposed financing with the Authority’s Executive Director, staff or legal counsel. An Applicant shall not initiate contact with individual members of the Board for purposes of soliciting support for or discussing an application without the approval of the Authority or the Authority’s legal counsel. All correspondence and submissions to the Authority are to be made as follows:

The Industrial Development Authority

 of the County of Maricopa

301 West Jefferson, 10th Floor

Phoenix, Arizona 85003

Attn: Executive Director

with copies to the Authority’s legal counsel:

William F. Wilder, Esq.

John J. Fries, Esq.

Ryley Carlock & Applewhite

3200 N. Central Avenue, Suite 1600

Phoenix, AZ 85012

Email: wwilder@rcalaw.com (602) 440-4802

Email: jfries@rcalaw.com (602) 440-4819

* 1. **Conflict of Interest**. The Authority and its Board members are subject to Arizona’s Conflict of Interest Law (A.R.S. § 38-501, et seq.) and notice of A.R.S. § 38-511 must be included in every contract to which the Authority is a party. An Applicant should take every precaution available to learn of and disclose any possible conflict between itself and Board members or officers or employees of the Authority or any “relative” (as defined in the Conflict of Interest Law) of any of the foregoing which might prohibit the Authority from completing the financing, especially where construction or other contracts may be signed before the bonds are authorized or issued.

**THE INDUSTRIAL DEVELOPMENT AUTHORITY**

**OF THE COUNTY OF MARICOPA**

**BOND FINANCING APPLICATION**

Thank you for considering The Industrial Development Authority of the County of Maricopa (“Authority”) for your bond financing. We look forward to working with you throughout the bond process. We encourage you to call us if you have any questions or wish to discuss the proposed financing.

**Instructions:** An Applicant seeking bond financing should provide the information requested below, together with a comprehensive written executive summary describing the proposed Project and the Plan of Finance. A word version of this Application is available to assist Applicant, but no specific form is required if the Applicant provides the requested information.

The Authority has posted on its website the Authority’s Procedural Policies to assist you in your Application. By submitting this Application to the Authority, the Applicant understands and agrees to comply with the terms and provisions of the Authority’s Procedural Policies, which are incorporated by reference and constitute part of this Application. Applicant agrees to pay to the Authority its application fee and if the bonds are issued, an annual Administrative Fee based upon the current Administrative Fee Schedule of the Authority.

Please return the completed Application to the Authority, together with the required application fee and the Financing Application Sworn Statement, verifying the information contained in the Application, to:

Shelby L. Scharbach, Executive Director
The Industrial Development Authority

 of the County of Maricopa

301 West Jefferson, 10th Floor

Phoenix, Arizona 85003
shelby.scharbach@maricopa.gov

With a copy to:

William F. Wilder
John J. Fries
Ryley Carlock &Applewhite
3200 N. Central Avenue, Suite 1600

Phoenix, AZ 85012
wwilder@rcalaw.com (602-440-8902)
jfries@rcalaw.com (602-440-4819)

**BOND FINANCING APPLICATION**

**Applicant: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Project Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Maximum Amount of Financing Requested (not to exceed)** **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Date Submitted: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

1. **The Applicant**
	1. Please provide Applicant’s name, address, telephone number, email address and any other applicable contact information and if an Applicant representative is named, for such representative.
	2. Please disclose the ownership and structure of the Applicant (for example, is the Applicant a corporation or another form of entity, for profit or nonprofit entity, who are the owners or members). Please indicate if the Applicant is a nonprofit entity and an exempt organization pursuant to Section 501(c) of the United States Internal Revenue Code of 1986, as amended, and provide a copy of the Internal Revenue Service Determination Letter.
	3. The names of all executive or managing officers, directors, managing members, and general partners of the Applicant.
	4. Describe whether Applicant has previously applied for bond financing before and if so, provide particulars.
	5. If the Applicant is currently rated or listed by any published rating agency, indicate the current rating of the Applicant?
2. **The Project**
	1. The location and a description of the Project to be financed.
	2. The current ownership of the Project site or property and if other than the Applicant, describe the interest of the Applicant and the terms upon which the site will be acquired.
	3. Please describe the anticipated impact of the Project on the community and Maricopa County, including the approximate number of persons to be employed at the Project, when completed and operational.
3. **Plan of Finance**
	1. Please provide an overview of the total financing for the Project, including any equity contribution, related party financing or other sources of financing.
	2. Please provide the anticipated uses for bond financing and the total financing for the Project.
	3. Indicate whether the bonds are to be sold in a private placement or in a public offering.
	4. Does the Applicant intend to seek a rating on the bonds from any rating agency? If so, provide the name or names of the rating agencies.
	5. Will the bonds be credit enhanced and, if so, what type of proposed credit enhancement?
	6. Applicant should provide copies of Applicant’s financial statements for the past two years (audited financial statements are to be provided if they exist).
4. **Timing**
	1. What is the anticipated closing date?
	2. Will the Applicant seek an inducement resolution?
	3. Will a TEFRA hearing be required?
	4. Describe any special timing issues that may affect the Project.
5. **The Financing Team**

Please provide the names, addresses and contact information, if currently known, for each member of the financing team for the bond issuance, including:

* 1. Applicant’s legal counsel.
	2. Bond counsel.
	3. Applicant’s financial advisor, if any.
	4. The designated placement agent or underwriter.
	5. The bond trustee, if any.
	6. The purchaser of the bonds if a private placement.
1. **Required Disclosures**
	1. Describe any current, threatened or pending material litigation involving the Applicant, the Applicant’s general partners, managing members or senior executives, as applicable.
	2. If any of Applicant’s officers, directors or partners have been convicted or are currently under complaint, charge or indictment for the alleged commission of a felony or have ever been charged or convicted of any civil, administrative or criminal offense regarding the issuance, sale or solicitation for sale of any type of security, Applicant must disclose and provide full particulars to the Authority.
	3. Applicant must disclose any actual or potential conflicts of interest with its officers, management, members or directors, parties to the financing, the Authority or the Authority’s Board of Directors.
2. **Verification**

The Application is supported by the Financing Application Sworn Statement:

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Applicant”), under penalty of perjury, state, affirm and agree as follows:

1. All facts and statements contained in the attached Financing Application and all Exhibits thereto are true and correct to the best of my knowledge and belief.
2. I know of no material adverse fact relating to the Applicant not mentioned in the Financing Application or the Exhibits thereto.
3. The Financing Application and all Exhibits thereto are in accordance with the Procedural Policies and Financing Application Guidelines of The Industrial Development Authority of the County of Maricopa (the “Authority”), and the Applicant consents to all investigations deemed reasonably necessary by the Authority as set forth therein.
4. The Applicant authorizes the release by the Authority and its Board of information concerning the Applicant as may be determined as reasonable or necessary by the Authority. The Applicant is aware of the State of Arizona’s conflict of interest statutes, A.R.S. § 38-501, et seq., as amended, and certifies that no member of the Authority or the Maricopa County Board of Supervisors, or any employee or associated staff thereof has a conflict of interest with the Applicant or the Project.
5. Whether or not the Applicant is granted preliminary approval, final approval, or whether the bonds are issued as applied for, the Applicant agrees to pay all costs and expenses incurred by the Authority, including but not limited to expenses incurred in the payment of fees to the Authority’s legal counsel and financial consultant, if any, related to the proceedings for the issuance of the bonds. If bonds are issued at the request of the Applicant, the Applicant agrees to pay the Authority’s Annual Administrative Fee, in accordance with the Authority’s Fee Schedule.

Respectfully submitted,

Dated:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Applicant

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature and Title of Applicant Representative

1. These Procedural Policies and Financing Application Guidelines supersede all prior procedures and guidelines of the Authority. [↑](#footnote-ref-1)