

TOWN OF AMHERST DEVELOPMENT CORPORATION

Governance Committee Meeting

Agenda

Thursday, June 2, 2022 8:30 am

Corporation Offices, 4287 Main Street

1. Roll Call of Members
2. Approval of Minutes
3. New Business
 - a. ADC Review of Recommended Policy changes
 - ADC/AIDA Shared Services Policy
 - Board of Directors Statement of Duties
 - Code of Ethics
 - Data Gathering
 - Financial Disclosure Policy
 - Fixed Asset Policy
 - Investment Policy
 - Procurement Policy
 - Property Acquisition Policy
 - Property Disposal Policy
 - Travel and Expenses Policy
 - Whistleblower Policy
4. Adjournment

TOWN OF AMHERST DEVELOPMENT CORPORATION
Minutes of the Governance Committee Meeting
March 4, 2021 – 8:30 AM
Agency Office, 4287 Main Street

Governance Committee: Carlton N. Brock, Jr.
Hon. Timothy Drury
Frank LoTempio III

Guests: William W. Tuyn
Anthony Agostino
Phillip S. Meyer
Hadar Borden
Jacqui Berger
Michael Szukala
David S. Mingoia
Jonathan O'Rourke
Kevin J. Zanner

Mr. Brock opened the meeting at 9:26 AM and requested a motion to approve the minutes of the previous Governance Committee Meeting. Mr. LoTempio made the motion, seconded by Mr. Drury and it carried unanimously.

Mr. Mingoia reviewed the draft Authority Budget Office Mission Review and Performance for 2020. After a brief discussion, Mr. LoTempio made a motion to send this report to the Board of Directors, seconded by Mr. Brock. The motion carried unanimously.

Mr. LoTempio made a motion to adjourn at 9:31, seconded by Mr. Drury, and it carried unanimously.

SECOND AMENDED AND RESTATED
SHARED SERVICES AGREEMENT

THIS SECOND AMENDED AND RESTATED SHARED SERVICES AGREEMENT (the "Agreement"), made as of the 1st day of June, 2018, 2022, by and between TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY, a New York public benefit corporation ("AIDA"), and TOWN OF AMHERST DEVELOPMENT CORPORATION, a New York not-for-profit local development corporation ("ADC") (individually, a "Party" and collectively, the "Parties").

RECITALS:

WHEREAS, the Town Board of the Town of Amherst has authorized and designated the ADC to act on behalf of the Town of Amherst ("Town") for the purpose of issuing bonds, in accordance with and for the purposes set forth in the resolution of the Town Board of the Town adopted on October 5, 2009, as may be amended by the Town Board from time to time; and

WHEREAS, that such designated powers include those powers described in Section 1411 of the New York Not-For-Profit Corporation Law and its Certificate of Incorporation, with the power to issue tax exempt and taxable bonds, notes, or other obligations on behalf of the Town in furtherance of its purposes; and

WHEREAS, the Parties entered into a Shared Services Agreement dated December 1, 2009, ~~which was subsequently amended and restated by that certain Amended and Restated Shared Services Agreement dated as of July 20, 2018; and pursuant to which AIDA agreed to provide all administrative and staffing services to the ADC (including but not limited to legal, accounting, marketing, and any other professional services) related to issuance of bond obligations, and the ADC agreed to compensate the AIDA in an amount equal to the administrative fees charged and received by the ADC relative to any bond obligation issued by the ADC on behalf of the Town; and~~

~~WHEREAS, Section 1411 of the New York Not For Profit Corporation Law authorizes local development corporations to engage in a broader range of economic development activities than industrial development agencies, including the provision by local development corporations of grants and loans of their own funds for economic development purposes; and~~

~~WHEREAS, it is contemplated by the Parties that the ADC will have an expanded role in economic development projects in the Town that extends beyond the ADC's current limited role as an issuer of tax exempt and taxable bonds, notes, or other obligations on behalf of the Town; and~~

WHEREAS, the Parties desire to further amend and restate the Shared Services Agreement as provided herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the

Parties, the Parties hereby agree as follows:

Section 1. Administrative and Staffing Services. AIDA executive and administrative staff shall provide all administrative and staffing services to the ADC (such services to include, but not be limited to: legal, accounting, marketing, and any other professional services) related to the issuance of bond obligations and other economic development activities undertaken by the ADC (the “Services”).

Section 2. Payment for Services. In consideration for the Services, the ADC shall compensate the AIDA from the administrative fees charged and received by the ADC relative to any bond obligation issued by the ADC on behalf of the Town, and from such other sources of income as the ADC may have from time to time. The AIDA will issue invoices to ADC setting forth the fees due and payable by the ADC for the Services. Such invoices will be issued by the AIDA on not less than an annual basis. The Parties agree that ninety percent (90%) of each administrative fee received by ADC relative to any bond obligation issued by the ADC on behalf of the Town shall be remitted to AIDA, and the balance retained by ADC for its general operations.

Section 3. Exculpatory Provisions. All covenants, stipulations, promises, agreements and obligations of any Party contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of such Party and not of any member, director, officer, employee or agent of such Party in his or her individual capacity, and no recourse shall be had for any claim hereunder against any member, director, officer, employee or agent of any of the Parties.

Section 4. Term. Unless otherwise agreed, the term of this Agreement shall continue unless and until any Party delivers a notice of termination to the other Party upon thirty (30) days written notice.

Section 5. Applicable Law. This Agreement shall be governed by and interpreted, construed and enforced in accordance with, and subject to, the laws of the State of New York.

Section 6. Waiver. No waiver by any Party of any breach, default or violation of any term, warranty, representation, agreement, covenant, condition or provision hereof shall constitute a waiver of any subsequent breach, default or violation of the same or any other term, warranty, representation, agreement, covenant, condition or provision hereof.

Section 7. Severability. The provisions of this Agreement shall be severable, and if any clause, sentence, paragraph, provision or other part hereof shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof, which remainder shall continue in full force and effect.

Section 8. Captions. The captions herein are for convenience only and are not to be construed as a part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.

Section 9. Successors and Assigns. The provisions of this Agreement shall bind and benefit the successors and assigns of the Parties hereto, provided that no Party shall assign this Agreement, or any of their rights or obligations hereunder, without the prior written consent of the other Party hereto. This Agreement is made for the sole benefit of the Parties hereto, and no other person or entity shall have any rights hereunder.

Section 10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 11. Notices. All notices that may be given in connection with this Agreement shall be in writing and shall be delivered personally or mailed postage prepaid, by regular mail, to the Party at 4287 Main Street, Amherst, New York 14226. Notices shall be effective from the date of delivery if delivered personally, or from the day of deposit with the U.S. mail, if mailed.

Section 12. Entire Agreement. Each Party hereto acknowledges its full understanding of this Agreement, that there are no verbal promises, undertakings or agreements in connection herewith and that this Agreement can be modified only by a written agreement signed by the Parties hereto. All previous negotiations and agreements between the Parties hereto with respect to the transactions set forth herein are merged into this instrument which fully and completely expresses the entire agreement between the Parties, setting forth all the Parties' rights and obligations.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

TOWN OF AMHERST INDUSTRIAL
DEVELOPMENT AGENCY

By: _____

Name: _____

Title: _____

TOWN OF AMHERST DEVELOPMENT
CORPORATION

By: _____

Name: _____

Title: _____

TOWN OF AMHERST ~~INDUSTRIAL DEVELOPMENT~~ ~~AGENCY CORPORATION~~

STATEMENT OF DUTIES AND RESPONSIBILITIES
OF THE BOARD OF DIRECTORS

ARTICLE I

Purpose

The purpose of this Statement is to set forth the standards of conduct and responsibilities of the Town of Amherst ~~Industrial Development~~ ~~Agency Corporation~~ (the "~~Agency Corporation~~") Board of Directors in furtherance of efficient operations so as to promote and assist economic development in the Town of Amherst and fulfill the purposes of the ~~Agency Corporation~~ as set forth in Article 14 of the Not-for-Profit Corporation Law.

ARTICLE II

Role and Expectations

It is the responsibility of Board members to: (a) execute direct oversight of the ~~Agency's Corporation's~~ CEO and other management in the effective and ethical management of the ~~Agency Corporation~~; (b) understand, review and monitor the implementation of fundamental financial and management controls and operational decisions of the ~~Agency Corporation~~; (c) establish policies regarding the payment of salary, compensation and reimbursements to, and establish rules for the time and attendance of, the CEO and management; (d) adopt a code of ethics applicable to each officer, director and employee that, at a minimum, includes the standards established in section seventy-four of the public officers law; (e) establish written policies and procedures on personnel, including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or Board member of the ~~Agency Corporation~~, investments, travel, the acquisition of real property and the disposition of real and personal property and the procurement of goods and services; (f) adopt a defense and indemnification policy and disclose such plan to any and all prospective Board members; and (g) adhere to the fiduciary duties of care and loyalty which they owe to the ~~Agency Corporation~~.

A. Duty of Care. A Board member shall perform his or her duties, including those duties as a member of any committee of the Board upon which he or she may serve, in good faith and with that degree of care which an ordinarily prudent person in a like position would use under similar circumstances.

B. Duty of Loyalty. Board members are bound by their duty of undivided and unqualified loyalty to the ~~Agency Corporation~~, a duty which encompasses good faith efforts to insure that their personal profit is not at the expense of the ~~Agency Corporation~~.

C. Board members may exercise and fulfill these duties by:

1. understanding the ~~Agency's Corporation's~~ role in the economic development community;

2. regularly attending and constructively participating in meetings of the Board and related committees;
3. reviewing and understanding the materials provided in advance of meetings and any other materials provided to the Board from time to time;
4. informing oneself prior to making decisions by utilizing material information reasonably available;
5. remaining reasonably accessible to the senior management on specific issues which may not require the attention of the entire Board but where an individual Board member's insight may be helpful; and
6. becoming familiar with and understanding the policies adopted by the AgencyCorporation and the criteria adopted by the AgencyCorporation to evaluate projects and using their best efforts to evaluate projects before them in light of the adopted policies and criteria established by the AgencyCorporation.

D. Acknowledgement of Fiduciary Duty. In conformity with Section 2824(h) of the New York Public Authorities Law, at or about the time that each Board member is appointed to or otherwise becomes a member of the AgencyCorporation, he or she shall execute an Acknowledgement of Fiduciary Duties and Responsibilities in the form prescribed by the New York State Authorities Budget Office, in which the Board member acknowledges that he or she understands his or her role and fiduciary responsibilities and acknowledges that he or she understands his or her duty of loyalty and care to the AgencyCorporation and commitment to the Agency'sCorporation's mission and the public interest.

ARTICLE III Board Member Conduct

A. Conflicts of Interest. Board members are required to conduct themselves in compliance with the conflict of interest requirements imposed upon members ~~as set forth in of industrial development agencies under Article 18 of the General Municipal Law and the requirements of the Agency'sCorporation's Code of Ethics~~Conflict of Interest policy.

B. Personal Loans. Board members must refrain from accepting or approving any personal loan from the AgencyCorporation.

C. Decorum. Board members are expected to observe proper decorum in the conduct of their duties on behalf of the AgencyCorporation and should not engage in conduct or make any public statement that harms, defames or otherwise brings discredit upon the AgencyCorporation.

D. Separation of Board and Management. No Board member may serve as the ~~Agency's~~Corporation's CEO, Executive Director, CFO, Comptroller or hold any other equivalent position while also serving as a Board member.

ARTICLE IV
Required Filings

Board members are required by New York Public Authorities Law Section 2825 to file annual financial disclosure statements with the Town of Amherst Board of Ethics. A completed financial disclosure form covering the immediately preceding calendar year must be submitted to the Town of Amherst Board of Ethics on or before May 15 of each year.

ARTICLE V
Training

A. Board Members Appointed ~~On~~ or After January 13, 2006.

All Board members appointed on or after January 13, 2006 must participate in State-approved training regarding their legal, fiduciary, financial and ethical responsibilities as Board members of the AgencyCorporation within one year of appointment.

B. All Board Members.

All Board members must participate in continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance.

C. Documentation.

The AgencyCorporation shall maintain documentation of Board member participation in required training and to assure that Board members are compliant with this Article.

~~ARTICLE VI~~
~~Agency Affiliates~~

~~This Statement of Duties and Responsibilities shall also be applicable to the Boards of the Town of Amherst Development Corporation ("ADC") upon approval by the ADC Board of Directors.~~

TOWN OF AMHERST ~~INDUSTRIAL DEVELOPMENT~~ ~~AGENCY CORPORATION~~

CODE OF ETHICS

ARTICLE I

Statement of Purpose

The Code of Ethics (this "Code") is a public statement by the Agency Corporation that sets clear expectations and principles to guide practice and inspire professional excellence. The Agency Corporation believes a commonly held set of principles can assist in the individual exercise of professional judgment. This Code speaks to the core values of public accountability and transparency. The purpose of having a code of ethics and practices is to protect the credibility of the Agency Corporation by ensuring high standards of honesty, integrity, and conduct of staff. To that end, this Code articulates the ethical standards to be observed by the Agency Corporation in pursuing and implementing economic development initiatives, and it sets rules and policies that prevent conflicts of interest.

ARTICLE II

Conflicts of Interest

No officer, member of the Agency's Corporation's Board of Directors (the "Board") or employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her or her duties in the public interest. Officers, Board members and employees are directed to review the Agency's Corporation's Conflict of Interest Policy for further guidance.

ARTICLE III

Standards

a. No officer, member of the Board or employee should accept other employment which will impair his or her or her independence of judgment in the exercise of his or her official duties.

b. No officer, member of the Board or employee should accept employment or engage in any business or professional activity which will require him or her to disclose confidential information which he or she has gained by reason of his or her official position or authority.

a-c. No officer, member of the Board or employee should disclose confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests.

d. No officer, member of the Board or employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself, herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the Agency Corporation for private business or other compensated non-Agency Corporation purposes.

e. No officer, member of the Board or employee should engage in any transaction as representative or agent of the Agency Corporation with any business entity in which he or she has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his or her official duties.

f. An officer, member of the Board or employee should not by his or her conduct give reasonable basis for the impression that any person can improperly influence him or her, unduly enjoy his or her favor in the performance of his or her official duties, or that he or she is affected by the kinship, rank, position or influence of any party or person.

g. An officer, member of the Board or employee should abstain from making personal investments in enterprises which he or she has reason to believe may be directly involved in decisions to be made by him or her, or which will otherwise create substantial conflict between his or her duty in the public interest and his or her private interest.

h. An officer, member of the Board or employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.

i. No officer, member of the Board or employee employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer, Board member or employee, should sell goods or services to any person, firm, corporation or association which receives financial assistance from the Agency Corporation.

j. No officer, member of the Board or employee of the Agency Corporation shall accept or arrange for any loan or extension of credit from the Agency Corporation or any affiliate of the Agency Corporation.

ARTICLE IV Gifts

~~Pursuant to and in accordance with Section 805-a(1) of the General Municipal Law,~~ No member, director, officer or employee of the Agency Corporation shall directly or indirectly, solicit any gift, or accept or receive any gift having a value of seventy-five dollars or more under circumstances in which it could reasonably be inferred that the gift was intended to influence such individual, or could reasonably be expected to influence such individual, in the performance of the individual's official duties or was intended as a reward for any official action on the individual's part.

ARTICLE V
Implementation and Ethics Officer

This Code shall be provided to all members, directors, officers and employees upon commencement of employment or appointment and shall be reviewed annually by the Agency's Corporation's Governance Committee.

The Finance & Audit Committee Chair shall serve as the Ethics Officer of the Agency Corporation, unless the Board designates by resolution a different officer, member or employee of the Agency Corporation to serve as the Ethics Officer. The Ethics Officer shall report to the Board and shall have the following duties:

- Counsel in confidence Board members, officers and employees who seek advice about ethical behavior and potential conflicts of interest;
- Receive and investigate complaints about possible ethics violations;
- Dismiss complaints found to be without substance; and
- Prepare an investigative report of his or her findings for action by the Executive Director or the Board.

ARTICLE VI
Violations

In addition to any penalty contained in any other provision of law, any Agency Corporation officer, member of the Board or employee who shall knowingly and intentionally violate any of the provisions of this Code may be fined, suspended or removed from office or employment in the manner provided by law.

ARTICLE VII
Reporting Unethical Behavior

Board members, officers and employees are required to report possible unethical behavior by a Board member, officer or employee of the Agency Corporation to the Ethics Officer. Board members, officers and employees may file ethics complaints anonymously and are protected from retaliation as provided in the Agency's Corporation's Whistleblower Policy.

ARTICLE VIII
Whistleblower Policy

In accordance with Section 2824(1)(e) of the Public Authorities Law, the Agency Corporation has adopted a Whistleblower Policy to afford certain protections to individuals who, in good faith, report violations of this Code or other instances of potential wrongdoing within the Agency Corporation. The Whistleblower Policy provides Board members, officers, employees and Agency Corporation volunteers with a confidential means to report credible allegations of misconduct, wrongdoing or unethical behavior and to protect those individuals, when acting in good faith, from personal or professional retaliation. The Whistleblower Policy is provided and is accessible to all Board members, officers, employees and volunteers of the Agency Corporation and is reviewed annually by the Agency's Corporation's Governance Committee.

TOWN OF AMHERST
~~INDUSTRIAL DEVELOPMENT AGENCY~~
DEVELOPMENT CORPORATION

DATA GATHERING PROCEDURES

I. Scope

This policy applies to all individuals, companies, agencies or others that receive financial assistance from the Town of Amherst ~~Industrial Development~~ Agency Corporation (the "Agency Corporation").

II. Objectives

The primary objectives of the Agency Corporation data gathering procedures are to:

Assure compliance with annual reporting requirements of the New York State Comptroller and the Public Authorities Budget Office

Assist in measuring the effectiveness of assistance provided

III. Description of Information

The Agency Corporation may provide financial assistance in several different forms, including:

- Assistance in the issuance of debt (bonds, notes, etc.).
- ~~Sales tax abatements~~
- ~~Mortgage tax recording abatements~~
- ~~Real property tax exemptions (and use of Payment in Lieu of Tax "PILOT" agreements)~~

Information required to be reported on an annual basis includes:

- In cases where the Agency Corporation assisted with the issuance of debt (e.g. IR bonds issued), even though the Agency Corporation has no responsibility for repayment of the debt, nor in the case of default, the Agency Corporation must report any beginning of year debt balances outstanding, any debt issued, principal payments made and end of year debt balances.
- ~~Sales and mortgage tax abatements during the fiscal year.~~
- ~~In the case where the Agency Corporation has assisted with a real property tax exemption (and PILOT agreement), the Agency Corporation must report the amount of real property taxes that would have been paid (to county, town and school district) if no exemptions had been granted, the amount the benefiting company did pay in PILOT's (to county, town and school district) and the difference between the two~~
- In all cases where the Agency Corporation provides financial assistance, the Agency Corporation must report

oThe number of FTE employees at the project location before [AgencyCorporation](#) assistance

- The original estimate of jobs to be created
- The original estimate of jobs to be retained
- The number of current FTE employees
- The number of jobs created during the fiscal year
- The number of FTE jobs created during the fiscal year
- The number of FTE jobs retained during the fiscal year
- The number of FTE construction jobs created during the fiscal year

This information can only be obtained through direct confirmation with the benefiting companies.

IV. Procedures to Obtain Information

Requirements to provide for the annual reporting of this information will be included in all agreements between the [Agency Corporation](#) and benefiting companies.

In order to assure compliance with reporting requirements the [Agency Corporation](#) will perform the following procedures:

1. Confirmation requests will be mailed to companies that have received [Agency Corporation](#) assistance. Staff will consult with independent auditor for assistance in preparing the confirmation requests. Requests will be mailed on or around December 30th with due date on or around January 31st. Independent auditor and [AIDAADC](#) staff will track responses.
2. If no response is received, a second request for confirmation will be mailed to those companies that have not replied. This shall be done on or around February 1st with a due date of February 15th. Independent auditor and [AIDAADC](#) staff will track responses.
3. If no response is received, a third request for confirmation will be mailed to those companies that have not replied. This shall be done on or around February 16th with a due date of February 28th. Independent auditor and [AIDAADC](#) staff will track responses.
- ~~4.~~ If no response is received, [AIDAADC](#) staff/attorney will contact the company to solicit a response. [AIDAADC](#) staff/attorney will track responses.

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TOWN OF AMHERST ~~INDUSTRIAL-DEVELOPMENT AGENCY~~CORPORATION
FINANCIAL DISCLOSURE POLICY

The Town of Amherst ~~Industrial-Development Agency~~Corporation in compliance with the requirements of the Town of Amherst and the Public Authorities Accountability Act require that all members and employees with executive positions complete an annual disclosure form and that the disclosure form be filed with the Town of Amherst and the Board of Ethics for the County of Erie.

~~TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY~~
TOWN OF AMHERST DEVELOPMENT CORPORATION

FIXED ASSET CAPITALIZATION POLICY

Adopted: March 18, 2011

~~The Town of Amherst Industrial Development Agency (the "Agency") and the~~
The Town of Amherst Development Corporation (the "Corporation") will regard fixed assets as capitalized when all of the following criteria are met:

- (1) Assets purchased, built or leased have useful lives of one year or more.
- (2) The cost of the asset (including installation) is \$1,000 or more. Multiple assets whose cost is less than \$1,000 but the aggregate request or total is \$1,000 or more are capitalized
- (3) The cost of repairing or renovating the asset is \$1,000 or more and prolongs the life of the asset.

The ~~Agency and~~ Corporation will regard the purchase of software programs as fixed assets subject to the above capitalization policy and will amortize over an estimated useful life of 3 years. Costs associated with software maintenance and customer support are considered expenditures and will not be capitalized. All capitalized assets will have a numbered asset tag affixed to it if/when applicable.

Other Considerations:

- (1) REPAIR is an expenditure that keeps the property in ordinary efficient operating condition. The cost of the repair does not add to the value of prolong the life of the asset. All repair expenditures are charged to the appropriate department and fund.
- (2) IMPROVEMENTS are expenditures for additions, alterations and renovations that appreciably prolong the life of the asset, materially increase its value or adapt it to a different use. Improvements of this nature are capitalized.

TOWN OF AMHERST ~~INDUSTRIAL~~ DEVELOPMENT ~~AGENCY~~ CORPORATION
INVESTMENT POLICY

ARTICLE I

Scope

This investment policy (this "Policy") applies to all money and other financial resources available for investment by the Town of Amherst ~~Industrial~~ Development ~~Agency~~ Corporation (the "~~Agency~~ Corporation").

ARTICLE II

Objectives

The primary objectives of the ~~Agency's~~ Corporation's investment activities are, in priority order:

- a. To conform with all applicable federal, state and other legal requirements;
- b. To adequately safeguard principal;
- c. To provide sufficient liquidity to meet all operating requirements; and
- d. To obtain a reasonable rate of return.

ARTICLE III

Delegation of Authority

The responsibility for administration of the investment program is delegated to the ~~Agency's~~ Corporation's Treasurer who shall establish procedures for the operation of the investment program consistent with these investment guidelines. Such procedures shall include an adequate internal control structure to provide a satisfactory level of accountability based on a data base or records incorporating description and amounts of investments, transaction dates and other relevant information.

ARTICLE IV

Prudence

All participants in the investment process shall seek to act responsibly as custodians of the public trust and shall avoid any transaction that might impair public confidence in the ~~Agency~~ Corporation.

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the safety of the principal as well as the probable income to be derived.

All participants involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions.

ARTICLE V
Diversification

It is the policy of the AgencyCorporation to diversify its deposits and investments by financial institution such that the Agency'sCorporation's deposits and investments do not exceed FDIC coverage and collateral pledged by such institution.

ARTICLE VI
Internal Controls

It is the policy of the AgencyCorporation that all money collected by any officer or employee of the AgencyCorporation be transferred to the CFO within 5 days of receipt for deposit into an AgencyCorporation account.

The CFO is responsible for establishing and maintaining an internal control structure to provide reasonable, but not absolute, assurance that deposits and investments are safeguarded against loss from unauthorized use or disposition and that transactions are executed in accordance with management's authorization, recorded properly and are managed in compliance with applicable laws and regulations.

ARTICLE VII
Designation of Authorized Depositories

The banks and trust companies authorized for the deposit of monies, up to the amounts which are collateralized:

Depository Name

- Citibank (New York State)
- Chase Bank
- M&T_Bank
- HSBC
- Bank of Akron
- Key Bank
- Bank of America

ARTICLE VIII
Collateralizing of Deposits

In accordance with the provisions of General Municipal Law §10, all deposits of the AgencyCorporation, including certificates of deposit and special time deposits, in excess of the amount

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insured under the provisions of the Federal Deposit Insurance Act shall be secured by a pledge of "eligible securities" with an aggregate market value, as provided by General Municipal Law §10, equal to the aggregate amount of such deposits (a list of eligible collateral securities are included as Appendix A to this Policy).

ARTICLE IX

Safekeeping and Collateralization

Eligible securities used for collateralizing deposits shall be held by the depositaries' trust departments and/or a third party bank or trust company subject to security and custodial agreements.

The security agreement shall provide that eligible securities are being pledged to secure local government deposits together with agreed upon interest, if any, and any costs or expenses arising out of the collection of such deposits upon default. It shall also provide the conditions under which the securities may be sold, presented for payment, substituted or released and the events which enable the AgencyCorporation to exercise its rights against the pledged securities. In the event that the securities are not registered or inscribed in the name of the local government, such securities shall be delivered in a form suitable for transfer or with an assignment in blank to the AgencyCorporation or its custodial bank.

The custodial agreement shall provide securities held by the bank or trust company, or agent of and custodian for the local government, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be commingled with or become part of the backing for any other deposit or other liabilities. The agreement should also describe that the custodian shall confirm the receipt, substitution or release of the securities. The agreement shall provide for the frequency of revaluation of eligible securities and for the substitution of securities when a change in the rating of a security may cause ineligibility. Such agreement shall include all provisions necessary to provide the local government a perfected interest in the securities.

ARTICLE X

Authorized Investments

As authorized by General Municipal Law §11, the AgencyCorporation authorizes the CFO to invest money not required for immediate expenditure for terms not to exceed its projected cash flow needs in the following types of investments:

- Special time deposit accounts
- Certificates of deposit; Obligations of the United States of America
- Obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America
- Obligations of the State of New York

All investment obligations shall be payable or redeemable at the option of the AgencyCorporation within such times as the proceeds will be needed to meet expenditures for purposes for which the

_____ money was provided and, in the case of obligations purchased with the proceeds of bonds or notes, shall be payable or redeemable at the option of the Agency Corporation within one year of the date of purchase.

ARTICLE XI
Monthly Reporting Requirements

At each regularly scheduled monthly meeting of the Agency's Corporation's Board of Directors, the CFO shall prepare a report of the Agency's Corporation's cash and investments balances as of the last day of the preceding month. At a minimum such report shall contain:

- The name of each financial institution
- Type of account (checking, savings, certificate of deposit, etc.)
- Current rate of interest
- Account balance as of the last day of the previous month
- Maturity date in the case where funds are not currently available

ARTICLE XII
Annual Monitoring and Reporting

On an annual basis, the Agency Corporation will obtain an independent audit of its financial statements, which shall include an audit of its cash and investments and the Agency's Corporation's compliance with this Policy. The results of the independent audit shall be made available to the Agency Corporation Board at the time of its annual review of this Policy.

Pursuant to Section 2925(6) of the Public Authorities Law, Agency Corporation staff shall, on an annual basis, prepare and submit for Agency Corporation Board approval an investment report which shall include this Policy, amendments to this Policy since the last investment report, an explanation of this Policy and any amendments, the results of the annual independent audit, the investment income record of the Agency Corporation and a list of the total fees, commissions or other charges paid to each investment banker, broker, agent, dealer and advisor rendering investment associated services to the Agency Corporation since the last investment report. The investment report will be distributed to those individuals identified in Section 2925(7)(b) of the Public Authorities Law. The Agency Corporation shall make available to the public copies of its investment report upon reasonable request therefor.

APPENDIX A

Schedule of securities eligible for collateralization of Agency Corporation deposits:

- i. Obligations issued, or fully insured or guaranteed as to the payment of principal and interest, by the United States of America, an agency thereof or a United States government sponsored corporation.
- ii. Obligations issued, or fully guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank.
- iii. Obligations partially insured or guaranteed by any agency of the United States of America, at a proportion of the Market Value of the obligation that represents the amount of the insurance or guaranty.
- iv. Obligations issued or fully insured or guaranteed by the State of New York, obligations issued by a municipal corporation, school district or district corporation of such State or obligations of any public benefit corporation which under a specific State statute may be accepted as security for deposit of public money.
- v. Obligations issued by states (other than the State of New York) of the United States rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization.
- vi. Obligations of Puerto Rico rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization.
- vii. Obligations of counties, cities and other governmental entities of a state other than the State of New York having the power to levy taxes that are backed by the full faith and credit of such governmental entity and rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization.
- viii. Obligations of domestic corporations rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization.
- ix. Any mortgage related securities, as defined in the Securities Exchange Act of 1934, as amended, which may be purchased by banks under the limitations established by bank regulatory agencies.
- x. Commercial paper and bankers' acceptances issued by a bank, other than the Bank, rated in the highest short term category by at least one nationally recognized statistical rating organization and having maturities of not longer than 60 days from the date they are pledged.
- xi. Zero coupon obligations of the United States government marketed as "Treasury strips".

TOWN OF AMHERST DEVELOPMENT CORPORATION

PROCUREMENT POLICY

A. Scope and Purpose.

Pursuant to Section 2824 of the Public Authorities Law, the Town of Amherst Development Corporation ("ADC" or the "Corporation") is required to establish and adopt a procurement policy. This Procurement Policy ("Policy") shall also be applicable to all procurements undertaken by any wholly-owned subsidiary of ADC as may hereafter be established by ADC.

B. Procurement Procedures.

1. Procurement Officer. The Executive Director of the ADC shall serve as the procurement officer for purposes of this Procurement Policy.
2. Solicitation Procedures for the Purchase of Goods and Services.
 - a. Up to \$10,000 per instance — Documented verbal quotes or written/fax/email quotes from at least two vendors.
 - b. Greater than \$10,000 to \$25,000 per instance — Written/fax/email quotes from at least three vendors.
 - c. Greater than \$25,000— Formal written Request for Proposals (RFP), or Request for Qualifications (RFQ) submitted to at least three vendors and posted at the ADC website.
3. Approval Thresholds. The following approval thresholds shall apply to the procurement of all goods and services, except those procurements made under Section 4(d):
 - a. The ADC Executive Director is authorized to procure goods and services in an amount up to \$10,000. Prior to procuring such goods or services, the Executive Director shall confer with the Treasurer to confirm that the proposed expenditure is within budgetary limits.
 - b. The procurement of goods and services in an amount greater than \$10,000 shall require the approval of the ADC Board of Directors. By resolution, the Board may delegate to the ADC Executive Director or a committee of the Board the authority to procure goods or services in an amount greater than \$10,000 without Board approval.

4. Exceptions. Alternative proposals or quotations shall not be required for procurements made through or with respect to:
- a. New York State or Erie County contracts.
 - b. State Finance Law Section 175-b (from agencies for the blind or severely handicapped).
 - c. Correction Law Section 186 (articles manufactured in correctional institutions).
 - d. Emergency - An emergency exists if the delay caused by soliciting quotes would endanger the health, welfare or property of the municipality or of the citizens. An emergency situation shall be documented in the procurement file and shall include a description of the facts giving rise to the emergency and basis for selecting the particular vendor.
 - e. Resolution - The Corporation may adopt a resolution waiving the solicitation requirements whenever it is determined to be impracticable and in the best interests of the Corporation.
 - f. Sole Source - Defined as a situation when there is only one possible source item which to procure goods and/or services and it is shown that the item needed has unique benefits, the cost is reasonable for the product offered and there is no competition available. In this situation, a request for a resolution, as described above, is required.
 - g. Single Source — Defined as a situation where, even though two or more vendors are available to supply the required goods or services, the Corporation determines that: (i) one particular vendor has unique knowledge or expertise with respect to the required goods, services or project, rendering the use of competitive procedures impractical; and (ii) considering the benefits, the cost to the Corporation is reasonable. Approval of the Executive Director after consultation with the Treasurer of the Corporation is necessary, which shall be documented in the procurement file along with an explanation of the basis for concluding that a single source procurement was in the best interests of the Corporation and the manner in which the Corporation identified the selected vendor.
 - h. True Lease - Prices will be obtained through quotations whenever possible. The award shall be made on the basis of goods and/or services to be provided, ability to meet the specifications desired and price.
 - i. Insurance - All insurance policies shall be procured in accordance with the following procedures: (1) Premium less than \$10,000 - documented telephone quotations from at least three agents (if available); (2) Premium over \$10,000 - written quotations/fax or proposals from at least three agents (if available).

- j. Professional Services - This category includes services which require special education and/or training, license to practice or are creative in nature. Examples of professional services are: lawyers, doctors, accountants, engineers, artists, etc.
4. Basis for the Award of Contracts. Contracts will be awarded to the lowest responsible vendor who meets the specifications.
 5. Circumstances Justifying an Award to Other than the Lowest Cost Quoted:
 - a. Delivery requirements;
 - b. Quality requirements;
 - c. Quality;
 - d. Past vendor performance;
 - e. The unavailability of three or more vendors who are able to quote on procurement;
 - f. It may be in the best interests of the Corporation to consider only one vendor who has previous expertise with respect to a particular procurement.
 6. Documentation.
 - a. For each purchase made, the Executive Director or his or her authorized designee shall set forth in writing the category of procurement that is being made and what method of procurement is specified.
 - b. Whenever an award is made to other than the lowest quote, the reasons for doing so shall be set forth in writing and maintained in the procurement file.
 - c. Whenever the specified number of quotations cannot or will not be secured, the reasons for this shall be indicated in writing and maintained in the procurement file.
 7. Contents of Requests for Proposals (RFP). For all procurements under this Policy that require an RFP, the following information shall be included in the solicitation:
 - a. Goods being sought or the scope of services desired;
 - b. The projected term of the contract;
 - c. Criteria to be used in evaluating proposals and the requirements that must be fulfilled;

- d. Schedule of relevant dates;
 - e. Insurance requirements;
 - f. M/WBE goals; and
 - g. Designation of the ADC representative to whom communications regarding the RFP should be directed.
8. Contents of the Requests for Qualifications (RFQ). For all procurements under this Policy that require an RFQ, the following information shall be included in the solicitation:
- a. The scope of services desired;
 - b. Criteria to be used in evaluating qualifications and the requirements that must be fulfilled;
 - c. Insurance requirements, if applicable;
 - d. M/WBE goals; and
 - e. Designation of the ADC representative to whom communications regarding the RFQ should be directed.
9. Minority and Women Business Enterprises. The Corporation shall comply with all applicable legal requirements relating to the hiring of such businesses.
10. Input from members of the Corporation. Comments concerning the procurement policy shall be solicited from the members of the Corporation from time to time.
11. Annual Review. The Corporation shall annually review its policies and procedures.
12. Procurement Lobbying Law. The Corporation shall follow the applicable provisions of Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005 (the "Procurement Lobbying Law"), for any contract or other agreement for an article of procurement involving an estimated annualized expenditure in excess of \$15,000.

TOWN OF AMHERST ~~INDUSTRIAL~~-DEVELOPMENT AGENCYCORPORATION

AMENDED AND RESTATED
REAL PROPERTY ACQUISITION GUIDELINES

The Town of Amherst ~~Industrial~~—Development AgencyCorporation (the "AgencyCorporation"), a New York public benefit corporation, in compliance with Section 2824(1)(e) of the New York State Public Authorities Law, hereby adopts the following Amended and Restated Real Property Acquisition Guidelines (these "Guidelines") as of April 21, 2017.

These Guidelines shall apply to the acquisition of real property until such time as the AgencyCorporation adopts new or revised Guidelines. The Board of Directors shall review and approve these Guidelines, with any necessary modifications and revisions, on an annual basis, or more frequently as the Board may determine.

ARTICLE I
Designation of Contracting Officer

The AgencyCorporation hereby designates the Executive Director of the AgencyCorporation as the Agency'sCorporation's Contracting Officer in compliance with the provisions of New York State Public Authorities Law. The Contracting Officer shall hold this position until the Board of Directors of the AgencyCorporation designate a new Contracting Officer.

The Contracting Officer shall be responsible for the administration and implementation of these Guidelines. The Contracting Officer shall cause these Guidelines to be posted on the Agency'sCorporation'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'sCorporation's acquisition of all interests in real property except for acquisitions of interests in real property where the AgencyCorporation is involved for the benefit of a third party. As used in these Guidelines, "property" shall include all interests in real property. The AgencyCorporation shall acquire real property in a prudent manner.

ARTICLE III
Purpose

The AgencyCorporation has adopted these Guidelines (i) to comply with the provisions of Section 2824(1)(e) of the New York State Public Authorities Law and (ii) to protect the Agency'sCorporation's interests when acquiring real property for its own benefit.

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ARTICLE IV Property Acquisition Requirements

A. Acquisition for Fair Market Value. The [AgencyCorporation](#) shall endeavor not to pay more than fair market value for any property being acquired. Where the property is such that it is required for [AgencyCorporation](#) purposes and other property will not suffice, the [AgencyCorporation](#) may under such circumstances pay such reasonable amount in excess of what an independent qualified professional has determined to be fair market value in order to purchase the property.

In such case the [AgencyCorporation](#) shall document the reasons why it is necessary to acquire such property and pay more than what was determined to be fair market value.

B. Determination of Fair Market Value. Prior to acquiring any parcel of real property, excepting property being gifted to the [AgencyCorporation](#), the Contracting Officer shall take reasonable measures to determine the fair market value of the property to be acquired and shall negotiate the purchase price after determination of the fair market value. The fair market value of all real property shall be established by an appraisal conducted by an independent qualified professional. 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. In the case of real property gifted to the [AgencyCorporation](#), an appraisal shall not be required.

A-C. Environmental Review. Prior to the acquisition of any interest in real property covered by these Guidelines, the [AgencyCorporation](#) shall take necessary steps to determine whether there are any environmental concerns. The [AgencyCorporation](#) shall order a Phase I Environmental Report and, if warranted by the results of the Phase I Environmental Report, the [AgencyCorporation](#) shall order a Phase II Environmental Report. The [AgencyCorporation](#) shall comply with the New York State Environmental Quality Review Act (SEQRA) in any property purchase.

B-D. Title Review. The [AgencyCorporation](#) shall have [AgencyCorporation](#) General Counsel review the title documents supplied in connection with the acquisition and shall require fee title insurance unless [AgencyCorporation](#) Counsel determines that title insurance is not required.

C-E. Execution of Property Acquisition. [AgencyCorporation](#) General Counsel shall handle the purchase of property on behalf of the [AgencyCorporation](#) and the [AgencyCorporation](#) shall pay such reasonable fees as are required in connection with such purchase.

ARTICLE V Yearly Property Report

Each year the Contracting Officer shall publish a report listing all real property acquired by the [AgencyCorporation](#) during the previous twelve-month period. The report shall contain a full description of each parcel of real property purchased, the price paid by the [AgencyCorporation](#) and the name of the individual(s) or entity that sold the property. The Contracting Officer shall

publish the report on the [Agency's Corporation's](#) website and shall deliver the report to the Comptroller, the Director of the Budget, the Commissioner of General Services, the New York State Legislature c/o the Speaker of the House, the Senate Majority Leader and the Authorities Budget Office.

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TOWN OF AMHERST ~~INDUSTRIAL~~ DEVELOPMENT ~~AGENCY~~CORPORATION

PROPERTY DISPOSAL GUIDELINES

The Town of Amherst ~~Industrial~~—Development AgencyCorporation (the "AgencyCorporation"), a New York local development 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 Board of Directors of the AgencyCorporation shall review, approve and make any necessary modifications to these Guidelines.

ARTICLE I

Designation of Contracting Officer

The AgencyCorporation hereby designates the Executive Director of the AgencyCorporation as the Agency'sCorporation's Contracting Officer. The Contracting Officer shall hold this position until the Members-Board of Directors of the AgencyCorporation designate a new Contracting Officer.

The Contracting Officer shall have supervision and direction over the disposition of the Agency'sCorporation'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'sCorporation'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'sCorporation'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 AgencyCorporation 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 agencyCorporation or disposed of in any manner practicable.

ARTICLE III

Purpose

The AgencyCorporation 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 AgencyCorporation property.

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ARTICLE IV
Property Disposition Requirements

~~A.~~

A. Method of Disposition

1. *Disposition for Fair Market Value.* Subject to the enumerated exceptions in subsection (3) below, the ~~Agency~~Corporation 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~~Corporation 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~~Corporation.

~~a.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~~Corporation'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;

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- 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.

~~e.~~
b.c. *Dispositions outside the Scope of Subsection (a).* In the event that the AgencyCorporation 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 AgencyCorporation 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 Assembly¹)

B. Award and Approval of Property Disposition Contracts

~~f.~~

1. Disposal of Property by Negotiation.

a. *Rule.* The AgencyCorporation 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 Corporation may effectuate such transfer.

~~+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.

vii.

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

i. 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 Corporation's principal office.

~~2.~~—

2. Standard Procedure.

a. Advertised Bid. Except as otherwise permitted herein, aAll disposals of Agency Corporation property shall be made after public advertisement for bids for the purchase of Agency Corporation 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 AgencyCorporation 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 AgencyCorporation 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 AgencyCorporation 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 AgencyCorporation shall notify the successful bidder in writing of the Agency'sCorporation'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 AgencyCorporation Treasurer in a form and on terms acceptable to the AgencyCorporation before taking possession of the property. The AgencyCorporation shall gather the following information regarding any successful bidder: name, address and telephone number. The AgencyCorporation 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 AgencyCorporation may solicit bids for contracts to dispose of the AgencyCorporation property covered by these Guidelines. In the event that the AgencyCorporation determines that the services of a company are necessary to assist the AgencyCorporation in disposing of certain of its property, the AgencyCorporation shall follow the same procedures in selecting an organization to dispose of property as the AgencyCorporation follows under these Guidelines for disposal of property through advertised bid. The Agency'sCorporation's contracting activities shall comply with New York Public Authorities Law §2896, the Agency'sCorporation'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 AgencyCorporation 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'sCorporation's website and delivered to the proper parties as required by the New York Public Authorities Law § 2896(3).

TOWN OF AMHERST ~~Industrial~~ DEVELOPMENT ~~Agency~~ CORPORATION
& Affiliates

EXPENSES, TRAVEL, CONFERENCES, MEALS AND ENTERTAINMENT POLICY

OBJECTIVE:

The purpose of this Expenses, Travel, Conferences, Meals and Entertainment Policy (Policy) is to outline the policies and procedures of the Town of Amherst ~~Industrial~~ Development ~~Agency~~ **and its affiliates (AIDA Corporation (ADC) or Agency Corporation)** will follow with respect to these and other related expenditures in accordance with Section 2824 of the Public Authorities Accountability Act of 2005.

APPLICABILITY:

~~This policy shall apply to the following affiliated corporation: Amherst Development Corporation (ADC).~~—This policy shall apply to every Board member, Officer and employee of these organizations.

GENERAL GUIDELINES:

It is the ~~AIDA's~~ADC's general policy to pay reasonable and necessary travel, conferences, meals and entertainment expenses incurred as a result of official business subject to the presentation of appropriate documentation.

Any exceptions or potential exceptions to this Policy must be submitted to the Executive Director/President (or in the case of the Executive ~~Director/President to the Board Chair~~¹) for approval.
~~Director/President to the Board Chair') for approval.~~

SECTION 1: TRAVEL

1.1- APPROVAL OF TRAVEL:

Travel involving overnight accommodation or travel outside of Western New York and Southern Ontario requires the approval of the Executive Director/President (or in the case of the Executive Director/President to the Board Chair).

1.2- PERSONAL TRAVEL:

Personal Travel is not reimbursable. This exclusion applies to personal travel which interrupts official travel, or precedes or follows a business trip.

Personal expenses are not reimbursable even when incurred while on an ~~AIDA~~ADC trip. Examples of such excluded expenses are pet care, house, or child-care expenses and purchase or repair of personal luggage.

~~**1 If the Board Chair benefitted from the expenditure then the Finance and Audit Committee Chair will approve the exception. If both the Board Chair and the Finance and Audit Committee Chair benefitted from the expenditure then the full Board must approve the exception.**~~

¹ ~~If the Board Chair benefitted from the expenditure then the Finance and Audit Committee Chair will approve the exception. If both the Board Chair and the Finance and Audit Committee Chair benefitted from the expenditure then the full Board must approve the exception.~~

1.3- REIMBURSABLE TRAVEL EXPENSES:

Where practicable, employees should perform appropriate due diligence to obtain the lowest reasonable cost for travel expenses.

Transportation expenses shall be reimbursed based on an economical mode of transportation and the most commonly traveled route consistent with the authorized purpose of the trip.

~~Transportation tickets should be procured in advance in order to obtain any discounts offered by the carrier. Every reasonable effort should be made to cancel reservations on a timely basis to avoid no-show or late cancellation charges.~~

A.

A. Automobile Travel

i) Personal Vehicle

Travelers may use their personal vehicle for business purposes if it is less expensive than renting a car, taking a taxi, or using alternative transportation, or if it saves time. In most circumstances, mileage shall be computed as the distance traveled to the business destination, less normal commuting miles that would ordinarily have been incurred. Mileage will be reimbursed at the prevailing IRS mileage rate reimbursement limits which are intended to cover the cost of fuel, depreciation, insurance, maintenance and other similar operating costs. Expenses related to the mechanical failure or accidents to personal cars are not reimbursable.

When utilizing a personal vehicle for business, travelers must maintain liability insurance on the vehicle in accordance with New York State requirements.

ii) Rental Cars

A vehicle may be rented when renting would be more advantageous to the ~~AIDA~~ADC than other means of commercial transportation, such as using a taxi. When the traveler uses a rental car also for a personal side trip, he or she is expected to pay the appropriate portion of both the per-diem and the mileage expense.

The ~~AIDA's~~ADC's insurance company currently provides liability and physical damage coverage if a vehicle is rented in the ~~Agency's~~Corporation's name in the U.S. or Canada. Therefore, if similar coverage is offered by the rental company, it should be declined in these circumstances.

iii) Miscellaneous Automobile-related Expenses

Charges for parking, ferries, bridges, tunnels, or toll roads while an individual is traveling on ADC business will be reimbursed.

~~on AIDA business will be reimbursed.~~

~~B.~~

B. Air Travel

Whenever practicable, travelers are expected to use tourist, economy, coach or "standard" accommodations for air travel.

C. Surface Transportation Used in Lieu of Air Travel

If advance approval has been obtained, a traveler may use surface transportation for personal reasons even though air travel is the appropriate mode of transportation. The cost of meals and lodging, parking, mileage, tolls, taxis, and ferries incurred while in transit by surface transportation may be reimbursed. Such costs shall not exceed the cost of airfare, based on the cost of regular coach fare available for the location of travel from a standard commercial air carrier plus transportation costs to and from the airport.

D. Other Forms of Transportation

Rail, shuttle, subway or bus transportation may be used if it is convenient and less expensive than alternative transportation or it saves time. If a traveler's destination is served by a regularly scheduled airline, the use of rail or bus transportation shall be reimbursed in accordance with the procedures specified under Surface Transportation in Lieu of Air Travel.

E. Food and Lodging

Lodging, meals, tips, and related miscellaneous expenses while an individual is on travel status for the ~~AIDA~~ADC will be reimbursed in their actual, reasonable amounts when properly documented. Accommodations are expected to be comfortable and appropriate to the particular purpose of the trip-not luxurious or extravagant.

Wherever possible the ~~AIDA's~~ADC's New York State sales tax exemption should be claimed.

F. Miscellaneous Travel Expenses

Examples of miscellaneous travel expenses that are reimbursable are the following:

- Reasonable tips for baggage handling, etc.
- Business telephone or internet calls and occasional, reasonable personal calls.
- Highway and bridge tolls.
- ~~E~~Necessary parking fees.
- ~~E~~Small supplies on an emergency basis
- ~~E~~Fees for visas, passports, and inoculations are allowable when they are a specific and necessary condition of fulfilling a work assignment

G. Travel Expenses Not Reimbursed

Expenses that are not reimbursable include:

- Lost or stolen tickets, cash, or personal property.
- ~~E~~Fines.
- ~~r~~Accident insurance premiums (the ~~AIDA~~ADC provides workers compensation and accidental death and disability insurance to employees).
- ~~r~~Child, pet or house-sitting expenses.

- ~~E~~ Penalties or fees for cancellation or change of discounted tickets when the
- cancellation or change came about from personal rather than **AIDA choice** ADC choice. In-room movie or video game rentals. Hotel mini-bar charges.

~~r In-room movie or video game rentals.~~
~~r Hotel mini-bar charges.~~

- Dry cleaning (unless the **AIDAADC** requests that the traveler extends their regularly scheduled trip or when the traveler is away from home for more than six days).
- All costs pertaining to spouses, partners or other non-**AgencyCorporation** personnel accompanying the traveler

The above listings are not all-inclusive and items not listed will be reviewed on a case-by-case basis.

SECTION 2: CONFERENCES AND SEMINARS

Reimbursement of conference and seminar fees and related hotel and meal expenses will be limited to those reasonable and necessary expenses. The **AIDAADC** will only reimburse reasonable meal and beverage expenses of guests when the purpose of the meeting is to discuss **AIDAADC** business.

SECTION 3: DUES OF PROFESSIONAL OR TECHNICAL ORGANIZATIONS

Dues for approved memberships in professional or technical organizations are reimbursable when they are related to the employee's job responsibilities. The **AgencyCorporation** may also choose to pay these directly.

SECTION 4: MEALS & ENTERTAINMENT

There are occasions when the **AIDAADC** may provide meals and light refreshments to Board or committee members, officers, employees, guests or visitors to support the mission of the **AgencyCorporation**. As with other **AIDAADC** expenditures, authorized officials must exercise prudent business judgment in reviewing proposed expenditures for meals and light refreshments based on their reasonableness and benefit to the **AIDAADC** and its mission of promoting economic development. In addition, such expenditures should be cost effective and in accordance with the best use of **AIDAADC**-administered funds.

Meals and entertainment costs of a spouse or partner will only be reimbursed if their presence serves a business purpose (such as if he or she has a significant role in the proceedings or makes an important contribution to the success of the event). Official functions to which spouses or partners are invited as a matter of protocol or tradition may be considered as bona fide business-related activities if their inclusion serves a legitimate business purpose.

4.1 Employee morale-building activities Exception

The cost of meals, light refreshments and entertainment for official employee morale-building activities that serve an **AIDAADC** business purpose may be treated as an exception to this Policy. Examples of such occasions include a gathering to honor a departing employee who is retiring or who is separating from **AIDAADC** employment after at least three years of service, employee recognition receptions, annual staff picnics, and holiday gatherings.

4.2 Entertainment Expenses Not Reimbursed

Expenses that are not reimbursable include:

- Entertainment expenses that are lavish or extravagant under the circumstances;
- Entertainment expenses for birthdays, weddings, anniversaries, or farewell gatherings
- Memberships/dues for private clubs such as the Buffalo Club or Saturn Club
- Adult entertainment

SECTION 5: ADVANCES

Cash advances are not generally provided, because individuals who travel regularly on **AIDAADC** business are encouraged to use **AIDAADC** issued credit card to charge their travel expenses. Other **AgencyCorporation** related expenses, such as purchasing supplies and related materials associated with the care and operation of the office, should use **AIDAADC** issued credit cards and adhere to previously discussed documentation requirements.

SECTION 6: REIMBURSEMENT APPROVAL

Reimbursement may be requested as soon as the individual has made the expenditure, completed their Expense Report and had it approved. Expense Reports must be approved by the Executive Director/President (or in the case of the Executive Director/President by the Board Chair). The individual approving the Expense Report should not have personally benefited from the expenditure.

In approving a request to reimburse an individual for expenditures authorized under this Policy, the approving authority must determine that:

- The expenditure serves a clear and necessary business purpose of benefit to the **AIDAADC** and its mission of promoting economic development;
- The expenditure of funds is reasonable, cost effective, and in accordance with the best use of **AIDAADC**-administered funds;
- Any alternatives that would have been equally effective in accomplishing the desired objectives were considered.

Individuals may not approve the reimbursement of their own expenses.^{2,2}

If a required receipt is lost or unavailable, a written explanation of the circumstances must accompany the reimbursement request.

6.1 Expenses Charged directly to the Agency Corporation

Certain expenses may be paid directly by the AIDAADC either via Agency Corporation credit cards or through check. Examples include such items as airline tickets, rental cars, accommodation and seminar registration fees. The fact that certain allowable business expenses may be paid directly by the AIDAADC does not relieve a traveler from complying with the substantiation requirements of this Policy (receipts and other supporting documentation must be submitted).

Use of the AIDAADC Corporate credit card for personal expenses is prohibited. If such expenses are inadvertently incurred, the individual must promptly refund the AIDAADC.

SECTION 7: EXPENSES IN FOREIGN CURRENCY

For expenses paid in foreign cash, the exchange rate at which the traveler bought-the foreign currency applies, and a receipt for the purchase of that currency should be kept and attached to the Expense Report.

SECTION 8: TAXABILITY OF REIMBURSEMENTS

In general, where the individual supplies a detailed accounting of bona fide business expenses to the employer, the amounts reimbursed are not taxable income to the

² In the case of the Executive Director/President, approval shall be sought from the Board Chair.

traveler. It is therefore in the traveler's interest to carefully follow the ~~AIDA's~~ADC's procedures for reporting and documenting expenses.

~~In the case of the Executive Director/President, approval shall be sought from the Board Chair.~~

TOWN OF AMHERST ~~INDUSTRIAL~~-DEVELOPMENT ~~AGENCY~~-CORPORATIONWHISTLEBLOWER POLICY**ARTICLE I**
General Provisions

The Town of Amherst ~~Industrial~~-Development ~~Agency~~Corporation Code of Ethics (the "Code") requires Board members, officers, and employees to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. Board members, officers and employees of the Town of Amherst ~~Industrial~~-Development ~~Agency~~Corporation (the "~~Agency~~Corporation") must practice honesty and integrity in fulfilling their responsibilities and comply with all applicable laws and regulations.

It is the policy of the ~~Agency~~Corporation to afford certain protections to individuals who in good faith report violations of the Code or other instances of potential wrongdoing within the ~~Agency~~Corporation. This Whistleblower Policy is intended to encourage and enable Board members, officers, employees and volunteers to raise concerns in good faith within the ~~Agency~~Corporation and without fear of retaliation or adverse employment action.

The objectives of the Town of Amherst ~~Industrial~~-Development ~~Agency~~Corporation Whistleblower Policy (this "Policy") are to establish policies and procedures for:

- The submission of concerns regarding questionable accounting or auditing matters by Board members, officers, employees and volunteers of the ~~Agency~~Corporation, on a confidential and anonymous basis;
- The receipt, retention, and treatment of complaints received by the ~~Agency~~Corporation regarding accounting, internal controls, or auditing matters; and
- The protection of Board members, officers, employees and volunteers reporting concerns from retaliatory actions.

ARTICLE II
Reporting Responsibility

Each Board member, officer, employee and volunteer of the ~~Agency~~Corporation has an obligation to report in accordance with this Policy (a) fraud or suspected fraud, (b) questionable or improper accounting or auditing matters, and (c) violations and suspected violations of the Code (each a "Concern," or collectively, "Concerns").

ARTICLE III
Authority of Finance and Audit Committee

All reported Concerns will be forwarded to the Finance and Audit Committee (the "Committee") in accordance with the procedures set forth herein. With respect to all reported

Concerns, the Committee shall be responsible for investigating and making appropriate recommendations to the Agency's Corporation's Board of Directors (the "Board") as provided herein.

ARTICLE IV
No Retaliation

No Board member, officer, employee or volunteer shall retaliate against any whistleblower for the disclosure of potential wrongdoing, whether through threat, coercion or abuse of authority; and no Board member, officer, employee or volunteer shall interfere with the right of any other Board member, officer, employee or volunteer by any improper means aimed at deterring disclosure of potential wrongdoing. Any attempts at retaliation or interference are strictly prohibited and:

- a. No Board member, officer, employee or volunteer who in good faith discloses potential violations of the Code or other instances of potential wrongdoing, shall suffer harassment, retaliation or adverse personnel action. Information concerning potential wrongdoing is disclosed in "good faith" when the individual making the disclosure reasonably believes such information to be true and reasonably believes that it constitutes potential wrongdoing.
- b. All allegations of retaliation against a whistleblower or interference with an individual seeking to disclose potential wrongdoing will be thoroughly investigated by the Agency Corporation.
- c. Any Board member, officer, employee or volunteer who retaliates against or had attempted to interfere with any individual for having in good faith disclosed potential violations of the Agency's Corporation's Code or other instances of potential wrongdoing is subject to discipline up to and including removal from the Board, dismissal from the volunteer position or termination of employment.
- d. Any allegation of retaliation or interference will be taken and treated seriously and irrespective of the outcome of the initial complaint, will be treated as a separate matter.

ARTICLE V
Reporting Concerns

A. Employees

Employees should first, in a prompt and timely manner, discuss their Concern with their immediate supervisor. If, after speaking with his or her supervisor, the employee has reasonable grounds to believe his or her supervisor has not taken adequate action regarding the Concern, the individual should report the Concern to the Ethics Officer, who has specific and exclusive responsibility to investigate all Concerns. In addition, if the individual is uncomfortable speaking

with his or her supervisor, or the supervisor is a subject of the Concern, the individual should report his or her Concern directly to the Ethics Officer.

If a Concern was reported verbally, the reporting individual, with assistance from the Ethics Officer, shall reduce the Concern to writing. Concerns may also be submitted anonymously. Such anonymous Concerns should be in writing and sent directly to the Ethics Officer.

Should an employee believe in good faith that disclosing information within the Agency Corporation pursuant to the procedure above would likely subject him or her to adverse personnel action or be wholly ineffective, the employee may instead disclose the information to the Authorities Budget Office or an appropriate law enforcement agency Corporation, if applicable.

B. Board Members, Officers and Volunteers

Board members, officers and volunteers should submit Concerns in writing directly to the Ethics Officer. Contact information for the Ethics Officer may be obtained from the Chief Financial Officer.

Should a Board member, officer or volunteer believe in good faith that disclosing information within the Agency Corporation pursuant to the procedure above would likely subject him or her to adverse personnel action or be wholly ineffective, the Board member, officer or other volunteer may instead disclose the information to the Authorities Budget Office or an appropriate law enforcement agency Corporation, if applicable.

C. Other Legal Rights Not Impaired

This Whistleblower Policy is not intended to limit, diminish or impair any other rights or remedies that an individual may have under the law with respect to disclosing potential wrongdoing free from retaliation or adverse personnel action.

ARTICLE VI **Handling of Reported Violations**

The Committee shall address all reported Concerns. The Ethics Officer shall immediately notify the Committee of any such report and the Committee will notify the sender and acknowledge receipt of the Concern within five business days, if possible. It will not be possible to acknowledge receipt of anonymously submitted Concerns.

All reports will be promptly investigated by the Committee and appropriate corrective action will be recommended to the Board if warranted by the investigation. Action taken must include a conclusion and/or follow-up with the complainant for complete closure of the Concern.

The Committee has the authority to discuss Concerns with ~~Agency~~Corporation Counsel or to retain outside legal counsel, accountants, private investigators or any other resource deemed necessary to conduct a full and complete investigation of the allegations.

ARTICLE VII
Acting in Good Faith

Anyone reporting a Concern must act in good faith and have reasonable grounds for believing the information disclosed indicates an improper accounting or auditing practice or a violation of the Code. The act of making allegations that prove to be unsubstantiated, and that prove to have been made maliciously, recklessly or with the foreknowledge that the allegations are false, will be viewed as a serious disciplinary offense and may result in discipline, up to and including removal from the Board, dismissal from the volunteer position or termination of employment, as applicable. Such conduct may also give rise to other actions, including civil lawsuits.

ARTICLE VIII
Confidentiality

Reports of Concerns, and investigations pertaining thereto, shall be kept confidential to the extent possible consistent with the need to conduct an adequate investigation. Disclosure of reports of Concerns to individuals not involved in the investigation will be viewed as a serious disciplinary offense and may result in discipline, up to and including removal from the Board, dismissal from the volunteer position or termination of employment, as applicable. Such conduct may also give rise to other actions, including civil lawsuits.