

**CITY OF RENNELAER INDUSTRIAL DEVELOPMENT AGENCY
GOVERNANCE COMMITTEE MEETING**

Monday, October 28, 2024
4:15 PM

I. CALL TO ORDER

II. NEW BUSSINESS

- Consideration of Policy Respecting Uniform Criteria for Project Evaluation
- Consideration of Policy Respecting Project Benefits Recapture
- Motion to Recommend Above Policies to CRIDA Board meeting for Adoption

III. ADJOURNMENT

**CITY OF RENSSELAER INDUSTRIAL DEVELOPMENT AGENCY
RESOLUTION APPROVING VARIOUS
POLICIES OF THE AGENCY**

A regular meeting of City of Rensselaer Industrial Development Agency (the “Agency”) was convened in public session at the office of the Agency located in the City of Rensselaer City Hall located at 62 Washington Street in the City of Rensselaer, Rensselaer County, New York on October 28, 2024 at 4:15 p.m., local time.

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

PRESENT:

Michael Stammel	Chairman
John DeFrancesco	Vice Chairman
Andrew Kretzschmar	Secretary
William Bulnes	Member
Ray Stevens	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

John J. Bonesteel	Chief Executive Officer/Treasurer
Madeline Rizzo	Executive Assistant
Shannon E. Wagner	Special Agency Counsel

The following resolution was offered by _____, seconded by _____, to wit:

Resolution No. 1024-__

RESOLUTION APPROVING (A) A CERTAIN POLICY RESPECTING UNIFORM CRITERIA FOR THE EVALUATION OF PROJECTS AND (B) A CERTAIN POLICY RESPECTING RECAPTURE OF PROJECT BENEFITS OF THE CITY OF RENSSELAER INDUSTRIAL DEVELOPMENT AGENCY.

WHEREAS, City of Rensselaer Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 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 industrial, manufacturing, warehousing, commercial, research and recreation 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, under Section 858 of the Act, the Agency has the power to approve certain administrative matters; and

WHEREAS, the Agency has previously adopted a uniform criteria for project evaluation policy (the “Existing Uniform Criteria”); and

WHEREAS, the Agency has considered the issues relating to the adoption of (1) a restated policy respecting uniform criteria for the evaluation of projects and (2) a policy respecting the recapture of project benefits at previous meetings of the Agency; and

WHEREAS, members of the Agency and the staff of the Agency have reviewed the Existing Uniform Criteria and reviewed the policy requirements of the Agency with counsel to the Agency (the “Discussion”); and

WHEREAS, based on the Discussion, counsel to the Agency prepared (A) a Policy Respecting Uniform Criteria for the Evaluation of Projects (the “Uniform Criteria,” a copy of which is attached hereto as Exhibit A), and (B) a Policy Respecting the Recapture of Project Benefits (the “Recapture Policy,” a copy of which is attached hereto as Exhibit B) (the Uniform Criteria and Recapture Policy are hereinafter collectively referred to as the “Policies”); and

WHEREAS, members of the Agency and staff of the Agency have reviewed drafts of the Policies with counsel to the Agency; and

WHEREAS, as provided in the Agency’s Governance Committee Charter, the members of the Governance Committee have reviewed the Policies and made certain recommendations to the full board regarding amending the Policies; and

WHEREAS, final drafts of the Policies have been presented to the members of the Agency and the members of the Agency have reviewed the drafts presented at this meeting; and

WHEREAS, the members of the Agency desire to approve the Policies;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE CITY OF RENSSELAER INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. The Agency hereby approves the Policies, presented and reviewed by the members of the Agency, copies of which is attached hereto as Exhibit A and Exhibit B.

Section 2. The Agency hereby authorizes the Chairman, Vice Chairman, or Chief Executive Officer of the Agency to take all steps necessary to implement the matters described in Exhibit A and Exhibit B attached hereto.

Section 3. This resolution shall take effect immediately.

[remainder of the page left blank intentionally]

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

Michael Stammel	VOTING	_____
John DeFrancesco	VOTING	_____
Andrew Kretzschmar	VOTING	_____
William Bulnes	VOTING	_____
Ray Stevens	VOTING	_____

The foregoing resolution was thereupon declared duly adopted.

[remainder of the page left blank intentionally]

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

I, the undersigned Secretary of City of Rensselaer Industrial Development Agency (the “Agency”), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the resolution contained therein, held on October 28, 2024 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) 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, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 28th day of October, 2024.

Secretary

(SEAL)

SCHEDULE A

POLICY RESPECTING UNIFORM CRITERIA
FOR THE EVALUATION OF PROJECTS

- SEE ATTACHED -

CITY OF RENSSELAER INDUSTRIAL DEVELOPMENT AGENCY

POLICY RESPECTING UNIFORM CRITERIA FOR THE
EVALUATION OF PROJECTS

SECTION 1. PURPOSE AND JUSTIFICATION. (A) The purpose of this policy respecting the uniform criteria for the evaluation of projects (the “Policy”) is to provide the uniform criteria to be utilized by City of Rensselaer Industrial Development Agency (the “Agency”) to evaluate and select projects from each category of eligible projects for which the Agency can provide financial assistance (as defined in the Act).

(B) The Agency was created pursuant to Section 903-c of Title 2 of Article 18-A of the General Municipal Law and Title 1 of Article 18-A the General Municipal Law (collectively, the “Act”) for the purpose of promoting employment opportunities for, and the general prosperity and economic welfare of, residents of the City of Rensselaer, Rensselaer County, New York (the “City”) and the State of New York (the “State”). Under the Act, the Agency was created in order to advance the job opportunities, health, general prosperity, and economic welfare of the residents of the City and of the State.

(C) Section 859-a(5) of the Act requires each industrial development agency to develop uniform criteria for the assessment of all material information included in connection with an application for financial assistance, as necessary to afford a reasonable basis for the decision by an industrial development agency to provide financial assistance for a project.

SECTION 2. ELIGIBLE PROJECT CATEGORIES. The Agency may provide financial assistance to any “project,” as defined in Section 854(4) of the Act.

SECTION 3. UNIFORM CRITERIA. (A) The following general uniform criteria will apply to all categories of eligible projects: (1) Extent to which a project will create or retain jobs; (2) Estimated value of tax exemptions; (3) Amount of private sector investment; (4) Likelihood of project being accomplished in a timely fashion; (5) Extent of new revenue provided to local taxing jurisdictions; (6) Any additional public benefits; (7) Local labor construction jobs; and (8) if applicable, the contribution of the project to the State’s renewable energy goals and emission reduction targets.

(B) The following additional criteria may apply to warehousing and research projects: (1) wage rates (above median for the City); (2) purchases within Rensselaer County, New York (% of purchases from local vendors); (3) supports local businesses or clusters; (4) retention or flight risk; and (5) provides capacity to meet City demand or shortage.

(C) The following additional criteria may apply to commercial projects: (1) regional wealth creation (% of sales/customers outside of the City); (2) located in a highly distressed census tract; (3) alignment with local planning and development efforts; (4) promotes walkable community areas; (5) elimination or reduction in blight; (6) proximity/support of regional tourism attractions/facilities; (7) local or City official support; (8) building or site has historic designation; and (9) provides brownfield remediation.

SECTION 4: REMOVAL OR ABANDONMENT. If the proposed project involves the removal or abandonment of a facility or plant within the state, the Agency will notify the chief executive officer or officers of the municipality or municipalities in which the facility or plant was located.

SECTION 5. EFFECTIVE DATE. This Policy shall be effective with respect to any project undertaken by the Agency after the date of approval of this Policy.

EXHIBIT B

POLICY RESPECTING THE
RECAPTURE OF PROJECT BENEFITS

- SEE ATTACHED -

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 through 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.