

COUNTIES OF WARREN AND WASHINGTON
INDUSTRIAL DEVELOPMENT AGENCY

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Glens Falls, New York 12801

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At the Board Meeting of the Counties of Warren and Washington Industrial Development Agency held on **July 18, 2016** at the Washington County Municipal Center in Fort Edward, NY, the following members were:

<i>PRESENT:</i>	Bud Taylor	Chairman
	Bruce Ferguson	Vice & Park Chairman/Contracting Officer
	Joseph LaFiura	Secretary/Treasurer
	Matt Simpson	At Large Member
	Lou Tessier	
	Dave O'Brien (delayed arrival)	
	Craig Leggett	

<i>ABSENT:</i>	Jim Lindsay
	John W. Weber
	Brian R. Campbell

<i>ALSO PRESENT:</i>	Robert Morris, Esquire	FitzGerald Morris Baker Firth PC
	Tom Rosecrans	TRSB Enterprises, LLC (RockSport)
	Sue Beadle	TRSB Enterprises, LLC (RockSport)
	Deborah Mineconzo	Office Administrator

The minutes of the meeting were taken by the Office Administrator. The Chairman called the meeting to order at 4:00 pm. After attendance was taken the Chairman determined a quorum was present.

Approval of minutes:

Mr. Simpson made a motion to approve the June 20, 2016 Board Meeting minutes. Mr. LaFiura seconded the motion and all voted in favor of the motion by voice vote.

Accounts Payable:

Mr. LaFiura moved to approve the accounts payables as presented with Mr. Simpson seconding. The motion was approved by roll call vote.

(Dave O'Brien arrives)

New Business:

TRSB Enterprises, LLC (RockSport)

Tom Rosecrans and Sue Beadle, members of TRSB Enterprises, LLC, gave an overview of their Queensbury project citing their community involvement over the last twenty years and Tom's extensive experience with rock climbing and guiding. On their already purchased Carey Road lot of 2.44 acres they plan to build an 8,400 sq. foot indoor rock climbing and training facility. They currently work in a much smaller 1,100 sq. foot facility which they've outgrown. They are a teaching facility and have had a fifteen year affiliation with

the Town and also SUNY Adirondack, assisting with their recreation and outdoor adventure programs. With the new facility, they will have the capacity to train firefighters, work with the military and train other needed rock climbing instructors and camp counselors besides being a recreational center for tourists and area residents. Site plans were displayed and reviewed for the members. The nearest competition is Clifton Park to the south, making their business unique for this area. There is also no other instructors available between Albany and Lake Placid. They are requesting assistance in the form of sales and mortgage tax exemptions along with a standard PILOT of 50% for five years and 25% for the next five years.

After answering member questions, Mr. O'Brien moved to pass the draft resolution to schedule a public hearing for the morning of Monday, August 15th, before the afternoon Board Meeting. Mr. Simpson seconded and all voted in favor of the resolution unanimously.

Resolution No. 16-11

**RESOLUTION TO SCHEDULE A PUBLIC HEARING RELATING TO THE HARD AS A ROCK TRAINING CENTER, INC. PROJECT
(Complete resolution annexed to this document)**

Old/Unfinished Business:

Big Bay Lodging LLC:

Mrs. Mineconzo reported the developer of Big Bay Lodging LLC advised her the requested appraisal had been received and he is now awaiting the final financing. Mr. Morris reminded everyone a signed Preliminary Agreement and security deposit had not been received as they are awaiting the funding information.

87 Stays, Inc.:

Mr. Taylor reported the Public Hearing was held this morning for the 87 Stays, Inc. project. No one attended the hearing other than the developer and his lawyer along with our Agency representatives. The process on new projects was reviewed by Mr. Morris for the new member, Mr. Leggett. Mr. Morris informed everyone this project is seeking a 485b PILOT which includes the school same as Big Bay Lodging. Mr. Huntley of Queensbury School District advised Mrs. Mineconzo this morning that the Board of Education plans to formally approve the PILOTS on August 8th. Mr. O'Brien moved to take on the project by approving the Inducement Resolution with Mr. LaFiura seconding. All voted in favor of the motion by roll call vote.

Resolution No. 16-12

**RESOLUTION TAKING PRELIMINARY ACTION TOWARD UNDERTAKING A CERTAIN PROJECT, AS DEFINED HEREIN, APPOINTING 87 STAYS, INC., AGENT OF THE AGENCY FOR THE PURPOSE OF CONSTRUCTING AND EQUIPPING THE PROJECT FACILITY (AS DEFINED HEREIN) AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BY AND BETWEEN THE AGENCY AND 87 STAYS, INC.
(Complete resolution annexed to this document)**

TFC Enterprises (Tree Paad):

Mr. Taylor read the recent email from the developer, Patti Garrand, of TFC Enterprises. The email advises that they have settled and received funds from a recent lawsuit. Also they have met with their accountant and talked with their investor and hope to have a written commitment within the next couple weeks. She plans to attend next month's Executive Meeting to report further. Three banks have been contacted and are being brought up to speed at this point.

Back to New Business:

By-Laws Revisions:

Mr. Morris said the current Agency By-Laws were a little ambiguous in two areas. After researching the subjects the new By-Laws are being revised to say six members are needed for a quorum even when a member vacancy exists. Secondly, a majority vote will consist of a minimum of six votes for approval. Mr. Simpson moved to approve the By-Laws resolution presented with Mr. LaFiura seconding. All voted in favor of the motion by roll call vote.

Resolution No. 16-13
RESOLUTION AMENDING THE BY-LAWS OF THE AGENCY
(Complete resolution annexed to this document)

Recapture Policy and Agency Evaluation Guidelines:

Mr. Taylor advised the members the new Agency Evaluation Guidelines and revised Recapture Policy for consideration are the result of the State's Budget Office keeping closer tabs on how IDAs perform. Mr. Morris informed everyone the Agency already has several criteria in their policies on evaluating new projects. However, since the ABO office suggested some additional criteria, Mr. Morris added more guidelines to Section VII of our policy manual. He also included some recommended "Material Terms" to consider with projects. Regarding the revised Recapture Policy on PILOTS, Mr. Morris mentioned the Agency only had one project go "belly up" in the past and that was The Forum which went bankrupt. He informed everyone Attorney Kara Lais, Mrs. Mineconzo and Mr. Morris worked on the new policies and guidelines to make sure they complied with the new ABO rulings. Mr. O'Brien moved to pass the resolution regarding the changes with Mr. Simpson seconding. All voted in favor of the motion by roll call vote.

Resolution No. 16-14
RESOLUTION APPROVING OF EVALUATIVE CRITERIA AND A RECAPTURE POLICY IN
CONNECTION WITH PROJECT APPLICATIONS
(Complete resolution annexed to this document)

Warren County Member:

Mr. Taylor formally introduced and welcomed the new Warren County Member, Craig Leggett. Mr. Leggett is the Supervisor for the Town of Chester replacing Fred Monroe. Mr. Taylor stated our Agency has had a problem with quorums and he appreciates Mr. Leggett becoming a member.

Mr. Ferguson informed the members he spoke with Deb Prehoda about Mr. Campbell not being able to attend meetings. Mr. O'Brien will be following up with Mr. Campbell on the matter.

There being no further business to discuss, Mr. Taylor adjourned the meeting at 4:30 pm.

Dated

Joseph LaFiura, Secretary

Counties of Warren and Washington Industrial Development Agency

Resolution No. 16 - 11

Adopted July 18, 2016

Introduced by Dave O'Brien
who moved its adoption.

Seconded by Matt Simpson

RESOLUTION TO SCHEDULE A PUBLIC HEARING RELATING TO THE HARD AS A ROCK TRAINING CENTER, INC. PROJECT

WHEREAS, Hard as a Rock Training Center, Inc., a business corporation established pursuant to the laws of the State of New York, having an address of 138 Quaker Road, Queensbury, New York 12804 (the "Company") has requested that the Agency provide financial assistance in the form of a payment of lieu of taxes, mortgage tax exemption and sales tax abatements regarding a tourist destination retail construction project (the "Project") to consist of: (i) the acquisition of an interest in a certain commercial parcel or parcels of land located at Carey Road (Lot 2), in the Town of Queensbury, County of Warren, State of New York and referred to as Tax Map Parcel Number 308.20-1-3.5 (the "Land"); (ii) the construction and equipping of a 8,400+/- square foot indoor climbing center and fitness facility (the "Facility"); (iii) the acquisition and installation therein of certain furnishings and fixtures (the "Equipment" together with the Land and the Facility, collectively the "Project Facility") to be used in connection with the contemplated uses; and (iv) the lease of the Project Facility to the Company, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the "Act"), as amended; and

WHEREAS, the Land is currently owned by TRSB Enterprises, LLC, a limited liability company established pursuant to the laws of the State of New York; said entity will enter into a sublease agreement with the Company; and

WHEREAS, Chapters 356 and 357 of the Laws of 1993 require that prior to granting financial assistance of more than \$100,000.00 to any project, an IDA must (a) adopt a resolution describing the project and the financial assistance contemplated by the IDA with respect thereto, and (b) hold a public hearing in the city, town or village where the project proposes to locate upon at least ten (10) days published notice and, at the same time, provide notice of such hearing to the Chief Executive Officer of each affected taxing jurisdiction within which the project is located; and

WHEREAS, the Agency is in the process of reviewing and considering the Company's Application requesting the Agency to provide financial assistance for the proposed Project, which may include a sales tax abatement during the construction of the Facility, a mortgage tax exemption and a payment in lieu of taxes, all of which shall be consistent with the uniform tax exemption policy of the Agency.

NOW, THEREFORE, BE IT RESOLVED:

1. The Agency hereby schedules a public hearing pursuant to Article 18-A of the New York

State General Municipal Law (the “Law”) to be held by the Agency on Monday, the 15th day of August, 2016, at 10:00 a.m., local time, at the Queensbury Town Office Building, Supervisor’s Conference Room, located at 742 Bay Road, Town of Queensbury, County of Warren, New York, 12804, in connection with the Proposed Project.

2. The Agency hereby authorizes the publication of a Notice of Public Hearing for the Proposed Project and in accordance with the Law and the Agency’s policies and procedures.

3. This resolution shall take effect immediately.

AYES:	<u>7</u>
NAYS:	<u>0</u>
ABSENT:	<u>3</u>
ABSTAIN:	<u>0</u>

Counties of Warren and Washington Industrial Development Agency

Resolution No. 16-12

Adopted July 18, 2016

Introduced by Dave O'Brien
who moved its adoption.

Seconded by Joseph LaFiura

RESOLUTION TAKING PRELIMINARY ACTION TOWARD UNDERTAKING A CERTAIN PROJECT, AS DEFINED HEREIN, APPOINTING 87 STAYS, INC., AGENT OF THE AGENCY FOR THE PURPOSE OF CONSTRUCTING AND EQUIPPING THE PROJECT FACILITY (AS DEFINED HEREIN) AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BY AND BETWEEN THE AGENCY AND 87 STAYS, INC.

WHEREAS, the Counties of Warren and Washington Industrial Development Agency (the "Agency") is a body corporate and politic duly organized and existing under Sections 856 and 890-c of the General Municipal Law ("GML") of the State of New York (the "State"), with its principal place of business at 5 Warren Street, Glens Falls, New York; and

WHEREAS, 87 Stays, Inc. (the "Company"), having an address of Corinth Road, Queensbury, New York 12804, is a business corporation created pursuant to the Laws of the State of New York; and

WHEREAS, the Company has submitted an Application for Assistance ("Application") requesting that the Agency provide financial assistance in the form of a payment of lieu of taxes, mortgage tax exemption and sales tax abatements regarding a tourist destination retail construction project (the "Project") to consist of: (i) the acquisition of an interest in a certain commercial parcel or parcels of land located Corinth Road, Town of Queensbury, County of Warren, State of New York and referred to as Tax Map Parcel Number 309.13-1-73 (the "Land"); (ii) the construction and equipping of a 53,200+/- square foot 90 room hotel (the "Facility"); (iii) the acquisition and installation therein of certain furnishings and fixtures (the "Equipment" together with the Land and the Facility, collectively the "Project Facility") to be used in connection with the contemplated uses; and (iv) the lease of the Project Facility to the Company, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the "Act"), as amended; and

WHEREAS, under Article 18-A of the General Municipal Law (the "Act"), the Legislature of the State of New York has granted the Agency the power and authority to undertake the Project; and

WHEREAS, the Project will require the Agency and the Company to enter into an agreement whereby the Company will acquire, by deed or by lease, and construct the Project Facility and the Agency will lease or sell the Project Facility to the Company with an option to buy; and

WHEREAS, the Agency is a state agency under Section 8-0105 of the Environmental Conservation Law of the State of New York and the Project is an action under Article 8 of said law (Article 8 hereinafter being referred to as the “State Environmental Quality Review Act” or “SEQRA”) and under 6 NYCRR Part 617, §§ 617.2(b) and 617.3(g); and

WHEREAS, the Company has submitted to the Agency, and the Agency has reviewed information needed to determine whether or not the Project will have a significant impact on the environment; and

WHEREAS, the acquisition, construction and installation of the Project Facility has not been commenced, and the Agency has not yet authorized the Project; and

WHEREAS, the Agency conducted a public hearing on July 18, 2016 pursuant to Article 18-A of the New York State General Municipal Law (the “Law”) before taking official action relating to the Project.

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. Findings. The Agency has reviewed the application together with the environmental assessment form to determine compliance with the requirements of the Act and based on the representations of the Company to the Agency in said application and elsewhere, the Agency hereby makes the following findings and determinations with respect to the Project:

(A) The Project is a permitted project under the Act; and

(B) Undertaking the Project will advance the Agency’s corporate purposes by leading to the creation of at least nine (9) full time and twelve (12) part time/seasonal job opportunities within the next two (2) years for the inhabitants of the Counties of Warren and Washington, New York and the State of New York. The Project will also promote the health, prosperity, and economic welfare of the inhabitants of the Counties of Warren and Washington and the State of New York and improve their standards of living; and

(C) (i) The Project is an “Unlisted Action” under SEQRA for which the Town of Queensbury Planning Board (the “Planning Board”) has acted as lead agency. On or about March 15, 2016, the Planning Board reviewed the Project Site Plan Application submitted on behalf of the Company and approved said Site Plans, and issued its Negative Declaration that the Project will not have a significant impact on the environment; and (ii) the Agency has thoroughly reviewed the environmental assessment form, negative declaration and related supporting information presented to the Agency within the Company’s Application for Assistance in order to determine whether the Project might have any potential significant adverse impacts upon the environment. After conducting this review, the Agency has determined that the acquisition, construction and equipping of the Project Facility are consistent with social, economic and other essential considerations and will not result in any significant adverse impacts on the environment. The Agency hereby ratifies the findings and Negative Declaration of the Town of Queensbury Planning Board. In doing so, the Agency satisfies the requirements of Part 617 of Title 6 of the New York Code of Rules and Regulations and no further SEQRA review is required for the Project; and

(D) It is in the public interest for the Agency to undertake the Project on behalf of the Company; and

(E) The completion of the Project will not result in the removal of a commercial, industrial or manufacturing plant of the Company from one area of the State of New York to another area of the State of New York, as the Company's lease at its current location will not be renewed. Further, the completion of the Project will not result in any loss of jobs and all existing jobs will be retained nor will the completion of the Project result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Facility located within the State of New York; and

(F) Pursuant to section 862(2)(a) of the General Municipal Law, the Agency has determined that the Project falls within the scope of the definition of a "tourism destination" as defined by the laws of the State of New York; and

(G) The Agency further determines that the Project includes the following key aspects: (i) the Project will be a tourist destination for persons outside of the immediate economic region; (ii) the Project will result in increased revenues to the County of Warren through the collection of sales tax and occupancy tax; (iii) the Project will result in an increased tax basis for the Project location since the Land is currently assessed at \$1,000,000, but the project consists of an \$10,137,500 private investment; and (iv) the Project will attract new and additional revenues to nearby stores and businesses; and

(H) The Agency hereby finds that the for this Project the private investment, as more specifically described in subsection (G) herein, and the creation of jobs, as more specifically described in subsection (B) herein, shall be considered Material Terms for the purposes of monitoring in accordance with the policies and procedures of the Agency.

SECTION 2. Preliminary Agreement. The proposed preliminary project agreement by and between the Agency and the Company (the "Preliminary Agreement"), as presented to this meeting, is hereby approved as to substance and form. The proposed agreement outlines the Agency's and the Company's rights and duties with respect to the undertaking of the Project. Subject to such changes as the Chairman of the Agency, upon advice of counsel, may reasonably deem necessary, the Chairman is authorized to execute the Preliminary Agreement, and the Secretary of the Agency is authorized to affix a facsimile of the corporate seal thereto and to attest to the same. Execution and attestation shall be conclusive evidence that the Agency has approved the Preliminary Agreement.

SECTION 3. Description of Project.

Subject to the conditions set forth herein and in Section 4.02 of the Preliminary Agreement, the Agency shall:

- (A) acquire an interest in, construct and install the Project Facility; and
- (B) lease or sell the Project Facility to the Company pursuant to an agreement or agreements whereby the Company will obligate itself, among other things, to undertake the Project on behalf of the Agency.

SECTION 4. Company Appointed Agent of Agency.

- (A) The Company is hereby appointed the true and lawful agent of the Agency to:
 - (1) construct and install the Project Facility;
 - (2) make, execute, acknowledge, and deliver all contracts, orders, receipts, instructions,

- and writings needed to complete the Project; and
- (3) do all other things requisite and proper for the completion of the Project.

(B) The Company is authorized to proceed with the acquisition, construction and installation of the Project Facility, subject to receiving appropriate municipal approvals needed prior to commencement of construction, and to advance such funds as may be necessary to accomplish these goals.

(C) The Company is also authorized to appoint third party agents to undertake the Project and thereby make available to such third party agents an exemption from New York State sales and use taxes in connection with undertaking the Project. This provision is subject to the Company entering into an Agent Agreement with the Agency.

SECTION 5. §144 Election. Not Applicable.

SECTION 6. Bond Counsel. Not Applicable.

SECTION 7. Document Preparation. Counsel to the Agency is hereby authorized and directed to cooperate with counsel to the Company, as well as all other necessary parties, in order to prepare the documents needed to undertake the Project.

SECTION 8. Payment in Lieu of Tax (PILOT) Agreement. The Agency's approval is subject to the Company entering into a PILOT Agreement with the Agency whereby the Company agrees to make payments in lieu of taxes in an amount pursuant to the Agency's Uniform Tax Abatement Policy, or pursuant to a schedule that is otherwise agreed upon by the Agency and the Company, in any given year as if the Company were the owner of the Project and not the Agency. The Agency's approval is also subject to the Company agreeing to the terms of the Agency's Recapture Policy, as it may be amended from time to time.

SECTION 9. Public Inspection. A copy of this resolution and a copy of the Company's Application for Assistance, together with all other application materials not protected under applicable Freedom of Information Laws, shall be placed on file in the office of the Agency. Such documents shall be available for public inspection during normal business hours.

SECTION 10. Distribution of Resolution. The Chairman of the Agency is hereby authorized to distribute copies of this resolution to the Company and all other persons requesting it.

SECTION 11. Public Hearing. A public hearing for this Project was duly authorized and held on May 11, 2016 in accordance with the provisions of Article 18-A of the General Municipal Law.

SECTION 12. Further Action. The Chairman of the Agency is authorized to take such further action as shall be necessary to give effect to and implement this resolution.

SECTION 13. Effective Date. This resolution shall not take effect until the Company delivers to the Agency of a fully executed Preliminary Agreement, as defined herein, together with an \$25,000.00 security deposit.

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

VOTING:	AYES	NAYS	ABSTAIN	ABSENT
Harold G. Taylor	1			
Bruce A. Ferguson	1			
Joseph P. LaFiura	1			
Louis Tessier	1			
James T. Lindsay				1
Dave O'Brien	1			
John W. Weber				1
Matthew Simpson	1			
Brian R. Campbell				1
Craig Leggett	1			
TOTALS	7	0	0	3

The foregoing resolution was thereupon declared duly adopted.

Counties of Warren and Washington Industrial Development Agency

Resolution # 16-13

Adopted: July 18, 2016

Introduced by Matt Simpson

who moved its adoption.

Seconded by Joseph LaFiura

RESOLUTION AMENDING THE BY-LAWS OF THE AGENCY

WHEREAS, the law of the State of New York requires that any board or similar body charged with any public duty to be performed or exercised by them as a board, a majority of the whole number of such persons or officers shall constitute a quorum; and that a majority of the whole number shall be required for any action of the board; and

WHEREAS, the law of the State of New York states that the words “whole number” shall be construed to mean the total number of individuals which the board would have were there no vacancies; and
WHEREAS, the current By-Laws of the Agency do not comply with the foregoing it is hereby

RESOLVED, that Article IV Section 4 of the By-Laws shall read as follows:

“Section 4. Quorum. At all meetings of the Agency, six members of the Agency shall constitute a quorum for the purpose of transacting business; provided that a smaller number may meet and adjourn to some other time or until the quorum is obtained;” And it is further

RESOLVED, that Article IV Section 6 of the By-Laws shall read as follows:

“Section 6. Manner of Voting. The vote of six members of the Agency shall be sufficient to pass any matter before the Agency. The voting to amend these By-Laws and the voting on all matters requiring the expenditure of money, the issuance of bonds, the granting of tax breaks, affecting the rights of a person or affecting real property shall be by a roll call vote. In the case of appointments or election of officers, the vote may be by secret ballot at the discretion of the Chairman.”

This Resolution will take effect immediately.

VOTING:	AYES	NAYS	ABSTAIN	ABSENT
Harold G. Taylor	1			
Bruce A. Ferguson	1			
Joseph P. LaFiura	1			
Louis Tessier	1			
James T. Lindsay				1
Dave O'Brien	1			
John W. Weber				1
Matthew Simpson	1			
Brian R. Campbell				1
Craig Leggett	1			
TOTALS	7	0	0	3

Counties of Warren and Washington Industrial Development Agency

Resolution No.16-14

Adopted July 18, 2016

Introduced by Dave O'Brien
who moved its adoption.

Seconded by Matt Simpson

RESOLUTION APPROVING OF EVALUATIVE CRITERIA AND A RECAPTURE POLICY IN CONNECTION WITH PROJECT APPLICATIONS

WHEREAS, there have been recent amendments to the New York State General Municipal Law concerning the Agency's review and approval of project applications and the recapture policies of an industrial development agency; and

WHEREAS, the Agency has reviewed the new legislation and has amended its policies and procedures accordingly.

Now, therefore, the Agency hereby approves of the evaluative criteria and Material Terms as set forth in the Agency's Policies and Procedures Manual dated as of the date hereof and as presented at this meeting; and

The Agency further approves of the Recapture Policy dated as of the date hereof and as presented at this meeting.

This Resolution shall take effect immediately.

VOTING:	AYES	NAYS	ABSTAIN	ABSENT
Harold G. Taylor	1			
Bruce A. Ferguson	1			
Joseph P. LaFiura	1			
Louis Tessier	1			
James T. Lindsay				1
Dave O'Brien	1			
John W. Weber				1
Matthew Simpson	1			
Brian R. Campbell				1
Craig Leggett	1			
TOTALS	7	0	0	3

SECTION VII: CRITERIA FOR CONSIDERING APPLICATIONS

A. **AGENCY EVALUATION GUIDELINES**

1. **Project Feasibility**

The applicant must provide information which demonstrates that the proposed project is feasible. The term “Project” means the activity or group of integrally related activities which are to be carried out by the applicant and all public and private participating parties.

Project feasibility includes but is not limited to (1) evidence that costs, both capital and operating, are reasonable; (2) that a reasonable, well thought out business plan exists; (3) that appropriate management and financial accounting capabilities are in place; (4) that there is a market for the proposed service, activity or product(s) and that a reasonable marketing plan is in place; (5) that revenue estimates are reasonable and that all sources of project funds, including Industrial Development Bond buyers, are firmly committed or can reasonably be expected to be firmly committed prior to closing.

In determining Project feasibility, the Agency shall examine the information and documentation it deems necessary to make an informed judgment which shall include, but not be limited to, the following:

- Company’s Financial Statement
- Personal Financial Statements (partners and 5% owners of corporations)
- Project Capital Cost Estimate and Equipment Quotes
- Working Capital Needs
- Projection of Income Operating Expenses
- Cash Flow and Net Profit
- Business Plan
- Job Projections - retained and created
- Evidence of Equity and Other Firm Financial Commitments

Project feasibility issues that are not resolved to the satisfaction of the Agency are an appropriate reason for refusal. The Agency shall provide reasonable advice and assistance to the applicant.

2. Impact on Local Economy

The Counties of Warren and Washington Industrial Development Agency will use the following criteria for reviewing Agency applications:

All applications for Agency financing and straight lease transactions will be reviewed by the Agency in order to determine whether or not they would have a significant beneficial impact upon the Counties' economy. Measures of significance would include, but not be limited to, the following:

1. Jobs:
 - a. Number and type of local jobs retained and used during the construction phase of the project.
 - b. Number and type of jobs retained and created by project upon commencement of operation of the facility.
2. Tax Abatements: The tax abatements available to and requested by the applicant will be considered by the Agency.
3. Cost: Total Cost of project, including the amount of private sector investment.
4. Cost Benefit: Agency inducement results in a project that provides additional revenues to the county, city, town, village, and school district in which the project is located.
5. Timely Completion: Developers ability to complete the project in a timely fashion.
6. Tenant Characteristics: Manufacturing facilities and back office operations; corporate headquarters; moderate priced rental space for start-up and small businesses; incubator space for research and development; tourist destination facilities; research and development activities; energy generation; etc.
7. Uniqueness: Business serves previously under-served segment of market; upgrades a distressed area; project provides amenities for the public; project is supported by the community; project involves redevelopment of an old structure for new purpose; location on a Brownfield site; etc.
8. Existing Business: The effect the project will have on existing businesses will be considered by the Agency.

NOTE: The above significant indicators are not all inclusive and are not in priority order. They are simply meant as examples of measurements to be used when reviewing each application on its merits.

B. MATERIAL TERMS

At the time of project approval the Agency shall identify “Material Terms” which will be used to determine if a project applicant has met the obligations required for the incentives received by the applicant. These “Material Terms” will be described in the inducement resolution approving the project, as well as the preliminary agreement between the parties.

These “Material Terms” as defined for the particular project will be utilized by the Agency in setting and monitoring project benchmarks during the term of the incentives for the purposes of administering the Agency’s recapture policy.

For certain numerical “Material Terms” such as job creation/retention or investment amount an achievement factor of 80% will constitute compliance. For non-numeric “Material Terms” such as redevelopment of an old structure for a new purpose or location on a Brown Field site, a determination of compliance will be made upon completion of the project.

It is understood that these “Material Terms” may vary depending on project type and project specifics, and may be selected from the criteria set forth in the foregoing Section A, 2 Impact on Local Economy.

C. FINANCING DECISIONS

Before making its final decision, the Agency will perform and put in writing a cost benefit analysis that identifies the extent to which the project will create or retain permanent, private sector jobs; the estimated value of any tax exemption to be provided; the amount of private sector investment generated or likely to be generated by the proposed project; the likelihood of accomplishing the proposed project in a timely fashion; and the extent to which the proposed project will provide additional source of revenue for municipalities and school districts; and any other public benefits that might occur as the result of the project.

Loan applicants will be informed in writing of the action of the Agency and the Agency shall document its decisions which shall include a statement or explanation of the public purpose served by the decision.

Following approval, the Agency shall forward a Preliminary Agreement to the applicant for signature. Such agreement shall set forth the complete terms and conditions of the IDA financing or lease.

SECTION VIII: HELD IN RESERVE

**COUNTIES OF WARREN AND WASHINGTON
INDUSTRIAL DEVELOPMENT AGENCY**

RECAPTURE POLICY

Section 1. Reasons for the recapture of benefits (Financial Assistance) include the following:

- a. Sale or closure of the facility and departure of the company from the Counties of Warren or Washington (Notwithstanding any of the terms set forth herein, this occurrence shall result in the immediate termination of Financial Assistance).
- b. Significant change in the use of the facility and/or the business activities of the company.
- c. Significant employment reductions not reflective of the company's (normal) business cycle and/or local and national economic conditions.
- d. Failure to comply with any periodic and/or annual reporting requirements of the Agency, State or Federal governmental agency.
- e. Failure to meet or comply with the Material Terms, as determined by the Agency at the time of the acceptance of the project for Financial Assistance and as set forth in the Inducement Resolution, Preliminary Agreement.

These “Material Terms” as defined for the particular project will be utilized by the Agency in setting and monitoring project benchmarks during the term of the incentives for the purposes of administering the Agency’s recapture policy.

For certain numerical “Material Terms” such as job creation/retention or investment amount an achievement factor of 80% will constitute compliance. For non-numeric “Material Terms” such as redevelopment of an old structure for a new purpose or location on a Brown Field site, a determination of compliance will be made upon completion of the project.

It is understood that these “Material Terms” may vary depending on project type and project specifics, and may be selected from the criteria set forth in the foregoing Section A, 2 Impact on Local Economy in the Policy Manual of the Agency.

- f. For a project that failed to comply with a significant term or condition to use property or services in the manner required by any and all provisions of the agreements that the company has entered into with the Agency.

Section 2. For companies receiving real property tax abatements the recapture of benefits schedule (applicable to the real property tax abatements) is as follows:

Years 1-5 100% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 6-7 75% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 8-9 50% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Year 10 25% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 11+ 0% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions.

The time period above is from the effective date of the PILOT Agreement.

In the case of real property taxes, any amounts recovered, recaptured, received or otherwise obtained shall be payable to the appropriate taxing jurisdictions, unless otherwise agreed to in writing by the taxing jurisdiction.

Section 3. In addition to the above reasons for recapture, the Agency shall recover, recapture, receive or otherwise obtain from the company, or its subagents, sales tax benefits that were taken or purported to be taken which are:

- a. In excess of the amounts authorized; or
- b. For property or services not authorized; or
- c. For a project that failed to comply with a significant term or condition to use property or services in the manner required by any and all provisions of the agreements that the company has entered into with the Agency.

For purposes of this Recapture Policy, the Company and its subagents shall cooperate with the Agency in its efforts to recover, recapture, receive or otherwise obtain such State sales and use benefit exemptions and shall promptly pay over such amount to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of Taxation and Finance to assess and determine State sales and use taxes due from the Company under Article 28 of the New York State Tax Law, together with any penalties and interest due on such amounts.

In the event that the Agency recovers, recaptures, receives or otherwise obtains any amount of State sales and use tax exemption benefits from the Company or its agents, the Agency shall, within thirty (30) days of coming into possession of such amount, remit it to the Commissioner of Taxation and Finance, together with such other information and report that the Commissioner deems necessary to administer payment over such amount.

Section 4.

In the event that the Agency determines that there exists a basis for recapture as set forth in Section 1 herein, the Agency shall notify the company, in writing, that the Agency has determined that a basis for recapture

exists. The company shall be given a reasonable timeframe within which to remedy the violation, such timeframe being commensurate to the violation, and the company shall provide additional information and/or an explanation as to why the violation has occurred or the Material Term has not been achieved, as the case may be. If requested by the Agency, the company shall make a presentation to the Agency concerning this default.

Thereafter the Agency may determination pursuant to this Recapture Policy. Imposition of any recapture is at the sole discretion of the Agency and is reviewed/considered on a case by case basis. In lieu of imposing the above recapture penalties and for good cause shown by the company, the Agency, at its sole discretion, may make a determination to discontinue the Financial Assistance in its entirety, per the provisions set forth the in the Lease Agreement; or suspend the Financial Assistance for a specific stated period of time in order for the company to correct or comply with the Material Term being breached; or, in the case of real property taxes exemptions, modify the PILOT Agreement to decrease the exemption and increase the payments due for the remaining term of the PILOT Agreement.