

Wyoming County Business
Center , Inc

Disposition and Acquisition of
Real Property Policy

WYOMING COUNTY BUSINESS CENTER INC.

PROPERTY DISPOSITION POLICY

AMENDED AND RESTATED NOVEMBER 4, 2015

SECTION 1. DEFINITIONS.

A. "Contracting officer" shall mean the officer or employee of the Wyoming County Business Center, Inc. (hereinafter, the "Corporation") shall be designated to be responsible for the disposition of property. The President of the Corporation is designated as the Corporation's contracting officer.

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 Corporation shall:

- (i) maintain adequate inventory controls and accountability systems for all property owned by the Corporation 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 3 below.

B. The Corporation shall:

- (i) publish, not less frequently than annually, a report listing all property owned in fee by the Corporation. 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 Corporation and the name of the purchaser for all such property sold by the Corporation 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 (the "Contracting Officer") shall have supervision and direction over the disposition and sale of property of the Corporation. The Corporation shall have the right to dispose of its property for any valid corporate purpose.

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

C. Method of Disposition. Unless otherwise permitted, the Corporation 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 Corporation and/or contracting officer deems proper. The Corporation 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 section. Provided, however, no disposition of real property or any interest in 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 and provided further, that no disposition of 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 without a similar appraisal.

D. Sales by the Commissioner of General Services (the "Commissioner"). When the Corporation shall have deemed that transfer of property by the Commissioner will be advantageous to the State of New York, the Corporation may enter into an agreement with the Commissioner pursuant to which the Commissioner may dispose of property of the Corporation under terms and conditions agreed to by the Corporation 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 Corporation, purporting to transfer title or any other interest in property of the Corporation 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 Corporation 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 Corporation, price and other factors considered; provided, that all bids may be rejected at the Corporation'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 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 (\$15,000.00);

(C) 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;

(D) 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;

(E) Under circumstances permitted under subsection (iv) below.

(F) such action is otherwise authorized by law.

(iv) Exceptions to Publicly Advertising for Bids and Obtaining Fair Market Value

(A) No assets owned, leased or otherwise in the control of the Corporation may be sold, leased, or otherwise alienated for less than its fair market value (FMV) except if:

- (1) Transferee is a government or public entity and the terms of transfer require that ownership and use remain with the government or public entity; or
- (2) Purpose of transfer is within purpose, mission or statute of the Corporation; or
- (3) the Corporation provides written notification thereof to the Governor, the Speaker of the Assembly and the temporary President of the Senate. Such proposed transfer shall be subject to denial 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 and each House of the Legislature shall take any such action within sixty (60) days of receiving notification of such proposed transfer during the months of January through June, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the Legislature may take any such action within sixty (60) days of January first of the following year. If no such resolution or certification is performed within sixty (60) days of such notification of the proposed transfer to the Governor, Senate, and Assembly, the Corporation may effectuate such a transfer. Any of the foregoing notwithstanding, with respect to a below market transfer by the Corporation that is not within the purpose, mission or governing statute of the Corporation, if the New York Not-For-Profit Corporation Law provides for the approval of such transfer by the Wyoming County Board of Supervisors and the transfer is of property obtained by the Corporation from Wyoming County, then such approval shall be sufficient to permit the transfer.

(B) If below FMV transfer is proposed, the following information is required to be provided to the Corporation's board and the public:

- (1) Description of Asset;
- (2) Appraisal of the FMV of the asset;
- (3) Description of purpose of transfer and the kind and amount of the benefit to the public resulting from the transfer, including, but not limited to, jobs and wages created or preserved and the benefits, if any, to the communities in which the asset is situated;

- (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.

(C) Board 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.

(D) In the event property is disposed of for less than FMV, the Corporation shall include in its annual report required under Section 2800(2) of the Public Authorities Law a detailed explanation of the justification for making the sale without competitive bidding and a certification by the CEO and CFO of the Corporation that they have reviewed the terms of the sale and determined that it complies with applicable law and this policy.

(v) 90 Day Notice of Negotiated Disposals:

(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 (\$15,000.00);

(2) 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 (3) and (4) of this subparagraph;

(3) any real property disposed of by lease if the estimated annual rent over the term of the lease is in excess of \$15,000; or

(4) 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 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) not less than ninety (90) days in advance of such disposal, and a copy thereof shall be preserved in the files of the Corporation making such disposal.

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

THE WYOMING COUNTY BUSINESS CENTER, INC.
REAL PROPERTY ACQUISITION POLICY

The Wyoming County Business Center, Inc. (the “Corporation”), a New York not-for-profit local development corporation, in compliance with the New York State Public Authorities Law, has established these Guidelines for the Acquisition of Real Property (the “Guidelines”).

These Guidelines shall apply to the acquisition of real property throughout the year following their adoption and until such time as the Agency adopts new or revised Guidelines. The Members of the Corporation shall review and approve of these Guidelines, with any necessary modifications and revisions, on a no less than annual basis.

1. Designation of Contracting Officer

The Corporation hereby designates the Corporation’s CFO as the Corporation’s Contracting Officer, in compliance with the provisions of New York State Public Authorities Law. The Contracting Officer shall hold this position until the Members of the Corporation designate a new Contracting Officer or until such time as the Members adopt new Real Property Acquisition Guidelines.

The Contracting Officer shall be responsible for the administration and implementation of these Guidelines. The Contracting Officer shall cause these Guidelines to be posted on the Corporation’s website so that they are available to the general public.

2. Application of Guidelines

The procedures outlined in these Guidelines shall apply to the Corporation’s acquisition of all interests in real property except for acquisitions of interests in real property where the Corporation is involved for the benefit of a third party. As used in these Guidelines, “property” shall include all interests in real property.

The Corporation shall acquire real property in a prudent manner. All acquisitions of real property shall be made in accordance with the policy and applicable law and shall be approved by the Corporation's Board of Directors.

3. Purpose

The Corporation has adopted these Guidelines to comply with the provisions of New York Public Authorities Law and to protect the interests of the Corporation in the acquisition of real property by the Corporation for its own benefit. The purpose of the acquisition of real property by the Corporation shall be to further the purposes of the Corporation, as authorized by the Corporation’s certificate of incorporation, by-laws, or resolutions adopted by the Board of Directors of the Corporation, or for a purpose otherwise permitted under applicable State law.

4. Fair Market Value

Prior to acquiring any parcel of real property except for property being gifted to the Corporation, the Contracting Officer shall take reasonable measures to determine the fair market value of the property to be acquired. Fair market value of property that is unique in nature and therefore not subject to fair market value pricing shall be determined through an appraisal by a qualified professional. Prior to its acquisition, the fair market value of all real property shall be established by an appraisal conducted by a qualified professional. In the case of real property donated to the Corporation, an appraisal shall not be required. The Corporation shall negotiate the purchase price after determination of the fair market value.

The Corporation shall endeavor not to pay more than fair market value for any property being acquired. Where the property is such that it is required for Corporation purposes and other property will not suffice, the Corporation may under such circumstances pay such reasonable amount in excess of what it has determined to be fair market price in order to purchase the property. In such case the Corporation shall document the reasons why it is necessary to acquire such property for a price in excess of what it determined to be fair market price and shall include in its annual report required by Section 2800(2) of the Public Authorities Law, a detailed explanation of the justification for making the purchase for a price in excess of fair market value and a certificate by the Corporation's CEO and CFO that they have reviewed the terms of the acquisition and determined that it complies with applicable law and this policy.

5. Environmental and Title Review

Prior to the acquisition of any interest in real property covered by this policy, the Corporation shall take necessary steps to determine whether there are any environmental concerns including, if appropriate, obtaining a Phase I Environmental Report or conducting other environmental due diligence. The Agency shall comply with the New York State Environmental Quality Review Act, to the extent applicable to any property purchase.

The Corporation shall have its General Counsel review the title documents supplied in connection with the acquisition and shall require fee title insurance unless the General Counsel shall determine that title insurance should not be required.

The General Counsel shall handle the purchase on behalf of the Corporation and the Corporation shall pay such reasonable fees as are required in connection with such purchase.

6. Yearly Property Report

Each year the Contracting Officer shall publish a report listing all real property acquired by the Corporation during the previous twelve-month period.

The report shall contain a full description of parcel of real property purchased, the price paid by the Authority, and the name of the individual(s) or entity that sold the property.

The Contracting Officer shall cause the report to be delivered to the Comptroller, the Director of the Budget, the Commissioner of General Services, and the New York State Legislature c/o the Speaker of the House and the Senate Majority Leader.

The Contracting Officer shall cause the report to be published on the Corporation's website.

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