UCCRC

Ulster County Capital Resource Corporation

ENFORCEMENT OF CORPORATION PROJECTS POLICY

SECTION 1. PURPOSE AND AUTHORITY.

The purpose of this policy is to outline the procedures utilized by the Ulster County Capital Resource Corporation (UCCRC) to review compliance with UCCRC requirements relating to project implementation, policy conformance and reporting. The UCCRC was created in order to promote community and economic development in Ulster County. The intent of the Enforcement Policy of the UCCRC is to maintain the integrity and accountability of UCCRC projects, while being supportive of and constructive with project entities that are attempting in good faith to implement their project commitments and goals.

SECTION 2. DEFINITIONS.

(A) "Active projects" shall mean projects that are approved and have received UCCRC benefits and/or are subject to an agreement with UCCRC that has not completed its term.

(B) "Full Time Equivalent (FTE) jobs" are defined as the total number of person hours, at a given point in time, working as of that time, divided by the number of person hours that the employer has designated as full time. The minimum weekly full time hours shall be thirty-five.

SECTION 3. REQUIREMENTS OF THE APPLICANT.

(A) Background. The UCCRC is required to submit certain annual reports relating to UCCRC projects to the New York State Office of the Comptroller and to the NYS Authority Budget Office. In order to satisfy its annual reporting requirements and other requirements, as well as the policies of the UCCRC, the UCCRC will require applicants for financial assistance to satisfy the requirements described in Section 3(B) below.

(B) Applicant Requirements. Each applicant for financial assistance from the UCCRC will agree to satisfy the following requirements as a condition to the receipt of such financial assistance:

i. The applicant shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination.

ii. Except as otherwise provide by collective bargaining agreements, new employment opportunities created as a result of the project will be listed with the New York State Department of Labor Community Services Division (the "DOC") and the Ulster County Office of Employment and Training (the "UCOET") such programs collectively with the DOC, hereinafter referred to as the "Workforce Investment Program."

iii. Except as otherwise provided by collective bargaining agreements, where practicable, the applicant will first consider persons eligible to participate in the Workforce Investment Program who shall be referred by DOC and the UCOET for new employment opportunities created as a result of the Project.

iv. The applicant must, whenever requested by the UCCRC, provide and certify or cause to be provide or certified such information concerning the applicant, its finances and other topics as the UCCRC from time to time reasonably considers necessary or appropriate, including, but not limited to such information as to enable the UCCRC to make any reports required by law or governmental regulation.

v. Within sixty (60) days after the end of each calendar year, the applicant shall furnish to the UCCRC a certificate of an Authorized Representative of the applicant stating that no Event of Default under the Installment Sale Agreement (or Lease Agreement) has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the applicant has taken or proposes to take with respect thereto, and setting forth the unpaid principal balance of the Bonds and accrued but unpaid interest thereon and that no defenses, offsets or counterclaims exist with respect to the indebtedness evidenced thereby.

vi. In cases where the UCCRC has administered a payment in lieu of tax (PILOT) program for an applicant, within sixty (60) days after the end of each calendar year, the applicant shall furnish to the UCCRC a certificate of an Authorized Representative of the applicant stating that all such PILOT payments for the prior calendar year have been paid on time. In the event that PILOT payments have not been paid on time, the applicant shall certify as to the nature and period of non-payment and what action the applicant has taken or proposes to take with respect compliance with future payment requirements.

vii. The applicant must file with the UCCRC, no later than sixty (60) days after the end of each calendar year, reports regarding the number of people employed at the Project Facility and certain other matters.

viii. The applicant must annually file and cause any sub-lessee or other operator of the Project Facility to file annually, with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Annual Sales Tax Report"), a statement of the value of all sales and use tax exemptions claimed by the applicant and all contractors, subcontractors, consultants and other agents of the applicant under the authority granted to the applicant pursuant to the Installment Sale Agreement (or this Lease Agreement) and/or the Final Inducement Resolution and/or the Sales Tax Exemption Letter.

ix. The applicant must furnish to the UCCRC a copy of each such annual report submitted to the New York State Department of Taxation and Finance by the applicant.

SECTION 4. COMPLIANCE.

(A) Monitoring. UCCRC project monitoring shall be the responsibility of the Chief Executive Officer or his or her designee which shall include but not limited to the following:

i. The UCCRC will perform a monitoring visit of every active project site at least every two (2) years.

ii. The UCCRC will, at least annually, collect information for each active project involving a PILOT that will enable it to reasonably verify that PILOT invoicing has been done correctly, that payments due for the same have been made, that jobs have been substantially retained or created as projected, and that major project objectives have been substantially achieved.

iii. Annually collect information as of the last day of the calendar year for the number of full time equivalent (FTE) jobs projected in the application for the year being reported on, the number of FTE jobs currently employed, and the total dollar payroll amount. At the expense to the project entity a certified public accountant shall verify and certify that the aforesaid numbers are consistent with the payroll data submitted to the State of New York in the entity's NY45, Proof of Workers' Compensation coverage.

iv. During project site visits the UCCRC will require the applicant, upon request, to show copies of payroll related documents, which may include but not be limited to, NY45, proof of Workers'

Compensation coverage, proof of Disability Insurance coverage, proof of Unemployment Insurance, etc.

v. Annually collect for each active project other information relating to project performance.

(B) Annual Reports. Within seventy-five (75) days after the end of each calendar year, the audit committee of the UCCRC will prepare an internal compliance annual report describing the compliance by applicants with the requirement described in Section 3 above, including the filing of annual reports and the number of jobs created and retained by the applicant.

(C) UCCRC Review. Projects that are administratively deemed out of compliance will be reviewed by the Governance Committee, which may make enforcement action recommendations to the UCCRC. The UCCRC will review the internal compliance report at a regular meeting of the UCCRC. The UCCRC will take such actions as it deems necessary, including but not limited to, (1) scheduling meetings with applicants to review non-compliance and to discuss remedial actions, (2) considering enforcement action against applicants that fail to comply with the requirements described in Section 3 above, as described in Section 5 below, and (3) preparation of letters of commendation or other form of congratulation to those applicants that have created and/or retained jobs consistent with (or in excess of) the estimates contained in the applicants original application to the UCCRC.

SECTION 5. ENFORCEMENT.

(A) General. Upon completion of the report prepared by UCDC regarding compliance by the applicants with the requirements described in Section 3 above, the UCCRC will initiate enforcement action against those applicants that have failed to comply with such requirements.

(B) Compliance. Compliance action by the UCCRC may include, but not be limited to, the following:

i. An active economic development project for which less than 80% of the projected jobs have been retained and/or created after three years from closing will be subject to review and possible enforcement action.

ii. An active project that has not substantially achieved its construction, expansion or services goals after three years from closing will be subject to review and possible enforcement action.

iii. The UCCRC will notify the concerned entity in writing of the fact if its project is administratively determined to warrant compliance review, will require that they report to the UCCRC on project status within sixty (60) days of the date of the letter, and will schedule

meetings with the entities in question to discuss explanations and remedial actions.

(C) Enforcement Action. Enforcement action by the UCCRC may include, but not be limited to, the following:

i. Requesting the information and/or compliance by a final notice letter.

ii. Forwarding an event of default notice to the involved parties, including the lender.

iii. Forwarding an event of PILOT nonpayment to the affected taxing jurisdictions.

iv. Notifying appropriate New York State, Ulster County, and local municipal agencies of the applicant's failure to comply with such requirements.

v. Terminating all or a portion of the financial assistance provide by the UCCRC, including any sales tax exemption letters and PILOT agreements.

vi. Recapturing any or all benefits provided to an applicant under a PILOT agreement or sales tax exemption letter or other agreement, in which case the UCCRC will return any such recovered funds to the taxing jurisdictions affected.

vii. Referral to appropriate agencies for criminal or civil prosecution.