

# **DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

## **POLICY ON MAINTAINING PERFORMANCE BASED INCENTIVES (MPBI)**

The MPBI policy is to be in addition to, and not in lieu of, any recapture requirement pursuant to Article 18A of the New York State General Municipal Law.

### **I. Return of 100 per cent of Incentives during construction stage 1 to 2 years or until a Certificate of Occupancy is used:**

- Default as defined by legislation and project documents
- Project ceases to be a project during construction and prior to occupancy
- Project ceases to be a project during Year 1, 2 and 3 of operations
- Defaults defined in Legislation and Project Agreement

### **II. Establish Performance Based Incentives Review Committee consisting of the entire Board of Directors:**

- Committee to review non-compliant projects
- Make recommendations for the return of benefits

### **II. Performance Failure**

The Agency's goal is to minimize performance failures by providing technical assistance to potential projects prior to the submission of an application for benefits and in helping projects understand the Performance Based Incentive Policy as follows:

- When a project does not achieve expected FTEs at the Project Facility by the dates set in the Project Agreement and falls below a Proportional Amount of 90%.
- The term "Proportional Amount" shall mean the ratio obtained by dividing (x) the number resulting from subtracting the number of FTEs employed at the Project Facility on the relevant date or during the relevant period, from the Base Employment Number (as enumerated in the Project Agreement), by (y) BASE Employment Number.
- Payment in Lieu of Taxes (PILOT) Agreement for each project will establish the terms for increased payments for the year following a performance failure.
- Each year, CEO will meet with projects having a higher Proportional Amount percent of FTEs in a previous year to assess business aspects that may lead to a performance failure in the current or subsequent years. This will mitigate a potential future failure by either terminating the project or amending the project agreement and PILOT with cause and decreasing incentives.

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**III. Identifying and Reporting Projects with Performance Based Incentive Deficiencies**

- Compliance Officer will prepare and submit a report to the MPBI Review Committee annually, detailing projects that utilized excess sales tax abatements, are not current with PILOT Payments, or have not achieved their expected employment jobs as detailed in the Agency's and Project agreements.
- Agency CEO will meet with each project to review deficiencies in performance-based measurements; prepare a report for the MPBI Review Committee
- Committee will assess causes of deficiencies and make recommendations to the Board, at its discretion, for action to: cure deficiencies, declare a project default, terminate the project agreement, reduce the value of incentives, terminate future benefits, and require the return of financial assistance made to date.
- Board will meet with the project to jointly discuss deficiencies and resolution option(s). The following will be used to determine if an explanation exists for failure to achieve the economic benefits projected by the company:
  - a. Natural Disaster: if a natural disaster such as a fire, flood, or tornado disrupts the business.
  - b. Industry Trends: An evaluation of industry trends will be made relevant to the company, and a determination reached as to whether the company is in a market that is declining. International and national data will be used in the evaluation. An industry is considered in decline when, measured by the appropriate NAIC code, it experiences employment or revenue declines—beyond its control—of 10% or more over 3 years.
  - c. Loss of Major Supplier or Customer: if the loss of a customer or supplier represents 15% or more of the sales of the company.
  - d. Productivity Improvements: if new technology, equipment or general productivity improvements result in the need for less than projected employees or investment
  - e. Unfair Competition: if an international competitor utilizes an unfair competitive advantage to acquire market share.
  - f. Other economic reversals.
- Company is officially notified by mail of the Board's decision and has 30 days to comply with the Board conditions.
- The IDA granting the economic incentive retains all rights to impose, delay or waive penalties. Further, the Agency, at its sole discretion, may waive all or any portion of any payment owing by the Company.

**IV. Recovery of Incentives**

The terms of Project Agreement will, depending upon the terms of a project include the following formula:

(A) one hundred per cent (100%) of the Benefits if the Recapture Event occurs prior to the Completion of Project Construction, or within the first (1st) or second (2nd) year after the Completion of Project Construction; or

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- (B) ninety per cent (90%) of the Benefits if the Recapture Event occurs during the third (3rd) year after the Completion of Project Construction; or;
- (C) eighty per cent (80%) of the Benefits if the Recapture Event occurs during the fourth (4th) year after the Completion of Project Construction; or;
- (D) seventy per cent (70%) of the Benefits if the Recapture Event occurs during the fifth (5th) year after the Completion of Project Construction; or;
- (E) sixty per cent (60%) of the Benefits if the Recapture Event occurs during the sixth (6th) year after the Completion of Project Construction; or;
- (F) fifty per cent (50%) of the Benefits if the Recapture Event occurs during the seventh (7th) year after the Completion of Project Construction; or;
- (G) forty per cent (40%) of the Benefits if the Recapture Event occurs during the eighth (8th) year after the Completion of Project Construction; or;
- (H) thirty per cent (30%) of the Benefits if the Recapture Event occurs during the ninth (9th) year after the Completion of Project Construction; or;
- (I) twenty per cent (20%) of the Benefits if the Recapture Event occurs during the tenth (10th) year after the Completion of Project Construction; or;
- (J) ten per cent (10%) of the Benefits if the Recapture Event occurs during the eleventh (11th) year after the Completion of Project Construction;

In the case of an industrial multi-tenant project, the above percentages will be multiplied by the percentage of Facility space leased by the sublessee(s) that caused such Recapture Event, as determined by the annual reports submitted to the Agency pursuant to the Tenant Agency Compliance Agreement.

*Adopted 7/21/2015  
Adopted 1/19/2016  
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Amended 2/14/2024  
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