

**POLICY FOR TERMINATION OR SUSPENSION OF AGENCY
BENEFITS AND RECAPTURE OF AGENCY BENEFITS
PREVIOUSLY GRANTED**

Pursuant to Sections 874(10) and (11) of Title 1 of Article 18-A of the New York State General Municipal Law (the “**Act**”), the County of Westchester Industrial Development Agency (the “**Agency**”) is required to adopt policies (i) for the discontinuance or suspension of any financial assistance provided by the Agency to a project or the modification of any payment in lieu of tax agreement and (ii) for the return of all or part of the financial assistance provided by the Agency to a project. This Agency Benefits Termination or Suspension and Recapture Policy was adopted pursuant to a resolution enacted by the members of the Agency on November __, 2019.

I. Termination or Suspension of Financial Assistance

The Agency, in its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so) to terminate or suspend the Financial Assistance (defined below) provided to a project upon the occurrence of an Event of Default, as such term is defined and described in the Lease Agreement entered into by the Agency and a project participant (the “**Project Beneficiary**”) or any other document entered into by such parties in connection with a project (the “**Project Documents**”). Such Events of Default may include, but shall not be limited to, the following:

- 1) Sale or closure of the Facility (as such term is defined in the Project Documents);
- 2) Failure by the Project Beneficiary to pay or cause to be paid amounts specified to be paid pursuant to the Project Documents on the dates specified therein;
- 3) Failure by the Project Beneficiary to create and/or maintain employment levels at the Facility as provided in the Project Documents;
- 4) A material violation of the terms and conditions of the Project Agreements; and
- 5) A material misrepresentation contained in the application for Financial Assistance, any Project Agreements or any other materials delivered pursuant to the Project Agreements.

The decision of whether to terminate or suspend Financial Assistance and the timing of such termination or suspension of Financial Assistance shall be determined by the Agency, in its sole discretion, on a case-by-case basis, and shall be subject to the notice and cure periods set forth below, or as otherwise expressly provided in the Project Documents.

For the purposes of this policy, the term “**Financial Assistance**” shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency’s participation in the transaction contemplated by the Project Agreements including, but not limited to:

- (i) any exemption from any applicable mortgage recording tax with respect to the Facility on mortgages granted by the Agency on the Facility at the request of the Project Beneficiary;
- (ii) sales tax exemption savings realized by or for the benefit of the Project Beneficiary, including and savings realized by any agent of the Project Beneficiary pursuant to the Project Agreements in connection with the Facility; and
- (iii) real property tax abatements granted under the Project Agreements.

II. Recapture of Financial Assistance

The Agency, in its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so) to recapture all or part of the Financial Assistance provided to a project upon the occurrence of a Recapture Event, as such term is defined and described in the Project Documents. Such Recapture Events may include, but shall not be limited to the following:

- 1) Sale or closure of the Facility (as such term is defined in the Project Documents);
- 2) Failure by the Project Beneficiary to pay or cause to be paid amounts specified to be paid pursuant to the Project Documents on the dates specified therein;
- 3) Failure by the Project Beneficiary to create and/or maintain employment levels at the Facility as provided in the Project Documents;
- 4) A material violation of the terms and conditions of the Project Agreements; and
- 5) A material misrepresentation contained in the application for Financial Assistance, any Project Agreements or any other materials delivered pursuant to the Project Agreements.

The timing of the recapture of the Financial Assistance shall be determined by the Agency, in its sole discretion, on a case-by-case basis, and is subject to the notice and cure periods provided for in the Project Documents. The percentage of such Financial Assistance to be recaptured shall be determined by the provisions of the Project Documents.

All recaptured amounts of Financial Assistance shall be redistributed to the appropriate affected taxing jurisdiction, unless agreed to otherwise by any local taxing jurisdiction.

For the avoidance of doubt, the Agency may determine to terminate, suspend and/or recapture Financial Assistance in its sole discretion. Such actions may be exercised simultaneously or separately and are not mutually exclusive of one another.

III. Non-Compliance Process

If the Agency shall become aware of the existence an Event of Default or a Recapture Event in connection with the Project, then:

- 1. The Agency shall notify the Project Beneficiary in writing of the Event of Default or Recapture Event.
- 2. The Project Beneficiary shall be given 30 days to remedy the violation; or

3. If the Project Beneficiary is unable to remedy the violation, the Agency shall seek additional information/explanation from the Project Beneficiary as to the reasons why the Event of Default or Recapture Event has occurred, including any extenuating and mitigating circumstances claimed by the Project Beneficiary. These may include, without limitation, economic or other factors outside the control of the Project Beneficiary, such as natural disaster, industry dynamics, or unfair competition. Such information shall be provided to the Agency within 30 days of request, unless the Agency shall agree to extend such period.

4. If the Project Beneficiary shall have failed to remedy the Event of Default or Recapture Event, or to establish to the satisfaction of the Agency the existence of extenuating or mitigating factors sufficient to excuse the Event of Default or Recapture Event, in whole or in part, then the Agency shall terminate, suspend and/or recapture the Financial Assistance, to the extent that the Agency shall deem appropriate under the circumstances, in its sole discretion. The Agency, to the extent provided by law, may consider extenuating and mitigating circumstances and may consider the extent to which the Project Beneficiary failed to achieve and maintain the Material Factors.

IV. Modification of Payment In Lieu of Tax Agreement

In the case of any Event of Default or Recapture Event, in lieu of terminating, suspending or recapturing the Financial Assistance, the Agency may, in its sole discretion, adjust the payments in lieu of taxes due under the Project Agreements, so that the payments in lieu of taxes payable under the Project Agreements are adjusted upward retroactively and/or prospectively for each tax year until such time as the Project Beneficiary has complied with the provisions of the Project Agreements. The amount of such adjustments shall be determined by the provisions of the Project Documents.

Adopted: December 12, 2019