

**ALLENTOWN NEIGHBORHOOD IMPROVEMENT ZONE
DEVELOPMENT AUTHORITY**

**Guidelines for Obtaining Financing
for Projects in the City of Allentown's
Neighborhood Improvement Zone**

1. Purposes of These Guidelines

1.1 General.

These Guidelines provide information for businesses, developers and other entities (collectively, "Applicants") seeking financing through the Allentown Neighborhood Improvement Zone Development Authority (the "Authority") for qualified projects within the Neighborhood Improvement Zone ("NIZ") within the City of Allentown (the "City"). Applicants are encouraged to improve and develop properties within the NIZ by utilizing financing available pursuant to the NIZ Act (described below).

Included in these Guidelines is background on the creation of the NIZ, the requirements of the NIZ Act, criteria Applicants should consider when seeking financing for a project within the NIZ ("Project") through the Authority, and procedures for applying for financing. As further described herein, the financing process includes the following four stages of review and approval by the Authority:

1. ***Qualification Stage.*** An initial, non-binding confirmation of interest by the Authority to an Applicant. In this stage, a review of a proposed Project is provided by the Authority's Project Review Committee ("PRC") to determine if the project meets the preliminary criteria and requirements to receive NIZ financing. Once the Qualification Stage is completed, the Applicant can proceed to the Application Phase. Please refer to PRC Criteria in Section 4.1.3, following.
2. ***Application Stage.*** A formal application for NIZ financing is prepared and submitted by the Applicant for Authority approval for a specific Project or initial phase(s) of a multi-phased Project.

3. **Review and Approval Stage.** This is a two-part application process. Following approval by the Authority, a formal review of the Project must be completed by Moody's Investor Services ("Moody's") to determine that the proposed Project will not materially adversely affect the NIZ Revenues supporting the outstanding bonds relating to the construction of the Arena and a review and approval must be completed by the Pennsylvania Department of Community and Economic Development ("PA DCED") under applicable law.

4. **Closing and Funding Stage.** This stage includes a closing of financing for an approved application and fund transfers from the Lender to the Applicant of qualified project costs.

1.2 Creation and Purpose of the NIZ; Use of Certified Tax Revenues; Statutory Background

The Authority is a public instrumentality of the Commonwealth of Pennsylvania (the "Commonwealth") and is authorized pursuant to the Economic Development Financing Law, 73 P.S. 371 *et seq.*, as amended (the "Financing Law"). The Authority is the successor contracting authority to the Allentown Commercial and Industrial Development Authority ("ACIDA") for purposes of administering, providing financing for and undertaking all other activities related to the NIZ.

On August 28, 2011, effective as of September 6, 2012, ACIDA designated the NIZ within the City pursuant to authorization provided in special legislation initially enacted by the Commonwealth and found in Article XVI-B of the Pennsylvania Fiscal Code, now part of the Tax Reform Code of 1971, in Article XIX-B, 72 P.S. Section 8901-B *et seq.* (the "NIZ Act"). .

The NIZ consists of approximately 127 acres located in Allentown partially in center city and partially along the western side of the Lehigh River. A map showing the boundaries of the NIZ is attached as Annex I.

The NIZ was established for the purpose of revitalization and furthering development and redevelopment in the City. The NIZ Act provides that certified state and local tax revenues from Qualified Businesses may be used for payment of debt service on bonds or loans issued for the improvement and development of qualified capital improvements within the NIZ. Such capital projects include, but are not limited to, an arena for professional sports and various other uses such as residential, office, commercial, exhibition, hospitality, conference and retail.

The Authority has constructed an 8,500 seat arena and has issued bonds (the "Arena Complex Bonds") to finalize the project costs of the arena. All certified state and local tax revenues generated by Qualified Businesses (including employee taxes) existing in the NIZ not allocated to developer projects shall be applied to fund debt service on the Arena Complex Bonds.

Tax Revenues from new Qualified Businesses starting up or moving into the NIZ within property owned or controlled by Applicants will be available to secure debt of the Authority issued to finance projects for Applicants. In addition, in certain cases, increased Tax Revenues resulting from an existing Qualified Business expansion may also be available to secure new financing.

1.3 Disclaimers

These Guidelines are intended for informational purposes only. They are not meant to constitute any contractual offer or promise by the Authority. These Guidelines shall not be construed to limit in any way the discretion of the Authority. To the extent of any inconsistency between these Guidelines and the provisions of the Financing Law and the NIZ Act as they may be amended or interpreted, the provisions of such laws shall control. These Guidelines speak as of the date set forth above and while the Authority intends to update them as appropriate from time to time, Applicants should seek and rely upon the advice of their own advisors with respect to matters of law and business judgment in any way relevant hereto.

1.4 Questions and Requests for Additional Information

Should you have any questions regarding these Guidelines, the NIZ, financing through the Authority or otherwise, please contact the Authority's Executive Director, Steven Bamford, sbamford@allentownniz.com

Common questions may be addressed in future Authority Guidelines.

2. Projects Eligible for NIZ Financing by the Authority

The following is a summary of significant guidelines and requirements for new development projects. These are outlined here solely for discussion purposes by the Authority.

2.1 Eligible Applicants

Applicants may include both for-profit and not-for-profit entities as well as individuals.

The Authority will consider applications from joint ventures. When submitting joint-venture proposals, all parties must provide all applicable application documents.

2.2 Eligible Projects

In order to be eligible for NIZ financing through the Authority, all projects must be in compliance with the City's zoning ordinances (City Ordinance No. 14835, which may be accessed on the City's website at www.allentownpa.gov) and be in general conformance with the "Downtown Allentown Development and Urban Design Plan" prepared by Goody Clancy dated December 2014 or the "Lehigh Riverfront Master Plan prepared by EDSA dated August, 2012," both of which are available on the city's website. *The City's Director of Planning will provide a report to the Authority at the Application stage.*

2.3 Design Review Committee Recommendations:

In addition to complying with all city development related ordinances, the project will also be reviewed by a Design Review Committee which will provide a report at the Application Stage to the Authority as to the project's conformance with Design Guidelines.

2.4 Timelines for Completion of Projects and Expenditure of Funds

All projects generally must be completed and issued a Certificate of Occupancy within 24 months of the date of Closing for the financing. Applicants should reflect this in their project timeline. However, the Authority may approve a different timeline depending on the size and scope of the Project.

2.5 Fees:

2.5.1 With the formal application, applicant shall pay a non-refundable deposit of \$2,000.00 to be used by the Authority as an offset to the out of pocket costs incurred by the Authority related to the Project and the loan.

2.5.2 The Applicant shall pay a fee to the Authority upon closing of the financing of 20 basis points on the amount financed with a minimum \$5,000 fee applicable to all financings less than \$2,500,000.00. This Authority fee will not be due if the financing does not close.

2.5.3 The Applicant shall reimburse the Authority and the City for all out of pocket costs related to the review and processing of any application for financing and for Transaction Costs related to a financing. Such reimbursement shall not be conditioned upon the financing closing. The non-refundable deposit set forth in Sec. 2.5.1 above shall be used as a credit against the amount of the reimbursement due to the Authority. Transaction Costs include but are not limited to Authority legal costs, Finance Advisor fees, fees payable to Moody's and all other out of pocket costs and expenses incurred by the Authority.

2.5.4 During the life of the financing, 20% of all eligible taxes certified to an approved project will be retained by the Authority, while 80% of the certified taxes shall be allocated to an approved financing. (see Section 4.3.1.2 following)

2.5.5 In addition, for the life of the financing, the Applicant shall also pay a fee to the Authority for the ongoing administrative costs incurred by the Authority. A fee structure subject to change by the Authority from time to time that is consistent with similar Authority fee structures in the Commonwealth will be utilized to cover such costs. Presently the annual fee is 10 basis points of the original principal amount of the financing.

2.5.6 The Applicant, not the Authority or City, is responsible for its own expenses related to the application and financing. Not more than 2% of the proceeds of such financing may be applied to closing costs and fees.

2.6. General Criteria that the Authority Will Consider in Selecting Projects for Financing

2.6.1 The Project will be developed in a manner consistent with the criteria used by the Authority in approving financing and in a manner consistent with the definition of “Facility Complex” in the NIZ Act. “Facility Complex” is defined to comprise a development or complex of residential, commercial, exhibition, hospitality, conference, retail and community uses.

2.6.2 The PRC and the Authority will be utilizing the criteria set forth in Section 4.1.3 following.

2.6.3 Locally or Domestically Sourced Materials: Preference will be given to the Applicants whose project plans involve the use of City, Pennsylvania or domestically sourced materials.

2.6.4 Projects must be in compliance with the Financing Law. Projects will not be approved if they would not be in compliance with any applicable federal, state or local laws.

2.6.5 The following types of projects may be considered to be ineligible for Authority NIZ financing:

2.6.5.1 financing a project in excess of the project’s cost;

2.6.5.2 any project proposing to relocate tenants, occupants or business existing in the NIZ to another location within the NIZ;

2.6.5.3 projects found not to be consistent with the City’s Downtown Allentown Development and Urban Design Plan or the Lehigh Riverfront Master Plan.

2.6.5.4 any project not located within the NIZ.

2.7. Certified Minority or Women Business Enterprise (MBE/WBE) Participation:

Preference will be given to the Applicants that are MBE/WBE certified in the Commonwealth or use of MBE/WBE certified subcontractors in the construction of the Project.

2.8 Certain Types of Projects May be Disfavored

2.8.1 The following types of projects, while eligible for Authority financing, may be disfavored and may require a more substantial justification to the Authority:

2.8.1.1 Projects involving uses that would require a variance or other action because they are not consistent with the City's zoning ordinances or represent a deviation from the Downtown Allentown Development and Urban Design Plan or the Lehigh Riverfront Master Plan.

2.8.1.2 Projects which may not be consistent with the Design Guidelines established for NIZ projects.

2.8.1.3 Projects which may create concerns related to traffic, mass transit or pedestrian access, lighting, view obstructions, noise, etc.

2.8.1.4 Projects which entail patterns of usage which may require markedly increased demand for public services (e.g., crowd management during off-hours requiring overtime from public safety officers).

3. Projects Costs Ineligible for Authority NIZ Financing, Financing and Insurance Requirements

3.1 Ineligible Project Costs

The following types of project costs are ineligible for Authority NIZ financing:

- Working capital
- Rolling stock
- Inventory/receivable financing
- Relocation costs for a business or its employees moving into the NIZ.
- Molds and dies

3.2 Permissible Parameters for Authority Financing; Security

3.2.1 *Authority Financing will generally be taxable for Federal Income Tax Purposes (Tax-Exempt for Certain Commonwealth or 501(c)(3) Purposes):* Certain projects may qualify for tax exempt financing if they are owned by a 501(c)(3) organization or a governmental entity and there is no private business use. The Authority can provide guidance to Applicants to resources available to determine whether a project may qualify for tax-exempt financing.

3.2.2 *Prepayment Provisions:* Separate from the requirements of any particular lender, the Authority imposes no pre-payment penalty.

3.2.3 *Mortgages, Security Interests—Lien Position*: Permitted subject to Authority approval.

3.3 Insurance Requirements

The Authority shall impose insurance requirements with respect to the Project, including but not limited to general liability and completion bonds with the Authority named as an insured. If insurance is required by Applicant's lender, the Authority may accept that coverage if the Authority is named as an additional insured.

4. Process for Obtaining Authority Approval of Financing of a Project in the NIZ

4.1 Stage 1: The Qualification Stage

The key components of the Qualification Stage are as follows:

4.1.1 A committee of ANIZDA, the PRC will receive project summaries from interested developers at a public meeting only after staff have reviewed and determined the completeness of the summaries. The summaries will not be more than fifteen pages (15) pages in length. The Applicant is responsible for submitting the original and all required copies.

4.1.2 The PRC has been established by the Authority to qualify potential projects prior to referral to the Authority members for approval. An Applicant must demonstrate adherence to the following criteria at **both** the Qualification Stage, and the Application Stage.

4.1.3 The PRC will consider the following criteria in reviewing projects:

4.1.3.1 **Project Narrative**: Applicant must submit a brief project narrative (no greater than one page) explaining the project to the Authority.

4.1.3.2 **Demonstration of Competency**: The Applicant must demonstrate historical capacity to develop comparable projects. If not, the applicant must contract with a developer who can demonstrate historical capacity to complete a comparable project.

4.1.3.3 **Project Cost Estimates/Sources and Uses of Funds**: Applicant must provide estimated total development project costs (budget) and a matching source of funds schedule. Applicant must provide estimates from a reputable independent source, which can demonstrate experience in providing cost estimates on comparable projects. Project costs shall incorporate prevailing wage rates.

4.1.3.4 **Project Funding**: Applicant must provide a term sheet from a state or federal accredited lending institution permitted to conduct business in the City (e.g. bank, credit union); OR an accredited Investor per the definition of the Securities and

Exchange Commission. A minimum of 10% equity will be required in any project, and documented proof of that equity must be provided (see Section 4.3.1.3 below). Evidence of construction financing must also be provided. The Authority reserves the right to request the financial statements of the applicant and any related entities.

4.1.3.5 Financial Pro formas: Applicant must provide financial pro formas for the full term of the financing, including, the anticipated amount of NIZ tax revenues expected to be generated based on eligible tenants for the duration of the requested financing. General assumptions behind pro formas must also be provided. The expected 20/80 split of certified tax revenues between authority/developer must be shown in the pro forma.

4.1.3.6 Ownership: Applicant must provide ownership breakdown. Applicant must fully disclose any ownership interest in any companies or projects which may benefit from NIZ revenues.

4.1.3.7 Use of building: Applicant must provide a detailed site plan; schematic drawings of the proposed building; total square footage of proposed facility broken down by use of square footage; and an artist rendering with a description of intended materials to be used.

4.1.3.8 Letters of interest from any prospective tenants (if possible)

4.1.3.9 Evidence of site control

4.1.3.10 Job Creation Projection Schedule upon full build out

4.1.3.11 Project timeline: Applicant should provide a timeline of major milestones and construction activities.

4.1.4 Following a review of the summaries by the PRC, an initial non-binding confirmation of interest (or non interest) by the PRC shall be provided to the Applicant. Upon receiving a favorable non-binding confirmation of interest from the PRC, the Applicant can proceed to the Application Stage.

4.1.5 In the event that a period of time greater than 90 days lapses between Stage 1 (Qualification Stage) and Stage 2 (Application Stage), an Applicant will be required to re-submit the project to the PRC.

4.2 Stage 2: The Application Stage

4.2.1 A formal application for NIZ financing will be prepared and submitted to the Authority by the Applicant for full consideration. *The entire application which was submitted to the PRC for consideration, must be re-submitted to the Authority with updated information.*

4.2.2 The key criteria for the Application Stage are the same as for the Qualification Stage. See Section 4.1.3 above.

4.2.3 *In addition, the following additional detail must be provided:*

4.2.3.1 Listing of four largest customers and suppliers

4.2.3.2 A list of contractors, subcontractors and their qualifications (if known). If not known at application, a list of contractors and subcontractors must be provided and approved prior to closing.

4.2.3.3 Applicant must provide it's' three years' audited or reviewed financial statements or Federal tax returns and all supporting schedules. Applicants interim financial statements, including balance sheet and income statement dated within 90 days of the application are also required.

4.2.3.4 Projected occupancy report

4.2.3.5 A report from the City's Director of Planning which indicates general conformance/non-conformance with the December, 2014 "Downtown Allentown Development and Urban Design Plan," or the "Lehigh Riverfront Master Plan" prepared by EDSA dated August, 2012.

4.2.3.6 Design Committee Report Review Findings

4.2.4. Please note the following additional requirements:

4.2.4.1 The Applicant shall submit information to allow a third-party background check to be conducted.

4.2.4.2 The Authority may require the Applicant to cause its lender(s) and/or investors to submit underwriting information and analysis to demonstrate overall project feasibility and the financial capability of the Applicant to complete the project.

4.2.4.3 The Applicant must demonstrate the plan's conformance with the City's Downtown Allentown Development and Urban Design Plan or the Lehigh Riverfront Master Plan, the City's zoning ordinances and consistency with all applicable existing City ordinances, i.e., Artist and/or renderings of each type of space and representation of each type of space, offices, apartments and retail space.

4.2.4.4 The Applicant must provide conceptual drawings of the proposed Project. The Authority reserves the right to comment upon and approval of all design and engineering. The Applicant must demonstrate adherence to recommendations of the Design Review Committee.

4.2.4.5 The Applicant must submit a reasonably detailed feasibility analysis, including market research and financial analysis to the Authority for review, demonstrating long term viability of the proposed development.

4.2.4.6 Upon approval of the Project by the Authority, with the assistance of the Authority, the Applicant must (i) complete an application to the PA Department of Community and Economic Development (“PA DCED”) which must approve the Authority’s financing and (ii) provide information in writing required as part of a submission to Moody’s by the Authority to secure the proper waiver.

4.2.5 Depending upon the nature of the particular project and financing sought by an Applicant, the Authority may request or require certain additional information related to, among other things, how the Project may be integrated with or impact existing uses within the NIZ. Following are examples of additional information which may be requested:

- i. Phase I/Phase II or other environmental impact reports or assessments;
- ii. parking/traffic impact studies; and/or
- iii. Any other information the Authority requests.

4.2.6 As part of the process approval of the application, the Authority must adopt a resolution approving the Project and the financing. A signed commitment letter from the lender will be required. Since the Authority shall enter into the lender commitment letter, Applicant shall provide to the Authority the proposed term sheet and commitment letter during the negotiation of either document to allow for the Authority’s review, input and approval. Following approval from the PA DCED, and receipt of the Moody’s waiver, the Applicant may then proceed to the Closing and Funding Stage.

4.3 Stage 3: The Closing and Funding Stage

4.3.1 The key components of the Closing and Funding Stage are as follows:

4.3.1.1 The Authority shall be the borrower or issuer on any loan or bond under the Financing Act and the NIZ Act. If the project will be funded by a lender other than the Authority, the Applicant shall secure financing for its project and provide all necessary collateral, guarantees and credit enhancement that the lender may require. The Authority shall be the Borrower under such documents. Provided that the Authority’s obligations remain limited as described herein, the Authority expects to be able to accommodate different credit structures. Applicants should have the Authority included in receipt of loan documentation during negotiations and all loan documentation shall be subject to approval by the Authority.

However, the Authority does not expect to be involved in negotiation of business terms between the lender and Applicant. The Applicant shall indemnify the Authority from and against any and all claims, losses, damages or liabilities relating to the loan or the Applicant's project. Among other things, such indemnifications shall extend to securities law and environmental claims and proceedings. The Authority expects to fund Applicant's projects from loan proceeds on a periodic basis as approved capital expenditures are incurred. Thus, most loans would be expected to be draw-down loans. The Authority reserves the right to review and suggest modifications of all loan documents and project expenditures.

4.3.1.2 The revenues available for debt service on the Authority's obligations shall be limited to the qualified tax revenues under the NIZ Act paid by Qualified Businesses in the Applicant's Project that have moved into the NIZ after Closing (Increases in tax revenue generated by taxpayers who moved into the NIZ on or after Closing may be available to support future financings to the extent such revenues are not pledged as revenue to other projects of the Authority.) Except in the case of short-term, interim pre-development funding, a percentage of qualified tax revenues from businesses moving into the Applicant's Project shall be retained by the Authority (the "Authority Retention") to be determined by the Authority depending on the size and scope of the Project. The Authority's target is to retain a minimum of 20% of qualified tax revenue as its Authority Retention. The Authority may vary the Authority Retention based on circumstances of specific projects. The Authority reserves the right to use the Authority Retention for any permitted purposes under the Act, including pledging it to any obligations of the Authority.

4.3.1.3 The Applicant shall either contribute equity for the Project in a sufficient amount to support the underwriting of the Project, as determined by the Authority (minimum of ten percent) (10%), or provide a full-recourse guarantee by it and its principals on all or portion of the debt service, as approved by the Authority or a combination of both.

4.3.1.4 The Applicant and the Authority will enter into a funding agreement for the particular project outlining requirements related to the development of the financed project (the "Funding Agreement"). The Applicant shall provide the Authority with a detailed project budget as well as other documentation the Authority may require, including, but not limited to, a schedule of project milestones and related timelines, in order to review, inspect and fund the project. Any Funding Agreement shall be governed under Pennsylvania law and subject to the Authority and City's standard policies related to, among other matters, sub-contractors, procurement, forum selection, jury trial, indemnification and liquidated damages.

4.3.1.5 If an Applicant utilizes funding under the NIZ Act to purchase properties (including long-term leasehold interests), the Authority or the City shall have the right to purchase such properties at the Applicant's acquisition cost if the Applicant does not proceed to develop the properties within 24 months. Such properties may then be sold by the Authority to pay down debt associated with them. Such provisions will be specified in greater detail in the Funding Agreement with Applicant.

4.3.1.6 As set forth in the Funding Agreement, if the Applicant abandons or intends to transfer the Project to another party, the Authority reserves the right of first refusal to purchase the Project and any related property from the Applicant.

4.3.1.7 At closing, the Applicant must provide the following:

- i. a current good standing certificate from the Commonwealth;
- ii. certification that the Applicant is:
 - a) qualified to do business in Pennsylvania;
 - b) current in payment of all federal, state and local taxes;
 - c) in compliance with all applicable federal, state and local laws and regulations;
 - d) not in bankruptcy, in default on any loans or other extensions of credit, and has no unsatisfied judgments against it; and
 - e) in compliance with all other provisions under the NIZ Act and other applicable law, including the City's zoning ordinances;
- iii. a summary of any outstanding litigation;
- iv. certification that all property subject to development in the NIZ is in compliance with environmental regulations and provide a site assessment for each property; and
- v. an opinion of counsel to the Applicant acceptable to the Authority.

4.3.1.8 Transfers of approved project funds from the Authority to the Applicant will occur monthly or as agreed to. The Authority or its representative will review and approve all cost documentation submitted by the Applicant on a monthly basis or as needed prior to funding. The Authority may require that all cost documentation be certified by an Authority-approved third party inspecting engineer on a monthly basis prior to fund transfer.

4.3.1.9 The Applicant shall pay a fee to the Authority upon closing of the financing. The Applicant shall also reimburse the Authority and the City for all costs related to the review and processing of any application for financing and for transaction costs related to a loan. For more information about fees, please see "*Projects Eligible for NIZ Financing by the Authority* See Section 2.4 above".

4.3.1.10 Applicants should consult with their own tax advisors regarding the federal and state tax implications of the receipt of Authority NIZ funding.

5.0 Post Closing:

5.1 After closing, the applicant will annually file the reports in accordance with and required under the NIZ Act and submit copies thereof to the Authority within ten (10) days of the filing. With respect to any tenant, occupant or licensee within the Project, and with regard to any party performing services, professional or otherwise, construction or capital improvements to the Project (“Third Parties”), Applicants covenant that they will include in all contractual arrangements with such Third Parties requirements that they, too, annually file the reports in accordance with and required under the NIZ Act and submit copies thereof to the Authority within ten (10) days of the filing. Further, Applicant, shall include within each contractual arrangement with Third Parties, that the Third Parties, shall consent to the Authority disclosing and discussing the report filed with the Commonwealth of Pennsylvania, Department of Revenue, the City Finance and Tax Department, the Bank of New York Mellon Trust Company and Moody’s with the understanding that in all other respects the reports are confidential to the party filing.

5.2 The Authority shall have the right to review construction inspection reports being prepared for the Applicant’s financial institution, and if an adequate party is not hired in the Authorities opinion, the Authority has the ability to hire its own inspector at the applicants cost.

**Approved by Resolution R2015-64
On March 4, 2015**

Annex I

Map of City of Allentown Neighborhood Improvement Zone Boundaries