

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