

**Town of Colonie Industrial Development Agency**

**POLICIES**

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## **TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY**

### **ATTENDANCE, COMPENSATION AND REIMBURSEMENT POLICY**

#### **I. Attendance**

Board members of the Town of Colonie Industrial Development Agency (the “Agency”) shall be available as required to perform the operations of the Agency and as set forth within the By-Laws, as may be amended, restated or revised by the Board from time to time. Said members and officers of the Agency shall put forth their best efforts to perform their respective duties and any other directives of the Board relating to the same.

#### **II. Compensation & Reimbursement**

The Chairman, Vice-Chairman, Members and Officers shall serve at the pleasure of the Agency. They receive no compensation for their services but shall be entitled to reimbursement for reasonable expenses incurred in the fulfillment of their duties.

Adopted: March 16, 2015

# TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY

## CODE OF ETHICS

### I. Persons Subject to this Code

This Code of Ethics (“Code”) applies to all members of the Town of Colonie Industrial Development Agency (“Agency”) and to all officers and employees of the Agency.

### II. General Rule with Respect to Conflicts of Interest

No person subject to this Code 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, that is in substantial conflict with the proper discharge of his or her duties in the public interest.

### III. Standards

(a) No person subject to this Code should accept other employment that will impair his or her independence of judgment in the exercise of official duties.

(b) No person subject to this Code should accept employment or engage in any business or professional activity that 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.

(c) No person subject to this Code should disclose confidential information acquired by him or her in the course of his or her official duties or use such information to further his or her personal interests.

(d) No person subject to this Code should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself, herself or others.

(e) No person subject to this Code should engage in any transaction as representative or agent of the Agency 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) A person subject to this Code 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) A person subject to this Code should abstain from making personal investments in enterprises that he or she has reason to believe may be directly involved in decisions to be made

by him or her or that will otherwise create substantial conflict between his or her duty in the public interest and his or her private interest.

(h) A person subject to this Code should endeavor to pursue a course of conduct that 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) If any person subject to this Code, or any firm or association of which such person is a member, or corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such person, sells goods or services to any person, firm, corporation or association that has received or will receive financial assistance from the Agency during such person's tenure as a member or officer or employee of the Agency, he or she must file with the Agency a written statement disclosing such sale, which statement will be open to public inspection.

(j) If any person subject to this Code has a financial interest, direct or indirect, having a value of \$10,000 or more in a project undertaken by the Agency, or that the Agency is considering undertaking, he or she must file with Agency a written statement that he or she has such a financial interest in such activity, which statement will be open to public inspection.

(k) Any member who has a material interest ("Interested Member") in a matter which relates to the affairs of the Agency may not be present at a meeting, while the matter is being considered nor vote on the matter unless members who do not have an interest in the matter agree that the interest should not disqualify the Interested Member from being present while the matter is being considered, and from voting on the matter.

(l) No person subject to this Code of may accept or arrange for any loan or extension of credit from the Agency or any affiliate of the Agency.

#### IV. Reporting and Investigation of Violations; Sanctions

(a) Any person subject to this Code who has credible information that a violation of this Code has occurred, is occurring or is imminent must promptly bring such information to the attention of the Governance Committee.

(b) Unless otherwise directed by a vote of the members, the Governance Committee will have responsibility for investigating and responding to violations reported under this section. The Governance Committee will also ensure that all the members (other than any member who is the subject of a report) are promptly informed of all violations reported under this section that are considered credible and meritorious.

(c) If the members determine that a violation of this Code has occurred, the members will determine the appropriate actions to be taken after considering all relevant facts and circumstances. Such actions may include a recommendation to the appointing body for the removal of a member or termination of the employment of an officer or employee and will be reasonably designed to:

(i) deter future violations of this Code or other wrongdoing; and

- (ii) promote accountability for adherence to the policies of this Code and other applicable policies.

In determining the appropriate sanction in a particular case, the members may consider the following matters:

- (i) the nature and severity of the violation;
- (ii) whether the violation was a single occurrence or repeated occurrences;
- (iii) whether the violation appears to have been intentional or inadvertent;
- (iv) whether the individual involved had been advised prior to the violation as to the proper course of action; and
- (v) whether or not the individual in question had committed other violations in the past.

(d) Persons subject to this Code are reminded that violations of this Code may also constitute violations of law that may result in civil or criminal penalties for the individual involved.

Adopted: March 16, 2015

# TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY

## CONFLICT OF INTEREST POLICY

### **I. STATEMENT OF PURPOSE**

The Town of Colonie Industrial Development Agency (“Agency”) has adopted this Conflict of Interest Policy (the “Policy”) in order to implement Section 883 of Title One of Article 18-A of the General Municipal Law (the “Act”), which provides that Article 18 of the General Municipal Law (the “Conflict of Interest Law”) applies to all members, officers and employees of the Agency. This Policy is intended to complement the Agency’s Code of Ethics by providing specific procedures to deal with conflicts of interest. This Policy is intended to supplement, but not to replace, any applicable state and federal laws governing conflicts of interest applicable to public authorities.

### **II. DEFINITIONS**

The definitions contained in Section 800 of the Conflict of Interest Law apply to this Policy.

### **III. CONFLICTS OF INTEREST**

(A) General Rule. Except as authorized by Section 802 of the Conflict of Interest Law, each of the following are a “Prohibited Interest”:

(1) No member, officer or employee of the Agency shall have an interest in any contract with the Agency when such member, officer or employee, either individually or as a member of a board, has the power or duty to:

(a) negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder;

(b) audit bills or claims under the contract; or

(c) appoint an officer or employee who has any of the powers or duties set forth above.

(2) No chief financial officer, treasurer, or his or her deputy or employee, of the Agency shall have an interest in a bank or trust company that is designated as a depository, paying agent, registration agent or for investment of funds of the Agency.

(3) Notwithstanding the remainder of this Policy, disclosure and recusal will not cure a Prohibited Interest. In order to avoid a violation of a “Prohibited Interest” the contract may not be acted upon or the member, officer or employee would have to resign.

(B) Conflicts of Interest Generally. A conflict of interest is a situation in which the financial, familial, or personal interests of a board member or employee come into actual or perceived conflict with their duties and responsibilities with the Agency. Perceived conflicts of interest are situations where there is the appearance that a board member and/or employee can personally benefit from actions or decisions made in their official capacity, or where a board member or employee may be influenced to act in a manner that does not represent the best interests of the Agency. The perception of a conflict may occur if circumstances would suggest to a reasonable person that a board member may have a conflict. The appearance of a conflict and an actual conflict should be treated in the same manner for the purposes of this Policy.

Board members and employees must conduct themselves at all times in a manner that avoids any appearance that they can be improperly or unduly influenced, that they could be affected by the position of or relationship with any other party, or that they are acting in violation of their public trust. While it is not possible to describe or anticipate all the circumstances that might involve a conflict of interest, a conflict of interest typically arises whenever a board member or employee has or will have:

1. A financial or personal interest in any person, firm, corporation or association which has or will have a transaction, agreement or any other arrangement in which the Agency participates.
2. The ability to use his or her position, confidential information or the assets of the Agency, to his or her personal advantage.
3. Solicited or accepted a gift of any amount under circumstances in which it could reasonably be inferred that the gift was intended to influence him/her, or could reasonably be expected to influence him/her, in the performance of his/her official duties or was intended as a reward for any action on his/her part.
4. Any other circumstance that may or appear to make it difficult for the board member or employee to exercise independent judgment and properly exercise his or her official duties.

(C) Disclosure. Except as provided in subsection (D) below, any member, officer or employee of the Agency who has, will have, or later acquires an interest in any actual or proposed contract with the Agency shall publicly disclose the nature and extent of such interest in writing to the members of the Agency as soon as he or she has knowledge of such actual or prospective interest. Such written disclosure shall be set forth in and made part of the official record of the proceedings of the Agency. Once disclosure has been made with respect to an interest in a contract with a particular person, firm, corporation or association, no further disclosures are required by such member, officer or employee with respect to additional contracts with the same party during the remainder of the fiscal year.

The minutes of the Agency's meetings during which a perceived or actual conflict of interest is disclosed or discussed shall reflect the name of the interested person, the nature of the conflict, and a description of how the conflict was resolved.

The Governance Committee shall advise the individual who appears to have a conflict of interest how to proceed. The Governance Committee should seek guidance from counsel or New York State agencies, such as the Authorities Budget Office, State Inspector General or the Joint Commission on Public Ethics (JCOPE) when dealing with cases where they are unsure of what to do.

(D) Disclosure Not Required. Pursuant to Section 803(2) of the Conflict of Interest Law, the disclosure required in subsection (B) above is not required in the case of an interest in a contract described in Section 802(2) of the Conflict of Interest Law.

(E) Penalties for Violations. Pursuant to Section 805 of the Conflict of Interest Law, any officer or employee of the Agency who willfully and knowingly violates the foregoing provisions of the Conflict of Interest Law, may be guilty of a misdemeanor. Furthermore, pursuant to Section 804 of the Conflict of Interest Law, any contract that is willfully entered into by or with the Agency in which there is an interest prohibited by the Conflict of Interest Law shall be null, void and wholly unenforceable.

(F) Recusal and Abstention. No board member or employee may participate in any decision or take any official action with respect to any matter requiring the exercise of discretion, including discussing the matter and voting, when he or she knows or has reason to know that the action could confer a direct or indirect financial or material benefit on himself or herself, a relative, or any organization in which he or she is deemed to have an interest. Board members and employees must recuse themselves from deliberations, votes, or internal discussion on matters relating to any organization, entity or individual where their impartiality in the deliberation or vote might be reasonably questioned, and are prohibited from attempting to influence other board members or employees in the deliberation and voting on the matter.

#### **IV. PROHIBITED ACTIONS**

(A) General. Pursuant to Section 805-a of the Conflict of Interest Law, no member, officer or employee of the Agency shall:

(1) either directly or indirectly, solicit, accept or receive any gift having a value of seventy-five dollars (\$75.00) or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended as a reward for any official action on his or her part, or that it was intended to or could reasonably be expected to influence him or her in the performance of his or her official duties;

(2) disclose confidential information acquired in the course of his or her official duties or use such information to further his or her personal interests;



(3) receive or enter into any express or implied agreement for compensation for services to be rendered in relation to any matter before the Agency; or

(4) receive or enter into any express or implied agreement for compensation for service to be rendered in relation to any matter before the Agency whereby his or her compensation is to be dependent or contingent upon any action by such Agency with respect to that matter; provided, however, that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

(B) Penalty for Violation. Pursuant to Section 805-a of the Conflict of Interest Law, any person who shall knowingly and intentionally violate the Conflict of Interest Law may be fined, suspended or removed from office or employment in the manner provided by law.

## **V. POSTING**

The Chief Executive Officer of the Agency shall have a copy of the Conflict of Interest Law and of this Policy posted in the office of the Agency in a place which is conspicuous to the officers, members and employees of the Agency.

## **VI. MISCELLANEOUS PROVISIONS**

(A) Financial Disclosure. Pursuant to Section 810(3) of the Conflict of Interest Law, members, officers and employees of the Agency are deemed to be officers or employees of the Town of Colonie for purposes of Sections 811 and 812 of the Conflict of Interest Law (said sections deal generally with financial disclosure).

(B) Compensation. Pursuant to Section 858-a(1) of the Act, the compensation of an officer or full-time employee of the Agency (but not including part-time employees or consultants, including accountants, attorneys and bond counsel to the Agency) shall not be contingent on the granting of financial assistance by the Agency.

Adopted: March 21, 2016

**TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY**

**DEFENSE AND INDEMNIFICATION POLICY**

The Town of Colonie Industrial Development Agency (the “Agency”) hereby incorporates by reference Article V, Section 5 of its By-Laws regarding the defense and indemnification of its members, officers and employees.

In furtherance of this policy, the Agency will maintain defense and indemnification insurance covering its members, officers and employees in reasonable amounts as determined by the Agency members in consultation with Agency counsel.

Adopted: March 16, 2015

## **TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY**

### **INTERNAL CONTROL POLICY**

In accordance with Section 2931 of the Public Authorities Law, the governing board of the Town of Colonie Industrial Development Agency (the "Agency") shall:

1. Establish and maintain for the Agency guidelines for a system of internal control that are in accordance with internal control standards;
2. Engage the services of its independent auditor to conduct a review of internal control programs and procedures. Such review shall be designed to identify internal control weaknesses, identify actions that are needed to correct these weaknesses, monitor the implementation of necessary corrective actions and periodically assess the adequacy of the Agency's ongoing internal controls;
3. Make available to each member, officer and employee of the Agency a clear and concise statement of the generally applicable managerial policies and standards with which he or she is expected to comply. Such statement shall emphasize the importance of effective internal control to the Agency and the responsibility of each member, officer and employee for effective internal control;
4. Designate an internal control officer, who shall report to the Executive Director of the Agency, to implement and review the internal control responsibilities established pursuant to this Policy; and
5. Implement education and training efforts to ensure that Agency's members, officers and employees have achieved adequate awareness and understanding of internal control standards and, as appropriate, evaluation techniques.

Adopted: March 16, 2015

# **THE TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY**

## **INVESTMENT POLICY**

As Revised for the Year Ended December 31, 2016

### **I. STATEMENT OF PURPOSE**

The Town of Colonie Industrial Development Agency (the “Agency”) has adopted this Investment and Deposit Policy (the “Policy”) in accordance with Article 9, Title 7 of the New York State Public Authorities Law (“PAL”) and the Public Authorities Reform Act of 2009 (“PARA”). This Policy shall detail the Agency’s instructions regarding the investment and deposit of its funds, all of which shall be consistent with and in compliance with the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 232 of the Laws of 1977 of New York, as amended, constituting Section 911-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”), and any other applicable law regarding the investment and deposit of Agency funds.

### **II. SCOPE**

This investment policy applies to all moneys and other financial resources available for deposit and investment by the Agency on its own behalf or on behalf of any other entity or individual.

### **III. OBJECTIVES**

The primary objectives of the Agency’s investment activities are, in priority order:

- To conform with all applicable federal, state and other legal requirements (legality);
- To adequately safeguard principal (safety);
- To provide sufficient liquidity to meet all operating requirements (liquidity) and
- To obtain a reasonable rate of return (yield).

### **IV. DELEGATION OF AUTHORITY**

The Agency shall establish written procedures for the operation of the investment program consistent with these investment policies. Such procedures shall include internal controls to provide a satisfactory level of accountability based upon records incorporating the description and amount of investments, the fund(s) which they are held, the place(s) where kept, and other relevant information, including dates of sale or other dispositions and amounts realized. In addition, the internal control procedures shall describe the

responsibilities and levels of authority for key individuals involved in the investment program.

**V. 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 to operate effectively.

Investments shall be made with prudence, diligence, skill, judgment and care, under circumstances then prevailing, which knowledgeable and prudent persons acting in like capacity would use, 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.

**VI. DIVERSIFICATION**

It is the policy of the Agency to diversity its deposits and investments by financial institution, by investment instrument, and by maturity scheduling.

The Agency shall establish appropriate limits for the amount of investments which can be made with each financial institution or dealer, and shall evaluate this listing at least annually.

**VII. INTERNAL CONTROLS**

It is the policy of the Agency for all moneys collected by any officer or employee of the government to transfer those funds to the Chief Financial Officer within 5 days of deposit, or within the time period specified in the law, whichever is shorter.

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

**VIII. DESIGNATION OF DEPOSITORIES**

The banks and trust companies that are authorized for the deposit of monies, and the maximum amount which may be kept on deposit at any time, are:

<u>Depository Name</u>	<u>Maximum Amount</u>
Bank of America	\$ 5,000,000.00

Key Bank	5,000,000.00
JP Morgan Chase	5,000,000.00
Berkshire Bank	5,000,000.00
<u>Depository Name</u>	<u>Maximum Amount</u>
M & T Bank	5,000,000.00
Capital Bank & Trust Co.	5,000,000.00
TD Bank	5,000,000.00
Citizens Bank	5,000,000.00
First Niagara	5,000,000.00
NBT Bank	5,000,000.00
Saratoga National Bank & Trust	5,000,000.00

## **IX. SECURING DEPOSITS AND INVESTMENTS**

All deposits and investments at a bank or trust company, including all demand deposits, certificates of deposit and special time deposits (hereinafter, collectively, “deposits”) made by officers of the Agency that are in excess of the amount insured under the provisions of the Federal Deposit Insurance Act, including pursuant to a Deposit Placement Program in accordance with law, shall be secured by:

1. A pledge of “eligible securities” with an aggregate “market value” (as provided by General Municipal Law Section 10) that is at least equal to the aggregate amount of deposits by the officers. See Schedule A of this policy for a listing of “eligible securities.”
2. An “eligible surety bond” payable to the Agency for an amount at least equal to 100 percent of the aggregate amount of deposits and the agreed upon interest, if any, executed by an insurance company authorized to do business in New York State, whose claims - paying ability is rated in the highest rating category by at least two nationally recognized statistical rating organizations. The governing board shall approve the terms and conditions of the surety bond.
3. An “eligible letter of credit, ” payable to the Agency as security for the payment of 140 percent of the aggregate amount of deposits and the agreed-upon interest, if any. An “eligible letter of credit” shall be an irrevocable letter of credit issued in favor of the Agency, for a term not to exceed 90 days, by a qualified bank (other than the bank where the secured money is deposited). A qualified bank is either one whose commercial paper and other unsecured short-term debt obligations (or, in the case of a bank which is the principal subsidiary of a holding company, whose holding company’s commercial papers and other unsecured short-term debt obligations) are rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization, or one that is in compliance with applicable federal minimum risk-based capital requirements.
4. An “irrevocable letter of credit” issued in favor of the Agency by a federal home loan bank whose commercial paper and other unsecured short-term debt obligations are rated in the highest rating category by at least one nationally recognized statistical

rating organization, as security for the payment of 100 percent of the aggregate amount of public deposits and agreed-upon interest, if any.

## **X. COLLATERALIZATION AND SAFEKEEPING**

Eligible securities used for collateralizing deposits made by officers of the Agency shall be held by (the depository 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 such deposits together with agreed upon interest, if any, and any costs or expenses arising out of the collections of such deposits upon default. It shall also provide the conditions under which the securities held may be sold, presented for payment, substituted or released and the events of default which will enable the Agency to exercise its rights against the pledged securities.

In the event that the pledged securities are not registered or inscribed in the name of the Agency, such securities shall be delivered in a form suitable for transfer or with an assignment in blank to the Agency or its custodial bank or trust company. Whenever eligible securities delivered to the custodial bank or trust company are transferred by entries on the books of a federal reserve bank or other book-entry system operated by a federally regulated entity without physical delivery of the evidence of the obligations, then the records of the custodial bank or trust company shall be required to show, at all times, the interest of the Agency in the securities as set forth in the security agreement.

The custodial agreement shall provide that pledged securities will be held by the custodial bank or trust company as agent of, and custodian for, the Agency, will be kept separate and apart from the general assets of the custodial bank or trust company and will not be commingled with or become part of the backing of any other deposit or other bank liability. The agreement shall also describe how the custodian shall confirm the receipt, substitution or release of the collateral and it shall provide for the frequency of revaluation of collateral by the custodial bank or trust company and for the substitution of collateral when a change in the rating of a security causes ineligibility. The security and custodial agreements shall include all other provisions necessary to provide the Agency with a perfected security interest in the eligible securities and to otherwise secure the Agency's interest in the collateral, and may contain other provisions that the governing board deems necessary.

## **XI. PERMITTED INVESTMENTS**

As provided by General Municipal Law Section 11, the governing board of the Agency authorizes the Chief Financial Officer to invest moneys 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 in, or certificates of deposit issued by, a bank or trust company located and authorized to do business in the State of New York;
- Through a Deposit Placement Program, certificates of deposit in one or more “banking institutions”, as defined in Banking Law Section 9-r;
- 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;
- With the approval of the State Comptroller, obligations issued pursuant to Local Finance Law Section 24.00 or 25.00 (i.e., Tax Anticipation Notes and Revenue Anticipation Notes) by any municipality, school district or district corporation in the State of New York other than the Agency; and
- Obligations of the Agency, but only with any moneys in a reserve fund established pursuant to General Municipal Law 6-c, 6-d, 6-e, 6-f, 6-g, 6-h, 6-j, 6-k, 6-l, 6-m, or 6-n.

All investment obligations shall be payable or redeemable at the option of the Agency within such times as the proceeds will be needed to meet expenditures for purposes for which the moneys were provided and, in the case of obligations purchased with the proceeds of bonds or notes, shall be payable or redeemable in any event at the option of the Agency within two years of the date of purchase. Time deposit accounts and certificates of deposit shall be payable within such times as the proceeds will be needed to meet expenditures for which the moneys were obtained, and shall be secured as provided in Sections IX and X herein.

Except as may otherwise be provided in a contract with bondholders or noteholders, any moneys of the Agency authorized to be invested may be commingled for investment purposes, provided that any investment of commingled moneys shall be payable or redeemable at the option of the Agency within such time as the proceeds shall be needed to meet expenditures for which such moneys were obtained, or as otherwise specifically provided in General Municipal Law Section 11. The separate identity of the sources of these funds shall be maintained at all times and income received shall be credited on a pro rata basis to the fund or account from which the moneys were invested.

Any obligation that provides for the adjustments of its interest rate on set dates is deemed to be payable or redeemable on the date on which the principal amount can be recovered through demand by the holder.

## **XII. AUTHORIZED FINANCIAL INSTITUTIONS AND DEALERS**

The Agency shall not engage in any activity with any investment banker, broker, agent, dealer, investment advisor or agent unless and until the Agency has determined that such party is qualified to do so. In determining a party’s qualifications, the Agency shall consider the quality and reliability of that party’s services, that party’s experience in providing such services, and the size and level of capitalization maintained by that party.



The Agency shall maintain a list of financial institutions approved for investment purposes and establish appropriate limits to the amount of investments which can be made with each financial institution. Such listing shall be evaluated at least annually. All financial institutions with which the Agency conducts business must be credit worthy. Banks shall provide their most recent Consolidated Report of Condition (Call Report) at the request of the Agency. Such currently approved financial institutions are set forth in Section XIII herein.

### **XIII. INVESTMENT CONTRACTS**

All investments must be made pursuant to a written contract between the Agency and the investment bank, broker, agent, dealer or advisor. If use of a written contract is not practical or not a regular business practice of the investment bank, broker, agent, dealer or advisor, the Agency may proceed with such party only if:

1. The Agency determines, by resolution, that the regular business practice does not encompass the use of a written contract; and
2. The Agency adopts procedures covering the investment transaction.

Any procedure so adopted must comply substantially with the provisions which would be required if the transaction were covered by a written contract as described below. Those procedures shall thereafter become a part of this Policy.

All investment contracts, written or otherwise, shall contain:

1. Provisions sufficient to secure the Agency's financial interest in each investment;
2. Provisions outlining the type and amount of collateral and insurance necessary to adequately secure the investment, as well as the uses, if any, of such collateral or insurance;
3. Provisions which establish a method for valuing the collateral, and procedures for monitoring the valuation of such collateral on a regular basis;
4. Provisions for the monitoring, control, deposit and retention of investments and collateral. In the case of a repurchase agreement, these provisions shall include a requirement that the obligations purchased be physically delivered for retention to the Agency or its agent (which shall not be an agent of the party with whom the Agency enters into such repurchase agreement), unless such obligations are issued in book-entry form, in which case the Agency shall take such other action as may be necessary to obtain title to or a perfected security interest in such obligations.

All contracts shall comply with the provisions of this Policy.

### **XIV. COURIER SERVICE**

The Chief Financial Officer may, subject to the approval of the governing board by resolution, enter into a contract with a courier service for the purpose of causing the deposit of public funds with a bank or trust company. The courier service shall be required to obtain a surety bond for the full amount entrusted to the courier, payable to the Agency and executed by an insurance company authorized to do business in the State of New York, with a claims-paying ability that is rated in the highest rating category by at least two nationally recognized statistical rating organizations, to insure against any loss of public deposits entrusted to the courier service for deposit or failure to deposit the full amount entrusted to the courier service.

The Agency may agree with the depository bank or trust company that the bank or trust company will reimburse all or part of, but not more than, the actual cost incurred by the Agency in transporting items for deposit through a courier service. Any such reimbursement agreement shall apply only to a specified deposit transaction, and may be subject to such terms, conditions and limitations as the bank or trust company deems necessary to ensure sound banking practices, including, but not limited to, any terms, conditions or limitations that may be required by the Department of Financial Services or other federal or State authority.

## **XV. ANNUAL AUDIT**

An independent certified public accountant shall audit all investments held by the Agency on an annual basis. The report prepared pursuant to the annual audit shall be available to the Agency and shall be used in reviewing and approving this Policy.

## **XVI. REPORTING REQUIREMENTS**

### **A. Quarterly Reports**

At the end of each quarter, the Agency members shall be provided with a report on all investment activity during that quarter. This report shall contain:

1. A list of any new investments and deposits;
2. An inventory of all existing investments and deposits; and
3. A description of the selection of investment bankers, brokers, agents, dealers, or auditors.

Any additions or deletions must be specifically indicated, with an explanation for the addition or deletion.

### **B. Annual Investment Report**

An annual investment report shall be prepared and transmitted to the appropriate oversight agencies.

The report shall include:

1. This policy, including any changes made since the last submission;
2. An explanation of this policy and any amendments;
3. The results of the annual independent audit;
4. The investment income record of the Agency; and
5. A list of all total fees, commission and other charges paid to each investment banker, broker, agent, dealer, advisor, bank and trust company, since the last submission.

The report shall be submitted to:

1. The State Department of Audit and Control; and
2. The Chief Executive Officer and Chief Fiscal Officer of the Town of Colonie.

Copies of the report shall be made available to the public, upon reasonable request.

## **XVII. ANNUAL REVIEW AND AMENDMENTS**

The Agency shall review this investment policy annually, and it shall have the power to amend this policy at any time.

## **XVIII. DEFINITIONS**

The terms “public funds,” “public deposits,” “bank,” “trust company,” “eligible securities,” “eligible surety bond,” and “eligible letter of credit” shall have the same meanings as set forth in General Municipal Law Section 10.

**THE TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY**

**INVESTMENT POLICY**

**As Revised for the Year Ended December 31, 2016**

**SCHEDULE A – “ELIGIBLE SECURITIES” FOR COLLATERALIZING DEPOSITS  
AND INVESTMENTS IN EXCESS OF FDIC COVERAGE (SECTION IX)**

- 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 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.
- iii) 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 this State or obligations of any public benefit corporation which under a specific State statute may be accepted as security for deposit of public moneys.

Note – For the purposes of determining aggregate “market value,” eligible securities shall be valued at 100% of “market value.”

**TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY**

**POLICY PROHIBITING EXTENSION OF CREDIT TO  
BOARD MEMBERS, OFFICERS AND EMPLOYEES**

Pursuant to Section 2824(5) of the New York State Public Authorities Law, the Board of the Town of Colonie Industrial Development Agency shall not, directly or indirectly, including through any subsidiary, extend or maintain credit, arrange for the extension of credit or renew an extension of credit, in the form of a personal loan to or for any officer, board member or employee (or equivalent thereof) of the Town of Colonie Industrial Development Agency.

Adopted: March 16, 2015

**TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY**

**PROCUREMENT POLICIES AND PROCEDURES**

**POLICY #1**

**SUBJECT: Individuals Responsible for Purchasing for the Agency by Name and Title**

**PURPOSE:** Per General Municipal Law Section 104-b(2)(f), the Town of Colonie Industrial Development Agency (the “Agency”) is required to include in the Policy and Procedures Manual the list of individuals by name and title that are responsible for purchasing for the Agency. The following is designated as the individual responsible for all Agency procurement.

Below is the current list of individuals responsible for purchasing by name and title.

Name	Title
Joseph LaCivita	Executive Director

**POLICY #2**

**SUBJECT: Quotation and Bid Requirements for Purchases and Leases Over \$1,000**

**PURPOSE:** To define the procedure for obtaining and submitting quotes and bids to acquire goods and services beyond \$1,000 in value.

**POLICY:** It is Agency policy to ensure fair and consistent consideration of potential vendors offering goods and services to the Agency, and to meet State requirements for competitive bidding for goods and services required by the Agency to the extent such State requirements are applicable. As of the date of adoption of these Policies and Procedures, the Agency is not subject to the competitive bidding requirements of Section 103 of the General Municipal Law.

Minimum requirements for Quotes and Bids are as follows:

<b><u>Purchase and/or Total Lease Amounts with a purchase option</u></b> (Excluding Public Works Contracts)	<b><u>Quote and Bid Requirements</u></b>
\$1,000 – \$2,500	Agency does price check
\$2,501 - \$5,000	Three verbal quotes obtained and documented by the Agency.
Over \$5,000	Three or more written quotes, documented by the vendor, obtained by the Agency.

True Leases	True leases are defined as leases without the option to purchase. As True Leases are exempt from the competitive bid requirements, three written quotes will be required to insure the Agency obtains the best value for the lease dollars spent. The total annual cost of the lease will be used to evaluate the quotes received in awarding the lease. For the purposes of this provision, leases should be closed-end, with agreed upon residual values and mandatory turn-in at end of lease. Lease documentation should include negotiated price, residual value and term and payment amounts.
<b>Public Works Contracts</b> (Material and Labor)	
\$3,001 - \$10,000	Three verbal quotes obtained and documented by the Agency. Must have written contract.
Over \$10,000	Three or more written quotes, documented by the vendor, requested by the Agency. Must have written contract.
<p>Aggregate Amounts – In determining if an item for purchase meets the bid requirements, the Agency shall consider the reasonable expected aggregate amount of all purchases of the same commodities, services or technology to be made within the twelve-month period commencing on the date of the purchase. Purchases of commodities, services, or technology shall not be artificially divided for the purpose of avoiding the requirement to competitively bid the item required.</p> <p>In each case the Agency should make every attempt to obtain required quotes and bids as defined above. If after good faith effort to obtain the required quantity of quotes and bids, the Agency is unsuccessful, the Agency should document the actions taken and may submit the requisition with the lower quantity of quotes or bids. After obtaining quotes and bids, the purchase should be awarded to the lowest bidder unless there is just cause for awarding the bid to an alternate vendor. If a quote is awarded to a vendor other than a low bidder the Agency must document why the award should be given to an alternate vendor. If a bid is awarded to vendor other than a low bidder the Agency must submit documentation through board resolution explaining why the award should be given to an alternate vendor.</p>	

**POLICY #3**

**SUBJECT: Non-Collusion Certification**

**PURPOSE:** To document that no collusion has occurred among the vendors providing quotes or bids to the Agency.

**POLICY:** All quotes or bids shall be accompanied by a non-collusion agreement in the form of Schedule A attached hereto and made a part hereof.

**POLICY #4**

**SUBJECT: Procurements Exempt by Statute**

**PURPOSE:** Identify procurements exempt under General Municipal Law Section 104-b from the procurement procedures in Policy #2.

**POLICY:** Alternative proposals or quotations for goods and services shall be secured by use of written requests for proposals or written quotations, verbal quotations or any other method of procurement which furthers the purposes of General Municipal Law Section 104-b except for procurements made pursuant to:

1. General Municipal Law, Section 103(3) (through county contracts);
2. General Municipal Law, Section 104 (through state contracts);
3. State Finance Law, Section 175-b (from agencies for the blind or severely handicapped);  
or
4. Correction Law, Section 186 (articles manufactured in correctional institutions).

**POLICY #5**

**SUBJECT: Exceptions to Above Procurement Procedures**

**PURPOSE:** To set forth the circumstances when, or types of procurements which, in the sole discretion of the Agency, the solicitation of alternative proposals or quotations will not be in the best interest of the Agency.

**POLICY:** No circumstances other than those in Policy #3 above will justify the exception to Policy #2.

**POLICY #6**

**SUBJECT: Procurement of Professional Services and the issuance of Requests for Proposals**

**PURPOSE:** To define the procedure for the procurement of Professional Services and the use of Request for Proposals.

**POLICY:** The procurement of a Professional Service is an exception to the Competitive Bid provision of the New York State General Municipal Law. The Agency may enter into a Professional Service Agreement without the need for a competitive bid. Use of a Request for



Proposal is recommended when entering into a Professional Service Agreement as it provides an opportunity for the following:

1. The Agency can review up-to-date services and technology available in the market place.
2. Several different approaches to accomplish the request can be evaluated.
3. Service providers must compete for the Agency's business. This may lead to better service and lower cost for the Agency.

A Request for Proposal ("RFP") is a descriptive document that explains in detail the requirements and terms associated with specific services request by the Agency from service providers.

While not every Professional Service Agreement will be entered into as the result of an RFP, the determination of when an RFP is required shall be made as follows:

1. The Executive Director, in conjunction with the Agency's counsel, will determine if a service is classified as a Professional Service and eligible for the exemption under the General Municipal Law.
2. If the service is determined to be Professional, the Executive Director and the Agency's counsel will determine if an RFP shall be required to enter into this agreement.
3. The Executive Director will prepare the RFP. If the specifications are rigorous and technical in nature, it is Agency policy to subcontract the RFP development to a third party firm that specializes in preparing such documentation.
4. The final draft of the RFP document shall be approved by the Agency counsel and the Board members prior to distribution.
5. Distribution of the RFP shall be handled in the same manner as a competitive bid, with the Executive Director advertising the RFP, distributing the RFP packages, receiving the responses, tabulating the companies that provide a proposal, and awarding the RFP.
6. The Executive Director shall be responsible for the review of the proposals and the recommendation of an award.

The use of the RFP process may be combined with the competitive bid or quote process if the total transaction involves a hybrid of professional services and other services or professional services and the acquisition of goods. If the primary or predominant part of the transaction is the professional service, the use of the competitive bid or quote process may not be required. Purchasing will make the final determination in conjunction with the Agency's counsel as to the need for an additional process.

Adopted: March 21, 2016

Schedule A

**NON-COLLUSIVE BIDDING CERTIFICATION**

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

I, hereby affirm under the penalties of perjury that the foregoing statement is true.

Firm: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed)

Date: \_\_\_\_\_

## **TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY**

### **PROPERTY DISPOSITION POLICY**

#### **I. STATEMENT OF PURPOSE**

The Town of Colonie Industrial Development Agency (“Agency”) has adopted this Property Disposition Policy (the “Policy”) in accordance with Article 9, Title 5-A of the New York State Public Authorities Law (“PAL”), and revised the Policy per the Public Authorities Reform Act of 2009 (“PARA”). This Policy shall detail the Agency’s instructions regarding the use, awarding, monitoring and reporting of contracts for the Disposal of Property, all of which shall be consistent with and in compliance with the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 232 of the Laws of 1977 of New York, as amended, constituting Section 911-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) and any other applicable law regarding the Disposal of such Property.

#### **II. DEFINITIONS**

- (1) “Act” shall mean Title 1 of Article 18-A of the New York General Municipal Law and Section 911-e of the General Municipal Law, each as amended from time to time.
- (2) “Agency” shall mean the Town of Colonie Industrial Development Agency.
- (3) “Commissioner of General Services” shall mean the Commissioner of the New York State Office of General Services.
- (4) “Contracting Officer” shall mean the officer or employee of the Agency who shall be appointed by Agency resolution to be responsible for the Disposal of Property.
- (5) “Dispose”, “Disposal” or “Disposition” shall mean transfer of title or any other beneficial interest in Property in accordance with the Policy and Section 2897 of the Public Authorities Law, as amended from time to time.
- (6) “FMV” shall mean fair market value.
- (7) “PAL” shall mean Article 9, Title 5-A of the New York Public Authorities Law, as amended from time to time.
- (8) “Policy” shall mean this policy, as amended from time to time by Agency resolution.
- (9) “Property” shall mean personal property in excess of \$5,000 in value, and real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party. For purposes of this Policy,

Property shall not include the interest granted to the Agency in any “project” (as defined in Section 854(4) of the Act) in connection with the provision of “financial assistance” (as defined in Section 854(14) of the Act) to the extent that such project and the interest granted to the Agency secure the project occupant’s obligations to the Agency or any indebtedness obtained by or on behalf of the project occupant.

(10) “State” shall mean the State of New York.

## **II. DESIGNATION AND DUTIES OF A CONTRACTING OFFICER**

The Contracting Officer shall be appointed by resolution of the members of the Agency. By resolution of the members of the Agency duly adopted on February 1, 2016, Joseph LaCivita is appointed the Contracting Officer. Except as otherwise provided herein and in the PAL, the Contracting Officer shall have supervision and direction (with Member approval) over the Disposal of Property of the Agency and be responsible for compliance by the Agency with, and enforcement of, this Policy.

## **III. TRACKING AND INVENTORY**

It shall be the policy of the Agency to maintain the following inventory control procedures:

(1) The Contracting Officer shall be responsible for creating an inventory of all Agency Property, including a description of the Property, location of the Property and estimated fair market value of the Property.

(2) Periodically, but not less than once quarterly, the Contracting Officer shall update the inventory and track the purchase or sale of Property, the name of the seller or purchaser and the price received or paid for each Property and the date of each transaction. In addition, the Contracting Office shall review the inventory and create a list of recommended Property for Disposition to present to the members of the Agency.

(3) All Agency Property shall be transferred or Disposed of as promptly as possible in accordance with this Policy and the PAL.

## **IV. CUSTODY AND CONTROL**

The custody and control of Agency Property, pending its Disposal, and the Disposal of such Property, shall be performed by the Agency or by the Commissioner of General Services when so authorized under the PAL and this Policy.

## **V. DISPOSAL PROCEDURES**

**Disposal For Not Less Than FMV.** The Agency may dispose of Property for not less than the FMV 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, and it may execute such documents for the transfer of title or other interest in Property

and take such other action as it deems necessary or proper to dispose of such Property under the provisions of PAL and this Policy.

**Appraisal Required.** No disposition of real property, or any interest in real property, or any other property, which because of its unique nature or the unique circumstances of the proposed transaction is not readily valued by reference to an active market for similar property, shall be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction.

**Disposal by Commissioner of General Services.** When the Agency shall have deemed that Disposal of any of the Agency's Property by the Commissioner of General Services will be advantageous to the Agency and the State, the Agency may enter into an agreement with the Commissioner of General Services pursuant to which the Commissioner may Dispose of Property of the Agency under terms and conditions agreed to by the Agency and the Commissioner. In Disposing of any such Property, the Commissioner shall be bound by the terms hereof and of PAL, and references to the Contracting Officer shall be deemed to refer to the Commissioner of General Services.

**Public Bidding.** All Disposals or contracts for Disposal of Property of the Agency shall be made after publicly advertising for bids except as provided herein. Whenever public advertising for bids is required:

- (1) The advertisement for bids shall be made at such time prior to the Disposal or contract for Disposal through such methods, and on such terms and conditions as the Contracting Officer determines will permit full and free competition consistent with the value and nature of the Agency's Property proposed for Disposal;
- (2) All bids shall be publicly disclosed at the time and place stated in the advertisement; and
- (3) The award shall be made by the Contracting Officer on behalf of the Agency with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Agency taking into consideration, price and other factors; provided that all bids may be rejected when the Agency determines it is in the public interest to do so.

**Exceptions to Public Bidding Requirement.** Disposals and contracts for Disposal of Property may be negotiated or made by public auction without regard to the Public Bidding Requirement described above but subject to obtaining such competition as the Contracting Officer determines to be feasible under the circumstances, if:

- (1) 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, or if the personal property to be sold is in such quantity that, if it were disposed of under by public bidding, would

adversely affect the State or local market for such property, and the estimated FMV of such property and other satisfactory terms of disposal can be obtained by negotiation;

- (2) The FMV of the Property does not exceed \$15,000;
- (3) Bid prices after advertising therefor are not reasonable, either as to all or some part of the Property, or have not been independently arrived at in open competition;
- (4) The Disposal will be to the State or any political subdivision, and the estimated FMV of the Property and other satisfactory terms of Disposal are obtained by negotiation;
- (5) The circumstances are described under “Disposal of Property for Less than FMV” below; or
- (6) Such action is otherwise authorized by law.

**Procedures Applicable to Disposal by Negotiation.** Where the Agency deems that a particular transaction falls within one of the exceptions described under “Exceptions to Public Bidding” and Disposes of Property by negotiation, the following procedure must be followed:

An explanatory statement of the circumstances surrounding the Disposition of Property by negotiation must be prepared if any of the following apply:

- (1) Personal property with estimated FMV in excess of \$15,000;
- (2) Real property with estimated FMV in excess of \$100,000 (except that any real property disposed of by lease or exchange requires an explanatory statement if it falls within one of the next two categories);
- (3) Real property disposed of by lease, if the estimated annual rent over the term of the lease is in excess of \$15,000 per year;
- (4) Real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

If such a statement is required, it must be transmitted to the Comptroller of the State of New York, the Director of the Budget of State of New York, the Commissioner of the New York State Office of General Services, the New York State Legislature and the New York State Authorities Budget Office at least ninety (90) days in advance of Disposal of the Property, with a copy of such statement to be retained in the Agency’s records.

**Disposal of Property for Less than FMV.** Assets owned, leased or otherwise in the control of the Agency may be sold, leased, or otherwise alienated for less than its FMV only under the following circumstances:

- (1) 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;
- (2) The purpose of the transfer is within the purpose, mission or governing statute of the Agency; or
- (3) The transfer is to other than a governmental entity, and such disposal is not consistent with the Agency's mission, purpose or governing statutes, and (a) the Agency provides written notification thereof to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate; and (b) such proposed transfer is not denied by the Governor, the Senate, or the Assembly. 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, the Assembly and the Senate may deny a transfer within sixty days of receiving notification of such proposed transfer, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the Legislature may deny such transfer within sixty days of January 1 of the following year. If no such certification or resolution of denial is executed or adopted, as the case may be, within the stated period, the Agency may effectuate such transfer.

In the event a below FMV asset transfer is proposed, the following information must be provided to the Members of the Agency and the public:

- (1) a full description of the asset;
- (2) an appraisal of the FMV of the asset and any other information establishing the FMV value sought by the Members of the Agency;
- (3) 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, the benefits, if any, to the communities in which the asset is situated as are required by the transfer;
- (4) a statement of the value to be received compared to the FMV;
- (5) the names of any private parties participating in the transfer, and if different than the statement required by (4), a statement of the value to the private party; and
- (6) 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.

Before approving the disposal of any property for less than FMV, the Members of the Agency must consider the information described in the preceding paragraph and make a written

determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.

## **VI. REPORTS**

The Agency shall publish, not less frequently than annually, a report listing all Property of the Agency. Such report shall consist of a list and full description of all real and personal Property Disposed of during such period. The report shall contain the price received by the Agency and the name of the purchaser for all such Property Disposed of by the Agency during such period.

The Agency shall deliver copies of such report to the Comptroller of the State of New York, the Director of the Budget of State of New York, the Commissioner of the New York State Office of General Services, the New York State Legislature and the New York State Authorities Budget Office.

## **VI. APPROVAL**

This Policy is subject to modification and amendment at the discretion of the Agency in accordance with the PAL and the Act. On or before March 31 of each year, the Agency shall review and approve the Policy, including the name of the Contracting Officer. On or before March 31 of each year, the Policy most recently reviewed and approved shall be filed with the Comptroller of the State, posted on the Agency's website and maintained on the Agency's website until a policy for the following year or an amended policy is posted.

Adopted: February 1, 2016



## TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY

### REAL PROPERTY ACQUISITION POLICY

Section 2824(1)(e) of the Public Authorities Law requires local authorities to adopt a written policy governing the acquisition of real property. The following policy (“Policy”) is hereby adopted upon approval by the Members of the Town of Colonie Industrial Development Agency (the “Agency”), and shall be applicable with respect to the acquisition of real property and any interests therein (“Real Property”) by the Agency.

#### A. Acquisition of Real Property

Real Property may be acquired by the Agency for use, development, resale, leasing or other uses designated by the Agency. The Agency may lease Real Property for use, subleasing or other uses designated by the Agency.

The purpose of each acquisition of Real Property by the Agency shall be to further one or more purposes of the Agency as authorized under the Agency’s enabling legislation, by-laws or a resolution adopted by the Members of the Agency, or for a purpose otherwise permitted under applicable state law.

Prior to each acquisition of Real Property, the Agency will conduct such due diligence as it deems appropriate in accordance with the particular circumstances of the proposed acquisition. Such due diligence may include, but is not limited to, Real Property appraisals and review and investigation of environmental, structural, title, pricing and other applicable matters.

#### B. Approval of Real Property Acquisitions

All acquisitions of Real Property shall be conducted in accordance with this Policy and applicable law. Proposed acquisitions of Real Property shall be presented to the Members of the Agency for approval or other appropriate action.

#### C. Exemption for Certain Agency Transactions

This Policy shall not be applicable to any agreements or arrangements involving the provision by the Agency of “financial assistance” as such term is defined in Section 854(14) of the New York General Municipal Law.

Adopted: February 1, 2016.

# TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY

## TRAVEL POLICY

### **I. Applicability**

This policy shall apply to every member of the board (the “Board”) of the Town of Colonie Industrial Development Agency (the “Agency”) and all officers and employees thereof.

### **II. Approval of Travel**

All official travel for which a reimbursement will be sought must be approved by the Chairman prior to such travel. Provided, however, in the instance where the Chairman will seek reimbursement for official travel, such travel must be pre-authorized by the Treasurer of the Agency.

### **III. Payment of Travel**

The Agency will reimburse all reasonable expenses related to meals, travel and lodging that were incurred by any director, officer or employee as a result of the performance of their official duties. All official travel shall be properly authorized, reported and reimbursed. Under no circumstances shall expenses for personal travel be charged to, or temporarily funded by the Agency. It is the traveler’s responsibility to report his or her travel expenses in a responsible and ethical manner, in accordance with this policy.

### **IV. Travel Expenses**

Travelers may use their private 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. The traveler will be reimbursed at the standard IRS mileage reimbursement rate in effect at the time of travel.

Meals will be reimbursed at actual, reasonable expense or a per diem rate, whichever is less. Lodging will be reimbursed at actual expense up to certain daily rate caps established for various locations. The applicability of such caps shall be determined on a case by case basis taking into consideration availability of lodging and other extenuating circumstances.

Reimbursement for miscellaneous expenses shall be determined on a case by case basis. Mileage rates, per diem allowances and lodging caps will be established and from time to time amended by the Treasurer. All determinations made pursuant to this section shall be made by the Treasurer. In the instance where such determinations regard the travel of the Treasurer, the Chairman shall make such determinations.

Adopted: March 16, 2015

## TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY

### UNIFORM TAX EXEMPTION POLICY

Pursuant to the authority vested in it by Article 18-A of the General Municipal Law of the State of New York (the “Act”), the Town of Colonie Industrial Development Agency (the “Agency”) may provide “financial assistance” to qualified applicants for qualified “project” or “facilities” as defined by the Act in the form of issuance of its tax-exempt or taxable bonds or by granting exemptions from sales and use taxes, mortgage recording taxes and real property taxes. The Agency has adopted this Uniform Tax Exemption Policy (the “Policy”) to provide guidelines for the granting of “financial assistance”.

**A. Application** No request for financial assistance shall be considered by the Agency unless an application and environmental assessment form are filed with the Agency on the forms prescribed by the Agency pursuant to the rules and regulations of the Agency. Such application shall contain the information requested by the Agency, including a description of the proposed project and of each tax exemption sought with respect to the project, the estimated value of each tax exemption sought with respect to the project, the proposed financial assistance being sought with respect to the project, and whether such financial assistance is consistent with this Policy. All recipients of financial assistance from the Agency shall be required to pay the Agency’s fee, as may be determined from time to time by resolution of the Agency, and the fees and expenses of counsel to the Agency.

**B. Real Property Taxes**

1. **General.** Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, property owned by or under the jurisdiction or supervision or control of the Agency is exempt from general real property taxes (but not exempt from special assessments and special ad valorem levies). However, it is the general policy of the Agency that, notwithstanding the foregoing, every non-governmental project will be required to enter into a payment in lieu of tax agreement (a “PILOT Agreement”). Such PILOT Agreement shall require payment of payments in lieu of taxes (“PILOT Payments”) in accordance with the provisions set forth below.
2. **PILOT Requirement.** Unless the applicant and/or project occupant and the Agency shall have entered into a PILOT Agreement acceptable to the Agency, the project documents shall provide that the applicant and/or the project occupant shall be required to make PILOT Payments in such amounts as would result from taxes being levied on the project by the taxing jurisdictions if the project were not owned by or under the jurisdiction or supervision or control of the Agency. The project documents shall provide that, if the Agency and the applicant and/or project occupant have entered into a PILOT Agreement, the terms of the PILOT Agreement shall control the amount of PILOT Payments until the expiration or sooner termination of such agreement.

3. Qualifying Projects for the “Grow Colonie Program”. The following projects shall qualify for real property tax exemptions under the Grow Colonie Program as set forth in Appendix A:
  - (a) Types of Qualifying Projects. Technology projects (either office or research and development), manufacturing projects and flex space projects. Other than in accordance with the deviation process set forth below, real property tax exemptions are not available for other types of projects.
  - (b) Job Creation Requirement. Any project requesting a real property tax exemption must meet a minimum 10% job creation goal over impacted employment within three (3) years. In the event of a new business, the project must create a minimum of ten (10) new jobs within three (3) years of commencement of operation.
  
4. Qualifying Projects for the “Enhanced Grow Colonie Program”. The following projects shall qualify for real property tax exemptions under the Enhanced Grow Colonie program as set forth in Appendix A:
  - (a) Basic Requirements. Any project requesting a real property tax exemption must comply with all of the requirements of the Grow Colonie Program.
  - (b) Additional Requirement. Any project requesting a real property tax exemption must be:
    - (i) Located in the Route 5 Corridor, beginning at the City of Albany line and ending at the City of Schenectady Line, as indicated on the map attached here to as Appendix B; or
    - (ii) Located on a not less than one acre parcel that has been underutilized for a period of not less than ten (10) years; or
    - (iii) Be a “brownfield project” located in a Brownfield Opportunity Area; or
    - (iv) Be a “prevailing wage project”. A prevailing wage project is one where the contractor and subcontractors constructing or reconstructing the project facility pays its workers the prevailing rate of wages within the meaning of Section 220 of the New York State Labor Law.

Although redevelopment of existing buildings that are not currently in use do not automatically qualify for the Enhanced Grow Colonie Program, such projects may be eligible for benefits similar to those provided in the Enhanced Grow Colonie Program as part of the deviation process.

5. PILOT Agreement. Unless otherwise determined by resolution of the Agency, all PILOT Agreements shall satisfy the following general conditions:
- (a) Amount of Abatement. The general policy of the Agency is to provide the applicant and/or project occupant with the abatement described in Appendix A attached hereto and made a part hereof.
  - (b) Special District Taxes. As indicated above, the Agency, is not exempt from special assessments and special ad valorem levies, and accordingly these amounts are not subject to abatement by reason of the Agency's leasehold interest in the project. The PILOT Agreement shall make this clear and shall require that all such amounts be directly paid by the applicant and/or project occupant.
  - (c) Payee. Unless otherwise determined by resolution of the Agency, all PILOT Payments payable to an affected tax jurisdiction shall be assessed, billed and collected directly by the same officials which assess, bill and collect normal taxes levied by such affected tax jurisdiction. Pursuant to Section 874(3) of the Act, such PILOT Payments shall be remitted to each affected tax jurisdiction within thirty (30) days of receipt of the bill therefor.
  - (d) Enforcement. An affected tax jurisdiction which has not received a PILOT Payment due to it under a PILOT Agreement may exercise its remedies under Section 874(6) of the Act. In addition, such affected tax jurisdiction may petition the Agency to exercise whatever remedies the Agency may have under the project documents to enforce payment and, if such affected tax jurisdiction indemnifies the Agency and agrees to pay the Agency's costs incurred in connection therewith, the Agency may take action to enforce the PILOT Agreement.
  - (e) Security for PILOT Payments. Except as otherwise provided by resolution of the Agency, each applicant entering into a PILOT Agreement with the Agency must grant to the Agency a first mortgage lien on the subject property to secure its obligation to make PILOT Payments.
6. Form 412-a. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, no real property tax exemption with respect to a particular project shall be effective until an exemption form is filed with the assessor of each county, city, town, village and school district in which such project is located (each, a "Taxing Jurisdiction"). Once an exemption form with respect to a particular project is filed with a particular Taxing Jurisdiction, the real property tax exemption for such project does not take effect until (1) a tax status date for such Taxing Jurisdiction occurring subsequent to such filing, (2) an assessment roll for such Taxing Jurisdiction is finalized subsequent to such tax status date, (3) such assessment roll becomes the basis for the preparation of a tax roll for such

Taxing Jurisdiction, and (4) the tax year to which such tax roll relates commences.

7. Real Property Appraisals. Since the policy of the Agency is to base the value of a project for payment in lieu of tax purposes on a valuation of such project performed by the assessor of the applicable Taxing Jurisdiction, normally a separate real property appraisal is not required. However, the Agency may require the submission of a real property appraisal if (1) the assessor of any particular Taxing Jurisdiction requires one or (2) if the valuation of the project for payment in lieu of tax purposes, is based on a value determined by the applicant or by someone acting on behalf of the applicant, rather than by an assessor for a Taxing Jurisdiction or by the Agency. If the Agency requires the submission of a real property appraisal, such appraisal shall be prepared by an independent MAI certified appraiser acceptable to the Agency.

**C. Mortgage Recording Tax Exemptions**

The Agency's policy is to permit mortgage recording tax exemptions on the initial financing of a project, to the full extent permitted by New York State Law. In instances where the initial financing commitment provides for a construction financing to be replaced by a permanent financing immediately upon the completion of the project, the Agency's general policy is to grant the mortgage recording tax exemption on both the construction financing and the permanent financing. It is the policy of the Agency not to grant a mortgage recording tax exemption with respect to any additional re-financing of a project.

**D. Sales and Use Tax Exemptions**

1. The Agency's policy is to permit project applicants, as agent of the Agency, to claim exemption from sales and use taxes to the full extent permitted by New York State Law for the period beginning on the closing date of the straight lease transaction or the date of issuance of Agency bonds (the "Closing Date") and ending on the date of completion of construction of the project. The tax exemption period may, at the discretion of the Agency, commence earlier than the Closing Date, provided that (a) the Agency has complied with the requirements of Section 859-a of the Act, (b) the Agency thereafter adopts a resolution determining to commence such period earlier, (c) the applicant agrees to the conditions of such resolution and supplies to the Agency the materials required to be supplied to the Agency thereunder, and (d) the Chairman (or Vice Chairman) of the Agency acknowledges satisfaction of all conditions to the granting of such tax exemption set forth in such resolution.
2. All project applicants must agree in writing to timely file with the New York State Department of Taxation an annual statement of the value of all sales and use tax exemptions, and other exemptions claimed in connection with the Facility in full compliance with Section 874(8) of the Act, in the form and at the times required thereby.

## **E. Deviations**

In addition to or in lieu of the foregoing the Agency may determine, on case-by-case basis and in accordance with the provisions of the Act, to deviate from the guidelines described above or provide enhanced benefits for a project expected to have significant impact in the Town. The Agency shall consider the following factors in making such determination, no single one of which shall be determinative:

- The nature of the proposed project (e.g., manufacturing, commercial, warehouse).
- The nature of the property before the project begins (e.g., vacant land, vacant buildings).
- The economic condition of the area at the time of the application.
- The extent to which a project will create or retain permanent, private sector jobs.
- The estimated value of tax exemptions to be provided.
- The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts in which the project is located.
- The impact of the project and the proposed tax exemptions on affected tax jurisdictions.
- The impact of the proposed project on existing and proposed businesses and economic development projects in the vicinity.
- The amount of private sector investment generated or likely to be generated by the proposed project.
- The likelihood of accomplishing the proposed projects in a timely fashion.
- The effect of the proposed project upon the environment.
- The extent to which the proposed project will require the provision of additional services including, but not limited to, additional educational, transportation, police, emergency medical or fire services.
- The extent to which the proposed project will follow local input from local planning agencies.
- The extent to which the proposed project will provide a benefit (economic or otherwise) not otherwise available within the Town.

- The extent to which the project owner or occupant will enter into apprenticeship agreements within the meaning of Section 816 of the Labor Law of the State of New York with respect to the construction, reconstruction or operation of the project.

## **F. Repayment Provisions**

Project documents for projects receiving real property tax exemptions pursuant to this Policy shall contain benefit recapture provisions including but not limited to the following:

If the minimum number of new jobs is not created by the end of the three (3) year period or is not continuously maintained during the balance of term of the PILOT Agreement, the exemption schedule for the following year will revert automatically to the schedule provided in Section 485-b of the New York Real Property Tax Law (the “485-b Schedule”). In addition, repayment will be required in any year for which job creation requirements are not met (the “Disqualifying Year”), as an additional payment in lieu of taxes. The repayment amount is equal to the difference between benefits received in years one through the Disqualifying Year and the tax benefits which would have been received in years one through the Disqualifying Year under Section 485-b of the New York Real Property Tax Law. Under extenuating circumstances, the Agency may waive the above penalties after reviewing a written request for waiver of penalties.



APPENDIX A

**GROW COLONIE PROGRAM**

The percentage of exemption for projects that qualify for the Grow Colonie Program shall be as follow:

<b>TAX YEAR</b>	<b>PERCENTAGE OF NORMAL TAX EXEMPTION*</b>
Year 1	75%
Year 2	65%
Year 3	55%
Year 4	45%
Year 5	35%
Year 6	25%
Year 7	15%
Year 8	0

\* 100% of Normal Taxes are payable with respect to the assessed value of land and existing improvements.

**ENHANCED GROW COLONIE PROGRAM**

The percentage of exemption for projects that qualify for the Enhanced Grow Colonie Program shall be as follow:

<b>TAX YEAR</b>	<b>PERCENTAGE OF NORMAL TAX EXEMPTION*</b>
Year 1	90%
Year 2	80
Year 3	70
Year 4	60
Year 5	45
Year 6	30
Year 7	15
Year 8	0

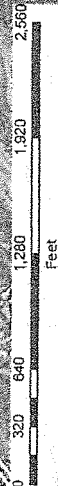
\* 100% of Normal Taxes are payable with respect to the assessed value of land and existing improvements.

## APPENDIX B

### Map of Route 5 Corridor

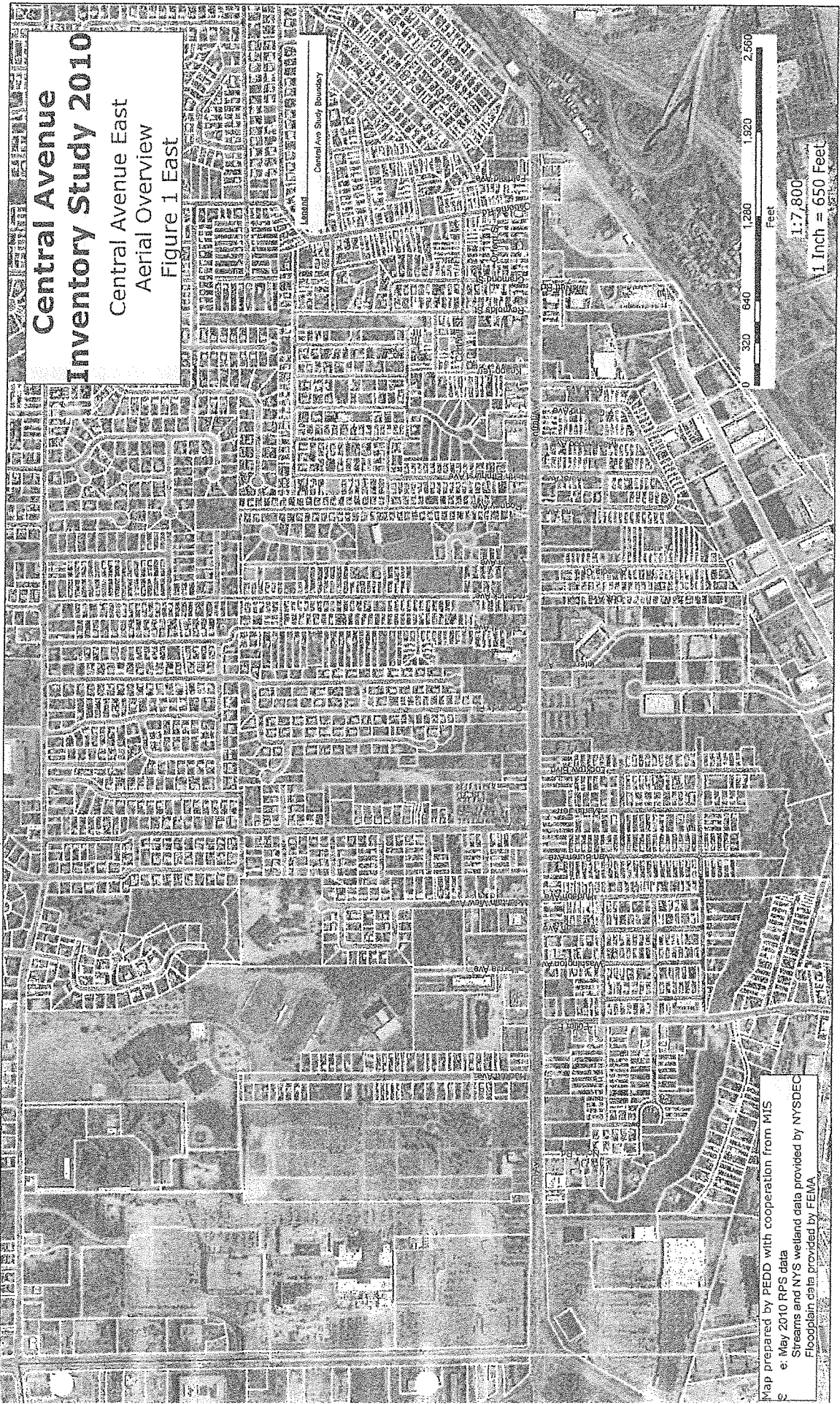
**Central Avenue  
Inventory Study 2010**  
Central Avenue East  
Aerial Overview  
Figure 1 East

Legend  
Central Ave Study Boundary



1:7,800  
1 Inch = 650 Feet

Map prepared by PEDD with cooperation from M15  
e. May 2010 RPS data  
Streams and NYS wetland data provided by NYSDEC  
Floodplain data provided by FEMA



## TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY

### RECAPTURE OF BENEFITS POLICY

#### **A. RECAPTURE OF THE NEW YORK STATE PORTION OF SALES AND USE TAX**

It is the policy of the Town of Colonie Industrial Development Agency (the “*IDA*”) to recapture New York State sales and use tax benefits, in accordance with the provisions of the General Municipal Law, from projects that utilized sales and use tax exemptions:

- In excess of the amounts authorized by the IDA;
- For property or services not authorized by the IDA; and/or
- For a project that has failed to comply with a material term or condition to use the property or services in the manner required by any of the project documents (the “*Project Documents*”) between the applicant and the IDA.

All approving resolutions and Project Documents shall include the terms and conditions of the foregoing recapture provision. Within thirty (30) day of the recapture, the recapture amount shall be remitted to the New York State Department of Tax and Finance. Such remittances shall include any penalties and interest imposed by the IDA.

In order to effectuate this recapture policy the IDA shall:

- Keep records of the New York State and local sales tax exemptions provided to each project, with such records available to the New York State Tax Commissioner upon request.
- Report within thirty days of providing any financial assistance in the form of a sales and use tax exemption, the project, the estimated amount of the exemption and other information as may be required by the New York State Tax Commissioner.
- The IDA shall file an annual report with the New York State Tax Commissioner detailing its terms and conditions and its activities in recapturing any unauthorized New York State sales and use tax exemptions.

#### **B. RECAPTURE OF OTHER FORMS OF FINANCIAL ASSISTANCE**

With respect to any financial assistance provided by the IDA other than the State portion of sales and use tax exemptions, the IDA shall include in Project Documents a requirement that the applicant repay all or a portion of the financial assistance granted by the IDA to the applicant to the extent that the applicant, upon completion of the project, fails to reach and maintain at

least 90 percent of its employment requirements or there otherwise occurs any event of defaults under any Project Document (collectively, an “*Event of Default*”).

At the time of any Event of Default, the IDA shall determine whether to exercise its right to recapture all or any portion of the financial assistance, and shall consider the following criteria in determining whether to proceed in the recapture of financial assistance:

- Whether the applicant has proceeded in good faith.
- Whether the project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the applicant.
- Whether the enforcement by the IDA of its recapture rights would create a more adverse situation for the applicant, such as the applicant going out of business or declaring bankruptcy, which would not occur if the IDA’s recapture rights were not exercised.
- Whether the enforcement by the IDA of its recapture rights would create an adverse situation for the residents of the Town of Colonie.
- Such other criteria as the IDA shall recognize as a relevant factor in connection with any decision regarding the exercise of its right to recapture financial assistance.

**C. RECAPTURE PERIOD**

Except as otherwise provided by the General Municipal Law, the recapture period will be (1) the term of the payment in lieu of taxes agreement for projects that receive financial assistance in the form of real property tax exemptions, and (2) five years for all other projects.

**D. TERMINATION OF FINANCIAL ASSISTANCE**

Nothing herein shall affect the rights of the IDA under any Project Document to exercise, upon the occurrence of an event of default, any and all remedies under any Project Document, including, but not limited to the right to terminate any on-going financial assistance.

# **TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY**

## **WHISTLEBLOWER POLICY**

### **I. Statement of Purpose**

The Town of Colonie Industrial Development Agency (“Agency”) has adopted this Whistleblower Policy (the “Policy”) in accordance with Section 2824(1)(e) of the New York State Public Authorities Law (“PAL”). This Policy shall be consistent with and in compliance with the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 232 of the Laws of 1977 of New York, as amended, constituting Section 911-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”), and any other applicable law.

### **II. Policy**

Every member of the board (the “Board”) of the Agency and all officers and employees thereof, in the performance of their duties shall conduct themselves with honesty and integrity and observe the highest standards of business and personal ethics as set forth in the Code of Ethics of the Agency (the “Code”).

Each member, officer or employee is responsible to report any violation of the Code (whether suspected or known) to the Agency’s Chairman. Reports of violations will be kept confidential to the extent possible. No individual, regardless of their position with the Agency, will be subject to any retaliation for making a good faith claim and, any employee who chooses to retaliate against someone who has reported a violation, shall be subject to disciplinary action, which may include termination of employment. All claims of retaliation will be taken and treated seriously and, irrespective of the outcome of the initial complaint, will be treated as a separate offense.

The Chairman is responsible for immediately forwarding any claim to the Agency’s counsel who shall investigate and handle the claim in a timely manner.

Adopted: March 16, 2015