

CITY OF GENEVA INDUSTRIAL DEVELOPMENT AGENCY
Policy for Termination and/or Modification of Agency Financial Assistance
and Recapture of Agency Financial Assistance Previously Granted

1. **Purpose.** To establish and provide a fair procedure, compliant with Sections 874 and 875 of the New York General Municipal Law and Geneva Industrial Development Agency ("Agency") policies, potentially resulting in the termination and/or modification of Agency Financial Assistance and/or the recapture of all or a portion of Agency Financial Assistance.
2. **Goal.** The goal of this policy is to enact a procedure for implementing the potential or actual termination and/or modification of Agency Financial Assistance and/or recapture of all or a portion of Agency Financial Assistance from Applicants resulting from the violation of certain statutory requirements and/or Material Factors, as defined herein, that were relied upon and established as consideration for the granting of Financial Assistance to Applicants.
3. **Definitions.**
 - a. **Agency Financial Assistance** includes any or all: (i) exemptions from New York State and local sales and use tax; (ii) an exemption from mortgage recording tax; and/or (iii) an abatement from real property tax provided by or through the Agency (under the terms of a Payment-in-lieu-of-Taxes Agreement or "PILOT Agreement") to an Applicant in order to induce such Applicant to undertake a project (also referred to herein individually or collectively as "Financial Assistance").
 - b. **Applicant** is a for-profit or not-for-profit entity that has applied for and received Agency Financial Assistance from Agency.
 - c. **Agency** is the City of Geneva Industrial Development Agency.
 - d. **Material Factors** are factors, and any related reporting requirements established to verify such factors, determined by the Agency Board as being so significant that without such factors at the level specified, it is unlikely that the Agency would have agreed to grant Agency Financial Assistance. Such factors generally include, but are not limited to, the number of net new permanent jobs retained and/or created, the dollar value of net new investment, etc... The quantity of such Material Factors (said Material Factors typically determined at the time a Project is granted Agency Financial Assistance) and the threshold for the termination and/or modification of Agency Financial Assistance and for the recapture of Agency Financial Assistance shall be determined by the Agency Board or Agency staff, as appropriate (and as further identified, below), on a case by case basis.
 - e. **Recapture of Agency Financial Assistance** is the result of an action taken by the Agency Board to seek to have an Applicant return all or a portion of Agency Financial Assistance that it has received.

- f. *Termination of Agency Financial Assistance* is the result of an action taken by the Agency Board or Agency staff, as appropriate, to cause an Applicant to cease receiving Agency Financial Assistance that it otherwise would have obtained in the future.
- g. *Modification of Agency Financial Assistance* is the result of an action taken by the Agency Board to cause a modification of the amount of Agency Financial Assistance to be received by the Applicant, for example, a modification of the abatement/increased payments under a PILOT Agreement, in the future.

4. **Termination and/or Modification of Agency Financial Assistance and/or Recapture-of Agency Financial Assistance.**

- a. Future Agency Financial Assistance may be terminated and/or modified by the Agency Board for a violation of any Material Factor contained in the Agency Application for Financial Assistance, inducement resolution (including all submissions made by the Applicant), Agent Agreement, Project Agreement, Lease/Leaseback Agreement, PILOT Agreement or any other agreement by and between the Applicant and the Agency (collectively, "Agency Transaction Documents").
- b. In addition to the termination and/or modification of Agency Financial Assistance, the Agency may impose recapture of Agency Financial Assistance where it is determined through the process specified below, that:
 - i. Agency Financial Assistance were obtained as a result of a knowing, misstatement of a material fact where such misstatement occurred in the written Agency Application for Financial Assistance, in any written submission, or in any on the record verbal statement made to Agency staff, the Board or Agency Finance Committee;
 - ii. An applicant failed to achieve the goals identified as Material Factors by the Agency Board at the time that the inducement/granting of Financial Assistance was approved. Such recapture of Agency Financial Assistance, to the extent provided by law, may consider extenuating and mitigating circumstances and may consider the extent to which the Applicant failed to achieve and maintain the Material Factors.

5. **Procedure to Terminate and/or Modify Agency Financial Assistance or to Recapture Agency Financial Assistance.**

- a. **Knowledge of Potential Termination/Modification of Financial Assistance or Recapture Issue:** When Agency staff becomes aware of a potential issue with respect to a Material Factor(s) related to the provision of Financial Assistance to an Applicant and is unable to otherwise remedy the issue, Agency staff shall notify the

Executive Director of the Agency (note in the case where Agency staff is able to remedy said issue, Agency staff shall still notify the Executive Director of the Agency). The Agency staff shall also notify or cause to be notified, the Chair of the Agency, the Agency Finance Committee and such other individuals as the Agency Board may determine. It is understood that this Agency Due Process Policy shall not apply to termination of Agency Financial Assistance related to the typical/standard events of default (not otherwise involving a Material Factor) as so identified within Agency Transaction Documents.

- b. Decision to Commence a Proceeding: The Agency Finance Committee or the Chair of the Agency shall cause a proceeding to be commenced to determine if Agency Financial Assistance should be terminated and/or modified and/or recaptured.
- c. Notice to the Applicant: If a decision is made to commence a proceeding to terminate and/or modify Agency Financial Assistance (said termination/modification of Agency Financial Assistance being related to a Material Factor and otherwise unrelated to typical/standard events of default as so identified within Agency Transaction Documents) and/or to recapture Agency Financial Assistance, then the Applicant shall be provided written notice ("Notice") of: (i) the alleged Material Factor(s) violation, (ii) the potential for termination and/or modification of Agency Financial Assistance and/or for recapture of Agency Financial Assistance as may be considered with respect to the commencement of such a proceeding, (iii) their rights to be heard and to appeal any such determination, and (iv) the date and time where a meeting will take place to consider the matter.
- d. Sufficient Time to Prepare a Response and Opportunity to be Heard: An Applicant shall be given ten (10) business days from the date said Notice, as described in Section 5(c), above, is received or deemed received to prepare and submit a written response to any alleged Material Factor(s) violation. The ten (10) business day response period, as described above, can be extended for good cause shown, as determined by the Chair. Thereafter, an Applicant will be provided an opportunity to make a written or written and oral presentation to the Agency Finance Committee.
- e. Representation: An Applicant shall have the right to be represented by counsel, or to appear without counsel.
- f. Creation of Written Record: The Agency Finance Committee shall take written meeting minutes that include a statement/summary of: (i) the alleged Material Factor(s) violation, (ii) the response, (iii) all evidence that has been submitted, and (iv) a summary of any oral presentations that have been made. The meeting minutes shall also include the vote, if any, taken by the Agency Finance Committee.

- g. Executive Session: To the extent allowed by the New York State Open Meetings Law, at the request of an Applicant, the Agency Finance Committee may go into executive session to receive certain confidential information that pertains to the considerations being made by the Agency Finance Committee.
- h. Agency Finance Committee Recommendation: The Agency Finance Committee shall vote on a resolution recommending a termination and/or a modification of Agency Financial Assistance and/or a recapture of Agency Financial Assistance, or no action.
 - i. If a determination is made to recapture New York State and local sales and use tax exemptions and/or mortgage recording tax exemptions, in accordance with New York General Municipal Law and Agency policies, the amount the Agency shall recapture may be equal to up to 100% of the amount of New York State and local sales and use tax exemption and/or mortgage recording tax exemption benefit so obtained and utilized.
 - ii. If a determination is made to recapture an abated amount of real property tax payment or payments provided by and through the Agency to an Applicant under the terms of a PILOT Agreement, the maximum amount that may be recaptured is equal to, but may be less than, the sum total of real property tax abatement received by the Applicant in the year or years that the violation(s) of Material Factors occurred as so determined by the Agency Finance Committee in consultation with Agency staff and as provided in the related inducement resolution authorizing the provision of Financial Assistance to the Applicant. If the Finance Committee recommends that an Applicant be subject to a real property tax abatement recapture event with respect to a particular year or year(s), it need not also simultaneously recommend, although it may do so, termination of real property tax abatements going forward.
 - iii. If a determination is made to modify Agency Financial Assistance, the Finance Committee, in consultation with Agency staff, may modify the amount of Financial Assistance, for example, to require a modification of any PILOT Agreement to require increased payments.

Such Agency Finance Committee resolution, to be effective, shall require a majority vote of the entire membership of the Agency Finance Committee. Any resolution shall be in writing and contain a statement of the reasons for the decision. The resolution shall be presented to the Applicant and submitted to the Agency Board for its consideration. If a resolution does not have sufficient votes to be enacted by the Agency Finance Committee, the matter, including a full record, shall be submitted to the Agency Board without recommendation.

- i. Flexible Application of Termination and/or Modification of Agency Financial Assistance and Recapture of Agency Financial Assistance: To the extent permitted by law and Agency policies, the Agency Finance Committee shall have broad discretion in recommending how to implement the termination and/or modification of Agency Financial Assistance and the recapture of Agency Financial Assistance. Such recommendation related thereto shall be based upon the circumstances that trigger such action. The Agency Finance Committee shall consider the extent of the violation of a Material Factor, the duration of such violation, the cause of such violation and the extent to which there was a creation of net new jobs and new investment and adherence to such other Material Factors as may have been considered at the time of the inducement.
- j. Appeal to Agency Board: An Applicant shall have the right to submit a written appeal to the Agency Board prior to the date upon which the Agency Board would otherwise consider taking action on a recommendation from the Agency Finance Committee. In addition, the Chair of the Agency Board may, in his or her discretion, grant an Applicant an opportunity to address the Agency Board prior to its action on a recommendation from the Agency Finance Committee.
- k. Final Decision by Agency Board: The Agency Finance Committee recommendation, if any, shall be promptly forwarded to the Agency Board for its consideration. No recommendation to terminate and/or modify Agency Financial Assistance and/or to recapture Agency Financial Assistance will become effective until and unless it is adopted by a majority vote of the entire Agency Board. The Agency Board may reject a recommendation, modify a recommendation or approve a recommendation in whole or in part, if any such recommendation was made by the Agency Finance Committee, or make any decision provided for in this paragraph.

6. **Other Remedies Available to Agency.** Notwithstanding the foregoing, the Agency, acting through its staff, retains the right to terminate Agency Financial Assistance as otherwise provided within the Agency Transaction Documents (for non-Material Factor(s) issues). Cause for such termination of Agency Financial Assistance include, but are not limited to, failure of the Applicant to make PILOT payments on a timely basis, failure to make reports as required by the Agency Transaction Documents, or other uncured breaches of the Agency Transaction Documents.

7. **Distribution of Recaptured Financial Assistance.** Any and all such returned/recaptured amounts of Agency Financial Assistance shall be redistributed to the appropriate affected tax jurisdiction, unless agreed to otherwise by any local taxing jurisdiction.

Approved and adopted this 3rd day of June 2022.