

# **TOWN OF NORTH HEMPSTEAD COMMUNITY DEVELOPMENT AGENCY**

## **GUIDELINES FOR DISPOSAL OF PROPERTY**

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Revised: February 5, 2020

Reaffirmed: February 24, 2021 - Resolution 6 (2021)

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### **SECTION I. DEFINITIONS.**

1. "Agency" shall mean the Town of North Hempstead Community Development Agency.
2. "Contracting officer" shall mean the Executive Director of the Town of North Hempstead Community Development Agency (hereinafter the "Agency"), who shall be responsible for the disposition of property.
3. "Dispose" or "disposal" shall mean a transfer of title or any other beneficial interest in the personal or real property following Section 2897 of the New York State Public Authorities Law and Articles 15 and 15-A of the General Municipal Law as they relate to the disposition of real property.
4. "Fair Market Value" of Property shall mean the amount which one desiring but not compelled to purchase will pay under ordinary conditions to a seller who desires but is not compelled to sell, taking into consideration all encumbrances thereon, including restrictions as to its use, with special attention to limitations on ownership rights.
5. "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.**

1. The Agency shall:
  - (a) Maintain adequate inventory controls and accountability systems for all Property owned by the Agency and under its control;
  - (b) Periodically inventory such Property to determine which property shall be disposed of;
  - (c) Produce a written report of such Property following subsection (b) herewith; and

(d) Transfer or dispose of such Property as promptly and practicably as possible in accordance with Section 3 below.

2. The Agency shall:

(a) Publish, not less frequently than annually, a report listing all real property owned in fee by the Agency. Such a report shall consist of a list, and full description of all real and personal property disposed of during such a 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

(b) 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.**

1. **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.

2. **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.

3. **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 the 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, 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.

4. **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.

**5. 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.

**6. Bids for Disposal: Advertising: Procedure: Disposal by Negotiation: Explanatory Statement**

(a) 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 (c) of this Subsection 6.

(b) Whenever public advertising for bids is required under subsection (a) of this Section 6:

(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 proposed for disposition;

(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 the Agency, price and other factors considered; provided, that all bids may be rejected at the Agency's discretion.

(c) Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to subsections (a) and (b) of this Subsection 6 but subject to obtaining such competition as is feasible under the circumstances, if:

(i) The personal property involved is of a nature and quantity which, if disposed of under subsections (a) and (b) of this Subsection 6, 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;

(ii) The fair market value of the property does not exceed fifteen thousand dollars (\$15,000.00);

(iii) 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;

(iv) the disposal will be to the state or any political subdivision or public benefit Agency, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

(v) 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

(vi) such action is otherwise authorized by law.

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

(i) Any personal property which has an estimated fair market value in excess of fifteen thousand dollars (\$15,000.00);

(ii) 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 (iii) through (v) of this subparagraph;

(iii) Any real property disposed of by lease for a term of five (5) years or less if the estimated fair annual rent is in excess of one hundred thousand dollars (\$100,000.00) for any of such years;

(iv) Any real property disposed of by lease for a term of more than five (5) years, if the total estimated rent over the term of the lease is in excess of one hundred thousand dollars (\$100,000.00); or

(v) 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.

(e) 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.

#### **SECTION 4. TRANSFER OR DISPOSITION OF PROPERTY FOR LESS THAN FAIR MARKET VALUE**

No asset owned, leased or otherwise in the control of the Agency may be sold, leased, or otherwise alienated for less than its fair market value except if:

- (i) 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;
- (ii) The purpose of the transfer is within the purpose, mission or governing statute of the Agency; or

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. 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 a house. The governor and each house of the legislature shall take any such action within sixty 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 days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the governor, senate, and assembly, the Agency may effectuate such transfer, provided, however, that with respect to a below-market transfer by the Agency that is not within the purpose, mission or governing statute of the local authority, if the governing statute provides for the approval of such transfer by the executive and legislative branches of the political subdivision in which such the Agency resides, and the transfer is of property obtained by the authority from that political subdivision, then such approval shall be sufficient to permit the transfer.

In the event a below fair market value asset transfer is proposed, the following information must be provided to the Agency's members (the "Board") and the public:

- (i) A full description of the asset;
- (ii) An appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the Board;
- (iii) 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;

- (iv) A statement of the value to be received compared to the fair market value;
- (v) The names of any private parties participating in the transfer, and if different than the statement required by subparagraph (iv) of this paragraph, a statement of the value to the private party; and
- (vi) the names of other private parties who have made an offer for such an 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 fair market value, the Board shall consider the information described 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.

## **SECTION 5. GENERAL MUNICIPAL LAW**

Anything herein to the contrary notwithstanding, the Agency shall have the authority to acquire and dispose of property pursuant to the terms of Article 15-A of the General Municipal Law.

## **SECTION 6. MODIFICATION OF GUIDELINES AND ANNUAL FILING**

These Guidelines are 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.