

Application for Assistance Introduction



- I. Each applicant seeking financial assistance through the Niagara County Industrial Development Agency must complete and return the accompanying Application and Environmental Assessment forms. This information is necessary to determine project and/or applicant eligibility.
- II. Subject to the applicable statute, information provided by applicant will be treated confidential until such time as the Agency takes action on the request. In accordance with Article 6 of the Public Officers Law, all records in possession of the Agency are open to public inspection and copy.
- III. The Niagara County Industrial Development Agency has a one thousand dollar (\$1000.00) non-refundable application fee that must accompany the application submission. Additionally, the applicant is responsible for all public hearing expenses.
- IV. At the time of the project closing, project applicant is required to pay certain costs associated with the project financing, including, but not limited to, Agency costs actually incurred. The applicant shall be responsible for the payment of an Agency fee in the amount of one percent (1.00%) of the face value of the project, together with Agency counsel fees as set forth in the Agency fee policy schedule, together with various related costs. Upon request, a fee summary will be provided to the Applicant.
- V. One (1) original signed copy of the Application and Environmental Assessment form should be returned to the Niagara County Industrial Development Agency at 6311 Inducon Corporate Drive, Suite One, Sanborn, New York 14132.
- VI. The following information may 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; and
 2. Projections for the next three (3) years including Balance Sheets, Profit and Loss Statements, Cash Flow Statements by quarters, etc.
- VII. Upon the closing of the Project, the Agency shall have the right to erect a sign at the site indicating the Agency's involvement with the Project. The sign shall be placed in a public viewing area at the direction of the applicant and shall be removed within 30 days of project completion.

The Niagara County Industrial Development Agency does not discriminate on the basis of race, color, religion, sex, sexual orientation, marital status, age, national origin, disability or status as a disabled or Vietnam Veteran or any other characteristic protected by law.

NCIDA

APPLICATION FOR ASSISTANCE

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

Each applicant seeking assistance must complete the accompanying application material which includes the Application for Assistance and Environmental Assessment form. A non-refundable application fee of \$1,000.00 must be included with this application, payable to the Niagara County Industrial Development Agency. Every project seeking NCIDA assistance must use best efforts to use local labor for the construction of new, expanded or renovated facilities.

Please answer all questions. Use "none" or "not applicable" where necessary. Information in this application may be subject to public review under New York State Law, except for information that is considered deniable by the Freedom of Information Law. This form is available online at our web page at www.nccedev.com.

I. APPLICANT DATA

A.

APPLICANT NAME	<u>Somerset Operating Company, LLC</u>
ADDRESS	<u>7725 Lake Road</u>
CITY/STATE/ZIP	<u>Barker, New York 14012</u>

B. APPLICANT'S OFFICER RESPONSIBLE FOR COMPLETING THIS APPLICATION

NAME	<u>Jack White</u>
TITLE	<u>President</u>
MAILING ADDRESS	<u>7725 Lake Road</u>
CITY/STATE/ZIP	<u>Barker, New York 14012</u>
TELEPHONE	<u>(716) 795-9501</u>
FAX	<u>(716) 795-3654</u>
E-MAIL	<u>jack.white@usnypp.com</u>
APPLICANT'S TAX ID NUMBER	<u>36-4731063</u>

- C. **BUSINESS TYPE**
- Sole Proprietorship
 - Partnership
 - Privately-held Corporation
 - Public Corporation
 - Not-for-Profit Corporation
 - LLC
 - Other

D. **STATE OF INCORPORATION:**

Delaware

- E. **IS APPLICANT AUTHORIZED TO DO BUSINESS IN NEW YORK STATE?** Yes No

F. **PRINCIPAL STOCKHOLDERS** (Owners of 20% or more of Stock Outstanding)

<u>Name</u>	<u>%</u>	<u>Corporate Title</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

G. **Has the Applicant (or any related entity) received previous NCIDA assistance?**

- Yes No

If yes, please give year(s) and project location

Third Amended and Restated Payment-in-Lieu-of-Tax Agreement, dated as of February 1, 2015

H. **APPLICANT'S LEGAL COUNSEL**

FIRM NAME Harris Beach, PLLC

ADDRESS 99 Garnsey Road

CITY/STATE/ZIP Pittsford, New York 14534

TELEPHONE (585) 419-8606

ATTORNEY'S NAME Christopher A. Andreucci, Esq.

E-MAIL candreucci@harrisbeach.com

II. PROJECT & OCCUPANCY DATA

A. LOCATION OF PROPOSED PROJECT FACILITY

ADDRESS 7725 Lake Road

PRINCIPAL USE Power Generation

SBL # 008.000-0001-001.(000C; 002; 011; 012; 000A; 000B); 007.000-0003-028.000

ZONING _____

B. INDICATE MUNICIPAL JURISDICTION

TOWN Somerset

VILLAGE _____

CITY _____

SCHOOL DISTRICT Barker Central School District

C. CURRENT OWNERSHIP OF PROPERTY

CURRENT OWNER Somerset Operating Company, LLC

CURRENT ASSESSMENT _____

CURRENT TAXES (ANNUAL) \$5,120,000 (per PILOT Agreement)

CURRENT BUSINESS OPERATING AT LOCATION? Yes

IF YES, EXPLAIN: Power Generating Facility

D. Who are the principal user(s) of the facility (the "Company")? If there are multiple users, please indicate on attached sheet. If same as Applicant indicate the "same" below.

COMPANY NAME Somerset Operating Company, LLC

ADDRESS 7725 Lake Road

CITY/STATE/ZIP Barker, New York 14012

CONTACT Jack White

TELEPHONE (716) 795-9501

TAX ID # 36-4731063

% OF FACILITY TO BE OCCUPIED BY COMPANY 100%

E. Are other facilities or related companies located within New York State: Yes No

LOCATION Lansing, New York

If there are other company facilities within the State, will any of these close or be subject to reduced activity?

Yes No

F. Has the company actively sought sites and/or facilities in another country or state?

Yes No

If yes, please describe on separate sheet.

G. Description of project (check one or more)

- New Construction Sq. Footage _____
- Addition to existing facility Sq. Footage _____
- Renovation and modernization of existing facility
- Acquisition and modernization of existing facility
- New machinery and equipment Production Non-Production

Other (specify) Extention of Current PILOT Agreement to allow Company to continue to operate business in Niagara County and maintain current employment levels.

H. **Provide a general narrative description of the project, including history and background on user(s) of the facility. Provide information on (Appendix A) for user(s) of the facility. Describe reasons why this project is necessary and its effect it will have on Applicant. Include site plans, renderings, photos, etc.**

The Company was formed in 2012 as a result of the bankruptcy proceeding of the predecessor in interest. At that time, the Agency and the Company entered into a PILOT Agreement (the "PILOT Agreement"), which such PILOT Agreement was necessary for the Company to operate the Facility in an economical manner and retain employment within Niagara County and which such PILOT Agreement was extended as evidenced by that certain 2015 Amended and Restated PILOT Agreement, dated as of February 1, 2015 (the "Amended PILOT Agreement"). The Amended PILOT Agreement expires on December 31, 2016 and if the Company is forced to pay full taxes, it may be forced to reduce current employment levels or, worse, cease its operations. The Company is seeking an extension of the existing Amended PILOT Agreement for an additional two (2) years and a downward adjustment of the current annual PILOT Payment by \$500,000 per year.

III. COMPANY EMPLOYMENT INFORMATION

A. **Total current employment within Niagara County is**

FULL-TIME: 99

PART-TIME: 0

Current Annual Payroll Including benefits

\$ 11,076,000

B. **Projected Employment:**

Applicant or principal user(s) must complete Appendix A.

IV. EMPLOYMENT IMPACT

Every project seeking NCIDA assistance must use best efforts to use Niagara County labor for the construction of new, expanded or renovated facilities. This requirement includes all project employees of the General Contractor, Subcontractor or sub to a Subcontractor, working on the project. Applicant agrees and understands the obligations herein, and agrees to transmit and convey in a timely fashion this requirement to all applicable contractors, subcontractors, suppliers and materialmen.

A. Will Niagara County contractors and/or subcontractors be utilized for the construction project?

Yes No

B. What is the estimated number of construction jobs to be created at the project site from

Niagara County: _____ Erie County: _____ Other Areas: _____

V. APPLICANT PROJECT COSTS AND FINANCING

A. Estimate the costs necessary for the construction, acquisition, rehabilitation, improvement and/or equipping of the project by the applicant.

Estimated Costs Eligible for Sales Tax Exemption Benefit

a. Building Construction or Renovation Costs	a. <u>\$0</u>
b. Sitework	b. <u>\$0</u>
c. Non-manufacturing Equipment	c. <u>\$0</u>
d. Furniture, Fixtures	d. <u>\$0</u>
e. Other (specify)	e. <u>\$0</u>
f. Subtotal	f. <u>\$0</u>

Estimated Costs Not Subject to Sales Tax

g. Land and/or building purchase	g. <u>\$0</u>
h. Manufacturing Equipment	h. <u>\$0</u>
i. Soft Costs (Legal, Architect, Engineering)	i. <u>\$0</u>
j. Other (specify)	j. <u>\$0</u>
k. Subtotal	k. <u>\$0</u>

Total Project Costs	f & k <u>\$0</u>
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B. Indicate how the project will be financed

a. Tax-Exempt IRB	a. <u>\$0</u>
b. Tax-Exempt Bond	b. <u>\$0</u>
c. Taxable IRB	c. <u>\$0</u>
d. Bank Financing	d. <u>\$0</u>
e. Public Financing	e. <u>\$0</u>
f. Equity	f. <u>\$0</u>

TOTAL SOURCES	<u>\$0</u>
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Estimated Amount of Mortgage	<u>\$0</u>
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- C. If applicant expects the Tax-Exempt IRB to exceed \$1,000,000, what is the dollar value of "capital expenditures" that the applicant and company, or any related company or person, has expended within the last three years in the municipality in which the proposed project is to be located and expects to expend in that municipality three years after the bond issue?

- D. Has the applicant made any arrangements for the financing of the project? Yes No

If so, please specify bank, underwriter, etc.

VI. PROJECT CONSTRUCTION INFORMATION

- A. What is the proposed commencement date of construction or acquisition of the project?

- B. Outline the timetable for the project, indicating when project will be in full use.


VII. 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: _____.
- F. Local Labor: The Applicant understands that the residents of Niagara County will be providing assistance to the project. The Applicant further understands that every project seeking NCIDA assistance must use best efforts to use Niagara County labor for the construction of new, expanded or renovated facilities. This requirement includes all project employees of the General Contractor, Subcontractor or sub to a Subcontractor, working on the project. Applicant agrees and understands the obligations herein, and agrees to transmit and convey in a timely fashion this requirement to all applicable contractors, subcontractors, suppliers and materialmen.

G. Hold Harmless. Applicant hereby releases Niagara County Industrial Development Agency and the members, officers, servants, agents and employees thereof (the "Agency") from, 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 attached Application, regardless of whether or not the Application or the Project described therein or the tax exemptions and other assistance requested therein are favorably acted upon by the Agency, (B) the Agency's acquisition, construction and/or installation of the Project described therein and (C) any further action taken by the Agency with respect to the Project; including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. Applicant hereby understands and agrees, in accordance with Section 875(3) of the New York General Municipal Law, that any New York State and local sales and use tax exemption claimed by Applicant and approved by the Agency in connection with the Project may be subject to recapture by the Agency under such terms and conditions as will be set forth in the Agent Agreement to be entered into by and between the Agency and the Applicant. The Applicant further represents and warrants that the information contained in this Application, including without limitation information regarding the amount of New York State and local sales and use tax exemption benefits, is true, accurate and complete. If, for any reason, the Applicant fails to conclude or consummate 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, or if the Agency or the Applicant are unable to reach final agreement with the respect to the Project, then, an in the event, upon presentation of an invoice regarding the same, the Applicant shall pay to the Agency, its age or assigns, all incurred by the Agency in the processing of the Application, including attorneys' fees, if any.

Name of Applicant's Officer Responsible for Completing Application:

(Please Print)	Jack White
Signature	
Date of Application	11/24/2015

VIII. ENVIRONMENTAL ASSESSMENT

New York State law requires that an Environmental Assessment Form (EAF) must be completed and submitted along with this application. Attach the EAF which was submitted to the municipality.

CERTIFICATION

Jack White

Name of chief executive of the company submitting application

Deposes and says that he/she is the President_of Somerset Operating Company LLC, the corporation named in the attached application; that he/she has read the foregoing application and knows the contents thereof; that the same is true to his/her knowledge. Deponent further says the reason this verification is made by the deponent and not by Somerset Operating Company LLC, (company name) is because the said company is a corporation. The grounds of deponent's belief relative to all matters in the said 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 this 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.

As officer of said corporation (hereinafter referred to as the "applicant") deponent acknowledges and agrees that applicant shall be and is responsible for all costs incurred by the nonprofit Niagara County Industrial Development Agency (hereinafter referred to as the "Agency") acting on behalf of the attached application whether or not the application, the project it describes, the attendant negotiations and ultimately the necessary issue of bonds and/or completion of the lease/leaseback transaction are ever carried to successful conclusion. If, for any reason whatsoever, the applicant fails to act within a reasonable or specified period of time to take reasonable, proper, or requested actions or withdraws, abandons, cancels, or neglects the application or if the Agency or applicant are unable to identify buyers willing to purchase the total bond issue required or facilitate the lease/leaseback transaction, then upon presentation of invoice, applicant shall pay to the Agency, its agents, or assigns all actual costs involved in conduct of the application, up to that date and time, including but not necessarily limited to fees of bond counsel for the Agency and fees of general counsel for the Agency. Upon successful conclusion and sale of the required bond issue or completion of the lease/leaseback transaction, the applicant shall pay to the Agency an administrative fee set by the Agency. The cost incurred by the Agency and paid by the applicant, including bond counsel and the Agency's general counsel's fees and the administrative fee, may be considered as a cost of the project and included as part of the resultant bond issue or lease/leaseback transaction.

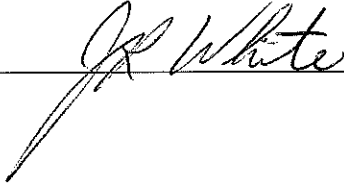
Applicant hereby releases Niagara County Industrial Development Agency and the members, officers, servants, agents and employees thereof (the "Agency") from, agrees that the Agency shall not be liable for and agrees to indemnify, defend and hold the Agency harmless from and against any and all liability arising from or expense incurred by (A) the Agency's examination and processing of, and action pursuant to or upon, the attached Application, regardless of whether or not the Application or the Project described therein or the tax exemptions and other assistance requested therein are favorably acted upon by the Agency, (B) the Agency's acquisition, construction and/or installation of the Project described therein and (C) any further action taken by the Agency with respect to the Project; including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. Applicant hereby understands and agrees, in accordance with Section 875(3) of the New York General Municipal Law, that any New York State and local sales and use tax exemption claimed by Applicant and approved by the Agency in connection with the Project may be subject to recapture by the Agency under such terms and conditions as will be set forth in the Agent Agreement to be entered into by and between the Agency and the applicant.

The Applicant further represents and warrants that the information contained in this Application, including without limitation information regarding the amount of New York State and local sales and use tax exemption benefits, is true, accurate and complete. If, for any reason, the Applicant fails to conclude or consummate 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, or if the Agency or the Applicant are unable to reach final agreement with the respect to the Project, then, in the event, upon presentation of an invoice regarding the same, the Applicant shall pay to the Agency, its agent or assigns, all incurred by the Agency in the processing of the Application, including attorneys' fees, if any.

Jack White

Print Name of Chief Executive

Signature

A handwritten signature in cursive script, appearing to read "Jack White", is written over a horizontal line.

NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

PROJECTED EMPLOYMENT*

	Full-Time	+	Part-Time	Total	Total Payroll*
Total number of employees within Niagara County at the date of Application	99	+	0	99	11,076,000
Total number of employees to be directly <u>IMPACTED</u> by the project	99	+	0	99	11,076,000
ADD: Number of new jobs to be created during the first year after completion:		+			
Total end of First Year:		+			
ADD: Number of new jobs to be created during the second year after completion:		+			
Total end of Second Year:		+			
ADD: Number of new jobs to be created during the third year after completion:		+			
Total end of Third Year:		+			
Estimated Average annual salary of NEW jobs created:	_____				
Expected high salary of NEW jobs created:	_____				
Expected low salary of NEW jobs created:	_____				

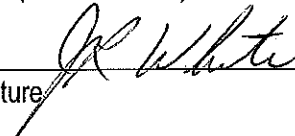
List types of jobs (i.e. production, managerial, clinical, engineering, etc.) to be created.

N/A

*Applicant or principal user(s) as noted in Section III B of application (includes benefits)

Jack White

Print Name



Signature

11/24/2015

Date