

POLICIES RELATING TO
THE PUBLIC AUTHORITIES
ACCOUNTABILITY ACT OF 2005

SECTION 1.1. PURPOSE AND SCOPE. The Public Authorities Accountability Act of 2005 (chapter 766 of the laws of 2005) (the “PAAA”) contains provisions imposing various requirements on industrial development agencies. The purpose of this Part is to set forth the policies and procedures adopted by the Town of Guilderland Industrial Development Agency (the “Agency”) to implement the PAAA.

SECTION 1.2. ORGANIZATION. This part is organized into two sections: administrative policies and administrative procedures.

SECTION 1.3. ADMINISTRATIVE POLICIES. (A) List of Policies. The administrative policies adopted by the Agency to comply with the PAAA are described as follows:

- (1) Code of Ethics Policy;
- (2) Personnel Policy (including compensation and whistle blower policies);
- (3) Travel Policy;
- (4) Real Property Acquisition Policy;
- (5) Real Property Disposition Policy; and
- (6) Procurement Policy.

(B) Review of Policies. The Governance Committee of the Agency shall, at least annually, review the administrative policies described in Section 1.3(A) above and any other administrative policies of the Agency. The Governance Committee shall report to the members of the Agency on its review of such administrative policies and its recommendations on any modifications to such administrative policies at the annual meeting of the Agency.

(C) Copies of Policies. Copies of each of the administrative policies are attached as Schedule A attached.

(D) Existing Policies. The Agency has previously adopted the following policies that are also required under the PAAA:

- (1) Investment Policy; and
- (2) Defense and Indemnification Policy.

SECTION 1.4. ADMINISTRATIVE PROCEDURES. (A) List of Administrative Procedures. The administrative procedures to be followed by the Agency to comply with the PAAA are described as follows:

- (1) Create and maintain a website;
- (2) Create, adopt and file an annual budget;
- (3) Prepare and file an annual report;
- (4) Review of annual independent audit by Audit Committee;
- (5) Review of Agency procedures by Governance Committee;
- (6) Board members must be independent and cannot hold certain positions;
- (7) Board members must attend training sessions;
- (8) Prepare and publish real property lists;
- (9) Create inventory controls;
- (10) Board members must file annual financial disclosure forms; and
- (11) Prohibit insider loans.

(B) Review of Procedures. The Governance Committee of the Agency shall, at least annually, review the administrative procedures described in Section 1.3(B) above and any other administrative procedures of the Agency. The Governance Committee shall report to the members of the Agency on its review of such administrative procedures and its recommendations on any modifications to such administrative procedures at the annual meeting of the Agency.

SCHEDULE A

ADMINISTRATIVE POLICIES

SCHEDULE A-1

CODE OF ETHICS

This Code of Ethics applies to both the members and the employees of Town of Guilderland Industrial Development Agency (the “Agency”). The purpose of this Code of Ethics is to promote honest and ethical conduct and compliance with the law.

1. Definitions. As used in this schedule: The term “Agency” shall mean the Town of Guilderland Industrial Development Agency.

The term “employee” shall mean any employee of the Town of Guilderland Industrial Development Agency.

2. Rule with respect to conflicts of interest. No member or employee of the Agency should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of their duties in the public interest.

3. Standards.

a. No member or employee of the Agency should accept other employment which will impair their independence of judgment in the exercise of their official duties.

b. No member or employee of the Agency should accept employment or engage in any business or professional activity which will require them to disclose confidential information which they have gained by reason of their official position or authority.

c. No member or employee of the Agency should disclose confidential information acquired by them in the course of their official duties nor use such information to further their personal interests.

d. No member or employee of the Agency should use or attempt to use their official position to secure unwarranted privileges or exemptions for themselves or others.

e. No member or employee of the Agency should engage in any transaction as representative or agent of the Agency with any business entity in which they have a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of their official duties.

f. A member or employee of the Agency should not by their conduct give reasonable basis for the impression that any person can improperly influence them or unduly enjoy their favor in the performance of their official duties, or that they are affected by the kinship, rank, position or influence of any party or person.

g. A member or employee of the Agency should abstain from making personal investments in enterprises which they have reason to believe may be directly involved in decisions to be made by them or which will otherwise create substantial conflict between their duty in the public interest and their private interest.

h. A member or employee of the Agency should endeavor to pursue a course of conduct which will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of their trust.

i. No member or employee of the Agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the Agency.

j. If any officer or employee of the Agency shall have a financial interest, direct or indirect, having a value of ten thousand dollars (\$10,000) or more in any activity which is subject to receiving benefits from the Agency, they should file with the members of the Agency a written statement that they have such a financial interest in such activity which statement shall be open to public inspection.

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

SCHEDULE A-2

COMPENSATION POLICY

1. Generally. Members of the Town of Guilderland Industrial Development Agency (the “Agency”) shall serve without compensation, except that members may be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their regular duties as specified in Section 858 of the Act.

2. Reimbursement. Members may be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their regular duties as specified in Section 858 of the Act. Members may not be compensated for rendering services to the Agency in any capacity other than member unless such other compensation is reasonable and is allowable under the provisions of Section 858 of the Act.

SCHEDULE A-3

RETALIATORY ACTION POLICY

1. Definitions. For purposes of this schedule, unless the context specifically indicates otherwise:

(a) “Employee” means an individual who performs services for and under the control and direction of an employer for wages or other remuneration.

(b) “Employer” means any person, firm, partnership, institution, corporation, or association that employs one or more employees.

(c) “Law, rule or regulation” includes any duly enacted statute or ordinance, or any rule or regulation promulgated pursuant to any federal, state or local statute or ordinance.

(d) “Public body” includes the following:

(i) the United States Congress, any state legislature, or any popularly elected local governmental body, or any member or employee thereof;

(ii) any federal, state, or local judiciary, or any member or employee thereof; or any grand or petit jury;

(iii) any federal, state, or local regulatory, administrative, or public agency or authority, or instrumentality thereof; or

(iv) any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer.

(e) “Retaliatory personnel action” means the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment.

(f) “Supervisor” means any individual with an employer's organization who has the authority to direct and control the work performance of the affected employee; or who has managerial authority to take corrective action regarding the violation of the law, rule or regulation of which the employee complains.

2. Prohibitions. An employer shall not take any retaliatory personnel action against an employee because such employee does any of the following:

(a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety;

(b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or

(c) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.

3. Application. The protection against retaliatory personnel action provided by paragraph (a) of subdivision two of this schedule pertaining to disclosure to a public body shall not apply to an employee who makes such disclosure to a public body unless the employee has brought the activity, policy or practice in violation of law, rule or regulation to the attention of a supervisor of the employer and has afforded such employer a reasonable opportunity to correct such activity, policy or practice.

4. Violation; Remedy.

(a) An employee who has been the subject of a retaliatory personnel action in violation of this schedule may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this schedule within one (1) year after the alleged retaliatory personnel action was taken.

(b) Any action authorized by this schedule may be brought in the county in which the alleged retaliatory personnel action occurred, in the county in which the complainant resides, or in the county in which the employer has its principal place of business.

(c) It shall be a defense to any action brought pursuant to this schedule that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this schedule. It shall also be a defense that the individual was an independent contractor.

5. Relief in any action brought pursuant to subdivision four of this schedule, the court may order relief as follows:

(a) an injunction to restrain continued violation of this schedule;

(b) the reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position;

(c) the reinstatement of full fringe benefits and seniority rights;

(d) the compensation for lost wages, benefits and other remuneration; and

(e) the payment by the employer of reasonable costs, disbursements, and attorney's fees.

6. Employer Relief. A court, in its discretion, may also order that reasonable attorneys' fees and court costs and disbursements be awarded to an employer if the court determines that an action brought by an employee under this schedule was without basis in law or in fact.

7. Existing Rights. Nothing in this schedule shall be deemed to diminish the rights, privileges, or remedies of any employee under any other law or regulation or under any collective bargaining agreement or employment contract; except that the institution of an action in accordance with this schedule shall be deemed a waiver of the rights and remedies available under any other contract, collective bargaining agreement, law, rule or regulation or under the common law.

SCHEDULE A-4

POLICY FOR TRAVEL OF AGENCY MEMBERS

1. Generally. It is the policy of the Town of Guilderland Industrial Development Agency (the “Agency”) that uniform procedures will be followed for the authorization and expenditure of funds for travel associated with Agency’s business.

(a) Expenses incurred by the Agency Board members, to be reimbursed from the Agency’s funds, must be approved in advance by the Board Chairperson. The Chairperson will advise the Chief Executive Officer of all requests received.

(b) All requests for reimbursement for the Chairperson must be approved by the members of the Agency.

(c) The Chairperson will inform the Chief Executive Officer or their designee of all Board Member pre-approved expenses.

(d) The Chief Executive Officer or their designee will assist the Board member, if desired, with arrangements for travel and the accompanying reimbursement procedures.

SCHEDULE A-5

REAL PROPERTY ACQUISITION POLICY

SECTION 1. DEFINITIONS.

(A) “Acquire” or “acquisition” shall mean acquisition of title or any other beneficial interest in personal or real property in accordance with the applicable provisions of Article 18-A of the New York State General Municipal Law.

(B) “Contracting Officer” shall mean the officer or employee of the Town of Guilderland Industrial Development Agency (the “Agency”) who shall be appointed by resolution to be responsible for the acquisition of property.

(C) “Property” shall mean personal property in excess of five thousand dollars (\$5,000.00) 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 maintain adequate inventory controls and accountability systems for all property owned by the Agency and under its control.

(B) The Agency shall prepare, 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 acquired of during such period. The report shall contain the price paid by the Agency and the name of the seller for all such property acquired by the Agency during such period.

SECTION 3. ACQUISITION OF PROPERTY.

(A) Supervision and Direction. Except as otherwise provided herein, the duly appointed Contracting Officer shall have supervision and direction over the acquisition of property of the Agency. The Agency shall have the right to acquire its property for any valid corporate purpose.

(B) Appraisal Report. An independent appraiser shall be hired to provide an opinion of fair market value before the Agency shall make an offer with respect to the acquisition of the property. The appraiser should have a professional affiliation with a national appraisal organization and must not have an interest in the property (or be retained as an agent to sell the property). The appraisal report shall be in form and substance satisfactory to the Agency and shall be included in the record of the transaction.

Notwithstanding the foregoing, the preparation of an appraisal report shall not be required where the Agency is acquiring the property pursuant to a donation, or if the valuation of the

property is uncomplicated and the fair market value is determined to be less than twenty-five thousand (\$25,000).

(C) Method of Acquisition.

(1) Voluntary Acquisition: Unless otherwise permitted by applicable law, the Agency shall acquire property for not more 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 acquisition of title or other interest in property and take such other action as it deems necessary or proper to acquire such property under the provisions of this schedule. Provided, however, the Agency may acquire property for more than its fair market value, as described in an appraisal report reviewed by the Agency, upon a finding by the Agency pursuant to resolution of the Agency that the acquisition of such property at such price is necessary for the Agency to (x) further its corporate purpose, and/or (y) avoid the expense and delay of condemnation.

(2) Condemnation: Unless otherwise prohibited by applicable law, the Agency may acquire property by condemnation. The Agency shall initiate any condemnation proceedings by resolution of the Agency and such resolution shall include findings and determinations made by the Agency in connection with the decision by the Agency to initiate such condemnation proceeding. Such findings and determinations may include the following: that the owner of the property has not responded to a reasonable offer for the acquisition of the property, that the Agency has negotiated for a reasonable amount of time with the owner of the property, and that the property is necessary to further the corporate purposes of the Agency.

(D) 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 seller of the property and accepted by the Agency, purporting to transfer title or any other interest in property of the seller to 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 grantor or transferor who has received valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to closing.

(E) Insurance. The Agency must ensure that all insurable real and personal property under its control is insured against physical loss or damage.

SCHEDULE A-6
PROPERTY DISPOSITION POLICY

SECTION 1. DEFINITIONS.

A. “Contracting Officer” shall mean the officer or employee of the Town of Guilderland Industrial Development Agency (the “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 New York State Public Authorities Law.

C. “Property” shall mean personal property in excess of five thousand dollars (\$5,000.00) 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, the 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 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 schedule.

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 proper to dispose of such property under the provisions of this schedule. 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 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 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 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 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 is to be sold in such quantity that, if it were disposed of by bid, would adversely affect the state or local market for such property, and the estimated fair market value of such property and other;
 - (B) satisfactory terms of disposal can be obtained by negotiation;
 - (C) the fair market value of the property does not exceed fifteen thousand dollars (\$15,000.00);
 - (D) bid prices after advertising therefore are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;
 - (E) the disposal will be to the state or any political subdivision or public benefit corporation, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;
 - (F) 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

(G) such action is otherwise authorized by law.

G. Transfer of Property for Less than Fair Market Value. (i) The Agency may dispose of its property for less than fair market value under the following circumstances:

- (A) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;
- (B) the purpose of the transfer is within the purpose, mission or governing statute of the Agency; or
- (C) in the event the Agency seeks to transfer an asset for less than its fair market value to other than a governmental entity, which disposal would not be consistent with the Agency's mission, purpose or governing statutes, the Agency shall provide written notification thereof to the governor, the speaker of the assembly, and the temporary president of the senate, and such proposed transfer shall be subject to denial by the governor, the senate, or the assembly.

(ii) In the event that the Agency intends to carry out a disposition of its property at a price that is less than the property's fair market value, the following steps must be taken prior to the disposition:

- (A) the Agency's members must be provided with the following:
 - (1) a full description of the asset;
 - (2) an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the members;
 - (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 fair market value;
 - (5) the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (4) of this paragraph, 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.
- (B) Before approving the disposal of any property for less than fair market value, the members shall consider the information described in the immediately preceding paragraph (A) above 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.

H. Explanatory Statement. If the Agency disposes of its property through a method other than competitive bidding, and any of the statements that follow in subsection (i) of this Section H apply to the disposition, the Agency must prepare and deliver an explanatory statement that complies with the notice requirements set forth in Section 2897 of the New York State Public Authorities Law.

- (i) The disposal involves:
 - (A) any personal property which has an estimated fair market value in excess of fifteen thousand dollars (\$15,000.00);
 - (B) any real property that has an estimated fair market value in excess of one hundred thousand dollars (\$100,000.00), except that any real property disposed of by lease or exchange shall only be subject to clauses (C) and (D) of this subparagraph;
 - (C) any real property disposed of by lease, if the estimated annual rent over the term of the lease is in excess of fifteen thousand dollars (\$15,000);
 - (D) 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.
- (ii) 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.

This Policy is subject to modification and amendment at the discretion of the Agency and shall be filed annually with all local and state agencies as required under all applicable law.

SCHEDULE A-7
INDEMNIFICATION POLICY

The Town of Guilderland Industrial Development Agency (the “Agency”) shall indemnify every Agency member and officer against all expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by them as a consequence of their being made a party to or being threatened to be made a party to any threatened, pending or contemplated civil or administrative action, suit or proceeding, by reason of their being or having been a member or officer of the Agency, except in such cases where they are adjudged guilty of willful and wanton misconduct or gross negligence in the performance of their duties or adjudged to have not acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interest of the Agency and its members. If a member or officer claims reimbursement or indemnification hereunder based upon settlement of a matter, they shall be indemnified only if the Agency Board (with any member seeking reimbursement abstaining) approves such settlement and reimbursement as being in the best interests of the Agency and, if a majority of the members request it, such approval is based on an opinion of independent counsel supporting the propriety of such indemnification and reimbursement. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights such member or officer may have. The Agency Board shall notify all members that it has approved an indemnification payment at least ten (10) days prior to making such payment.