

# IDA APPLICATION FOR FINANCIAL ASSISTANCE

## Applicant Certifications

### **Local Labor Workforce, Equal Pay, and Unpaid Real Property Tax Certification**

Project applicants (the “Company”), as a condition to receiving Financial Assistance (including a sales tax exemption, mortgage recording tax exemption, real property tax abatement, and/or tax-exempt bond proceeds) from the Erie County Industrial Development Agency (the “Agency”), will be required to utilize qualified Local Labor, as defined and described in Section I, below, for all projects involving the construction, expansion, equipping, demolition and/or remediation of new, existing, expanded or renovated facilities (collectively, the “Project Site”).

Applicants for Financial Assistance must comply with the Erie County Industrial Development Agency Pay Equity Policy, as described in Section II, below, requiring recipients of Agency Financial Assistance to pay their male and female employees equal pay for equal work and to not otherwise engage in wage discrimination on the basis of gender.

Applicants for Financial Assistance must also confirm, as described in Section III, below, that the Applicant, and any party related to said Applicant (a “Related Party”), are paid and current with respect to all real property taxes, payments in lieu of taxes, assessments and/or special district charges (collectively, “Real Property Taxes”) due on account of the Applicant’s, or the Related Party’s, ownership in such real property, and confirm that the Applicant, or any Related Party, has not, within the prior five years, had such property or properties be the subject of a real property tax foreclosure or tax sale.

#### **I. Local Labor Workforce Certification**

##### Local Labor Defined

Local Labor is defined as individuals residing in Erie County, Niagara County, Chautauqua County, Cattaraugus County, Allegany County, Wyoming County, Genesee County, and Orleans County (collectively, the “Local Labor Area”).

##### Local Labor Requirement

At least 90% of all Project employees of the general contractor, subcontractor, or subcontractor to a subcontractor (collectively, the “Workers”) working on the Project Site must reside within the Local Labor Area. Companies do not have to be local companies as defined herein, but must employ local Workers residing within the Local Labor Area to qualify under the 90% local labor criteria.

It is understood that at certain times, Workers residing within the Local Labor Area may not be available with respect to a Project. Under this condition, the Company is required to contact the Agency to request a waiver of the Local Labor Requirement (the “Local Labor Waiver Request”) based on the following circumstances: (i) warranty issues related to installation of specialized equipment or materials whereby the manufacturer requires installation by only approved installers; (ii) specialized construction for which qualified Local Labor Area

Workers are not available; or (iii) documented lack of Workers meeting the Local Labor Area requirement. The Agency shall evaluate the Local Labor Waiver Request and make its determination related thereto based upon the supporting documentation received with such waiver request.

#### Local Labor Reporting Requirement

Companies authorized to receive Financial Assistance from the Agency will be required to file or cause to be filed a Local Labor Utilization Report (the "Report") on such form as made available by the Agency, and as directed by the Agency, which will identify, for each Worker, the city, town, or village and associated zip code that each such Worker is domiciled in. The Report shall be submitted to the Agency as follows: (i) immediately prior to commencement of construction activities; and (ii) on or by the next following quarterly dates of January 1, April 1, July 1, and October 1 and each quarterly date thereafter through the construction completion date.

In addition, the Agency, or its designated agents, shall have the right, during normal business hours, to examine and copy the applicable books and records of the Company and to perform spot checks of all Workers at the Project site to verify compliance with the Local Labor Requirement throughout the construction period.

#### Local Labor Workforce Enforcement

If Agency staff determines that: (i) the Local Labor Requirement is not being met; or (ii) Agency staff, upon use of its reasonable discretion, discovers or becomes aware of a compliance issue related to the Local Labor Requirement, then written notice delivered by Certified Mail of said Local Labor Requirement violation (the "Notice of Violation") shall be provided to the Company. The Company shall have 10 business days thereafter to either: (i) provide written confirmation to the Agency indicating that it has cured the violation and is now in compliance with the Local Labor Requirement; (ii) submit the Local Labor Waiver Request as described above; or (iii) confirm in writing its inability to meet the Local Labor Requirement. If the Company does not respond to the Agency's Notice of Violation, or if the Company confirms its inability to meet the Local Labor Requirement then the Agency shall immediately terminate any and all Financial Assistance being provided to the Project in accordance with the terms of the underlying agreements between the Agency and the Company with respect to the Project. If a Local Labor Wavier Request is submitted and the Agency declines to issue the requested waiver, then the Company shall have 10 business days after receipt of the notice of the waiver request denial to provide written confirmation to the Agency indicating that it has cured the violation and is now in compliance with the Local Labor Requirement. If the Agency does not receive such confirmation, the Agency shall then immediately terminate any and all Financial Assistance being provided to the Project in accordance with the terms of the underlying agreements between the Agency and the Company with respect to the Project.

## **II. Equal Pay Certification**

The Company hereby certifies and confirms that it has read, reviewed, and understands the requirements contained within the Erie County Industrial Development Agency Pay Equity Policy and, as related thereto, that it may be subject to a compliance audit, related thereto, by the

Erie County Division of Equal Employment Opportunity. The Company hereby certifies that it is in compliance with the provisions prohibiting wage discrimination on the basis of gender as found in federal law, including the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, Federal Executive Order 11246 of September 24, 1965 and New York State Labor Law Section 194 (together “Equal Pay Law”).

The Company further agrees and understands that submission of the Pay Equity Policy’s Equal Pay Certification is a material component upon which the Agency will determine whether to permit and continue to permit Financial Assistance to be provided to the Company, and further confirms and understands that violation of the provisions of the Pay Equity Policy may: (i) constitute a material term and condition violation under the agreements by and between the Agency and the Company by which the Agency provides Financial Assistance; (ii) be grounds for the immediate termination of Agency Financial Assistance; and (iii) constitute grounds for recapture by the Agency of any Financial Assistance granted by the Agency to the Company, subject to the Agency’s “Policy for Termination of Agency Benefits and Recapture of Agency Benefits Previously Granted”.

The Company hereby confirms and certifies that it has evaluated wages and benefits to ensure compliance with the provisions prohibiting wage discrimination on the basis of gender as contained within the Equal Pay Law. The Company further certifies that: (1) it has not been the subject of any state or federal court finding of unlawful wage discrimination on the basis of gender as contained in any of the statutes, regulations or orders referenced above as the “Equal Pay Law” within the previous five years; and (2) that it has not been the subject of any probable and/or reasonable cause determination by a state or federal department or agency indicating wage discrimination on the basis of gender as contained in any of the statutes, regulations or orders referenced above as the “Equal Pay Law” within the previous five years. In addition, the Company has annexed to this Equal Pay Certification, if applicable, a detailed description of any currently pending claims under the Equal Pay Law, as described herein, in which it is involved and confirms, understands, and agrees that it will report to the Agency any Equal Pay Law claims or determinations, as described herein, during the term of the applicable Financial Assistance monitoring and recapture period (said period running through and for two years after issuance of a sales tax exemption benefit if no real property tax abatement is provided, and through the seven or ten year term (as applicable) of an Agency payment-in-lieu-of-tax agreement).

**III. Unpaid Real Property Tax/Special District Charges Certification**

A. The Applicant hereby confirms and represents that:

- (i) the Applicant, and
- (ii) if applicable, any party related to the Applicant (which includes any person or entity holding at least a 25% ownership interest in the Applicant (a “Related Party”))

holding, at a minimum, directly or indirectly, a 25% ownership interest in any real property or in an entity that holds title to real property, within Erie County, New York is, notwithstanding any challenges under Article 78 of the New York Civil Practice Law and

Rules or Article 7 of the New York Real Property Tax Law, and, notwithstanding any current claims or lawsuits against said Applicant and/or Related Party with respect to real property taxes, payments in lieu of taxes, assessments and/or special district charges, **paid and current** with respect to all real property taxes, payments in lieu of taxes, assessments and/or special district charges due on account of said Applicant's and/or Related Party's ownership interest in any such real property regarding such obligations.

B. The Applicant hereby confirms and represents that:

- (i) the Applicant, and
- (ii) if applicable, any Related Party

holding, at a minimum, directly or indirectly, a 25% ownership interest in any real property or in an entity that holds title to real property, within Erie County, New York, has not, within the prior five (5) years, had such property or properties be the subject of a real property tax foreclosure or tax sale.

The foregoing terms as contained with Section I, Section II, and Section III of this Local Labor Workforce, Equal Pay, and Unpaid Real Property Tax Certification have been read, reviewed and understood by the Company and all appropriate personnel and the statements and representations made by the Company herein are true. The undersigned agrees and understands that the information contained herein with respect to use of local labor must be transmitted and conveyed in a timely fashion to all applicable subcontractors, suppliers and materialmen. Furthermore, the undersigned realizes and understands that failure to abide by the terms herein could result in the Agency making a determination to not authorize the Financial Assistance as so requested, or, revoking and/or recapturing all or any portion of Financial Assistance, whether already received or to be received by the Company, as it deems reasonable in its sole discretion for any violation hereof.

**NAME OF COMPANY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public