

NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY

PROJECT MONITORING AND COMPLIANCE POLICY

POLICY PURPOSE: It is the policy of the Nassau County Industrial Development Agency (the “Agency”) to conduct its operations in compliance with the highest standards of conduct and ethical behavior and with best practices applicable to industrial development agencies and to operate in an accountable and transparent manner. The purpose of this Project Monitoring and Compliance Policy (this “Policy”) is to update the Agency’s procedures for the monitoring of Agency “projects.”

AUTHORITY: Section 874 of the New York State General Municipal Law, as amended, requires the Agency to at least annually assess the progress of projects for which bonds or notes remain outstanding or for which straight-lease transactions have not terminated, or which continue to receive financial assistance or are otherwise active, toward achieving the investment, job retain or creation, or other objectives of the project set forth in the Agency’s transaction documents with respect to such project.

SECTION 1. DEFINITIONS

- A. “Company” shall mean the direct recipient of Financial Assistance from the Agency in connection with a Project, together with any other owner, occupant or user of a Project designated by the Agency.
- B. “Financial Assistance” shall have the meaning set forth in Section 854 of the General Municipal Law, as amended.
- B. “Project” shall have the meaning set forth in Section 854 of the General Municipal Law, as amended.
- C. “Questionnaire” shall mean an annual project monitoring questionnaire issued by the Agency as set forth in this Policy.
- D. “Transaction Documents” shall mean, with respect to each Project, collectively, the company lease, sublease, installment sale agreement, PILOT Agreement and the other documents, instruments and agreements executed by the Agency and/or the Company in connection therewith.

SECTION 2. MATERIAL REQUIREMENTS

For each Project seeking Financial Assistance, the Agency shall establish certain material performance requirements (collectively, the “Material Requirements”), which Material Requirements shall be explicit and measurable and shall be set forth in the Transaction Documents. Material Requirements for each Project shall be approved by the members of the Agency. Material Requirements may vary by type of Project and may include such requirements as capital investment, job retention, job creation and such other requirements as may be established by the members of the Agency.

Each Project shall have identified Material Requirements, which shall be measured and evaluated from time to time to determine whether a Project receiving Financial Assistance has met and/or continues to meet the required obligations as established by the members of the Agency at the time the Project is approved.

SECTION 3. ANNUAL PROJECT REPORTING & MONITORING

Within a reasonable period of time after the end of each of the Agency’s fiscal years, the staff of the Agency shall issue a Questionnaire for each Project for which bonds or notes remained outstanding or for which a straight-lease transaction had not terminated, or which continued to receive financial assistance or was otherwise active, as of the last day of such fiscal year.

The form of the Questionnaire shall be determined by the Executive Director for each fiscal year and shall require each Company to submit such information, together with such supporting documentation, as the Agency shall deem necessary or desirable in connection with the Project, including, without limitation, such information and/or documentation, that may be required to allow the Agency to comply with applicable law and the Agency’s policies and procedures. At a minimum, the Questionnaire for a Project shall address the Material Requirements imposed by the Agency with respect to such Project.

In addition, the staff of the Agency shall have the right and are hereby authorized, on behalf of the Agency, to conduct such further audits, inquiries, investigations and inspections (including, without limitation, on-site investigations) of each Project as shall necessary or desirable to ensure compliance with applicable law and the Agency’s policies and procedures. All monitoring efforts should be documented in writing.

Monitoring and compliance reports shall be presented to the members of the Agency on an annual basis.

SECTION 4. NON-COMPLIANCE WITH REQUIREMENTS

The Executive Director of the Agency, with the assistance of the staff of the Agency and/or counsel to the Agency, shall be responsible for determining whether a Project is in compliance

with the requirements of the Transaction Documents for such Project, including, without limitation, compliance with Material Requirements.

If the Executive Director of the Agency determines that a Company is not in compliance with the requirements of the Transaction Documents, the Agency shall:

1. Notify the Company (and other applicable parties to the Transaction Documents) of such non-compliance in accordance with the Transaction Documents;
2. Give the Company the opportunity, if applicable, to cure such non-compliance with the Transaction Documents;
3. To the extent applicable, seek additional information/explanation from the Company as to the reasons for such non-compliance, including, without limitation, an explanation of the economic or natural factors that led to such non-compliance;
4. If applicable, the Company should be provided the opportunity to present to the members of the Agency any information outlined in #3 above regarding such non-compliance; and
5. If required by applicable law, notify the appropriate New York State agencies of the Company's failure to comply with applicable reporting requirements.

With respect to Material Requirements that are numerical in nature (e.g., job retention, job creation, capital investment), the Executive Director is authorized to waive or otherwise address non-compliance by the Company without action by the members of the Agency if the Company is within ten percent (10%) of the goal of such Minimum Requirement. If non-compliance with a numerical Material Requirement is greater than ten percent (10%) of the goal of such Material Requirement, the consent of the members of the Agency shall be required to waive or otherwise address such non-compliance.

With respect to Material Requirements that are not numerical in nature, such Material Requirements shall be evaluated in accordance with the terms of the Transaction Documents approved by the members of the Agency for such Project.

SECTION 5. ACTION BY MEMBERS OF THE AGENCY

Except as otherwise set forth in Section 4 above with respect to actions authorized to be taken by the Executive Director, actions to waive or modify the default or remedy provisions of the Transaction Documents, including, without limitation, with respect to non-compliance with Material Requirements, shall be made by the members of the Agency.

The members of the Agency shall have the right, upon a review of the facts related to a Project's non-compliance with the Transaction Documents, to determine that there was a valid and acceptable reason for non-compliance with the provisions of the Transactions Documents and, if so, to (i) consider the matter closed without further action, (ii) set a specific time period for the Company to achieve compliance, and/or (iii) set additional reporting requirements.

If the members of the Agency determine, upon a review of the facts related to a Project's non-compliance with the Transaction Documents, that there is not a valid and acceptable reason for such non-compliance with the provisions of the Transaction Documents, the members of the Agency may (i) authorize staff of the Agency to proceed with enforcement of the Agency's rights and remedies (including, but not limited to, termination of the Transaction Documents, suspension of future Financial Assistance and/or recapture of previously granted Financial Assistance), or (ii) authorize the Agency to enter into an amendment of the Transaction Documents providing for a modification of the terms of the granting of the Financial Assistance (e.g., an increase in PILOT payments, reduction in authorized sales tax exemptions) based on the particular circumstances of the matter, including, without limitation, partial compliance with the Agency's requirements.

This Policy is subject to modification and amendment in the discretion of the members of the Agency, shall be filed annually with all local and state agencies as required under all applicable law and shall be posted on the Agency's website.

This Policy was adopted by the members of the Agency on March 4, 2017.