

Niagara County Industrial Development Agency
6311 Inducon Corporate Dr. - Sanborn, New York 14132
(716) 278-8760 Fax (716) 278-8769

Application for Assistance

Please answer all questions on the **Niagara County Industrial Development Agency Application and Environmental Assessment Form**. Information submitted as part of this application will not be made public prior to the passage of an Official Action Resolution by the Agency. After such action, this information may be subject to disclosure under the New York State Freedom of Information Act.

Prior to application submission, this project was reviewed with **Lawrence Witul** of the Niagara County Industrial Development Agency and assigned Project Number _____.

I. Company Data

A. Company Name: **Ashland Advanced Materials LLC.and/ or an entity to be formed**

Address: **6100/6200 Niagara Falls Blvd., Niagara Falls, New York 14304**

Telephone: **419.281.5800**

Fax: **419.281.0059**

Email: **mattr@reinekecompany.com**

Website: N/A

IRS Identification No.: **11-3840639**

Company official completing this application and authorized to respond on behalf of the company:

Name: **Matt Reineke**

Title: **President**

B. Company Owners, Officers, Directors and Partners: List name and home address, title and other principal business affiliations.

Matt Reineke
21 Benton Road
Saginaw, MI 48602
55% ownership in AAM LLC

Lee Reineke
P.O. Box 199
Nankin, OH 44848
45% ownership in AAM LLC

Ashland Advanced Materials LLC, (AAM LLC) is the operating company who will lease the Niagara Falls property from Graphite Mine Holdings LLC. Graphite Mine Holdings, LLC (GMH) is a NY Limited Liability Company that is privately owned by Lee and Matt Reineke for the purpose of owning the Niagara Falls property; 100% of GMH's shares are owned by Ashland Advanced Materials Inc.

Ashland Advanced Materials Inc. is a New York Sub chapter S corporation that is also privately owned by Lee and Matt Reineke with 100% of its' shares held by PMG Acquisitions Inc. DBA Americarb. Ashland was formed in March of 2008 to purchase certain assets and expand certain businesses of Reineke Advanced Technology Inc. and Amerciarb Inc., both wholly owned and operated by Lee and Matt Reineke.

Legal Counsel: **Joe Tegreene, Esq., Benesch Frielander et al**
Address: **200 Public Square, Suite 2300, Cleveland OH 44114**
Telephone: **216.363.4500** Fax: **216.363.4588**
Email: **jtegreene@bfca.com**

D. Accountant (Firm): **Ron Pribula, Kuhns, CPA's**
Address: **9700 Rockside Road, Cleveland OH 44125**
Telephone: **216.573.7395** Fax: **216.573.7370**
Email: **ron@kuhnscpa.com**

E. Principal Bank of Account: **Sutton Bank**

F. Type of Business Corporation Sub Chapter S Partnership
 Sole Proprietorship Other LLC

G. Is Company authorized to do business in New York State? Yes No

H. Principal Stockholders with 5% or more of stock outstanding in the company:

| <u>Name</u> | <u>Address</u> | <u>% of Holding</u> |
|---------------------------|---|---------------------|
| Matt Reineke | 21 Benton Road Saginaw, MI 48602 | 55% |
| <u>Lee Reineke</u> | P.O. Box 199 Nankin, OH 44848 | 45% |

I. List subsidiary, associate, and/or affiliated companies of applicant.

Ashland Advanced Materials LLC, (AAM LLC) is the operating company who will lease the Niagara Falls property from Graphite Mine Holdings LLC. Graphite Mine Holdings, LLC (GMH) is a NY Limited Liability Company that is owned by Lee and Matt Reineke for the purpose of owning the Niagara Falls property; 100% of GMH's shares are owned by Ashland Advanced Materials Inc.

Ashland Advanced Materials Inc. is a New York Sub chapter S corporation that is also privately owned by Lee and Matt Reineke with 100% of its' shares held by PMG Acquisitions Inc. DBA Americarb. Ashland was formed in March of 2008 to purchase certain assets and expand certain businesses of Reineke Advanced Technology Inc. and Americarb Inc., both wholly owned and operated by Lee and Matt Reineke.

J. Is the Company or management of the Company now a plaintiff or a defendant in any civil or criminal litigation? Yes No **X**

Has any person listed above ever been convicted of a criminal offense (other than a minor traffic violation)? Yes No **X**

Has any person listed above or any concern with whom such person has been connected ever been in receivership or been adjudicated a bankrupt? Yes No **X**

If the answer to any of the above questions is yes, please, furnish details in a separate attachment.

K. Identify the assistance being requested of the Agency:

- | | |
|---|---------------------|
| (1) X Bond financing for new project; estimated amount | \$10,000,000 |
| (2) <input type="checkbox"/> Bond/project refinancing; estimated amount | \$ |
| (3) X Lease/sale back | |
| (4) <input type="checkbox"/> Assignment of lease | |
| (5) X Exemption from Sales Tax; estimated benefit | \$60,000 |
| (6) X Exemption from Mortgage Tax; estimated benefit | \$20,000 |
| (7) X Exemption from Real Property Tax; estimated benefit | \$1,170,000 |

If you have selected (5), (6) or (7), indicate whether you are seeking a deviation from the Agency's uniform tax exemption policy: Yes ; No **X** If the answer is yes, please furnish details in a separate attachment.

(8) **X** Other (please furnish details in a separate attachment) **Direct Loan i/a/o \$450,000.**

II. Business Data

A. Company Background

1. Describe when and where was the company established?

Ashland Advanced Materials LLC (AAM LLC) is a graphite products company with manufacturing operations to be located in Niagara Falls, NY at 6100/6200 Niagara Falls Blvd. The company was formed on 5/08/2008, is owned by Matt and Lee Reineke and is authorized to do business in New York State. It will lease the production facilities from Graphite Mine Holdings LLC, also owned by Matt and Lee Reineke.

2. Describe the type of business
Graphite Manufacturing and ultra high temperature heat treating.

3. Description of Present Facilities:

Lot size: **15 acres (approx.) – 2 parcels** Number of buildings: **4**

Square footage of facilities: **Approx. 100,000 square feet total**

Owns OR Rents present facilities (**with option to purchase**)

4. What is the present employment of the company?

Full Time **0** # Part Time **0**

Estimated annual payroll: **\$0**

5. Approximate annual sales: **\$0**

6. Describe primary markets.

Companies requiring carbon structures such as nano tubes, carbon fibers, carbon fiber based rigid and flexible high temperature insulation, carbon composites, meso phase beads and high purity isostatic graphite, including, but not limited to those involved in the production of solar cells, fuel cells, wind mills and lithium ion batteries.

7. Provide a brief description of the company and its history.

Ashland Advanced Materials LLC was formed in 2008 to be a primary supplier of manufactured graphite products and ultra high temperature heat treating services. The company was formed to purchase the assets and expand certain businesses of Reineke Advanced Technology Inc. and Americarb, Inc., both of Ashland, Ohio. Ownership of Ashland Advanced Materials LLC is Matt Reineke (55%) and Lee Reineke (45%). The company is duly authorized to do business in New York State.

B. Provide types of business activity and approximate square feet of each for company's present facility:

| | Square Feet |
|-----------------------------------|--------------------|
| Manufacturing/Processing | 85,000 |
| Warehousing | |
| Research & Development | |
| Commercial | |
| Retail* | |
| Office | 15,000 |
| Other (specify) | |

* A retail business activity shall mean (i) sales by a registered vendor under article twenty-eight of the New York tax law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or (ii) sales of a service to such customers.

C. Describe principal goods, products and/or services of the company:

Graphite products and ultra high temperature heat treating services.

III. Project Data

A. Location of Proposed Project:

1. Physical Address of proposed Project Site:

Address: **6100/6200 Niagara Falls Boulevard**
City, Town, Village: **City of Niagara Falls, NY**
County: **Niagara County**

2. New York State Empire Zone Tax Incentives.

In addition to financial incentives that the Niagara County Industrial Development Agency can provide with respect to the proposed Project, the Project may also be eligible for New York State tax benefits (sales tax, income tax, and real property tax benefits and credits) under the New York State Empire Zone Program. Empire Zone tax benefits can be utilized concurrently with Niagara County Industrial Development Agency benefits and incentives.

Is the proposed Project Site located in an Empire Zone?

Yes No Unsure

(QEZE Certification in process)

3. New York State Brownfield Cleanup Program Tax Incentives

New York State provides for significant refundable New York State tax credits with respect to cleanup and construction (buildings and equipment) costs, real property tax expenses, and insurance costs related to remediating and developing a Brownfield/contaminated property. In addition, New York State provides for a release of liability with respect to such contamination located in, on or emanating from the Brownfield Site. New York State Brownfield Cleanup Program tax credits can be utilized concurrently with Niagara County Industrial Development Agency benefits and incentives.

Under the New York Brownfield Cleanup Program, a Brownfield or a Brownfield Site is any real property, the redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous waste, petroleum, pollutant, or contaminant (collectively, "contaminants").

Is the proposed Project Site located on a site where the known or potential presence of a contaminant(s) is complicating the development/use of the property?

Yes No Unsure

Has a Phase I Environmental Assessment been prepared or will one be prepared with respect to the proposed Project Site?

Yes No Unsure

Have any other studies or assessments been undertaken with respect to the proposed Project Site that indicate the known or suspected presence of contamination that would complicate the site's development?

Yes No Unsure

B. Existing Project Facilities:

1. Parcel Size: **15 Acres (approx.) – 2 parcels** **OR** ft. x _____ ft.

2. Are there existing buildings on the Project site? Yes ; No .

a. If yes, indicate the number of buildings on the site: **4**. Also, please briefly identify each existing building and indicate the approximate size (in square feet) of each such existing building:

| Building Description | Size |
|--------------------------------|---------------|
| Office | 15,000 |
| Manufacturing/Warehouse | 85,000 |
| | |
| | |

b. Are the existing buildings in operation? Yes ; No . If yes, describe present use of present buildings:

| Building | Use |
|-----------------|------------|
| | |
| | |
| | |
| | |

c. Are the existing buildings abandoned? Yes ; No . About to be abandoned? Yes ; No . If yes, describe:

- d. Attach photograph of present buildings.
3. Identify present landowner. **NFB Carbon Properties, LLC (both parcels)**
4. Present zoning of site: **M2 – Heavy Industrial**

Are there any variances or special permits affecting the Project site?
Yes No

If yes, list below and attach copies of all such variances or special permits.

5. Provide Tax Map (section/block/lot) number(s):
160.07-3-38.1, 160.07-3-38.2 (6100 and 6200 Niagara Falls Blvd. respectively)
6. List current assessed value: **\$732,375/\$371,500, respectively**
List current annual property tax payment: **\$45,230.79/22,953.64 respectively**
7. Identify school district pertaining to Proposed Project location:

Niagara Falls

C. Proposed Project Facility and Equipment

1. Does part of the Project consist of the acquisition or construction of a new building or buildings? Yes ; No .

If yes, indicate number and size of new buildings:

Acquisition of 4 (four) existing buildings totaling approximately 100,000 square feet

2. Does part of the Project consist of additions and/or renovations to existing buildings located on the Project site? Yes ; No .

3.

If yes, indicate the buildings to be expanded or renovated, the size of any expansions and the nature of expansion and/or renovation:

New concrete floor, patching of metal walls, internal repairs in main manufacturing building.

3. Describe the principal uses to be made by the Company of the building or buildings to be acquired, constructed or expanded:

Manufacturing of graphite products.

4. Will machinery and equipment be acquired and installed?

New: No Yes Type **Production (various)**

Used: No Yes Type **Production (various)**

Describe the principal uses to be made by the Company of the Equipment to be acquired or installed:

The equipment will be used in the manufacturing of graphite products and for ultra high temperature heat treating.

5. Project Use

- a. What are the principal products to be produced at the Project?

Carbon structures such as nano tubes, carbon fibers, carbon based rigid and flexible high temperature insulation, carbon-carbon composites, meso phase beads and high purity isostatic graphite used in technologies including, but not limited to solar cell, fuel cells, wind mills and lithium ion battery production.

5. Project Use

- b. What are the principal activities to be conducted at the Project?

| | % | | % |
|--------------|----|------------------------|----|
| Warehousing | 10 | Manufacturing | 85 |
| Processing | | Pollution control | |
| Office | 5 | Research & Development | |
| Retail* | | Commercial | |
| Recreational | | Other: | |

* A retail business activity shall mean (i) sales by a registered vendor under article twenty-eight of the New York tax law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or (ii) sales of a service to such customers.

- c. Does the Project include facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities? Yes ; No .

If yes, please see Addendum A attached hereto.

- d. Will the completion of the Project result in the removal of a plant or facility of the Company or another proposed occupant of the Project (a "Project Occupant") from one area of the State of New York to another area of the State of New York? Yes No If yes, please explain:

- e. Will the completion of the Project result in the abandonment of one or more plants or facilities of the Company located in the State of New York? Yes No

If yes, please provide detail: _____

- i. If the answer to either question (d) or question (e) is yes, indicate whether any of the following apply to the Project:

- (1) Is the Project reasonably necessary to preserve the competitive position of the Company or such Project Occupant in its industry? Yes No

If yes, please provide detail: _____

- (2) Is the Project reasonably necessary to discourage the Company or such Project Occupant from removing such other plant or facility to a location outside the State of New York? Yes No

If yes, please provide detail: _____

6. Is this a single phase or multi-phase project? Single Multi

Phase I Activities: **Acquisition of property, building renovations, utility upgrades, 2008**

Phase II Activities: **Remediation, 2009 (or to begin sooner, if cleared), some production**

Phase III Activities: **Full-scale production (2009)**

D. Utilities and services presently serving site. Provide name of utility provider.

| | | | |
|------------------|----------------------|--------|--------------------------|
| Gas: | National Fuel | Size: | 6-7" |
| Electric: | National Grid | Power: | 3.5 MW |
| Water: | Municipal | Size: | 2" |
| Sewer: | Municipal | Size: | 4", 10" connector |
| Other (specify): | | | |

E. What is your project timetable? (Provide dates)

1. Start date: acquisition or construction of facilities: **2008**
2. Completion of project facilities: **2010 (remediation)**
3. Project occupancy – starting date of operations: **2008**

F. Have any contracts or purchases been made, committed and/or executed toward the project? No Yes

If yes, please provide detail: Lease with purchase option for property

G. Has any work toward the completion of the project been initiated? No Yes,

If yes, please provide detail: _____

H. Will the project require any government actions, permits or clearances (other than IDA requirements)? If yes, please provide the following details:

| Action | Issuing Agency | Date of Issuance |
|-----------------------------|------------------|------------------|
| Site Facilities Air Permit | NYSDEC | TBD |
| SPEDES Permit | NYSDEC | TBD |
| Industrial Discharge Permit | City of N. Falls | TBD |
| Environmental Justice | | |

I. Include any site plans, drawings or blueprints that have been developed.

J. Does the Company intend to lease or sublease more than 10% (by area or fair market value) of the Project? Yes ; No . If yes, please complete the following for each existing or proposed tenant or subtenant:

Sublessee name: _____
 Present Address: _____
 Address: _____
 Employer's ID No.: _____

Sublessee is: Corporation Partnership Sole Proprietorship

Relationship to Company: _____

Percentage of Project to be leased or subleased: _____%

Use of Project intended by Sublessee: _____

Date of lease or sublease to Sublessee: _____

Term of lease or sublease to Sublessee: _____

Will any portion of the space leased by this sublessee be primarily used in making retail sales of goods or services to customers who personally visit the Project?

Yes No .

If yes, please provide on a separate attachment: (a) details, and (b) the answers to questions III(D)(6)(c) through (f) with respect to each such sub lessee.

- K. Describe the reasons why this project is necessary and what effect it will have on your company:

Recent technological advances, increasing world-wide demand and rising energy costs have made it economically feasible for large-scale production of carbon-based components required for solar cells, fuel cells, wind mills and lithium batteries. The acquisition of this facility will make it possible for Ashland to produce at rates that out paces current supply from the market and for the future. The availability of key personnel from the previous graphite company that vacated the property in 2002 will help to make the proposed Niagara Falls operation a force to be dealt with in the world-wide market for carbon products.

Incentives from various sources are absolutely necessary in order to incentive the project to locate in New York State, as the state of Ohio has generous grant programs through its "Third Frontier Program" that are available to the company.

IV. Employment Impact

- A) Will Niagara County contractors and / or sub contractors be utilized for the construction project? Yes **X** No .
- B) What is the estimated number of construction jobs to be created at the project site from Niagara County: **12** Erie County **1** Other Areas **2**
(National Maintenance Contracting Corp. and Niagara Lock)
- C) Indicate below the number of people presently employed at the Project site and the number that will be employed at the Project site at end of the first and second years after the Project has been completed (Do not include construction workers). Also indicate below the number of workers employed at the Project site representing newly created positions as opposed to positions relocated from other project sites of the applicant.

| TYPE OF EMPLOYMENT | | | | |
|---|---|---|------------------|---------------|
| | PROFESSIONAL OR MANAGERIAL | SKILLED OR SEMI- SKILLED | UNSKILLED | TOTALS |
| Present Full Time | 0 | 0 | 0 | 0 |
| Present Part Time | 0 | 0 | 0 | 0 |
| Present Seasonal | 0 | 0 | 0 | 0 |
| First Year Full Time (by 12/31/09) | 5 | 35 | 20 | 60 |

| TYPE OF EMPLOYMENT | | | | |
|--|----------------------------------|--------------------------------|-----------|--------|
| | PROFESSIONAL OR MANAGERIAL | SKILLED OR SEMI- SKILLED | UNSKILLED | TOTALS |
| First Year Part Time | 0 | 0 | 0 | 0 |
| First Year Seasonal | 0 | 0 | 0 | 0 |
| Second Year Full Time (by 12/31/09) | 7* | 45* | 23* | 75* |
| Second Year Part Time | 0 | 0 | 0 | 0 |
| Second Year Seasonal | 0 | 0 | 0 | 0 |

* Job numbers for the second year are written as cumulative totals.

V. Project Cost Data

A. Give breakdown of project costs:

| | |
|---|--------------------|
| Land | \$300,000 |
| Buildings: Acquisition | \$1,490,000 |
| Renovation | \$550,000 |
| New Construction | \$0 |
| Demolition | \$ |
| Utilities and Road | \$ |
| Site work and preparation | \$ |
| Acquisition of machinery & equipment | \$7,000,000 |
| Installation | \$ |
| Architectural and engineering fees | \$ |
| Legal fees | \$ |
| Interest during construction | \$ |
| Other | \$400,000 |
| TOTAL | \$9,740,000 |
| <p>An additional \$9,550,000, primarily comprised of equipment purchases, furniture and renovations is projected in years four and five, this bringing the five year total to \$19,290,000.</p> | |

Have any of these expenditures been incurred to date? No Yes If yes, identify:

B. Summary of Financing

| | |
|--|--------------------|
| Total Project Costs | \$9,740,000 |
| Amount of Bond or Leaseback financing | 9,740,000 |
| Amount of Conventional financing | |
| Equity | |

C. Will any part of the project be financed with funds of the company? No Yes, If yes, please provide detail:

| | |
|--|--|
| | |
| | |
| | |
| | |

D. Will other forms of government financing be used to undertake the project: No Yes
If yes, please provide detail:

| Program | Amount | Status |
|----------------------|----------------|-----------------------------------|
| ESD | TBD | Application Submitted 6/08 |
| National Grid | 250,000 | Application Submitted 6/08 |

E. Have financial institutions or potential bond purchasers been approached? No Yes

If yes, please provide detail:

F. List capital expenditures of the company:

| | Past 3 years | Next 3 years |
|---|---------------------|---------------------|
| Real Property | \$0 | \$550,000 |
| Buildings (includes land cost of \$300K) | \$0 | \$1,790,000 |
| Equipment | \$0 | \$7,000,000 |

VI. Financial and Feasibility Data

A. Describe the need or demand for the product or services to be provided as a result of the project:

World-wide demand for graphite and related products has greatly increased of late, spurred on by supply-demand factors, increasing utility costs, heightened interest in alternative energy sources and economic factors. This facility will allow Advanced to produce graphite products for those markets in an economically-viable manner and in a large-scale way.

B. Has the company utilized bond financing before? No Yes.

C. Provide any marketing, economic and/or feasibility studies that have been developed, particularly for tourist destination facilities.

(See attached materials)

D. The following information will be required by the Agency and returned once an action of the Agency has been taken:

1. Financial statements for the last three (3) years;
2. Projections for the next three (3) years including Balance Sheets, Profit and Loss Statements, Cash Flow Statements by quarters, etc.

VII. Financial Assistance Expected From The Agency

A. Tax Benefits.

1. Is the applicant requesting any real property tax exemption in connection with the Project that would not be available to a project that did not involve the Agency?
Yes No

If yes, is the real property tax exemption being sought consistent with the Agency's Uniform Tax Exemption Policy? Yes No

2. Is the applicant expecting that the financing of the Project will be secured by one or more mortgages? Yes No

If yes, what is the approximate amount of financing to be secured by mortgages?
\$ 2,000,000.

3. Is the applicant expecting to be appointed agent of the Agency for purposes of avoiding payment of N.Y.S. Sales Tax or Compensating Use Tax? Yes No .

If yes, what is the approximate amount of purchases which the applicant expects to be exempt from the N.Y.S. Sales and Compensating Use Taxes? **\$1,000,000.**

4. What is the estimated value of each type of tax-exemption being sought in connection with the Project? Please detail the type of tax-exemption and value of each exemption.

- a. N.Y.S. Sales and Compensating Use Taxes: **\$80,000**
- b. Mortgage Recording Taxes: **\$20,000**
- c. Real Property Tax Exemptions: **\$1,170,000**
- d. Other (please specify):
_____ \$ _____
_____ \$ _____

5. Are any of the tax-exemptions being sought in connection with the Project inconsistent with the Agency's Uniform Tax-exemption Policy?
Yes No .

If yes, please explain how the request of the applicant differs from the Agency's Uniform Tax-Exemption Policy: _____

VIII. Representations By The Applicant

The applicant understands and agrees with the Agency as follows:

- A. Job Listings. In accordance with Section 858-b(2) of the New York General Municipal Law, the applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the "DOL") and with the administrative entity (collectively with the DOL, the "JTPA Entities") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA") in which the Project is located.
- B. First Consideration for Employment: In accordance with Section 858-b(2) of the New York General Municipal Law, the applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, where practicable, the applicant will first consider persons eligible to participate in JTPA programs who shall be referred by the JTPA Entities for new employment opportunities created as a result of the Project.
- C. Annual Sales Tax Filings: In accordance with Section 874(8) of the New York General Municipal Law, the applicant understands and agrees that, if the Project receives any sales tax exemptions as part of the Financial Assistance from the Agency, in accordance with Section 874(8) of the General Municipal Law, the applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the applicant and all consultants or subcontractors retained by the applicant.
- D. Annual Employment Reports: The applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, the applicant agrees to file, or cause to be filed, with the Agency, on an annual basis, reports regarding the number of people employed at the project site.
- E. Absence of Conflicts of Interest: The applicant has received from the Agency a list of the members, officers and employees of the Agency. No member, officer or employee of the Agency has an interest, whether direct or indirect, in any transaction contemplated by this Application, except as hereinafter described: _____

CERTIFICATION

(to be executed by the principal of the applicant and acknowledged by a notary public)

- I. **Lee Reineke**, deposes and says that he/she is the **CEO of Ashland Advanced Materials LLC**, named in the attached Application (the "Applicant"); that he/she has read the foregoing Application and knows the contents thereof, and that the same is true to his/her knowledge.

- II. The grounds for deponent's belief relative to all matters in the Application which are not stated upon his/her own personal knowledge, are investigations which deponent has caused to be made concerning the subject matter of the Application, as well as information acquired by deponent in the course of his/her duties as an officer of and from the books and papers of said corporation or other entity.

- II. As an officer of the Applicant deponent acknowledges and agrees that the Applicant shall be and is responsible for all costs incurred by the Agency and all legal counsel for the Agency, including its general counsel and/or bond/transaction counsel, whether or not the Application, the proposed project it describes, the attendant negotiations, or the issue of bonds or other transaction or agreement are ultimately ever carried to successful conclusion and agrees that the Agency shall not be liable for and agrees to indemnify, defend and hold the Agency harmless from and against any and all liability arising from or expense incurred by (A) the Agency's examination and processing of, and action pursuant to or upon, the Application, regardless of whether or not the Application or the proposed project described herein or the tax exemptions and other assistance requested herein are favorably acted upon by the Agency, (B) the Agency's acquisition, construction and/or installation of the proposed project described herein and (C) any further action taken by the Agency with respect to the proposed project; including without limiting the generality of the foregoing, all causes of action and attorney's fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing.

- IV. By executing and submitting this Application, the Applicant covenants and agrees to pay the following fees to the Agency and the Agency's general counsel and/or the Agency's bond/transaction counsel, the same to be paid at the times indicated:
 - (a) The sum of one thousand dollars (**\$1,000**) as a non-refundable processing fee, plus the sum of _____ if Agency assistance in retaining professionals is requested, to be paid upon submission of the Application;

 - (b) Unless otherwise agreed to by the Agency, an amount equal to ~~one and one-quarter percent (1.25%)~~ of the total project costs to be paid at transaction closing;

- (c) All fees, costs and expenses incurred by the Agency for (1) legal services, including but not limited to those provided by the Agency's general counsel and/or the Agency's bond/transaction counsel, thus note that the Applicant is entitled to receive a written estimate of fees and costs of the Agency's general counsel and the Agency's bond/transaction counsel; and (2) other consultants retained by the Agency in connection with the proposed project; with all such charges to be paid by the applicant at the closing.
- V. By executing and submitting this Application, and in the event the closing does not occur, the Applicant further covenants and agrees to pay the following fees to the Agency and the Agency's general counsel and/or the Agency's bond/transaction counsel:
- (a) ~~If the Applicant fails to conclude or consummate the necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable proper or requested action, or withdraws, abandons, cancels, or neglects the Application, the Applicant shall pay to the Agency, its agents, or assigns, upon presentation of an invoice, a sum of one and one quarter percent (1.25%) of (i) the amount of bond financing requested; or (ii) the amount on which the financial assistance for the proposed project was determined, and upon presentation of an invoice, all actual costs involved with respect to the Application, including but not necessarily limited to fees of the Agency's general counsel and/or the Agency's bond/transaction counsel; or~~
- (b) If the Applicant is unable to find buyers willing to purchase the bond issue requested, or if the Applicant is unable to facilitate the sale/leaseback transaction, then upon presentation of an invoice, all actual costs involved with respect to the Application, up to that date and time, incurred by the Agency including but not necessarily limited to fees of the Agency's general counsel and/or the Agency's bond/transaction counsel.
- VI. The Applicant acknowledges and agrees that all payment liabilities to the Agency and the Agency's general counsel and/or the Agency's bond and/or transaction counsel as expressed in Sections IV and V are obligations that are not dependent on final documentation of the transaction contemplated by this Application.
- VI. The cost incurred by the Agency and paid by the Applicant, including bond/transaction counsel fees and the Agency's general counsel's fees and the processing fees, may be considered as a costs of the project and included in the financing of costs of the proposed project, except as limited by the applicable provisions of the Internal Revenue Code with respect to tax-exempt bond financing.
- VI. The Applicant is aware and acknowledges that according to the New York Public Officer's Law, Article 6, Freedom of Information, the public has the right to request information about the project and the Applicant, and that in accordance with Public Officer's Law Article 7, all meetings of the Agency are open to the public.