

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY

PROPERTY DISPOSAL GUIDELINES

The Town of Amherst Industrial Development Agency (the “Agency”), a New York public benefit corporation, in compliance with Section 2824(1)(e) of the New York State Public Authorities Law has established these Property Disposal Guidelines (the “Guidelines”) for the disposal of real property and personal property. No less than annually, the Members of the Agency shall review, approve and make any necessary modifications to these Guidelines.

ARTICLE I

Designation of Contracting Officer

The Agency hereby designates the Executive Director of the Agency as the Agency’s Contracting Officer. The Contracting Officer shall hold this position until the Members of the Agency designate a new Contracting Officer.

The Contracting Officer shall have supervision and direction over the disposition of the Agency’s property and shall be responsible for the administration and implementation of these Guidelines. The Contracting Officer shall cause these Guidelines to be posted on the Agency’s website so that they are available to the general public.

ARTICLE II

Application of Guidelines

The procedures outlined in these Guidelines shall apply to the Agency’s disposal from time to time of all personal property having a fair market value at the time of disposal of more than five thousand dollars (\$5,000) and all interests in real property. As used in these Guidelines, “property” shall include personal and real property. Personal and real property may be distinguished from each other as appropriate in these Guidelines.

The Agency shall dispose of personal property with a fair market value at the time of disposal of Five Thousand Dollars (\$5,000.00) or less in a prudent manner. Property of only nominal value may be donated to a not-for-profit or governmental agency or disposed of in any manner practicable.

ARTICLE III

Purpose

The Agency has adopted these Guidelines (i) to comply with the provisions of the New York Public Authorities Law and (ii) to realize a favorable return on the disposal of Agency property.

ARTICLE IV
Property Disposition Requirements

A. Method of Disposition

1. *Disposition for Fair Market Value.* Subject to the enumerated exceptions in subsection (3) below, the Agency shall dispose of property for not less than the fair market value of such property by sale, exchange or transfer, for cash, credit or other property, with or without warranty, and upon such other terms and conditions as the Contracting Officer deems proper.

2. *Determination of Fair Market Value.* Before disposing of property, the Contracting Officer shall take reasonable measures to determine the fair market value of the property to be disposed. Prior to its disposal, the fair market value of all real property shall be established by an appraisal conducted by an independent qualified professional and shall be included in the record of the transaction. Fair market value of property that is unique in nature and therefore not subject to fair market value pricing shall be determined through an appraisal by an independent qualified professional.

3. *Disposition for Less than Fair Market Value.*

a. *Rule.* The Agency may dispose of its property for less than fair market value if: (a) the transferee is a government or other public entity and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity; or (b) the purpose of the transfer is within the purpose, mission or governing statute of the Agency.

b. *Reporting Information.* In the event a below fair market value asset transfer is proposed, the following information shall be provided to the Agency's Board of Directors and to the public:

- i. a full description of the asset;
- ii. an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the Board;
- iii. a description of the purpose of the transfer and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, and the benefits, if any, to the communities in which the asset is situated as are required by the transfer;
- iv. a statement of the value to be received compared to the fair market value;

- v. the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (iv) of this paragraph, a statement of the value to the private party; and
- vi. the names of other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.

c. Dispositions outside the Scope of Subsection (a). In the event that the Agency seeks to transfer property for less than fair market value and such transaction does not fall within one of the enumerated exceptions in subsection (a) of this Section 3, the Agency shall provide written notification thereof to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate, as such proposed transfer shall be subject to denial by the Governor, the Senate, or the Assembly.¹

B. Award and Approval of Property Disposition Contracts

1. Disposal of Property by Negotiation.

a. Rule. The Agency may dispose of property through negotiation or by public auction without regard to the procedure described in subsection (2) below if the Contracting Officer determines that any of the following conditions exist:

- i. the personal property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity or other quality of similar effect, that would tend to increase its value;
- ii. if the personal property is to be sold in such quantity that, if it were disposed of under the procedures described in subsection (2) below, it would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;
- iii. the fair market value of the property does not exceed fifteen thousand dollars (\$15,000);

¹ Denial by the Governor shall take the form of a signed certification by the Governor. Denial by either house of the Legislature shall take the form of a resolution by such house. The Governor shall take any such action within sixty days of receiving notification of such proposed transfer. Each house of the Legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the Legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the Governor, Senate and Assembly, the Agency may effectuate such transfer.

- iv. prices for the property that were obtained by advertised bid were not reasonable or the bid process did not generate open competition;
- v. disposal of the property to the state or any political subdivision at fair market value can be arranged through negotiation;
- vi. disposal of the property is for less than fair market value consistent with Section (A)(3) of this Article; or
- vii. such action is otherwise authorized by law.

b. Explanatory Statement. The Contracting Officer shall cause to be prepared an explanation of the circumstances of the disposal when property is disposed of through the negotiation process described in subsection (1) above, and any of the following are true:

- i. personal property disposed of has an estimated fair market value in excess of fifteen thousand dollars (\$15,000);
- ii. real property sold has an appraised value in excess of one hundred thousand dollars (\$100,000.00), except that any real property disposed of by lease or exchange shall only be subject to clauses (iii) and (iv) of this subsection (b);
- iii. real property disposed of by lease has an estimated annual rent over the term of the lease in excess of fifteen thousand dollars (\$15,000.00);
- iv. any real property or real and related personal property is disposed of by exchange, regardless of value; or
- v. any part of the consideration for the property disposed of consists of real property.

The Contracting Officer shall cause any and all explanatory statements required under this subsection (b) to be transmitted at least ninety (90) days in advance of disposal by negotiation to the recipients of the yearly report of dispositions required under this Article V of these Guidelines. The Contracting Officer shall maintain a copy of all written statements at the Agency's principal office.

2. Standard Procedure.

a. Advertised Bid. All disposals of Agency property shall be made after public advertisement for bids for the purchase of Agency property. The Contracting Officer shall order the advertising for bids in such a manner and in such publications as the Contracting Officer deems reasonably necessary to permit full and fair competition for the property consistent with the fair market value and nature of the property. All advertisements for soliciting

bids on Agency property shall state the method, place and deadline for the submission of bids, and shall request any other information the Contracting Officer deems necessary to evaluate bids being solicited. All advertisements and announcements soliciting bids shall state the place and time at which the content of all bids received for the property advertised shall be publicly disclosed. The content of all bids received shall be publicly disclosed as announced in the solicitation for bids.

b. *Award of Property Subject to Bid.* Award of the property for which bids have been solicited shall be made within a timeframe reasonable for the evaluation of the bids received. The Contracting Officer shall evaluate the bids and select the bid most advantageous to the Agency based upon (a) conformance with the invitation for bids, (b) the terms, including but not limited to the price offered, and (c) any other factors that warrant consideration. Notwithstanding the foregoing, the Agency may reject as inadequate all bids received in response to a particular solicitation for bids if the Contracting Officer deems that it is in the public interest to do so.

c. *Notification of a Successful Bid.* The Agency shall notify the successful bidder in writing of the Agency's acceptance of the bid. This notice shall contain a description of the property, the amount of the successful bid and any other material terms of the bid. The bidder shall be required to make payment to the Agency Treasurer in a form and on terms acceptable to the Agency before taking possession of the property. The Agency shall gather the following information regarding any successful bidder: name, address and telephone number. The Agency shall provide to the successful bidder a deed, bill of sale, lease or other appropriate instrument adequate to transfer to the successful bidder the interest in the property.

d. *Contracts to Dispose of Property.* The Agency may solicit bids for contracts to dispose of the Agency property covered by these Guidelines. In the event that the Agency determines that the services of a company are necessary to assist the Agency in disposing of certain of its property, the Agency shall follow the same procedures in selecting an organization to dispose of property as the Agency follows under these Guidelines for disposal of property through advertised bid. The Agency's contracting activities shall comply with New York Public Authorities Law §2896, the Agency's enabling legislation and any other applicable law for the disposal of property.

ARTICLE V

Yearly Property Report

Each year the Contracting Officer shall publish a report listing all real and personal property disposed of by the Agency during the previous twelve-month period. The report shall contain a full description of each item of property disposed of, the price received by the Authority and the name of the individual(s) or entity that purchased the property. The Contracting Officer shall cause the report to be published on the Agency's website and delivered to the proper parties as required by the New York Public Authorities Law § 2896(3).