

**Property Disposition Guidelines  
of the  
Erie County Industrial Development Agency (“ECIDA”),  
Buffalo and Erie County Regional Development Corporation  
 (“RDC”), Buffalo and Erie County Industrial Land  
Development Corporation (“ILDC”), Buffalo Niagara Regional  
Development Corporation (“BNRDC”) and ATC of Buffalo  
and Erie County, Inc. (“ATC”)**

Effective Date: March 8, 2010

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The Erie County Industrial Development Agency (“ECIDA”) and each ECIDA Affiliate (as defined herein) (hereinafter collectively referred to as the “Agency”) are required by Section 2896 of the Public Authorities Law to adopt by resolution comprehensive guidelines regarding the use, awarding, monitoring and reporting of contracts for the disposal of Property (as defined herein). The following guidelines (“Guidelines”) are adopted upon approval by the respective Boards or Members of each corporation pursuant to such requirement and are applicable with respect to the use, awarding, monitoring and reporting of all Property Disposition Contracts which are entered into by the Agency.

**ARTICLE I  
DEFINITIONS**

1. “Contracting Officer” shall mean an officer or employee of ECIDA appointed by resolution of the Board of Directors or Members of the ECIDA and each ECIDA Affiliate to be responsible for the disposition of Property of ECIDA and each ECIDA Affiliate.

2. “Dispose” or “disposal” or “disposition” shall mean the transfer of title or any other beneficial interest in Property from ECIDA or an ECIDA Affiliate to any unrelated third party.

3. “ECIDA Affiliate” shall mean the following organizations:

- (i) Buffalo and Erie County Regional Development Corporation;

- (ii) Buffalo and Erie County Industrial Land Development Corporation;
- (iii) ATC of Buffalo and Erie County, Inc.;
- (iv) Buffalo Niagara Regional Development Corporation; and
- (iv) such other affiliated entities of ECIDA as may hereafter be established by ECIDA and which are determined to be subject to the requirements of Section 2896 of the Public Authorities Law.

4. "Property" shall mean personal property in excess of Five Thousand Dollars (\$5,000.00) in value, real property, or any other legally transferable 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.

5. "Property Disposition Contracts" shall mean written agreements for the sale, lease, transfer or other disposition of Property from ECIDA or an ECIDA Affiliate to any unrelated third party.

6. "Real Property" shall mean real property and interests therein.

## **ARTICLE II**

### **APPOINTMENT AND DUTIES OF CONTRACTING OFFICER**

#### **A. Appointment**

The Contracting Officer shall be an officer or employee of ECIDA appointed by the Board of Directors or Members of the ECIDA and each ECIDA Affiliate who is responsible for the supervision and direction over the custody, control and disposition of Property and responsible for ECIDA's compliance with and enforcement of these Guidelines. The Contracting Officer is the Treasurer/Chief Financial Officer of ECIDA.

#### **B. Duties**

The duties of the Contracting Officer shall include the following:

1. Maintaining adequate inventory controls and accountability systems for all Property under the control of ECIDA and each ECIDA Affiliate.
2. Periodically conducting an inventory of Property to determine which Property may be disposed of.
3. Preparing an annual written report of all Property of ECIDA and each

ECIDA Affiliate. Each report shall include a list of all Real Property, a full description of all real and personal property disposed of during the reporting period, the price received and the name of the purchaser for all Property sold during each reporting period. Each report shall be completed and delivered to the New York State Comptroller, the Director of the Budget, the Commissioner of General Services and the New York State Legislature no later than ninety (90) days following the completion of the fiscal year of ECIDA and each ECIDA Affiliate.

4. Disposing of Property as promptly as possible in accordance with these Guidelines, as directed by ECIDA or the applicable ECIDA Affiliate.

### **ARTICLE III**

### **PROPERTY DISPOSITION REQUIREMENTS**

#### **A. Method of Disposition**

Subject to such exceptions and/or requirements set forth in these Guidelines, in the event that ECIDA or an ECIDA Affiliate determines to dispose of any of its Property, ECIDA or the ECIDA Affiliate (as applicable) shall endeavor to dispose of such Property for at least the fair market value of the Property. The disposition of Property may be made by sale, exchange, or transfer, for cash, credit or other Property, with or without warranty, and upon such terms and conditions as are determined by ECIDA or the applicable ECIDA Affiliate to be appropriate and reasonable and consistent with these Guidelines. Provided, however, no disposition of real 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.

#### **B. Award and Approval of Property Disposition Contracts**

1. Compliance with Guidelines; Approval Requirements. All dispositions of Property shall be conducted in accordance with these Guidelines by or under the supervision of the Contracting Officer, subject to approval of the Board of Directors or Members of the ECIDA or the applicable ECIDA Affiliate where appropriate.

2. Disposition by Public Bid.

(a) All Property Disposition Contracts may be made only after publicly advertising for bids, unless the criteria set forth in Article III(B)(3) below has been satisfied for such contracts to be made by negotiation or public auction.

(b) Whenever public advertising for bids is required, (i) 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; (ii) all bids shall be publicly disclosed at the time and place stated in the advertisement; and (iii) 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 ECIDA, the applicable ECIDA Affiliate and New York State, price and other factors considered.

(c) Any public bid for the disposition of Property may be rejected, refused, or declined by ECIDA or the applicable ECIDA Affiliate on any basis or ground allowable at law.

3. Disposition by Negotiated Sale/Public Auction. The following dispositions are exempt and excepted from the public bidding requirements set forth above in Article III(B)(2) and may be consummated through a negotiated sale or by public auction:

(a) Below Fair Market Value. ECIDA and each ECIDA Affiliate may dispose of Property for less than the fair market value of the Property where:

- (i) Transferee is a government or public entity and terms of transfer require ownership and use to remain with the government or public entity; or
- (ii) Purpose of transfer is within the purpose, mission or statute of the ECIDA or each applicable ECIDA Affiliate; or
- (iii) Written notification to the Governor, Speaker, and Temporary President. Such notification is subject to denial. Denial by Governor is in the form of a certification. Denial by the legislature is in the form of a resolution. Denial must be made within 60 days of receiving notification during January through June. Provided no denial, then authority may effectuate transfer. If legislature receives the notification in July through December, then legislature may take 60 days from January 1 of the following year. However, a local may obtain local approval from the chief executive and legislature of the political subdivision in lieu of the notification to the Governor, Speaker and Temporary President provided the local authority's enabling legislation provides for such approval and the property was obtained by the authority from the political subdivision.

If a below FMV transfer is proposed, the following information is required to be provided to the ECIDA board or each applicable ECIDA Affiliate's board and to the public:

- (1) Description of Asset;
- (2) Appraisal of the FMV of the asset;
- (3) Description of the purpose of the transfer, the kind and amount

of the benefit to the public resulting from the transfer such as jobs and wages created or preserved;

- (4) Value received compared to FMV;
- (5) Names of private parties to the transaction and value received;
- (6) Names of private parties that have made an offer, the value of offer, and purpose for which the asset would have been used.

The board of the ECIDA or applicable ECIDA Affiliate must 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.

(b) Disposition of Certain Personal Property. ECIDA and each ECIDA Affiliate may dispose of personal property where such 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 to be disposed of through public advertisement and bidding, would adversely affect the state or local market for such personal property.

(c) Disposition of Low FMV Property. ECIDA and each ECIDA Affiliate may dispose of Property the fair market value of which does not exceed Fifteen Thousand Dollars (\$15,000.00).

(d) Disposition Following Receipt of Unacceptable Bid Prices. ECIDA and each ECIDA Affiliate may dispose of Property where the bid prices received by ECIDA or the applicable ECIDA Affiliate after public advertising are not commercially reasonable (either as to all or some part of the Property) as determined by ECIDA or the applicable ECIDA Affiliate in its sole discretion.

(e) Disposition to a Political Subdivision. ECIDA and each ECIDA Affiliate may dispose of Property to New York State or any political subdivision of New York State.

(f) Disposition Authorized by Law. ECIDA and each ECIDA Affiliate may dispose of Property where such disposition is otherwise authorized by law.

#### 4. Reporting Requirements Regarding Negotiated Dispositions.

(a) Preparation of Written Statements. The Contracting Officer shall prepare a written statement explaining the circumstances of each negotiated disposition of Property involving any of the following:

- (i) the negotiated disposition of personal property which has an estimated fair market value in excess of Fifteen Thousand Dollars (\$15,000.00);

- (ii) the negotiated disposition of Real Property that has an estimated fair market value in excess of One Hundred Thousand Dollars (\$100,000.00);
- (iii) the negotiated disposition of Real Property that will be disposed of by lease if the estimated annual rent over the term of the lease is in excess of \$15,000; or
- (iv) the negotiated disposition of Real Property or real and related personal property where the same will be disposed of by exchange, regardless of value, or any Property any part of the consideration for which is Real Property.

(b) Submission of Written Statements. Written statements prepared pursuant to Article III(B)(4) shall be submitted to the New York State Comptroller, the Director of the Budget, the Commissioner of General Services and the State Legislature no later than ninety (90) days prior to the date on which the disposition of Property is expected to take place. The Contracting Officer shall maintain a copy of all written statements at ECIDA's principal office.

## **ARTICLE IV**

### **GENERAL PROVISIONS**

#### **A. Annual Review and Submission of Guidelines**

These Guidelines shall be annually reviewed and approved by the Board of Directors or Members of the ECIDA and each ECIDA Affiliate. On or before the 31<sup>st</sup> day of March of each year, the Contracting Officer shall file (for itself and on behalf of each ECIDA Affiliate) a copy of the most recently reviewed and adopted Guidelines with the New York State Comptroller, and shall post the Guidelines on ECIDA's website. Guidelines posted on ECIDA's website shall be maintained at least until the Guidelines for the following year are posted on ECIDA's website.

#### **B. Effect of Awarded Contracts**

These Guidelines are intended for the guidance of the officers, members, directors and employees of ECIDA and the ECIDA Affiliates only. Nothing contained herein is intended or shall be construed to confer upon any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof, or be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, these Guidelines. Without limiting the generality of the preceding sentence, any deed, bill of sale, lease, or other instrument executed by or on behalf of ECIDA or an ECIDA Affiliate, purporting to transfer title or any other interest in Property shall be conclusive evidence of compliance with these Guidelines 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 compliance with these Guidelines prior to the closing.

**C. Exemption for Certain ECIDA Transactions**

These Guidelines shall not be applicable to any agreements or arrangements involving the provision by ECIDA of “financial assistance” as such term is defined in Section 854(14) of the New York General Municipal Law (i.e. property dispositions serving solely as a conduit for providing financial assistance).

Amended and restated by the respective Boards of Directors and Members of the Agency this 8<sup>th</sup> day of March, 2010.