

RECORDS RETENTION AND DISPOSITION OF PROPERTY POLICY WITH GUIDELINES

I. Records Retention and Disposition Policy

The Agency has adopted the Records Retention and Disposition Schedule LGS-1 for Use by Miscellaneous Local Governments prepared by the New York State Archives and Records Administration. A copy of this schedule is kept on file at the Agency.

The purpose of the Records and Retention and Disposition Schedule indicates the minimum length of time that records of local government entities must be retained by local officers before they may be disposed of. Schedule LGS-1 is designed for use by a public benefit corporation performing regional or municipal functions.

The Administrative and Human Resource Officer is appointed as the Records Management Officer for the Agency.

The Disposition of Property Guidelines has been ratified and approved, along with the appointment of the Executive Director of the Agency as the Contracting Officer of the Agency.

II. Disposition of Property Guidelines

Section 1. Definitions

- A. "Contracting Officer" shall mean the officer or employee of the Niagara County Industrial Development Agency ("Agency") who shall be appointed by resolution to be responsible for the disposition of property.
- B. "Dispose" or "disposal" shall mean transfer of title or any other beneficial interest in personal or real property in accordance with section 2897 of the Public Authorities Law.
- C. "Property" shall mean personal property in excess of five thousand dollars (\$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.

Section 2. Duties

A. The Agency shall:

- (i) maintain adequate inventory controls and accountability systems for all property owned by the Agency and under its control;
- (ii) periodically inventory such property to determine which property shall be disposed of;
- (iii) produce a written report of such property in accordance with subsection B herewith; and
- (iv) transfer or dispose of such property as promptly and practicably as possible in accordance with Section 2 below.

B. The Agency shall:

- (i) publish, not less frequently than annually, a report listing all real property owned in fee by 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 sold by the Agency during such period; and
- (ii) 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, Commissioner of the New York State Office of General Services, and the New York State Legislature (via distribution to the majority leader of the senate and the speaker of the assembly).

Section 3. Transfer or Disposition of Property

A. Supervision and Direction.

Except as otherwise provided herein, the duly appointed contracting officer (the "Contracting Officer") shall have supervision and direction over the disposition and sale of property of the Agency. The Agency shall have the right to dispose of its property for any valid corporate purpose.

B. Custody and Control.

The custody and control of Agency property, pending its disposition, and the disposal of such property, shall be performed by the Agency or by the Commissioner of General Services when so authorized under this section.

C. Method of Disposition.

Unless otherwise permitted, the Agency shall dispose of property for not less than its fair market value by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Agency and/or contracting officer deems proper. The Agency may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or property to dispose of such property under the provisions of this section. Provided, however, except in compliance with all applicable law, no disposition of real property, any interest in real property, or any other property which because of its unique nature is not subject to fair market pricing 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.

D. Sales by the Commissioner of General Services (the "Commissioner").

When the Agency shall have deemed that transfer of property by the Commissioner will be advantageous to the State of New York, the Agency may enter into an agreement with the Commissioner of pursuant to which 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 references to the contracting officer shall be deemed to refer to such Commissioner.

E. Validity of Deed, Bill of Sale, Lease, or Other Instrument.

A deed, bill of sale, lease, or other instrument executed by or on behalf of the Agency, purporting to transfer title or any other interest in property of the Agency in accordance herewith shall be conclusive evidence of compliance with the provisions of these guidelines and all applicable law insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to the closing.

F. Bids for Disposal; Advertising; Procedure; Disposal by Negotiation; Explanatory Statement.

- (i) Except as permitted by all applicable law, all disposals or contracts for disposal of property made or authorized by the Agency shall be made after publicly advertising for bids except as provided in subsection (iii) of this Section F.
- (ii) Whenever public advertising for bids is required under subsection (i) of this Section F:

- (A) the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property proposed for disposition;
 - (B) all bids shall be publicly disclosed at the time and place stated in the advertisement; and
 - (C) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Agency, price and other factors considered; provided, that all bids may be rejected at the Agency's discretion.
- (iii) Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to subsections (i) and (ii) of this Section F but subject to obtaining such competition as is feasible under the circumstances, if:
- (A) the personal property involved is of a nature and quantity which, if disposed of under subsections (i) and (ii) of this Section F, would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;
 - (B) the fair market value of the property does not exceed fifteen thousand dollars;
 - (C) bid prices after advertising therefor are not reasonable, either as to all or some party of the property or have not been independently arrived at in open competition;
 - (D) the disposal will be to the state or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;
 - (E) the disposal is for an amount less than the estimated fair market value of the property, the terms of such disposal are obtained by public auction or negotiation, the disposal of the property is intended to further the public health, safety or welfare or an economic development interest of the Agency, the state or a political subdivision (to include but not limited to, the prevention or remediation of a substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the authority's enabling legislation permits or other economic development initiatives), the

purpose and the terms of such disposal are documented in writing and approved by resolution of the board of the Agency; or

(F) such action is otherwise authorized by law.

(iv) (a) An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:

(1) any personal property which has an estimated fair market value in excess of fifteen thousand dollars;

(2) any real property that has an estimated fair market value in excess of one hundred thousand dollars, except that any real property disposed of by lease or exchange shall only be subject to clauses (3) through (5) of this subparagraph;

(3) any real property disposed of by lease for a term of five years or less, if the estimated fair annual rent is in excess of one hundred thousand dollars for any of such years;

(4) any real property disposed of by lease for a term of more than five years, if the total estimated rent over the term of the lease is in excess of one hundred thousand dollars; or

(5) any 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.

(b) Each such statement shall be transmitted to the persons entitled to receive copies of the report required under all applicable law not less than ninety (90) days in advance of such disposal, and a copy thereof shall be preserved in the files of the Agency making such disposal.

The Guidelines are subject to modification and amendment at the discretion of the Agency board and shall be filed annually with all local and state agencies a required under all applicable law.

The designated Contracting Officer for the Agency is the Executive Director.