

CITY OF RENSSELAER INDUSTRIAL DEVELOPMENT AGENCY
POLICY RESPECTING RECAPTURE OF PROJECT BENEFITS

SECTION 1. PURPOSE AND JUTIFICATION. (A) Pursuant to Section 875 of the General Municipal Law of the State of New York (the “Act”), the City of Rensselaer Industrial Development Agency (the “Agency”) hereby adopts the following policy respecting the recapture of project benefits (the “Policy”) to be used by the Agency to review compliance with (1) the requirements of the Agency relating to job creation and/or retention, other expected public benefits and reporting, and (2) the requirements of the State of New York (the “State”) relating to sales tax exemptions and reporting.

(B) The Agency desires to establish a process by which the Agency evaluates the performance of each Project (as defined herein) related to the Financial Assistance (as defined herein) granted by the Agency. In connection with such evaluation, this policy (1) contains provisions allowing the Agency to recapture certain Financial Assistance provided by the Agency to a Project Applicant or Project Operator (as defined herein) (collectively, the “Project Beneficiary”) if such Project Beneficiary does not fulfill certain promises contained in its application to the Agency or in the Project Documents (as defined herein) by and between the Agency and the Project Beneficiary, and (2) allows the Agency to take into account exigent circumstances in deciding whether to exercise the provisions of this Policy related to the recapture of Financial Assistance.

SECTION 2. STATUTORY REQUIREMENTS.(A) Pursuant to the Act, the Agency is required to:

(1) keep records of the amount of sales tax benefits provide to each Project and make those records available to the State upon request;

(2) report to the State, within thirty (30) days after providing Financial Assistance, the amount of sales tax benefits intended to be provided to a Project; and

(3) post on the internet and make available without charge copies of its resolutions and agreements appointing a Project Beneficiary as its agent, or otherwise related to any Project undertaken by the Agency. An agent of the Agency is appointed by the Agency through the filing of State Form ST-60 with the New York State Department of Taxation and Finance.

(B) The Act requires that the Agency recapture State sales tax benefits where: (1) the Project is not entitled to receive those benefits, (2) the exemptions exceed the amount authorized or are claimed for unauthorized property or services, or (3) the Project Beneficiary failed to use the property or services in the manner required by the Project Documents (as defined herein).

SECTION 3. DEFINITIONS. For purposes of this Policy, the following definitions are incorporated herein.

(A) Agency shall mean the City of Rensselaer Industrial Development Agency.

(B) Annual Report shall mean the annual report to be provided by each Project Beneficiary to demonstrate compliance with the Material Factors established in the Project Documents. Each Project Beneficiary will complete the Annual Report, and supply all supporting documents deemed necessary by the Agency to confirm the representations set forth in the Annual Report, within thirty-one (31) days after the end of each calendar year.

(C) Financial Assistance shall include the following:

- (1) Proceeds of debt obligations issued by the Agency with respect to said Project that have been disbursed during the calendar year in question; and
- (2) Any tax exemption or abatement (a) which may have directly or indirectly benefitted the Project or Project Beneficiary during such calendar year and (b) which resulted from (i) the Agency's title to, possession, or control of such Project, or (ii) the designation by the Agency of such Project Beneficiary (or any sublessee, contractor, supplier or other operator of the Project) as an agent of the Agency.

(D) Full Time Equivalent Employee shall mean (A) a full-time, permanent, private-sector employee on the Project Beneficiary's payroll, who has worked at the Project for a minimum of 35 hours per week for not less than 4 consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by the Project Beneficiary to other employees with comparable rank and duties; or (B) two or more part-time, permanent, private-sector employees on Project Beneficiary's payroll, who have worked at the Project for a combined minimum of 35 hours per week for not less than 4 consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by the Project Beneficiary to other employees with comparable rank and duties; or (C) a contractor.

(E) Material Factors shall mean the explicit and measurable factors established by the Agency in its approving resolution or the Project Documents such as investment, job creation, job retention, new tax revenues, community benefit, direct economic activity in the host community and others as set forth by the Agency. Material Factors may vary by Project type or between Projects. It is acknowledged by the Agency that certain Material Factors will vary from year to year depending on the timing for construction and financing such as sales and use taxes and mortgage recording tax exemptions.

(F) Project shall mean any eligible project undertaken by the Agency pursuant to the Act.

(G) Project Beneficiary shall mean a company which has applied to, and been approved to receive, Financial Assistance from the Agency, or any sublessee, contractor, supplier or other operator of the Project.

(H) Project Documents shall mean the project documents by and between the Agency and a Project Beneficiary with respect to a Project including, but not limited to, a lease agreement or installment sale agreement, payment in lieu of tax agreement, uniform agency project agreement, one or more recapture agreements, and security agreements intended to ensure compliance by the Project Beneficiary with the requirements of the Project Documents.

(I) Recapture Period shall mean that period of time established by the Agency as the time period to satisfy the Material Factors for any Project. The Recapture Period shall reflect any request for flexibility as companies hire and train new employees.

SECTION 4. PROJECT MONITORING. (A) Under the Act, the Agency is required to submit certain annual reports relating to Agency Projects to the New York State Comptroller (the "Comptroller") And the New York State Authorities Budget Office (the "ABO"). In order to satisfy its annual reporting requirements and other requirements under the Act, the Agency will require each Project Beneficiary to agree and satisfy the following requirements as a condition to the receipt of Financial Assistance:

- (1) Any applicant requesting a sales tax exemption from the Agency must include in the application a realistic estimate of the value of the savings anticipated to be received by the Project Beneficiary. Each applicant is hereby warned to provide a realistic estimate in the

application, as the Act requires that the Agency recapture any benefit that exceeds the greater of (a) the amount listed in said application or (b) authorized by the Agency in a separate resolution.

(2) Any applicant requesting a sales tax exemption from the Agency must agree to annually file (and cause any sublessee, contractor, supplier or other operator of the Project to file annually) with the State, on a form and in such manner as is prescribed by the State, a statement of the value of all sales and use tax exemptions claimed by the applicant and all contractors, subcontractors, consultants and other agents of the Project Beneficiary under the authority granted to the Project Beneficiary by the Agency.

(3) Any applicant requesting a sales tax exemption from the Agency must agree to furnish to the Agency a copy of each such annual report submitted to the State by the Project Beneficiary or any sublessee, contractor, supplier or other operator of the Project.

(4) As required by the Act, the Project Documents will provide that any sales tax benefits determined by the Agency to be subject to recapture must be remitted by the Project Beneficiary to the Agency within twenty (20) days of a request therefor by the Agency.

(5) The applicant agrees that, as required by the Act, the resolutions of the Agency with respect to the Project and the Project Documents will now be publicly available on the Agency's website. As provided in the New York Freedom of Information Law ("FOIL"), the Project Beneficiary may request that certain information contained therein be redacted and, if the applicant can demonstrate to the satisfaction of the Agency that release of said information would result in substantial harm to the Project Beneficiary's competitive position, the Agency may comply with such request.

(6) 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 "DOC") and with the administrative entity (collectively with the DOC, the "JTPA Entities") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA"), as replaced by the Workforce Investment Act of 1998 (Public Law 105-220), where the Project is located.

(7) Except as otherwise provided by collective bargaining agreements, where practicable, the Project Beneficiary will first consider persons eligible to participate in JTPA programs who shall be referred by JTPA Entities for new employment opportunities created as a result of the Project.

(8) The Project Beneficiary agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the Project Beneficiary, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation.

(9) Within thirty-one (31) days after the end of each calendar year, the Project Beneficiary shall furnish to the Agency a certificate of an Authorized Representative of the Project Beneficiary stating that no event of default under the Project Documents has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the applicant has taken or proposes to take with respect thereto, and setting forth the unpaid principal balance of the Bonds (if any) and accrued but unpaid interest thereon and that no defenses, offsets or counterclaims exist with respect to the indebtedness evidenced thereby.

(10) The Project Beneficiary shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination.

(11) The Project Beneficiary agrees to file the Annual Report with the Agency, no later than thirty-one (31) days after the end of each calendar year.

(B) The Agency shall monitor the compliance with the Material Factors and the requirements set forth in subsection (A) above for each Project on an annual basis. The monitoring period shall begin upon closing of each Project and shall extend for the life of the Project Documents. The process by which the Agency shall review each Project with respect to compliance with the Project Documents and this Policy is as follows:

(1) In December of each year, the Agency shall send a letter to all Project Beneficiaries requesting such Project Beneficiary to complete the Annual Report, a form of which shall be attached to each uniform agency project agreement (each a “Uniform Agency Project Agreement”) by and between the Agency and a Project Beneficiary.

(2) Each Project Beneficiary shall be required by the Project Documents to submit a completed Annual Report no later than thirty-one (31) days after the end of each calendar year. The Annual Report shall include updates on satisfying the Material Factors and complying with the requirements of subsection (A) above.

(3) The staff of the Agency will report a summary of the status and compliance of each Project, based on the Annual Reports, at the February meeting of the Agency.

(4) Based on the information included in the staff summary, the Agency shall review and, if necessary, proceed with enforcement as discussed in section 5 below.

SECTION 5. ENFORCEMENT BY THE AGENCY. (A) The Agency will use the information contained in the Annual Report, and may use site visits and follow-ups, to gauge the status of a project in relation to the completion of the Material Factors.

(B) Should the staff or board of directors of the Agency (the “Board”) find that a Project has failed to demonstrate compliance with at least ninety percent (90%) of the Material Factors, or the other requirements of this Policy or the Project Documents; the Project will be further reviewed. Examples of situations that may trigger review and/or action by the Agency include:

(1) If the Project Beneficiary shifts production activity to a facility outside of the City of Rensselaer (the “City”) and, as a result, fails to achieve the economic benefits projected;

(2) If the Project Beneficiary moves all operations outside the City, neglects to move operations to the City, or the Project does not otherwise conform to the Project as described in the Project Documents;

(3) If a significant shortfall in economic benefits is identified, as compared with the application, such as a significant shortfall in new job creation/retention and/or expected major investments in the business;

(4) Failure to comply with annual reporting requirements or provide the Agency with requested information;

(5) Closure of a Project within the Recapture Period;

(6) The Project Beneficiary fails to make timely and full payments in lieu of taxes, if applicable, and any other payments required under the Project Documents; or

(7) The Project Beneficiary used false or misleading information in its application.

(C) (1) The Agency will determine on a case-by-case basis whether a hearing is appropriate to allow a Project Beneficiary to be heard on the issue regarding said Project Beneficiary's failure to achieve the Material Factors or otherwise comply with the Project Documents or this Policy.

(2) The Agency recognizes the existence of business exigencies that from time to time may prevent a Project Beneficiary from satisfying the requirements of the Project Documents. The Agency may consider such exigencies when making a determination with respect to the recapture of Financial Assistance. The Agency shall also compare the findings with respect to a Project against industry standards, as well as the current market and economic conditions, to determine whether the Project Beneficiary did all that it could to meet its obligations as outlined in the application and the Project Agreements.

(3) The Agency shall also consider the additional criteria identified in Section 6 hereof.

(D) After a thorough consideration of compliance by any Project Beneficiary with respect to the Material Factors and other requirements set forth in this Policy or in the Project Documents, the Board may determine to undertake any enforcement action available to the Agency under the Project Documents to seek redress for the Project's deficiencies including, but not limited to:

(1) Requesting a cure of the deficiency by a written notice to the Project Beneficiary. Cure periods shall be no longer than one (1) year but may be extended by the Agency, in its sole discretion upon request by the Project Beneficiary subject to the requirements of the Project Documents. ;

(2) Forwarding an event of default notice under the Project Documents;

(3) Notifying the appropriate State agencies of the Project Beneficiary's failure to comply with the requirements set forth in the Project Documents;

(4) Terminating any or all of the Project Documents early (including the Payment in Lieu of Tax Agreement);

(5) Reduction of the Financial Assistance either in amount or the term or both;

(6) Terminating the Project Beneficiary's eligibility to receive any future Financial Assistance;

(7) Recapture of all or a portion of the Financial Assistance provided by the Agency.

SECTION 6. CRITERIA FOR RECAPTURE OF FINANCIAL ASSISTANCE. In completing the review required by Sections 4 and 5 hereof, the Agency may consider the following criteria in determining whether

to take any action described in Section 5(D) hereof. The determination of the Agency shall be based on its good faith evaluation of the criteria set forth in this Policy. The Agency shall document its decision in a determination or resolution of the Agency.

- (A) Whether the Project Beneficiary has proceeded in good faith;
- (B) Whether natural disasters such as fire, flood, hurricane etc. were a significant contributing factor to the failure to meet requirements;
- (C) Whether the failure to meet the Material Factors can be reasonably attributed to factors outside the reasonable control of the Project Beneficiary such as changes in market conditions, overall economic conditions, industry trends or other factors;
- (D) Loss of a major supplier or customer or contract;
- (E) Whether enforcement by the Agency of its recapture rights would create substantial adversity for the Project and surrounding community such as a bankruptcy or insolvency proceeding;
- (F) Whether industry trends related to new technology, equipment or production methods resulted in productivity benefits which reduced the need for the projected employment;
- (G) Whether trade practices of foreign governments resulted in an unfair competitive advantage negatively impacting the Project Beneficiary;
- (H) The performance of the Project in meeting Material Factors over the period prior to non-compliance; or
- (I) Such other criteria as the Agency shall recognize as a relevant contributing factor.

SECTION 7. ANNUAL REVIEW AND EFFECTIVE DATE. This Policy shall be effective with respect to any project undertaken by the Agency where receipt of the application for the project occurs after the date of approval of this Policy. The Agency shall review this Policy annually.

Adopted: October 28, 2024