

RESOLUTION

A Meeting of the City of Rensselaer Industrial Development Agency (the "Agency") was held at City Hall, 62 Washington Street, City of Rensselaer, New York 12144 on July 27, 2018 at 8:00 a.m., local time.

The meeting was called to order by the Chairman and, upon roll being called, the following members of the Agency were:

PRESENT:

Daniel J. Dwyer	Chairman
Adrian E. Hilstro	Vice Chairman
Christine Van Vorst	Secretary/Treasurer
Richard Mooney	Member
John DeFrancesco	Member

ABSENT:

THE FOLLOWING PERSONS WERE ALSO PRESENT:

Paul J. Goldman, Esq.	Goldman Attorneys PLLC Special Counsel to the Agency
Charles E. Moore	Director of the Planning and Development City of Rensselaer
Steven Terry	Assistant Comptroller to the City of Rensselaer

On motion duly made and seconded, the following resolution was placed before the members of the Agency, to wit:

RESOLUTION ADOPTING A POLICY FOR THE UNIFORM CRITERIA FOR PROJECT EVALUATION OF THE CITY OF RENSSELAER INDUSTRIAL DEVELOPMENT AGENCY PURSUANT TO GENERAL MUNICIPAL LAW SECTION 859-a(5).

WHEREAS, the Agency is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 235 of the 1974 Laws of New York, , as amended, constituting Section 903-c of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to issue its industrial development revenue bonds to finance the cost of acquisition, construction and installation of one or more "projects" (as defined in the Act), to acquire, construct and install said projects or to cause said projects to be acquired, constructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, the Agency confers a financial advantage upon a company that participates in a project described above in the form of a real property, mortgage recording, and sales tax exemptions; and

WHEREAS, pursuant to Section 859-a(5) of the Act, the Agency shall establish a policy to be used in the evaluation of any project seeking financial assistance within the meaning of Section 854(14) of the GML. The term financial assistance means: (a) the proceeds of the bonds to be issued by the Agency; (b) straight leases; or (c) the value of the exemptions claimed by a project occupant as result of the Agency taking title, possession or control to the property or equipment of such project occupant, or of such project occupant acting as an agent of the Agency; and

WHEREAS, the Agency desires to establish a process by which the Agency evaluates each project versus certain material factors justifying the grant of financial assistance. It is the policy of the Agency to evaluate, reduction or recapture of any tax exemption granted to each project; and

NOW, THEREFORE, BE IT RESOLVED by the City of Rensselaer Industrial Development Agency as follows:

1. The Agency's Uniform Criteria for Project Evaluation is hereby adopted in the form and substance annexed hereto as **Exhibit "A"** pursuant to Section 859-a(5) of the Act.
2. The Chairman of the Agency is hereby authorized to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.
3. This resolution shall take effect immediately.
4. All prior resolutions or parts thereof inconsistent with this resolution are hereby repealed to the extent of such inconsistency.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Hon. Daniel J. Dwyer	Chairman	voting	<u>Yes</u>
Adrian E. Hilstro, III	Vice Chairman	voting	<u>Yes</u>
Christine Van Vorst	Secretary/Treasurer	voting	<u>Yes</u>
Richard Mooney	Member	voting	<u>Yes</u>
John DeFrancesco	Member	voting	<u>Yes</u>

The resolution was therein declared duly adopted.

STATE OF NEW YORK)
) ss.:
COUNTY OF RENSSELAER)

I, the undersigned (Assistant) Secretary of the City of Rensselaer Industrial Development Agency, **DO HEREBY CERTIFY:**

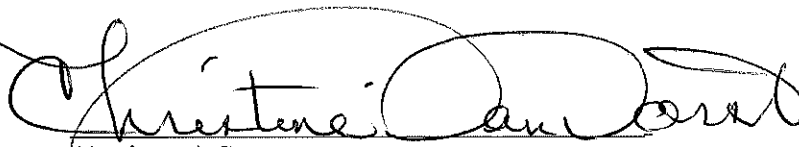
That I have compared the annexed extract of the minutes of the meeting of the City of Rensselaer Industrial Development Agency (the "Agency"), including the resolutions contained therein, held on July 27, 2018, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters referred to therein.

I FURTHER CERTIFY that all members of said Agency had due notice of said meeting, that due notice of said meeting was given to the public and news media as required by Article 7 of the Public Officers Law and that the meeting was open to the public and that public notice of the time and place of said meeting was duly given in accordance with Article 7 of the Public Officers Law.

I FURTHER CERTIFY that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, modified or repealed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 27th day of July, 2018.


(Assistant) Secretary

(SEAL)

EXHIBIT "A"

UNIFORM CRITERIA FOR PROJECT EVALUATION

CITY OF RENSSELAER INDUSTRIAL DEVELOPMENT AGENCY

UNIFORM CRITERIA FOR PROJECT EVALUATION

Pursuant to Section 859-a(5) of the General Municipal Law ("GML"), the City of Rensselaer Industrial Development Agency ("RCIDA") hereby adopts the following Policy to be used in the evaluation of any Project seeking financial assistance within the meaning of Section 854(14) of the GML. For purposes of establishing Uniform Criteria for Project Evaluation under Section 859-a(5), the term financial assistance means: (a) the proceeds of the bonds to be issued by the RCIDA; (b) straight leases; or (c) the value of the exemptions claimed by a project occupant as result of the RCIDA taking title, possession or control to the property or equipment of such project occupant, or of such project occupant acting as an agent of RCIDA. The RCIDA desires to establish a process by which the RCIDA evaluates each project versus certain material factors justifying the grant of financial assistance. It is the policy of the RCIDA to evaluate, reduction or recapture of any tax exemption granted to each project based on the occurrence of one or more of the following factors:

- (A) The tax exemption benefits taken by any applicant exceeds the amounts authorized by the RCIDA.
- (B) The tax exemptions taken by the project applicant were not authorized by the RCIDA.
- (C) The project applicant fails to satisfy the Material Factors established in the Project Documents (as hereinafter defined).
- (D) The project applicant does not comply with the reporting requirements in the GML and the Project Documents.
- (E) The project applicant fails to make timely and full payment of the PILOT payments and any other payments required under the Project Documents.
- (F) The project applicant has used false or misleading information in its application to the RCIDA.

1. Definitions. For purposes of this Policy, the following definitions are incorporated herein.

Annual Report – The Annual Report to be provided by each Project applicant to demonstrate compliance with the Material Factors established in the Project Documents. Each Project applicant will complete the Annual Report and supply all supporting documents deemed necessary by the RCIDA to confirm the representations set forth in the Annual Report.

Establishment Period – That period of time established by the RCIDA as the time period to satisfy the Material Factors for any Project. The Establishment Period shall reflect any request for flexibility as companies hire and train new employees.

Financial Assistance – Benefits such as exemption of the Mortgage Recording Tax, exemption of Sales and Use Tax and an exemption from real estate taxes such as a Payment in Lieu of Tax Agreement ("PILOT"). Financial Assistance may include one or more of the above listed benefits based on each specific project.

Jobs – Employment positions created or retained by the Project and measured based on Full Time Equivalencies (FTEs). Jobs may include direct employment by the Project, contracted positions that are dedicated on an on-going basis to working at the Project site and other contracted services which represent new or retained jobs at locations within the City of Rensselaer and which are exclusively dedicated to support of the Project's operations.

Material Factors – Explicit and measurable factors established by the RCIDA in its approving resolution or project findings resolution 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 RCIDA and which shall be established as performance measures in Project Documents. Material Factors may vary by Project type or between Projects but will be incorporated into the Project Documents. It is acknowledged by the RCIDA 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.

Monitoring Report – A written summary developed by RCIDA staff for review by the RCIDA Board of Directors which summarizes the Material Factors and the relative achievement of each Project with the Material Factors. Each applicant for Financial Assistance will be required to file the Monitoring Report and/or otherwise assist the RCIDA with the completion of the Monitoring Report.

Project – A project that is a recipient of Financial Assistance from the RCIDA.

Project Documents – Those documents executed between the Project and RCIDA which set forth the Material Factors and/or form the basis for the provision of financial assistance for any Project. Project Documents may include but is not limited to RCIDA application for assistance, inducement resolutions, Project Agreements, Pilot Agreements, lease/leaseback agreements and any other documents that are associated with a specific Project.

RCIDA – City of Rensselaer Industrial Development Agency.

2. Project Monitoring

The RCIDA shall monitor the compliance with the Material Factors for each Project on an annual basis. The monitoring period shall be each calendar year and over the full term of the Financial Assistance. The RCIDA will use the following process for monitoring of active Projects.

- (a) In December of each year, the RCIDA will send letter to all recipients of financial assistance requesting the status of the Material Factors established in the Project Documents.
- (b) The Project applicant will submit a report on their status with satisfying the Material Factors with supporting documentation by January 31 for the prior year's monitoring period.
- (c) The staff of the RCIDA will compile a status report for each Project on its compliance with the established Material Factors.
- (d) For any project reporting Material Factors that are less than one hundred (100%) percent but more than ninety (90%) percent of their requirement, such project applicant will be notified of the non-compliance and that the RCIDA will be monitoring such non-compliance in the next reporting period. The RCIDA will offer a meeting with the project applicant to assess its corrective action plan if warranted under the circumstances.
- (e) For any project reporting Material Factors that are less than ninety (90%) percent of the requirement in the Project Documents, such applicant will have a mandatory meeting with the RCIDA and that applicant will be required to provide a corrective action plan to the RCIDA for its evaluation.
- (f) In its evaluation of any failure to have satisfied the Material Factors, the RCIDA recognizes that there are business exigencies that from time to time prevent a project applicant from satisfying its Material Factors.
- (g) From the documentary information provided to staff, the staff of the RCIDA will make a recommendation to the Board of Directors of the RCIDA.

3. Actions of the Board of Directors of the RCIDA

After a through consideration of any default by any Project applicant with regard to the Material Factors set forth in the Project Documents, the recommendation of RCIDA staff and responsive documents by the Project applicant, the RCIDA Board may take any of the following actions:

- (a) Establishment of a cure period during which the Project applicant will be provided additional time to satisfy their Material Factor requirements. Cure periods shall be no longer than one (1) year but may be extended by the RCIDA, in its sole discretion upon request by the Project applicant.

- (b) Suspension of the Financial Assistance for a period approved by the RCIDA during which the Projects shall complete its cures of any default. The suspension may be lifted by action of the RCIDA upon its determination that the Project applicant has remedied the default. Lifting of the suspension shall not be retroactive and any Financial Assistance that would have been received during the suspension period will not be reinstated.
- (c) Reduction of the Financial Assistance either in the amount or the term or both.
- (d) Termination of Financial Assistance.
- (e) Recapture of all or some portion of the Financial Assistance provided under items 3(b), 3(c) or 3(d) above. Recapture can be applied retroactively but shall not exceed the period of default.

4. Criteria for Recapture of Financial Assistance

In the event the RCIDA declares that a Project is in default of its Material Factors, the RCIDA shall utilize the following criteria in decision on whether to recapture financial assistance. The determination of the RCIDA shall be based on its good faith evaluation of the criteria set forth in this Policy. The RCIDA shall document its decision in a determination or resolution of the RCIDA.

- (a) Whether the Project applicant has proceeded in good faith.
- (b) Whether natural disasters such as fire, flood, hurricane etc. were a significant contributing factor to the default.
- (c) Whether failure to meet the Material Factor can be reasonably attributed to factors outside the reasonable control of the applicant 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 RCIDA of the recapture rights would create substantial adversity for the Project and 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 reduces the need for the projected employment.
- (g) Whether a competitor or trade practices of foreign governments resulted in an unfair competitive advantage negatively impacting the project applicant.
- (h) The performance of the Project in meeting Material Factors over the prior periods prior to non-compliance.
- (i) Such other pertinent criteria as the RCIDA shall recognize as a relevant contributing factor.

5. Suspension, Reduction, Termination and/or Recapture Policy

When a project applicant fails to satisfy the Material Factors, the RCIDA has the ability to reduce, terminate and/or recapture all or a portion of the Financial Assistance approved by the RCIDA for the project as follows:

A. Mortgage Tax and Sales and Use Tax Exemptions.

The evaluation of a Project's compliance associated with Mortgage Recording Tax exemptions and/or a Sales and Use Tax Exemptions shall be based on the relative satisfaction of the investment goals established as Material Factors in the Project Documents. The compliance of the Project in meeting any investment Material Factor shall be evaluated one time and shall be deemed to be completed for the reporting year after later of:

- (a) the date the Project is completed as evidenced by the date of the permanent certificate of occupancy; or
- (b) the project commenced operation.

Investment shall be measured by either: (a) proof of the actual investment by audited financial statements; or (b) an increase in the municipality's implied full value assessment on the Project.

- (a) If the Project meets ninety (90%) percent of the required project investment no further action is necessary and the Project will be considered in full compliance and will no longer continue to be monitored and/or tested.
- (b) If the Project meets eighty (80%) percent to ninety (90%) percent of the required project investment, RCIDA staff shall document the actual investment and include a summary of the Project's reason as to why investment goals were not satisfied. The summary will also include a review of compliance with other Material Terms that may be applicable to the Project. The summary produced by RCIDA staff will be provided to the RCIDA for their review and potential further action
- (c) For Projects that fail to meet eighty (80%) percent of their Material Factor associated with the required minimum investment, the RCIDA may, as set forth in this policy and upon consideration of all relevant facts, require a recapture of a portion of the Mortgage Recording Tax and Sale and Use Tax exemptions and/or a termination of such exemptions which will not exceed the percentage deficit in meeting the Material Term for investment. For example, if a project only meets seventy-five (75%) percent of its Material Factor for investment, the RCIDA recapture requirements will not exceed twenty-five (25%) percent of the Mortgage Recording Tax and Sales & Use Tax Financial Assistance granted to the Project applicant.

- (d) For Projects where the Mortgage Recording Tax and/or Sales and Use Tax exemptions taken by the Project exceed the limit of the exemption approved by the RCIDA, the Project shall be required to reimburse the RCIDA for the amount of the exemption which exceeded the RCIDA approval.

B. PILOTS.

In the event that Project applicant and the RCIDA execute and deliver a PILOT Agreement, the Project applicant shall demonstrate compliance with its Material Factors over the term of the PILOT Agreement. For terms of any PILOT, as part of the annual reporting to be made by the Project applicant to the RCIDA, such applicant will reflect the status of the Project's compliance with each of the Material Factor. For any project, upon consideration of all facts, including the Project applicant's success in implementing corrective actions as set forth in the original cure period, the RCIDA, may in its discretion, extend the cure period to allow additional time to be cure any non-compliance with the Material Factors.

6. Procedure to Terminate, Amend or Recapture Agency Benefits

The following procedure is intended to ensure that upon any non-compliance with one or more Material Terms, any affected Project applicant will be provided an adequate opportunity to seek to amend and/or modify the Material Factors. This procedure shall apply upon request of the Project applicant where it has not been able to satisfy its Material Terms over two successive annual monitoring periods or has been unable to remedy the default after a RCIDA established cure period.

- (a) The RCIDA staff shall prepare a Project Status Report for review by the RCIDA. The status report shall include, but is not limited to:
 - (i) A summary of the current status of the Project and a summary of the deficiencies in the achievement of any Material Factors.
 - (ii) A summary of the Material Terms in prior years.
 - (iii) A summary of the RCIDA's staff meeting with Project applicant during which the deficiencies were reviewed and a curative proposal was established with the applicant, including reasons for any failure to have satisfied the Material Factors.
 - (iv) A discussion of the likeliness that the Project applicant can successfully remedy any default in the Material Factor during the next Reporting Period.
 - (v) An analysis of the Material Terms that are deficient as well as Material Factors that have been successfully met.
- (b) The RCIDA Board will review the Project Status Report and make a decision to proceed with further review of the need to amend, suspend, reduce the exemption percentage and/or increase the amount of the PILOT payments, terminate or recapture Project Financial Assistance consistent with this policy.

- (c) If the RCIDA Board determines that further action is necessary, the Project applicant will be notified in writing of the RCIDA's determination. The notification shall be sent as Certified Mail, Return Receipt Requested or by recognized overnight courier (i.e. Federal Express). The notice shall include but is not limited to:
- (i) A description of the deficiencies in meeting Material Factors. The letter shall include the Status Report as an attachment.
 - (ii) The potential actions of the RCIDA including an amendment of the Project Documents to suspend, reduce the exemption percentage and/or increase the amount of the PILOT payments or terminate or recapture Financial Assistance that has been provided to the Project including the Mortgage Recording Tax and/or Sales and Use Tax Exemptions.
 - (iii) The right of the Project applicant to be heard and appeal any such determination set forth in the Project Status Report.
 - (iv) The date and time of a meeting of the RCIDA at which the RCIDA will consider the Project Status Report and any recommendation concerning modification of the PILOT payments and/or termination and/or recapture of Financial Assistance. The date of the meeting shall be later than the date that the Project is provided to submit a written response.
 - (v) Notification that the Project has fifteen (15) business days from the date the notice is sent to prepare a written response to any alleged deficiencies to meet the Project's Material Factors.
 - (vi) Notification that the Project applicant has the right to be represented by legal counsel.
- (d) The RCIDA shall create a full written and/or electronic record that includes a statement of the alleged deficiencies in satisfying the Material Factors, the response from the Project applicant, all evidence that has been submitted by the RCIDA staff and/or the Project representative, and a transcript or written summary of any oral presentations made to the RCIDA. The record shall also include a Findings Statement prepared by RCIDA staff and adopted and/or modified by the Board of Directors of the RCIDA setting forth any specific action taken by the Board in association with the failure to have satisfied the Material Factors.
- (e) To the extent allowed under NYS Open Meetings Law and at the request of the Project applicant or the Board, the Board may enter into executive session to receive certain confidential information that may pertain to the considerations being made by the RCIDA. Written materials submitted by the Project applicant in response to a default notice that are considered confidential or proprietary shall be clearly marked as such and will not be released by the RCIDA absent a court order compelling such release.

- (f) Upon consideration of all materials and information prepared by RCIDA staff or Project representative, the RCIDA Board may vote on a resolution setting forth its determinations under this policy.

7. Fees

In the event the RCIDA Board elect action associated with suspension, reduction, termination or recapture of Financial Assistance under this Policy, the Project will be subject to the following fees:

- (a) Administrative Fee – The RCIDA will impose an administrative fee not to exceed \$5,000 to cover the RCIDA's costs to process the default.
- (b) Legal Fees – As set forth in the Project Documents, the Project applicant shall be required to reimburse the RCIDA in full for any legal fees incurred by the RCIDA in its pursuit of remedy for default on Material Terms. Legal fees shall be billed directly by and payable to the RCIDA attorney.

8. Flexible Application

To the extent permitted by the GML, regulations promulgated thereunder and RCIDA policies, the RCIDA has broad discretion in recommending how to implement the provisions of this policy and any required evaluation under this Policy, including termination of Financial Assistance, modification, suspension and/or recapture of Financial Assistance. Any determination by the RCIDA shall consider the circumstances that led up to any failure to have satisfied the Material Factors. The RCIDA Board shall consider how the failure occurred, the duration of such failure, the cause of such failure and the extent to which there was a creation of net new jobs, new investment, the use of local labor, new community benefit or retained community benefit and such other Material Factors as may have been considered at the time of the passage of the Project findings statements.