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TITLE 865 - I-195 REDEVELOPMENT DISTRICT

CHAPTER 10 - ADMINISTRATIVE

SUBCHAPTER 00 - N/A

PART 1 - Rules and Regulations for the I-195 Redevelopment Project Fund

1.1 Purpose.

These rules and regulations (the "Rules") are promulgated to set forth the principles, policies, and practices of the I-195 Redevelopment District Commission in providing financing pursuant to R.I. Gen. Laws Chapter 42-64.24, the I-195 Redevelopment Project Fund Act (the "Act").

1.2 Authority.

A. These Rules are promulgated pursuant to R.I. Gen. Laws Chapter 42-64.24.

B. These Rules have been prepared in accordance with the requirements of the Rhode Island Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

1.3 Scope.

These Rules shall apply to the provision of financing from the I-195 Redevelopment Project Fund. Notwithstanding anything contained in these Rules to the contrary, the I-195 Redevelopment District Commission shall have and may exercise all general powers set forth in the Act that are necessary or convenient to effect its purposes, and these Rules shall be liberally construed so as to permit the I-195 Redevelopment District Commission to effectuate the purposes of the Act, the public interest, and other applicable state laws and regulations.

1.4 Severability.

If any provision of these Rules, or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules shall not be affected thereby.

1.5. Definitions.

A. "Act" means R.I. Gen. Laws Chapter 42-64.24 known as the I-195 Redevelopment Project Fund Act.

B. “Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by an Applicant that is a Business. Control exists in all cases in which the entity is a member of a controlled group of corporations as defined pursuant to the Internal Revenue Code of 1986, 26 U.S.C. § 1563 or the entity is an organization in a group of organizations under common control as defined pursuant to 26 U.S.C. §§ 414(b) or (c). A taxpayer may establish by clear and convincing evidence, as determined by the Commission, that control exists in situations involving lesser percentages of ownership than required by those statutes.

C. “Applicant” means a Developer or Occupant applying for ~~I-~~195 Project Funding ~~Financing~~ under the Act and the Rules.

D. "Application for Funding" means the application for 195 Project Funding submitted by an Applicant in compliance with the Act and these Rules.

E. “Business” means a corporation as defined in R.I. Gen. Laws §§ 44-11-1(4), ~~or~~ a partnership, an S corporation, a non-profit corporation, sole proprietorship, or a limited liability company.

F.~~E.~~ “Capital Investment” in a Project means costs or expenses by a Business or any Affiliate of the Business incurred after Application for: site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property; or obtaining and installing furnishings and machinery, apparatus, or equipment, including but not limited to material goods for the operation of a business on real property or in a building, structure, facility, or improvement to real property.

G.~~F.~~ “Commission” means the I-195 Redevelopment District Commission established pursuant to R.I. Gen. Laws Chapter 42-64.14.

H.~~G.~~ “Developer” means a person, firm, corporation, partnership, limited liability company, association, political subdivision, or other entity that proposes to divide, divides, or causes to be divided real property into a subdivision or proposes to build, or builds a building or buildings or otherwise improves land or existing structures, which division, building, or improvement of land qualifies for benefits under the Act and these Rules.

I.~~H.~~ “Development Plan" means the I-195 Redevelopment District Development Plan adopted by the Commission dated September 20, 2023, as the same may be amended from time to time.~~Developer’s Toolkit” means the Commission’s published Developer’s Toolkit, as amended from time-to-time. The Developer’s Toolkit is available on the Commission’s web site.~~

J.~~I.~~ "195 Act" means R.I. Gen. Laws Chapter 42-16.14 known as the I-195 Redevelopment Act of 2011.

K. "~~I-~~195 Fund" means the fund established pursuant ~~to~~ to the Act. ~~R.I. Gen. Laws § 42-64.24-4.~~

~~J. "I-195 Fund Financing" means financing of a Project from the I-195 Fund.~~

L.~~K.~~ "~~I-~~195 Land" means the surplus land within the city of Providence owned by the I-195 Redevelopment District and any land within one-quarter mile of said surplus land.

M.~~L.~~ "195 Project Funding" means funding of a Project from the 195 Fund.

N. "Occupant" means a Business as a tenant, owner, or joint venture partner, occupying space pursuant to a lease or other occupancy agreement on the ~~I-~~195 Land or in a Project developed on such land.

O.~~M.~~ "Personal Property" means furniture, fixtures and equipment, except automobiles, trucks or other motor vehicles, or materials that otherwise are depreciable and have a useful life of one year or more, that are utilized for the Project for any given phase of the Project inclusive of a period not to exceed six (6) months after receipt of a certificate of occupancy for the given phase of the development.

P.~~N.~~ "Project" means a specific construction project or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands ~~under water~~underwater, riparian rights, space rights and air rights, acquired, owned, leased, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, undertaken by a Developer, owner or tenant, or both, at least a portion of which is contained on the ~~I-~~195 Land, adjacent and proximate parcels.

Q.~~O.~~ "Project Cost" means the costs incurred in connection with a Project by an Applicant or an Affiliate of an Applicant until the issuance of a permanent certificate of occupancy (less adjustments for pre-completion revenue), including, but not limited to, costs incurred for lands, buildings, improvements, real and personal property or any interest therein, including the site, space or air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, and any environmental remediation costs, plus reasonable soft costs as determined by the Commission, and~~,~~ ancillary infrastructure projects and infrastructure improvements as permitted in the sole discretion of the Commission.

R.~~P.~~ "Project Financing Gap" means:

1. the part of the Project Cost that remains to be financed after all other sources of capital have been accounted for (such sources will include, but not be limited to, Developer- contributed capital), including, but not limited to, Applicant's equity in the Project, a reasonable assumption of debt on

the Project, and any other capital source that is reasonably available given the nature of the Project; or

2. the amount of funds that the State of Rhode Island may invest in a Project to gain a competitive advantage over a viable and comparable location in another state by means described in the Act and these Rules.

~~Q. "Request for Financing" means the request for I-195 Fund Financing submitted by an Applicant in compliance with the Act and these Rules.~~

1.6 Funding Guidelines.

A. ~~In the case of Applicants seeking I-~~The uses of 195 Funds include, but are not limited to, the following: ~~Financing for:~~

1. Capital Investment requirements for anchor institutions (as owners or building project tenants) or other catalytic project components on the 195 Land, adjacent and proximate parcels, that can be instrumental in achieving some or all of the economic development and quality of life goals for the ~~I-~~195 Land that are set forth ~~in Section 2 of the selection criteria contained in~~ the Development ~~or's Toolkit~~Plan; ~~or~~

2. F~~f~~illing project financing gaps for real estate projects on the 195 Land, adjacent and proximate parcels; ~~an Applicant must demonstrate in its Request for Financing that its Project satisfies at least one of these purposes in order to be eligible for I-195 Fund Financing, in addition to the following conditions:~~

3. Financing land acquisition in areas adjacent to and proximate to the 195 Land, including street rights of way and abandonment costs;

4. Financing public infrastructure and public facilities to support or enhance development including, but not limited to, transportation, parks, greenways, performance venues, meeting facilities, community facilities, and public safety precincts.

B. An Applicant must demonstrate in its Application for Funding that its Project satisfies at least one of the purposes set forth in Section 1.6.A above in order to be eligible for 195 Project Funding.

~~a. A Project seeking I-195 Fund Financing must be located on the I-195 Land;~~

~~b. I-195 Fund Financing may only be used to finance Capital Investment or other Project Costs; and~~

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~~c.~~ If applicable, the Applicant will, at the discretion of the Commission, commit to applying for a tax stabilization agreement with the City of Providence for the Project.

C~~B~~. ~~I-~~195 Project Fund ~~Financing~~ing is available in the form of debt financing, equity financing, or grants. The Commission prefers that a Project not receive a lump sum distribution of the full amount of ~~I-~~195 Project Funding ~~Financing~~ until the Applicant's equity has been fully applied to the Project; the disbursement of funds will be pursuant to an agreed-upon schedule of deliverables and contingent upon achievement of Project milestones.

D~~C~~. A Project may apply for both ~~I-~~195 Project Funding ~~Financing~~ and other incentives available under federal or state law.

1.7 Application.

A. An Applicant seeking funding from the ~~I-~~195 Fund ~~Financing for a Project~~ must submit to the Commission ~~and to the Executive Office of Commerce~~ an A~~a~~pplication ~~as described in the Developer's Toolkit. This requirement applies even if no part of the Applicant's Project is located on land within the jurisdiction of~~ for Funding in a form prescribed by the Commission. The Commission expects that the information submitted by an Application will meet the standards of a prudent equity lender or senior or junior creditor seeking such information.

~~B. Simultaneous with or after submission of an application as described in the Developer's Toolkit, an Applicant seeking I-195 Fund Financing must submit to the Commission and the Executive Office of Commerce a Request for Financing, in a form prescribed by the Commission. The Commission expects that the information submitted by an Applicant in a Request for Financing will meet the standards of a prudent equity investor or senior or junior creditor seeking such information.~~

B~~C~~. The ~~Request for Financing~~ Application for Funding shall contain the following information, in addition to any other information the Commission deems appropriate or necessary:

1. the amount of ~~I-~~195 Project ~~Fund Financing requested~~Funding requested, and the form (debt, equity, grant) in which the ~~I-~~195 Project Funding ~~Financing~~ is sought;

2. a schedule for the disbursement of the ~~I-~~195 Project Funding ~~Financing~~;

3. a detailed description of the Project's financing including a sources and uses of funds;

4. a list of all federal, state, and local incentives, grants, tax credits or other aid (including a tax stabilization agreement with the City of Providence, if

applicable) that will or may be received or requested for the Pproject, and the status of the application for each;

5. a detailed line- -item breakdown of Project Cost;

~~6. a demonstration that the Project satisfies at least one of the two purposes set forth in § 1.7(C)(6) of this Part, as more fully described below:~~

a. for an Applicant proposing an anchor institution or other catalytic project component, the Applicant must provide:

(1) a demonstration that the Project can be instrumental in achieving some or all of the economic development and quality of life goals for the ~~l~~-195 Land that are set forth in ~~Section 2 of the selection criteria contained in~~ the Developmen~~t'~~ Plan;~~Toolkit~~ and

(2) a statement of need demonstrating why ~~l~~-195 Fund Financing in the amount sought is necessary to bring the Project to fruition~~; or~~

b. for an Applicant seeking to fill a Project Financing Gap, the Applicant must provide:

(1) a demonstration of the Project Financing Gap, which shall include, but is not limited to, the submission of Project pro forma, and

(2) a certification from the Applicant's chief executive officer or equivalent officer that a Project Financing Gap exists on the Project.

1.8 Fees.

A. An Applicant shall be charged a one-time, non-refundable application fee by the Commission. ~~The Commission shall annually publish a fee schedule on its website.~~ No fee will be charged if the Commission is the Applicant.

B. An Applicant may be required to pay to the Commission the full amount of direct fees and costs paid to third-parties by the Commission in relation to the consideration and/or approval of the Applicant's ~~Request~~ Application for Fundin~~financing~~.

1.9 Review Process.

A. Each ~~Request~~ Application for Fundin~~financing~~ shall be reviewed by the Commission and, because the Secretary of Commerce must concur in the

provision of any ~~I-~~195 Project Funding ~~Financing~~, by the Executive Office of Commerce as well.

B. Each ~~Request~~ Application for Funding~~inancing~~ shall be reviewed to confirm compliance with the Act and these Rules, and the Commission may reject any incomplete or deficient Application~~Request~~ for Funding~~inancing~~.

C. The Commission may require the submission of additional information in connection with any Application~~Request~~ for Funding~~inancing~~ or the revision of an Application~~Request~~ for Funding~~inancing~~, and may permit the resubmission of an Application~~Request~~ for Funding~~inancing~~ rejected as being incomplete or deficient.

D. Prior to approving financing for a Project that claims a Project Financing Gap, the Commission shall review the ~~Request~~ Application for Funding~~inancing~~ to determine if a Project Financing Gap exists. This review shall include testing the validity of the Applicant's financial information and assumptions through the use of financial models and, to the extent deemed necessary or desirable by the Commission, seeking input from third-party consultants.

E. The Commission may from time to time set deadlines for Applications~~Requests~~ for Funding~~inancing.~~ Such deadlines will be published on the Commission's website.~~web site~~.

1.10 Discretion and Judicial Review.

A. Neither the Commission nor the Secretary of Commerce shall have any obligation to make any award or grant any benefits under the Act or these Rules.

B. A review of an Application~~Request~~ for Funding~~inancing~~ shall not constitute a "contested case" under the Administrative Procedures Act, R.I. Gen. Laws § 42-35-9, and no opportunity to object to an Application~~Request~~ for Funding~~inancing~~ shall be afforded, nor shall judicial review be available from a decision rendered in connection with any Application~~Request~~ for Funding~~inancing~~.

1.11 Commission Approval.

A. No ~~I-~~195 Project Funding ~~Financing~~ may be provided without approval of the Commission.

B. In considering whether to provide ~~I-~~195 Funding ~~Financing~~ to a Project, the Commission may take the following into account, in consideration with other factors deemed relevant by the Commission:

1. the evaluation of the Applicant's pro forma and other financial information, including, but not limited, to the availability of third-party equity or debt capital commitments and the status of development cost estimates provided by contractors and service providers;

2. the Project's catalytic impact on development on or near the ~~I-~~195 Land, including impact on private investment, employment, and state and local revenues, and other criteria ~~set forth in Section 2 of the selection criteria contained in the Developer's Toolkit~~deemed relevant by the Commission;

3. the Project's relationship to other existing or anticipated Projects located on or near the ~~I-~~195 Land;

4. whether the Project furthers the purposes of ~~R.I. Gen. Laws Chapter 42-64.14~~the Act;

5. the risks of providing financing to the Project and any measures that mitigate such risks; and

6. whether there exists an opportunity for the State of Rhode Island or the Commission to recoup or receive a return on all or portion of ~~I-~~195 Project Fund~~-Financ~~ing provided to an Applicant.

C. In approving ~~I-~~195 Project Fund~~-Financ~~ing for an Applicant, the Commission may set terms and conditions on the receipt of 195 Project Fund~~-Financ~~ing as it deems appropriate, including but not limited to approving 195 Project Fund ~~Financ~~ing in an amount lesser than that sought in the ~~Request~~ Application for Fund~~Financ~~ing.

D. No approval of 195 Project Fund~~-Financ~~ing by the Commission shall be effective until and unless the Secretary of Commerce ~~of the Executive Office of Commerce~~ concurs with the provision of ~~I-~~195 Project Fund~~-Financ~~ing in the contemplated amount and under the contemplated terms and conditions.

1.12 Project Funding~~Financing~~ Agreement.

A. Upon approval of ~~I-~~195 Project Fund~~-Financ~~ing for an Applicant by the Commission, the Commission and the Applicant will enter into a ~~Financing~~ Project Funding Agreement prior to the ~~issuance~~ advance of any ~~I-~~195 Project Fund~~-Financ~~ing to the Applicant.

B. In order to safeguard the expenditure of public funds and ensure that the disbursement of funds furthers the objectives of the 195 Act, the Project Funding~~financing~~ Agreement shall include, among others, the following terms:

1. the maximum amount of ~~I-~~195 Project Funding~~-Financing~~ awarded;

2. a schedule for the disbursement of the ~~I-~~195 Project Fund~~-Financ~~ing;

3. a provision delineating the permissible uses of the ~~I-~~195 Project Fund ~~Financ~~ing to be provided;

4. reasonable evidence that the Applicant is in good standing with the Division of Taxation at the time of execution of the ~~Financing~~ Project Funding Agreement, meaning that the:

   a. the taxpayer is current on all outstanding filings and declared tax liabilities subject to audit;

   b. the taxpayer and the Division of Taxation have a workout payment agreement or other settlement with respect to any known delinquent tax liability, and the taxpayer is current on that workout payment agreement or settlement; or

   c. the taxpayer has timely commenced or is engaged in an administrative or judicial proceeding concerning a tax liability the status of which would otherwise preclude the issuance of a letter of good standing from the Division of Taxation;

5. events of default and remedies including events, if any, that would trigger forfeiture, revocation and/or repayment of the ~~I~~-195 Project Fund ~~Financ~~ing provided;

6. indemnification, insurance and other customary protective requirements;

7. reporting requirements including, but not limited to, any requirements under the Act;

8. the imposition of such restrictions or covenants upon the Project as may be necessary to ensure continued compliance with the Act, the Rules, and any terms and conditions on the provision of ~~I~~-195 Project Fund ~~Financ~~ing that the Commission deems appropriate;

9. at the Commission's discretion, a provision requiring the Applicant to pay the Commission's ~~reasonable attorneys'~~ third-party fees and expenses incurred in connection with the negotiation, execution and enforcement of the Project Funding~~Financing~~ Agreement; and

10. any other provisions the Commission deems appropriate.

1.13 Administration and Examination of Records.

The Commission may examine any books, papers, records or memoranda bearing upon the approval of any financing awarded under the ~~Act, and~~Act and may require the attendance of any person executing any application, report or other statement, or the attendance of any other person, and may examine such person under oath respecting any matter which the Commission deems pertinent or material in determining eligibility for financing sought under the Act.

1.14 Inspection Rights.

The Commission shall have the right to make an inspection and to enter upon any property that is the subject of ~~a Request for Financing~~an Application for Funding during the application process or term of any ~~Financing~~ Project Funding Agreement to verify compliance with the Act, these Rules and such other conditions imposed in the ~~Financing~~ Project Funding Agreement or by the Commission.

~~1.15 Land Acquisition, Public Infrastructure, and Public Facilities.~~

~~The provision of financing from the 195 Fund for any uses other than those set forth in R.I. Gen. Laws §§ 42-64.24-4(b)(1) and (2), including for the financing of land acquisition in areas adjacent to and proximate to the I-195 Land, including street rights of way and abandonment costs, or financing public infrastructure and public facilities to support or enhance development including, but not limited to, transportation, parks, greenways, performance venues, meeting facilities, community facilities, and public safety precincts, shall be done in accordance with the terms of the Act.~~