FINAL DOCUMENT

BUSINESS SUBSIDY POLICY AND CRITERIA

CITY OF CAMBRIDGE

and the

CAMBRIDGE ECONOMIC DEVELOPMENT AUTHORITY

COUNTY OF ISANTI
STATE OF MINNESOTA

Business Subsidy Policy Adopted:	June 2, 2003
JobZ Business Subsidy Policy Adopted:	July 19, 2004
Public Hearing for Combined and Modified Policy:	June 19, 2006
Combined and Modified Policy Adopted:	June 19, 2006
Modified Policy Adopted:	October 16, 2006
Modified Policy Adopted:	February 5, 2007

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CAMBRIDGE ECONOMIC DEVELOPMENT AUTHORITY
and the
CITY OF CAMBRIDGE

BUSINESS SUBSIDY POLICY AND CRITERIA
(As Modified on February 5, 2007)

1. PURPOSE

1.01 The purpose of this policy is to establish the guidelines and criteria of regarding the City of Cambridge (the "City) and the Cambridge Economic Development Authority, Minnesota's (the "EDA") position as it relates to the use of municipal business subsidies under the Job Opportunity Building Zones Act pursuant to *Minnesota Statutes ("M.S."), Sections 469.310 through 469.320* (the "JOBZ Act") and the general Business Subsidy Act pursuant to *M.S., Sections 116J.993 through 116J.995* (the "Business Subsidy Act", and with the JOBZ Act, the "Acts"). This policy and criteria shall be used as a guide in processing and reviewing applications requesting municipal business subsidy assistance. A copy of this policy shall be submitted to the Minnesota Department of Employment and Economic Development or a successor entity ("DEED") along with the first annual report.

1.02 The City and the EDA shall have the option of amending or waiving sections of this policy and criteria when determined necessary or appropriate. The Business Subsidy Act allows the City and the EDA to deviate from its criteria by documenting in writing the reason for the deviation and attaching a copy of the document to its next annual report to DEED. Amendments to this policy and criteria are subject to public hearing requirements pursuant to *M.S., Section 116J.993 through 116J.995*.

1.03 Meeting all or a majority of the criteria, however, does not mean that the municipal business subsidy will be awarded or denied by the City or the EDA. The City and the EDA maintain their ability to approve or reject a municipal business subsidy at their discretion, based on the merits of the project and the overall benefit to the community, using the criteria as a means of measuring overall benefit.

1.04 It is the intent of the City and the EDA to provide a minimum amount of municipal subsidies, as well as other incentives that they may deem appropriate, at the shortest term required for the project to precede. The City and the EDA reserve the right to approve or reject projects on a case-by-case basis, taking into account established policies, specific project criteria, and demand on city services in relation to the potential benefits to be received from a proposed project. Meeting policy guidelines or other criteria does not guarantee the award of municipal subsidies. Furthermore, the approval or denial of one project is not intended to set precedent for approval or denial of another project.

1.05 Whenever possible, it is the City and the EDA's intent to coordinate the use of municipal subsidies with other applicable taxing jurisdictions.

2. STATUTORY LIMITATIONS

2.01 In accordance with the City and EDA's Business Subsidy Policy and Criteria, Business Subsidy requests must comply with applicable State Statutes. The City and EDA's ability to grant business subsidies is governed by the limitations established in *M.S. 116J.993 through 116J.995.*

2.02 Any amendments or modifications to the Acts shall amend or modify the terms and definitions of this policy and criteria without any further actions of the City and the EDA.

3. DEFINITIONS

3.01 Business Subsidy Generally. A Business Subsidy, as further defined herein and in the Business Subsidy Act shall include, but not be limited to one of the following types of subsidies provided by the City or the EDA:

A. Loan,
B. Grant,
C. Tax increment financing (TIF),
D. Tax abatement other tax reduction or deferral,
E. Guarantee of payment,
F. Contribution of property or infrastructure,
G. Preferential use of governmental facilities,
H. Land contribution, or
I. Other specified subsidy.

A Business Subsidy does not include assistance of less than $25,000, business loans or loan guarantees of less than $75,000, assistance generally available to all businesses, housing assistance, or any other type of assistance specifically excluded in the Business Subsidy Act.

3.02 Job Opportunities Building Zone (JOBZ) Business Subsidy. Under the JOBZ Act, a Business Subsidy includes the subsidy provided through the following set of tax benefits to certain qualified businesses:

A. Exemption from individual income taxes,
B. Exemption from corporate franchise taxes,
C. Exemption from state sales and use tax and any local sales and use taxes on qualifying purchases,
D. Exemption from state sales tax on motor vehicles and any local sales tax on motor vehicles,
E. Exemption from property tax,
F. Exemption from wind energy production tax, and
G. Jobs credit.

3.03 Further Definitions. The following defined terms apply equally to all business subsidies. Any terms not defined herein shall have the meanings set forth in the Acts.

"Benefit Date" the later of either the date on which the Business Subsidy Agreement is executed or the date on which any amount of Business Subsidy is first provided to the Business Subsidy Recipient.

"Business Subsidy" means a state or local government agency grant, contribution of personal property, real property, infrastructure, the principal amount of a loan at rates below those commercially available to the recipient, any reduction or deferral of any tax or any fee, any guarantee of any payment under any loan, lease, or other obligation, or any preferential use of government facilities given to a business, and as defined by the Business Subsidy Act.

"Business Subsidy Agreement" means the agreement between the Recipient as defined herein and the City or the EDA entered into pursuant to the Business Subsidy Act describing the subsidy, specific tangible goals (i.e., create number of jobs, establish minimum wage rates and time

periods in which goals will be achieved) and providing remedy for failure to achieve goals and providing for reporting to the State of Minnesota.

"Business Subsidy Recipient" means any business entity that receives a municipal business subsidy as defined by the Business Subsidy Act and that has signed a Business Subsidy Agreement with the City or the EDA.

"Business Subsidy Report" means the annual reports submitted by the City or the EDA each year for each business receiving a Business Subsidy in the City in order to comply with the Business Subsidy Act.

3.04 JOBZ Definitions. The following defined terms apply to all JOBZ business subsidies. Any terms not defined herein shall have the meanings set forth in the Acts.

"JOBZ Business Subsidy" means tax exemptions or tax credits available to a Qualified Business located in a Zone, as defined by the Business Subsidy Act, and as modified by amendments to these Acts.

"Qualified Business" means a person that carries on a trade or business at a place of business located within a Zone and which complies with the reporting requirements specified therein and the criteria set forth herein, except in the case of a Relocating Business, as defined herein, in which case such person must also meet the requirements described in the JOBZ Act, which as of March 2004 were to increase employment or to make a capital investment.

"Relocating Business" A person that relocates a trade or business from outside a Zone into that Zone according to the criteria set forth in the JOBZ Act, which as of March 2004 meant ceasing one or more operations or functions at the non-Zone location and beginning performing substantially the same functions inside the Subzone or by reducing employment at the non-Zone location starting one year before and ending one year after beginning operations in the Zone, where the relocated employees in the Zone are engaged in the same line of business as the employees at the location where employment was reduced.

"Relocation Agreement" means a binding written agreement between a Relocating Business and the Commissioner of DEED pledging that the qualified business shall meet the requirements of the JOBZ Act, which as of March 2004 meant either: (a) increase full-time or full-time equivalent employment in the first full year of operation within the job opportunity building zone by at least 20 percent, *or* (b) make a capital investment on the property equivalent to 10% of the gross revenues of operation that was relocated in the immediately preceding taxable year. As of March 2004, a Relocation Agreement also had to provide for repayment of all tax benefits if the requirements of (a) or (b) are not met.

"Subzone" means the parcel or parcels of land within the Region West Central Region 4 in the City which the Commissioner of DEED has now, or at any time in the future shall, designate to receive certain tax credits and exemptions specified under the JOBZ Act.

"Year One" shall start on date of the public hearing and approval of the JOBZ Agreement with the Company **or when the company begins operations in the zone as defined in the JOBZ Agreement.**

"Zone" means a Job Opportunity Building Zone or an Agricultural Processing Facility Zone designated by the Commissioner of DEED under the JOBZ Act.

4. ELIGIBLE USES FOR THE RECEIPT OF BUSINESS ASSISTANCE

4.01 As a matter of policy, the City or the EDA will consider using municipal business subsidies to assist private developments only in those circumstances in which the proposed private projects achieve one or more of the following uses:

A. To redevelop blighted or under-utilized areas of the community.

B. To meet the following housing-related uses:

1. To provide a diversity of housing not currently provided by the private market.

2. To provide a variety of housing ownership alternatives and housing choices.

3. To create opportunities for the construction, operation and maintenance of affordable housing for low or moderate-income individuals.

4. To promote community stabilization and revitalization by the removal of blight and the upgrading in existing housing stock in residential areas.

C. To remove blight and/or encourage development of commercial and industrial areas in the city that result in higher quality development or redevelopment and private investment.

D. To enhance economic growth by increasing the tax base of the City in order to ensure the long-term ability of the City to provide adequate services for it's residents while lessening the reliance on residential property tax.

E. To retain high quality local jobs, create high quality local job growth, and provide diversity of jobs that offer stable employment and/or attractive wages and benefits in that job base.

F. To enhance and diversify the City of Cambridge's economic base.

G. To encourage additional unsubsidized private development in the area, either directly, or through secondary "spin-off" development.

H. To offset increased costs of development of specific properties when the unique physical characteristics of the site may otherwise preclude private investment.

I. To accelerate the development process and to achieve development on sites which would not be developed without municipal subsidies assistance.

5. PUBLIC POLICY REQUIREMENT

5.01 All business subsidies must meet a pubic purpose other than increasing the tax base. Job retention may only be used as a public purpose in cases where job loss is imminent and demonstrable.

6. BUSINESS ASSISTANCE PROJECT APPROVAL CRITERIA

6.01 All new projects approved by the City or EDA should meet the following mandatory minimum approval criteria. However, it should not be presumed that a project meeting these criteria would automatically be approved. Meeting these criteria creates no contractual rights on the part of any potential developer or the City and/or EDA.

A. The assistance shall be provided within applicable state legislative restrictions, State Auditor interpretation, debt limit guidelines, and other appropriate financial requirements and policies.

B. The project should meet one or more of the uses identified in Section 4, Eligible Uses for the Receipt of Business Assistance.

C. The project must be in accordance with the Comprehensive Plan and Zoning Ordinances, or required changes to the plan and ordinances must be under active consideration by the City at the time of approval.

D. Business subsidies will not be provided to projects that have the financial feasibility to proceed without the benefit of the assistance. In effect, business subsidies will not be provided solely to broaden a developer **or business's** profit margins on a project. Prior to consideration of a business assistance request, the City or the EDA may undertake an independent underwriting of the project to help ensure that the request for assistance is valid with underwriting costs to be reimbursed by the business in all instances which shall be in addition to the application fee described herein.

E. Prior to approval of a business subsidies financing plan and when deemed appropriate by the City and/or EDA, the developer or business shall provide any required market and financial feasibility studies, appraisals, soil boring, information provided to private lenders for the project, and other information or data relative to the successful operation of the project that the City or the EDA or its financial consultants may require in order to proceed with an independent underwriting. If requested by the City, the developer shall provide adequate financial guarantees to ensure completion of the project, including, but not limited to: assessment agreements, letters of credit, cash escrows, and personal guaranties.

F. A developer requesting municipal subsidy assistance must demonstrate, to the satisfaction of the City, sufficient cash equity investment in the project.

G. Any business requesting business assistance should be able to demonstrate past successful general development capability as well as specific capability in the type and size of development proposed. Each developer must be able to demonstrate to the City and/or EDA's satisfaction, an ability to construct, operate, and maintain the proposed project based on past experience, general reputation, and credit history.

H. A recipient of a municipal business subsidy must make a commitment to continue operations at the site where the subsidy is used for at least five years after the date of occupancy. If the business is a Qualified Business under JOBZ criteria, that business shall agree to continue to operate in the City for the duration of the JOBZ Zone.

I. The level of business assistance funding should be reduced to the lowest possible level and least amount of time by maximizing the use of private debt and equity financing first, and then using other funding sources or income producing vehicles that can be structured into the project financing, prior to using additional business assistance funding.

J. A municipal business subsidy will not be used for projects that would place extraordinary demands on city infrastructure and services.

K. **A** municipal business subsidy will not be provided in circumstances where land and /or property price is demonstrated by the City Assessor to be in excess of fair market value.

L. **A** municipal business subsidy will not be used in cases where the subsidy would create an unfair and significant competitive financial advantage over other similar projects in the area.

M. The City and/or EDA will more favorably receive projects receiving municipal subsidy other affected taxing jurisdictions.

N. **A** municipal business subsidy will not be used for commercial/industrial projects that have a history of inconsistent compliance with applicable environmental rules and regulations.

7. GUIDELINES FOR JOB OPPORTUNITY BUILDING ZONE (JOBZ) SUBSIDIES

7.01 The primary purpose of JOBZ subsidies is to create jobs in those sectors of the economy that export a product or service from the region and import new wealth to the region. Manufacturing and distribution projects are the highest priority for the use of JOBZ subsidies. Service businesses that export a service from the region and import new wealth to the region, such as research laboratories, or back offices for insurance companies or financial institutions are also a priority for JOBZ subsidies.

7.02 Cambridge JOB Zone benefits will be available to all projects until expiration of the zone on December 31, 2015.

7.03 ***M.S. 469.310, Subd. 11(g)*** **requires that, at a minimum, a qualifying business must pay each employee compensation, <u>excluding</u> benefits not mandated by law, that on an annualized basis is equal to at least 110 percent of the federal poverty level for a family of four, <u>plus health insurance.</u>**

7.04 The value of benefits will not be included in the minimum wage calculation. The company shall provide information to the city from the employee manual regarding benefits available to employees above and beyond legally required benefits such as FICA, FUTA, and worker's compensation.

7.05 For a business relocating to Cambridge and requesting JOBZ subsidies, *M.S. 469.310 Subd. 11(d)(1)* requires, at a minimum, that the business must increase full-time employment in the first full year of operation within the JOBZ by a minimum of five jobs or 20 percent, whichever is greater, measured relative to the operation that was relocated. The business must maintain the required level of employment level of employment for each year that JOBZ designation applies.

7.06 For a new business or an existing expanding business in the City of Cambridge requesting JOBZ subsidies, the business **shall** create **the lesser** of 4 new full time equivalent (FTE) jobs in the Subzone by the end of Year One and a total of 6 FTE jobs by the end of Year 3 **or 1 new full time equivalent (FTE) job for every $30,000 in estimated property tax savings. If less than 6 FTE jobs are required to be created, 50% of more of the jobs must be created by the end of Year One and the balance by Year 3.** For local expanding business, at least one of the jobs must be located within the JOBZ site. As a general guideline, the City and/or EDA **for larger developments** encourages the creation of one FTE job for every $30,000 in **estimated** property tax savings from the JOBZ program. In the event the business fails in any year to create the new jobs required by their JOBZ Business Subsidy Agreement, the business may request a deferral of up to 2 years. The City will review the request on the basis that meeting the job requirement

would create an undue financial hardship on the business. The City and/or EDA may require the business to submit financial disclosures in support of any deferral request.

7.07 The City or EDA will not consider the use of JOBZ subsidy for retail projects.

7.08 The City or EDA will not consider the use of JOBZ subsidy for a project that would create an unfair and significant competitive financial advantage over existing businesses.

7.10 The City and/or EDA shall charge annual administrative fees as follows: JOBZ Qualified Business pay annual fee of 3% of the property tax savings with a minimum fee of $500 and a maximum fee of $2000 per year. JOBZ Leasing Company pay annual fee of $.05 per square foot of property leased to a JOBZ Qualified Business with a minimum fee of $500 and a maximum fee of $2000 per year. These fees shall begin in the year of the property tax benefits and may be paid in installments on the due dates of the property taxes.

7.11 It should be noted that these are guidelines to be used when evaluating the community's investment in a project. The City and EDA has chosen not to use rigid formulas because projects vary in their impact. For example, a capital-intensive business may pay high property taxes and excellent wages, but provide few jobs or few jobs per acre. A more labor-intensive business may provide a reasonable tax base and good wages, and a significantly higher number of jobs per acre. Elected and appointed officials will weigh all these factors, consider them as a whole, and determine a reasonable level of subsidy on a project by project basis.

8. BUSINESS ASSISTANCE PROJECT EVALUATION CRITERIA (Including Tax Increment Projects)

8.01 The City and/or EDA will utilize Tax Increment Financing to support the community's long-term economic development goals. Business assistance funding should not be provided to those projects that fail to meet good public policy criteria as determined by the Council or the Board, including: poor project quality; projects that are not in accord with the comprehensive plan, zoning, redevelopment plans, and City policies; projects that provide no significant improvement to surrounding land uses, the neighborhood, and/or the City; projects that do not have significant new, or retained, employment; projects that do not meet financial feasibility criteria established by the City and the EDA; and projects that do not provide the highest and best use for the property.

8.02 All projects will be evaluated by the City Council (the "Council") or the EDA Board (the "Board") on the following criteria for comparison with other proposed business assistance projects reviewed by the City or the EDA, and for comparison with other subsidy standards (where appropriate). It is realized that changes in local markets, costs of construction, and interest rates may cause changes in the amounts of business assistance subsidies that a given project may require at any given time.

8.03 Each project shall be measured against the criteria and the value of the project shall be determined, based upon meeting the criteria. Some criteria, by their very nature, must remain subjective. However, wherever possible "benchmark" criteria have been established for review purposes. The fact that a given proposal meets one or more "benchmark" criteria does not mean that it is entitled to funding under this policy, but rather that the City or the EDA is in a position to proceed with evaluations of (and comparisons between) various business assistance proposals, using uniform standards whenever possible.

8.04 Following are the evaluation criteria that will be used by the City and the EDA:

A. All proposals should, in the opinion of the Council or Board, optimize the private development potential of a site.

B. All business subsidy requests should create the highest feasible number of jobs on the site from date of occupancy where deemed appropriate.

C. Business assistance will not be provided when the relocating or new business requesting assistance would be in direct competition with an established business in the community.

D. All business subsidy requests should create the highest possible ratio of property taxes paid before and after redevelopment. Given the different assessment circumstances in the City, this ratio may vary widely.

E. Proposals should usually not be used to support speculative industrial, commercial, and office projects.

G. All business subsidy requests shall meet the "but for" test. Assistance will not be used unless the need for the City's or EDA's economic participation is sufficient that, without that assistance the project could not proceed in the manner as proposed. The "but for" test means that the project would not develop solely on private investments in the reasonable future. The developer shall provide findings for the "but for" test.

H. Business assistance will not be used when the business's credentials, in the sole judgment of the City or EDA, are inadequate due to past track record relating to: completion of projects, general business reputation and/or bankruptcy, or other problems or issues considered relevant by the City or the EDA.

I. Business subsidy requests should facilitate the "clean-up" of environmentally unsound property where deemed appropriate. Business assistance will not normally be used for projects that would generate significant environmental problems in the opinion of the local, state, or federal governments.

J. Except where job creation or job retention is not a goal, all projects receiving business assistance must create a minimum of one new full-time equivalent (**FTE**) job in the community **for every $30,000 in land subsidy.** Annual written reports are required until termination date. Failure to meet the job and wage level goals requires partial or full repayment of the assistance with interest.

K. A business must pay each employee compensation, <u>excluding</u> benefits not mandated by law, that on an annualized basis is equal to at least 110 percent of the federal poverty level for a family of four, <u>plus health insurance.</u>

L. <u>The value of benefits will not be included in the minimum wage calculation. The company shall provide information to the city from the employee manual regarding benefits available to employees above and beyond legally required benefits such as FICA, FUTA, and worker's compensation</u>.

M. In the case where job creation or job retention is not a goal, the business must meet at least one of the following minimum requirements:

1. The Business Subsidy accomplishes the removal, rehabilitation or redevelopment of, or prevention of development or spread of, a blighted area as defined by M.S., Section 469.002, Subdivison 11, or constitutes a cost of correcting conditions that permits designation of a redevelopment district or renewal and renovation district under M.S., Section 469.174 to 469.179; or

2. The Business Subsidy improves public infrastructure or public facilities, including without limitation streets, sewers, storm sewers, streets, parks, recreational facilities, and other City facilities; or

3. The Business Subsidy removes physical impediments to development of land, including without limitation poor soils, bedrock conditions, steep slopes, or similar geotechnical problems.

The above requirements must be expressed as specific, measurable and tangible goals in each Business subsidy Agreement. The job and wage goals that would otherwise be required may be set at zero. In addition, in the case where a business is qualified to receive job opportunity building zone tax benefits, the requirements of a Relocation Agreement must be met.

N. Any Business Subsidy Recipient must pay back assistance received if the job and wage goals or other specified goals are not met within two (2) years of the Benefit Date or such time as permitted by the Acts as they may be amended. For all Business Subsidies, assistance provided by the City or the EDA must be paid back, with interest as determined in the Business Subsidy Act, to the City or the EDA, or at the City or EDA's request, to the account created under the Business Subsidy Act. Any repayment may be prorated by the City or the EDA to reflect partial fulfillment of goals. The City or the EDA may, after a public hearing, extend the period for meeting job and wage goals for up to one year and may pursuant to the procedure in the Acts, extend the period for meeting other goals for any period specified by the City or the EDA. For JOBZ Business Subsidies, state tax exemptions must be paid back to the State of Minnesota and property tax exemptions paid back to the Subzone county, all pursuant to the JOBZ Act. The Commissioner of DEED may waive, without a hearing, the necessity of such state and county repayment if in consultation with the City or the EDA officials the Commissioner determines that requiring repayment is not in the best interest of the state or City and/or EDA and the business ceased operating as a result of circumstances described in the JOBZ Act.

O. All business subsidy applications are encourage to demonstrate involvement in the community.