

Albany Industrial Development Agency

21 Lodge Street
Albany, New York 12207
Telephone: (518) 434-2532
Fax: (518) 434-9846

Tracy Metzger, *Chair*
Susan Pedo, *Vice Chair*
Darius Shahinfar, *Treasurer*
Lee Eck, *Secretary*
Dominick Calsolaro
Robert Schofield
Jahkeen Hoke

Sarah Reginelli, *Chief Executive Officer*
Mark Opalka, *Chief Financial Officer*
William Kelly, *Agency Counsel*

To: Tracy Metzger
Robert Schofield
Darius Shahinfar

Cc: Susan Pedo
Jahkeen Hoke
Lee Eck
Dominick Calsolaro

Sarah Reginelli
Mark Opalka
William Kelly
Joe Scott
Joe Landy
Andy Corcione
Genevieve Zurowski

Date: October 12, 2018

GOVERNANCE COMMITTEE AGENDA

A meeting of the Governance Committee of the City of Albany Industrial Development Agency will be held on **Thursday, October 18th at 12:00 PM** at 21 Lodge Street, Albany, NY 12207 (Lg. Conf. Room).

Roll Call

Reading of Minutes of the Governance Committee Meeting of September 20, 2018

Approval of Minutes of the Governance Committee Meeting of September, 2018

New Business

A. Annual Review of PAAA Requirements

1. Code of Ethics Policy
2. Compensation Policy
3. Whistle Blower Policy
4. Travel Policy
5. Real Property Acquisition Policy
6. Real Property Disposition Policy
7. Indemnification of Officers and Trustees

B. Annual Review of Agency Policies

1. Agency Mission Statement
2. Agency Bylaws
3. Equal Employment Opportunities
4. Conflicts of Interest
5. Procurement Policy
6. Monitoring & Enforcement
7. Recapture of Project Benefits

C. Governance Committee Charter

1. Review Adequacy of Governance Committee Charter

Other Business

Adjournment

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IDA MINUTES OF GOVERNANCE COMMITTEE MEETING

Thursday September 20, 2018

Attending: Tracy Metzger, Robert Schofield, and Darius Shahinfar

Absent: None

Also Present: Susan Pedo, Dominick Calsolaro, Lee Eck, Joseph Scott, Marisa Franchini, Sarah Reginelli, Mark Opalka, Joe Landy, Andy Corcione, Mike Bohne, Ashley Mohl and Genevieve Zurowski

Chair Tracy Metzger called the Governance Committee meeting of the IDA to order at 12:20pm.

Roll Call

Chair Tracy Metzger reported that all committee members were present.

Reading of Minutes of the March 14, 2018 Governance Committee Meeting

Since the minutes of the previous meeting had been distributed to Committee members in advance for review, Chair Tracy Metzger made a proposal to dispense with the reading of the minutes.

Approval of Minutes of the March 14, 2018 Governance Committee Meeting

Chair Tracy Metzger made a proposal to approve the minutes of the Governance Committee Meeting of March 14, 2018 as presented. A motion to accept the minutes, as presented, was made by Robert Schofield and seconded by Darius Shahinfar. A vote being taken, the minutes were accepted unanimously.

New Business

NYS Comptroller Audit/Corrective Action Plan

Agency staff reviewed the draft of the Corrective Action Plan, in response to the NYS Office of the Comptroller's CAIDA audit, with the Committee. As part of the Corrective Action Plan, Staff will implement revised policy provisions to include; a review of the Project Evaluation & Assistance Framework in 2019, enhancement of the contents of meeting minutes to reflect Board/Committee discussion on deviations for the Agency's UTEP and discussions on project monitoring, revisions to the Agency's application for assistance, the commitment to complete of ten (10) site visits for active projects annually, and working with the ABO to address potential inaccuracies within PARIS. The Committee discussed various aspects of the plan in addition to providing suggestions for implementation.

The Committee also received a revised draft application presented for committee approval. The implementation of the plan will be effective as of September 20, 2018 if it is approved by the Board. A motion to recommend the

approval of the Corrective Action Plan to the full Board was made by Robert Schofield and seconded by Darius Shahinfar.

Policy Manual Modification – Change in Project Ownership

Recapping prior board discussions, Agency Counsel and staff discussed potential issues regarding ownership changes relating to Agency projects with the Committee. Based on the Board's request, Staff presented recommended changes to the language in the Policy Manual to provide additional oversight of the controlling ownership of Agency projects. The Committee discussed various scenarios regarding percentages of ownership and potential windows of applicability. A motion to recommend amending the Policy Manual with the recommended changes to the full Board was made by Robert Schofield and seconded by Darius Shahinfar.

Other Business

None.

There being no further business, Chair Tracy Metzger adjourned the meeting at 1:10pm.

Respectfully submitted,

Lee Eck, Secretary

MEMO

TO: City of Albany Industrial Development Agency Governance Committee

FROM: City of Albany Industrial Development Agency Staff

RE: Annual Review of Agency Policies

DATE: October 12, 2018

Pursuant to the Agency's Policy Manual and Governance Committee Charter, it is a requirement and best practice that the committee review the following policies annually.

Please find the following attached for your review:

- A. Code of Ethics Policy
- B. Compensation Policy
- C. Whistle Blower Policy
- D. Travel Policy
- E. Real Property Acquisition Policy
- F. Real Property Disposition Policy
- G. Indemnification of Officers & Trustees

SCHEDULE A

CODE OF ETHICS POLICY

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

2. Definitions. For purposes of this section, unless the context specifically indicates otherwise:

(a) “Agency” shall mean the City of Albany Industrial Development Agency.

(b) “employee” shall mean any employee of the City of Albany Industrial Development Agency.

3. 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 his duties in the public interest.

4. Standards.

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

(b) No member or employee of the Agency should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

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

(d) No member or employee of the Agency should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself 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 he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

(f) A member or employee of the Agency should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly

enjoy his favor in the performance of his official duties, or that he is 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 he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his 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 he is likely to be engaged in acts that are in violation of his 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, he should file with the members of the Agency a written statement that he has such a financial interest in such activity which statement shall be open to public inspection.

5. 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 section may be fined, suspended or removed from office or employment in the manner provided by law.

SCHEDULE B

COMPENSATION POLICY

1. Generally. Members of the City of Albany Industrial Development 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 C

WHISTLE BLOWER POLICY

1. Definitions. For purposes of this section, 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 section 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 section may institute a civil action in a court of competent jurisdiction for relief as set forth in subdivision five of this section within one (1) year after the alleged retaliatory personnel action was taken.

(b) Any action authorized by this section 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 section that the personnel action was predicated upon grounds other than the employee's exercise of any rights protected by this section. 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 section, the court may order relief as follows:

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

(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 section was without basis in law or in fact.

7. Existing Rights. Nothing in this section 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 section 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 D

POLICY FOR TRAVEL OF AGENCY MEMBERS

1. Generally. It is the policy of 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 Chair. The Chair will advise the Chief Executive Officer of all requests received.

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

(c) The Chair will inform the Chief Executive Officer or his/her designee of all Board Member pre-approved expenses.

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

SCHEDULE E

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 City of Albany Industrial Development Agency (hereinafter, 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 (the “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 dollars (\$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 section. 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 F

PROPERTY DISPOSITION POLICY

SECTION 1. DEFINITIONS.

(A) “Contracting officer” shall mean the officer or employee of the City of Albany Industrial Development Agency (hereinafter, 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 with a fair market value in excess of five thousand dollars (\$5,000.00) 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 3 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 include 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 (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 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.

(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).

(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 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; or

(e) 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:

(1) 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;

(2) the purpose of the transfer is within the purpose, mission or governing statute of the public authority; or

(3) 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, such authority 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:

(1) the Agency's members must be provided with the following:

(a) a full description of the asset;

(b) an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the members;

(c) 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;

(d) a statement of the value to be received compared to the fair market value;

(e) the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (d) of this paragraph, a statement of the value to the private party; and

(f) 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.

(2) 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 (1) 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. (i) If the Agency disposes of its property through a method other than competitive bidding, and any of the statements that follow in subsection (ii) 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.

(ii) (a) the disposal involves any personal property which has an estimated fair market value in excess of fifteen thousand dollars (\$15,000.00);

(b) the disposal involves 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) through (4) of this subparagraph;

(c) the disposal involves 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) the disposal involves 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.

(iii) 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 G

INDEMNIFICATION OF OFFICERS AND TRUSTEES

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 him or her as a consequence of his or her 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 his or her being or having been a member or officer of the Agency, except in such cases where he or she is adjudged guilty of willful and wanton misconduct or gross negligence in the performance of his or her duties or adjudged to have not acted in good faith and in a manner he or she 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, he or she shall be indemnified only if the 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 Board shall notify all members that it has approved an indemnification payment at least ten (10) days prior to making such payment.

MEMO

TO: City of Albany Industrial Development Agency Governance Committee
FROM: City of Albany Industrial Development Agency Staff
RE: Review of Agency Mission and Bylaws
DATE: October 12, 2018

It is best practice that the committee annually reviews the Agency's mission statement and bylaws.

Please find the following for your review:

- A. Agency Mission Statement
- B. Agency Bylaws
- C. Equal Employment Opportunities
- D. Conflicts of Interest
- E. Procurement Policy
- F. Monitoring & Enforcement
- G. Recapture of Project Benefits

City of Albany Industrial Development Agency Mission Statement:

Date Adopted: December 16, 2010

Assist in the enhancement and diversity of the economy of the City of Albany (the "City") by acting in support of projects in the City that create and/or retain jobs and/or promote private sector investment utilizing the statutory powers of the Agency as set forth under the provisions of the laws of the State of New York.

- No changes to the mission statement are proposed at this time.

SCHEDULE K

MISSION STATEMENT

Name of Public Authority: City of Albany Industrial Development Agency (the “Agency”).

Agency’s Mission Statement:

Assist in the enhancement and diversity of the economy of the City of Albany (the “City”) by acting in support of projects in the City that create and/or retain jobs and/or promote private sector investment utilizing the statutory powers of the Agency as set forth under the provisions of the laws of the State of New York.

Date Adopted: December 16, 2010.

Agency Stakeholders:

Agency Stakeholders include the following: (A) The Mayor of the City of Albany, (B) The members of the Albany Common Council, (C) The residents of the City of Albany, (D) The businesses located or intending to locate in the City of Albany, (E) The City of Albany School District, (F) the State of New York, and (G) local trade unions.

At a minimum, Agency Stakeholders expect the Agency’s members to carry out the business of the Agency in a manner that accomplishes its mission while strengthening the local economy.

List of Proposed Performance Measurements:

- A. Number of firms assisted (with cash, loans, technical assistance, problem-solving) by the Agency.
- B. Number of jobs created with help from Agency assistance.
- C. Number of jobs retained with help from Agency assistance.
- D. Capital investment made in the City (both total and private funds leveraged with public assistance).
- E. Number and dimension of efforts to support local efforts that support continued job growth and economic gains for the City.
- F. Number and dimension of efforts to support regional efforts that support continued job growth and economic gains in the region.

PART 3

BY-LAWS OF AGENCY

SECTION 301. PURPOSE AND AUTHORITY. The purpose of this Part is to establish such procedures relating to the making of By-Laws of the City of Albany Industrial Development Agency (the “Agency”) as necessary for the implementation of Section 858(5) of Title One of Article 18-A of the General Municipal Law (the “Act”). Section 858(5) of the Act provides as follows:

“(5) To make by-laws for the management and regulation of its affairs and, subject to agreements with its bondholders, for the regulation of the use of a project or projects.”

SECTION 302. BY-LAWS. A copy of the By-Laws of the Agency is attached hereto as Appendix 3A.

SECTION 303. AMENDMENT OF BY-LAWS. The By-Laws of the Agency may be amended only with the approval of at least a majority of all of the members of the Agency at a regular or a special meeting, but no such amendment shall be adopted unless at least seven (7) days written notice thereof has been previously given to all members of the Agency.

APPENDIX 3A

BY-LAWS

OF

CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY

Approved March 17, 2016

Pursuant to the authority contained in Section 858, Title 1 of Article 18-A of the General Municipal Law, as set out in Chapter 1030 of the Laws of 1969, and Section 903-a of the General Municipal Law, as set out in Chapter 325 of the Laws of 1974 of the State of New York, the City of Albany Industrial Development Agency hereby approves the following by-laws for the regulation of its activities:

ARTICLE I

NAME SEAL

Section 1. Name. The name of the Agency shall be “City of Albany Industrial Development Agency”.

Section 2. Seal. The seal of the Agency shall be in a design circular in form bearing the words and dates as follows:

CITY OF ALBANY INDUSTRIAL DEVELOPMENT AGENCY, NEW YORK

CORPORATE SEAL

1974

Section 3. Office of Agency. The office of the Agency shall be in the City of Albany, New York.

Section 4. Execution of Instruments. Except as otherwise provided in these bylaws, instruments and documents of the Agency may be signed or countersigned, executed, verified or acknowledged by such officer or officers or other person or persons as the Agency may designate by resolution.

ARTICLE II

MEMBERS OF THE BOARD; OFFICERS
AND BOARD COMMITTEES

Section 1. Appointment Of Members; Qualifications Thereof. (A) Pursuant to Article 18-a of the General Municipal Law of the State of New York (the “Act”), the members of the Agency

(each, a “Member”) are appointed by, and serve at the pleasure of the Common Council. Each Member must be a resident of the City of Albany. A public officer or employee may be appointed as a Member of the Agency without forfeiture of any other public office or employment. The Agency shall consist of seven (7) Members.

(B) Except for Members who serve as Members by virtue of holding a civil office of the State, the majority of the remaining Members appointed after January 13, 2006 shall be “Independent Members”.

(C) For purposes of these bylaws, the term “Independent Member” means a Member who: (1) is not, and in the past two (2) years has not been, employed by the Agency (or an “Affiliate” of the Agency) in an executive capacity; (2) is not, and in the past two (2) years has not been, employed by an entity that received remuneration valued at more than fifteen thousand (\$15,000) for goods and services provided to the Agency or received any other form of financial assistance valued at more than fifteen thousand (\$15,000) from the Agency; (3) is not a relative of an executive officer or employee in an executive position of the Agency (or an “Affiliate” of the Agency); and (4) is not, and in the past two (2) years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the Agency (or an “Affiliate” of the Agency).

(D) For purposes of these bylaws, the term “Affiliate” means a corporate body having substantially the same ownership or control as the Agency.

(E) For purposes of these bylaws, the term “Relative” means an individual’s spouse, child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of the individual or of the individual’s spouse.

Section 2. Responsibilities of Members; Training Requirement. (A) The Members of the Agency constitute the governing body of the Agency (the “Board”), and shall have and shall responsibly exercise all of the powers prescribed by the Act and other applicable law, including but not limited to Chapter 766 of the 2005 Laws of the State of New York (the “PAAA”).

(B) The Board shall appoint a Chief Executive Officer and a Chief Financial Officer of the Agency, neither of whom shall be a Member of the Agency.

(C) Every annual financial report of the Agency must be approved by the Board.

(D) The Members of the Agency shall: (1) execute direct oversight of the Chief Executive Officer of the Agency and the Chief Financial Officer of the Agency in the effective and ethical management of the Agency; and (2) understand, review and monitor the implementation of fundamental financial and management controls and operational decisions of the Agency.

(E) The Board shall not, directly or indirectly, including through a subsidiary, extend or maintain credit or arrange for the extension of credit, or renew an extension of credit, in the

form of a personal loan to or for any officer, Member or employee (or equivalent thereof) of the Agency.

(F) Members of the Agency shall file annual financial disclosure statements with the Albany County Board of Ethics.

(G) Individuals newly appointed to the Board of the Agency must participate in state approved training regarding their legal, fiduciary, financial and ethical responsibilities within one (1) year of appointment to such Board. Existing Members shall participate in such continuing training as may be required to remain informed of best practices, regulatory and statutory changes relating to the effective oversight of the management and financial activities of public authorities and to adhere to the highest standards of responsible governance.

Section 3. Officers of the Board. (A) The officers of the Agency shall be a Chair, Vice Chair, Secretary, Assistant Secretary, Treasurer, Assistant Treasurer and such other officers as it may determine who shall have such duties, powers and functions as hereinafter provided, all of whom shall be elected by the Members of the Agency, except the original Chair, who shall be appointed by the Common Council. Such officers shall be elected at the annual meeting of the Agency in each fiscal year.

(B) Each officer of the Agency shall hold office for one (1) year and each Member shall continue to hold office until his/her successor is appointed or elected and qualifies in his/her stead. If the term of an Agency Member should terminate, his/her term of office as an officer shall also terminate and at the regular meeting next succeeding such termination the Members of the Agency shall elect from among their number a successor who shall serve until the next annual meeting of the Agency.

(C) Each Member shall continue to hold office as a Member until his/her successor is appointed or elected and qualifies in his/her stead.

Section 4. Chair. The Chair shall be a Member of the Agency and preside at all meetings of the Agency. He/she shall sign and execute on behalf of the Agency all contracts, notes, bonds, trust indentures or other evidences of indebtedness when so authorized by the Agency, and shall perform such other duties as may be prescribed for him by law or by the Agency. The Chair shall submit to the Agency such recommendations and information as he/she may consider proper concerning the business, affairs and policies of the Agency.

Section 5. Secretary. The Secretary shall be a Member of the Agency and, in coordination with the Chief Executive Officer, shall record all the votes and record the minutes of the Agency in a journal to be kept for such purpose; attend to the serving of notices of all meetings when required; keep in safe custody the seal of the Agency and shall have power to affix such seal to all papers or other documents as may be required; attend to such correspondence as may be assigned; and perform all the duties as the Agency may designate.

Section 6. Treasurer. The Treasurer shall be a Member of the Agency and, in coordination with the Chief Financial Officer, shall have the care and custody of all funds and securities of the

Agency and shall deposit the same forthwith in the name of the Agency in such bank or banks in the State of New York as the Agency may designate.

The Treasurer shall have charge of the treasury and custody of receipts, deposits and disbursements of all Agency moneys. He/she shall keep full and accurate and separate accounts of the various funds and moneys in his/her custody. The Treasurer, in coordination with the Agency's chief financial officer, shall render to the Agency at each regular meeting an account of the financial transactions and the current financial condition of the Agency. The Treasurer shall at a reasonable time exhibit his/her books and accounts to any Member of the Agency upon application at the office of the Agency during business hours and render a full financial report at the annual meeting of the Agency if so required. He/she shall have such other powers and duties as are conferred upon him by any special or general law.

Section 7. Vice Chair, Assistant Secretary, Assistant Treasurer. The Vice Chair shall be a Member of the Agency and perform all duties of the Chair in the absence of the Chair. The Assistant Secretary shall perform all duties of the Secretary in the absence of the Secretary. The Assistant Treasurer shall perform all duties of the Treasurer in the absence of the Treasurer. The Assistant Secretary and the Assistant Treasurer need not be Members of the Agency.

Section 8. Additional Duties. The officers of the Agency shall perform such other duties and functions as may from time to time be required by the Agency, by the by-laws of the Agency, or by the rules and regulations of the Agency.

Section 9. Removal, Resignation, Salary, etc. Any officer elected or appointed by the Agency may be removed by the Agency with or without cause. In the event of the death, resignation or removal of an officer, the Agency in its discretion may elect a successor to fill the unexpired term at the next regular meeting of the Agency. All officers who are Members of the Agency shall serve without compensation.

Section 10. Governance Committee. (A) The Chair shall appoint a Governance Committee, to be comprised of not less than three (3) Independent Members, who shall constitute a majority on the committee, and who shall possess the necessary skills to understand the duties and functions of the Governance Committee; provided, however, that in the event that a board has less than three (3) Independent Members, the board may appoint non-Independent Members to the Governance Committee, provided that the Independent Members must constitute a majority of the Members of the Governance Committee.

(B) The Governance Committee shall: (1) keep the board informed of current best governance practices; (2) review corporate governance trends; (3) recommend updates to the Agency's corporate governance principles; (4) advise appointing authorities on the skills and experiences required of potential board Members, (5) examine ethical and conflict of interest issues, (6) perform board self-evaluations and (7) recommend by-laws which include rules and procedures for conduct of board business, and (8) advise the Board on the skills and experiences required of potential Members of the Board.

Section 11. Audit Committee. (A) The Chair shall appoint an Audit Committee, to be comprised of not less than three (3) Independent Members, who shall constitute a majority on the committee, and who shall possess the necessary skills to understand the duties and functions of the Audit Committee; provided, however, that in the event that a board has less than three (3) Independent Members, the board may appoint non-Independent Members to the Audit Committee, provided that the Independent Members must constitute a majority of the Members of the Audit Committee.

(B) Members of the Audit Committee shall be familiar with corporate financial and accounting practices.

(C) The Audit Committee shall ensure that the Agency arranges for the timely preparation and appropriate filing of the annual budget, the annual financial statements, the annual financial reports and the annual financial audit required by Article 18-A of the General Municipal Law.

(D) The Audit Committee shall recommend to the Board the hiring of a certified independent public accounting firm for the Agency, establish the compensation to be paid to the accounting firm, and provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purpose. The Audit Committee shall not recommend the hiring of a certified independent public accounting firm to provide audit services to the Agency if the Chief Executive Officer, comptroller, Chief Financial Officer, chief accounting officer, or any other person serving in an equivalent position for the Agency was employed by that certified independent public accounting firm and participated in any capacity in the audit of the Agency during the one year period preceding the date of the initiation of the audit.

(E) If the lead (or coordinating) audit partner (having primary responsibility for the audit) of the certified independent public accounting firm proposing to provide an annual independent audit for the Agency, or the audit partner responsible for reviewing the audit, has performed audit services for the Agency in each of the five (5) previous fiscal years of the Agency, the Audit Committee shall prohibit such certified independent public accounting firm from providing an annual independent audit for the Agency.

(F) The Audit Committee shall require that each certified independent public accounting firm that performs for the Agency an audit required by law shall timely report to the Audit Committee: (1) all critical accounting policies and practices to be used; (2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the Agency, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the certified independent public accounting firm; and (3) other material written communications between the certified independent public accounting firm and the management of the Agency, such as the management letter along with management's response or plan of corrective action, material corrections identified or schedule of unadjusted differences, where applicable.

(G) The Audit Committee shall prohibit the certified independent public accounting firm providing an annual independent audit for the Agency from performing any non-audit services

to the Agency contemporaneously with the audit, unless receiving previous written approval by the Audit Committee, including: (1) bookkeeping or other services related to the accounting records or financial statements of the Agency; (2) financial information systems design and implementation; (3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (4) actuarial services; (5) internal audit outsourcing services; (6) management functions, (7) broker or dealer, investment advisor, or investment banking services; and (8) legal services and expert services unrelated to the audit.

Section 11A. Finance Committee. (A) The Chair shall appoint a Finance Committee, to be comprised of not less than three (3) Independent Members, who shall constitute a majority on the committee, and who shall possess the necessary skills to understand the duties and functions of the Finance Committee; provided, however, that in the event that a board has less than three (3) Independent Members, the board may appoint non-Independent Members to the Finance Committee, provided that the Independent Members must constitute a majority of the Members of the Finance Committee.

(B) The Finance Committee shall be responsible for the following:

(i) Reviewing proposals for the issuance of debt by the Agency and its subsidiaries and to make recommendations concerning those proposals to the Members;

(ii) Making recommendations to the Members concerning the level of debt and nature of debt issued by the Agency;

(iii) Making recommendations concerning the appointment and compensation of bond counsel, investment advisors and underwriting firms used by the Agency, and to oversee the work performed by these individuals and firms on behalf of the Agency;

(iv) Meeting with and requesting information from Agency staff, independent auditors and advisors or outside counsel, as necessary to perform the duties of the committee.

(v) Annually reviewing the Agency's financing guidelines and making recommendations to the Members concerning criteria that should govern its financings;

(vi) Reporting annually to the Members how it has discharged its duties and met its responsibilities as outlined in the charter adopted by the committee; and

(vii) Conducting an annual self-evaluation of its performance, including its effectiveness and compliance with the charter and request the Member's approval for proposed changes.

(viii) Reviewing and filing the annual budget of the Agency.

Section 12. Additional Personnel. The Agency may appoint such other officers and employees as the Agency may require for the performance of its duties, and fix and determine their

qualifications, duties and compensation. The Agency may also appoint Counsel, and may retain and employ private consultants for professional and technical assistance and advice.

Section 13. Bonding of Officers. The Chair, the Treasurer, and such other officers as the Agency may require, shall execute bonds conditioned upon the faithful performance of the duties of their offices, the amount and sufficiency of which shall be specified by the Agency and the premiums thereof shall be paid by the Agency.

ARTICLE III

GENERAL PROVISIONS

Section 1. Fiscal Year. The fiscal year of the Agency shall begin on the 1st day of January.

Section 2. Annual Meetings. The annual meeting of the Agency shall be held on the third Thursday at 12:15 P.M. in January at the regular meeting place of the Agency. In the event such day shall fall on a legal holiday, the annual meeting may be scheduled to any other time or place at the will of a majority of the Members of the Agency.

Section 3. Regular Meetings. Regular meetings of the Agency shall take place monthly, on the third Thursday at 12:15 P.M. Regular meetings may be adjourned to any other time or place at the will of a majority of the Members of the Agency present and voting at such meeting.

Section 4. Special Meetings. The Chair of the Agency may, when he/she deems it desirable, and shall, upon the written request of two (2) Members of the Agency, call a special meeting of the Agency for the purpose of transacting any business designated in the notice of such meeting. Pursuant to the Public Officers Law, notice of such special meeting shall be given to the news media.

Section 5. Executive Sessions. When determined by the Agency that any matter pending before it is confidential in nature, it may, upon its own motion, establish an executive session in accordance with the NYS Open Meetings Law and exclude non-members from such sessions.

Section 6. Quorum. At all meetings of the Agency, a majority of the Members of the Agency shall constitute a quorum and the vote of a majority of the Members of the Agency shall be deemed the act of the Agency. A majority of the Members present whether or not a quorum is present may adjourn any meeting to another time and place.

Section 7. Order of Business. The order of business at regular meetings will be:

- (a) Roll call (Determination of quorum)
- (b) Reading of minutes of previous meeting
- (c) Approval of minutes of previous meeting
- (d) Report of Chief Financial Officer
- (e) Unfinished business
- (f) New business

- (g) Other
- (h) Adjournment

Section 8. Committees. The Chair, Vice Chair and Members of all committees shall be appointed by the Chair of the Agency who shall be an ex officio Member of each committee. A quorum of any committee shall consist of a majority of Members of that committee. The Chief Executive Officer shall attend all committee meetings, if requested and make such reports and recommendations as he/she deems necessary and advisable.

Section 9. Execution of Instruments. All Agency instruments and documents shall be signed or countersigned, executed, verified or acknowledged by such officer or official or other person or persons as provided in these by-laws or as the Agency may from time to time designate.

Section 10. Voting. (A) The voting on all questions coming before the Agency shall be by roll call, except as otherwise directed by the Chair, and the yeas and nays for the voting on all questions coming before the Agency shall be entered on the minutes of such meeting, except in the case of appointments when the vote may be by ballot.

(B) All resolutions of the Agency shall be passed by a majority of the Members of the Agency. In order to vote on a resolution, a Member of the Agency must be present at a meeting of the Board either in person or via videoconference.

ARTICLE IV

EXECUTIVE OFFICERS AND EMPLOYEES

Section 1. Chief Executive Officer. (A) The Chief Executive Officer shall be appointed by the Board, and shall be the chief executive officer of the Agency.

(B) The Chief Executive Officer shall have general supervision over the administration of the business and affairs of the Agency, subject to the direction of the Board. Whenever possible, the Chief Executive Officer shall attend each meeting of the Board, and shall submit such recommendations and information to the Board as the Chief Executive Officer may consider proper concerning the business, affairs and policies of the Agency.

(C) The Chief Executive Officer shall be charged with the management of all projects of the Agency.

(D) The Chief Executive Officer shall receive compensation for such services in a manner to be set by resolution of the Agency.

(E) The Chief Executive Officer shall also act as the Assistant Secretary of the Agency.

(F) The Chief Executive Officer shall also serve as the Contracting Officer of the Agency, and, as such, be responsible for (1) the disposition of property of the Agency, and (2) the Agency's compliance with the Agency's property use and disposition guidelines.

(G) Every annual financial report of the Agency must be certified in writing by the Chief Executive Officer that based on the Chief Executive Officer's knowledge (1) the information provided therein is accurate, correct and does not contain any untrue statement of material fact; (2) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and (3) fairly presents in all material respects the financial condition and results of operations of the Agency as of, and for, the periods presented in the financial statements.

Section 2. Chief Financial Officer. (A) The Chief Financial Officer shall be appointed by the Board, and shall be the chief financial officer of the Agency.

(B) The Chief Financial Officer, in coordination with the Treasurer, shall have the care and custody of all funds of the Agency and shall deposit the same in the name of the Agency in such bank or banks as the Board may select or, if the Board have not so selected a bank or banks, which the Chief Financial Officer selects.

(C) The Chief Financial Officer shall keep regular books of accounts showing receipts and expenditures, and shall render to the Audit Committee at each regular meeting thereof an account of such transactions and also of the financial condition of the Agency.

(D) The Chief Financial Officer shall give such bond for the faithful performance of his/her duties as the Agency may determine.

(E) The Chief Financial Officer shall also act as the Assistant Treasurer of the Agency.

(F) The Chief Financial Officer shall also serve as an Investment Officer of the Agency under the Agency's Investment Policy.

(G) Every annual financial report of the Agency must be certified in writing by the Chief Financial Officer that based on the Chief Financial Officer's knowledge (1) the information provided therein is accurate, correct and does not contain any untrue statement of material fact; (2) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and (3) fairly presents in all material respects the financial condition and results of operations of the Agency as of, and for, the periods presented in the financial statements.

Section 3. Additional Personnel. The Agency may from time to time employ such personnel as it deems necessary to exercise its statutory powers, duties and functions. The selection and compensation of all personnel shall be determined by the Agency.

Section 4. Financial Disclosure. Officers and employees of the Agency shall file annual financial disclosure statements with the Albany County Board of Ethics.

ARTICLE V

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Right of Indemnification. Each Member and officer of the Agency, whether or not then in office, and any person whose testator or intestate was such a Member or officer, shall be indemnified by the Agency for the defense of, or in connection with, any threatened, pending or completed actions or proceedings and appeals therein, whether civil, criminal, administrative or investigative, in accordance with and to the fullest extent permitted by the Section 18 of the Public Officers Law of the State of New York or other applicable law, as such law now exists or may hereafter be adopted or amended; provided, however, that the Agency shall provide indemnification in connection with an action or proceeding (or part thereof) initiated by such a Member or officer only if such action or proceeding (or part thereof) was authorized by the Board.

Section 2. Advancement of Expenses. (A) Expenses incurred by a Member or officer in connection with any action or proceeding as to which indemnification may be given under Section 1 of this Article V may be paid by the corporation in advance of the final disposition of such action or proceeding upon (1) the receipt of an undertaking by or on behalf of such Member or officer to repay such advancement in case such Member or officer is ultimately found not to be entitled to indemnification as authorized by this Article V and (2) approval by the Board.

(B) To the extent permitted by law, the Board shall not be required to find that the Member or officer has met the applicable standard of conduct provided by law for indemnification in connection with such action or proceeding before the Agency makes any advance payment of expenses hereunder.

Section 3. Availability and Interpretation. To the extent permitted under applicable law, the rights of indemnification and to the advancement of expenses provided in this Article V (A) shall be available with respect to events occurring prior to the adoption of this Article V, (B) shall continue to exist after any rescission or restrictive amendment of this Article V with respect to events occurring prior to such rescission or amendment, (C) shall be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding or, at the sole discretion of the Member or officer (or, if applicable, at the sole discretion of the testator or intestate of such Member or officer seeking such rights), on the basis of applicable law in effect at the time such rights are claimed and (D) shall be in the nature of contract rights that may be enforced in any court of competent jurisdiction as if the Agency and the Member or officer for whom such rights are sought were parties to a separate written agreement.

Section 4. Other Rights. The rights of indemnification and to the advancement of expenses provided in this Article V shall not be deemed exclusive of any other rights to which any Member or officer of the Agency or other person may now or hereafter be otherwise entitled, whether contained in these by-laws, a resolution of the Board or an agreement providing for such indemnification, the creation of such other rights being hereby expressly authorized. Without limiting the generality of the foregoing, the rights of indemnification and to the advancement of expenses provided in this Article V shall not be deemed exclusive of any rights, pursuant to statute or otherwise, of any Member or officer of the Agency or other person in any action or proceeding

to have assessed or allowed in his or her favor, against the Agency or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof.

Section 5. Severability. If this Article V or any part hereof shall be held unenforceable in any respect by a court of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it enforceable, and the remainder of this Article V shall remain fully enforceable. Any payments made pursuant to this Article V shall be made only out of funds legally available therefor.

ARTICLE VI

AMENDMENTS

Section 1. Amendments to By-Laws. The by-laws of the Agency shall be amended only with the approval of at least a majority of all the Members of the Agency at a regular or special meeting, but no such amendment shall be adopted unless at least seven (7) days written notice thereof has been previously given to all Members of the Agency.

ARTICLE VII

MISCELLANEOUS

Section 1. Interpretation. In these By-Laws, words of masculine gender shall mean and include correlative words of the feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa.

PART 9

EQUAL EMPLOYMENT OPPORTUNITIES

SECTION 901. PURPOSE AND AUTHORITY. The purpose of this Part is to establish procedures for the implementation of Section 858-b of Title One of Article 18-A of the General Municipal Law (the “Act”).

SECTION 902. AGENCY EMPLOYMENT. It is the policy of the City of Albany Industrial Development Agency (the “Agency”) to ensure that all employees and applicants for employment are afforded equal employment opportunity without discrimination. Accordingly, it is the policy of the Agency to prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, gender, age, disability, or marital or domestic partner status in all aspects of its personnel policies, programs, practices and operations in accordance with Title VII of the Civil Rights Act of 1964, the Human Rights Law of the State of New York and with Article I, Chapter 48 of the City Code, entitled “Office of Equal Employment Opportunity and Affirmative Action Program”.

SECTION 903. PROJECT EMPLOYMENT OPPORTUNITIES. It is the policy of the Agency that every individual within its boundaries is afforded an equal opportunity to participate fully in the life of the City, free from violation of basic civil and human rights, and to prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, gender, age, disability, or marital or domestic partner status. Accordingly, it is the policy of the Agency to encourage sponsors of projects to endeavor to comply with the provisions of Article I, Chapter 48 of the City Code, entitled “Office of Equal Employment Opportunity and Affirmative Action Program”, which prohibits such discrimination. Notwithstanding the foregoing, it is expressly understood that project sponsors shall not be directly subject to the provisions of Affirmative Action Ordinance.

(A) Listing Requirement. Except as otherwise provided by collective bargaining contracts or agreements, sponsors of projects shall list new employment opportunities which are created as a result of projects of the Agency with the Community Services Division of the New York State Department of Labor, the City Office of Equal Employment Opportunity, and with the administrative entity of the Albany, Rensselaer and Schenectady Service Delivery Area (or successor entity) created by the Federal Job Training Partnership Act (P.L. No. 97-300) where the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)), or current federal statute.

(B) First Consideration Requirement. Pursuant to the Act, except as otherwise provided by collective bargaining contracts or agreements, sponsors of projects must agree, where practicable, to first consider persons eligible to participate in the Federal Job Training Partnership programs who are referred by the Department of Human Resources or by the Community Services Division of the Department of Labor for such new employment opportunities.

(C) Guidelines for Access to Employment Opportunities. The listing and first consideration requirements of Section 858-b of the Act are substantially the same as the requirements contained in the private activity bond volume allocation act (the “Allocation Act”) enacted annually, except that such new requirements apply to every project undertaken by the Agency. The Allocation Act requires that new employment opportunities shall be listed with the New York State Department of Labor and with the one-stop career center established pursuant to the federal Workforce Investment Act (Pub. L. No. 105-220) serving the locality in which the employment opportunities are being created. Such listing shall be in a manner and form prescribed by the commissioner. All issuers shall further require that for any new employment opportunities created in connection with an industrial or manufacturing project financed through the issuance of qualified small issue bonds by such issuer, industrial or manufacturing firms shall first consider persons eligible to participate in Workforce Investment Act (Pub. L. No. 105-220) programs who shall be referred to the industrial or manufacturing firm by one-stop centers in local workforce investment areas or by the New York State Department of Labor.

PART 10

CONFLICTS OF INTEREST

SECTION 1001. PURPOSE AND AUTHORITY. The purpose of this Part is to implement Section 883 of Title One of Article 18-A of the General Municipal Law (the "Act"), which provides that Article 18 of the General Municipal Law (the "Conflict of Interest Law") applies to all members, officers and employees of City of Albany Industrial Development Agency (the "Agency").

SECTION 1002. DEFINITIONS. The definitions contained in Section 800 of the Conflict of Interest Law apply to this Part.

SECTION 1003. CONFLICTS OF INTEREST. (A) General Rule. Except as authorized by Section 802 of the Conflict of Interest Law:

(1) No member, officer or employee of the Agency shall have an interest in any contract with the Agency when such member, officer or employee, either individually or as a member of a board, has the power or duty to:

(a) negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder;

(b) audit bills or claims under the contract; or

(c) appoint an officer or employee who has any of the powers or duties set forth above.

(2) No chief fiscal officer, treasurer, or his or her deputy or employee, of the Agency shall have an interest in a bank or trust company that is designated as a depository, paying agent, registration agent or for investment of funds of the Agency.

(B) Disclosure. Except as provided in subsection (C) below, any member, officer or employee of the Agency who has, will have, or later acquires an interest in any actual or proposed contract with the Agency shall publicly disclose the nature and extent of such interest in writing to the members of the Agency as soon as he or she has knowledge of such actual or prospective interest. Such written disclosure shall be set forth in and made part of the official record of the proceedings of the Agency. Once disclosure has been made with respect to an interest in a contract with a particular person, firm, corporation or association, no further disclosures are required by

such member, officer or employee with respect to additional contracts with the same party during the remainder of the fiscal year.

(C) Disclosure Not Required. Pursuant to Section 803(2) of the Conflict of Interest Law, the disclosure required in subsection (B) above is not required in the case of an interest in a contract described in Section 802(2) of the Conflict of Interest Law.

(D) Penalties for Violations. Pursuant to Section 805 of the Conflict of Interest Law, any officer or employee of the Agency who willfully and knowingly violates the foregoing provisions of the Conflict of Interest Law, may be guilty of a misdemeanor. Furthermore, pursuant to Section 804 of the Conflict of Interest Law, any contract that is willfully entered into by or with the Agency in which there is an interest prohibited by the Conflict of Interest Law shall be null, void and wholly unenforceable.

SECTION 1004. PROHIBITED ACTIONS. (A) General. Pursuant to Section 805-a of the Conflict of Interest Law, no member, officer or employee of the Agency shall:

(1) either directly or indirectly, solicit, accept or receive any gift having a value of seventy-five dollars (\$75.00) or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended as a reward for any official action on his or her part, or that it was intended to or could reasonably be expected to influence him or her in the performance of his or her official duties;

(2) disclose confidential information acquired in the course of his or her official duties or use such information to further his or her personal interests;

(3) receive or enter into any express or implied agreement for compensation for services to be rendered in relation to any matter before the Agency; or

(4) receive or enter into any express or implied agreement for compensation for service to be rendered in relation to any matter before the Agency whereby his or her compensation is to be dependent or contingent upon any action by such Agency with respect to that matter; provided, however, that this paragraph shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

(B) Penalty for Violation. Pursuant to Section 805-a of the Conflict of Interest Law, any person who shall knowingly and intentionally violate the Conflict of Interest Law may be fined, suspended or removed from office or employment in the manner provided by law.

SECTION 1005. POSTING. The Chief Executive Officer of the Agency shall have a copy of the Conflict of Interest Law and of this Part posted in the office of the Agency in a place which is conspicuous to the officers, members and employees of the Agency.

SECTION 1006. MISCELLANEOUS PROVISIONS. (A) Financial Disclosure. Pursuant to Section 810(3) of the Conflict of Interest Law, members, officers and employees of the Agency are deemed to be officers or employees of the City of Albany for purposes of Sections 811, 812 and 813 of the Conflict of Interest Law (said sections deal generally with financial disclosure).

(B) Compensation. Pursuant to Section 858-a(1) of the Act, the compensation of an officer or full-time employee of the Agency (but not including part-time employees or consultants, including accountants, attorneys and bond counsel to the Agency) shall not be contingent on the granting of financial assistance by the Agency.

PART 5

PROCUREMENT POLICY

SECTION 501. PURPOSE AND AUTHORITY. The purpose of this Part is to outline the procurement policy of City of Albany Industrial Development Agency (the “Agency”) as set forth by the procurement policy resolution (the “Resolution”) adopted by the Agency on February 24, 1995 pursuant to Section 858-a(2) of Title One of Article 18-A of the General Municipal Law (the “Act”).

SECTION 502. SECURING GOODS AND SERVICES. All goods and services will be secured by use of written requests for proposals, written quotations, verbal quotations, or any other method that assures that goods will be purchased at the lowest price and that unfair preference will be avoided, except in the following circumstances: purchases costing less than \$500; goods purchased from agencies for the blind or severely handicapped pursuant to Section 175-b of the State Finance Law; goods purchased from correctional institutions pursuant to Section 186 of the Correction Law; purchases under State contracts pursuant to Section 104 of the General Municipal Law; purchases under county contracts pursuant to Section 103(3) of the General Municipal Law; or purchases pursuant to Section 504 of this policy.

SECTION 503. METHOD OF PURCHASE.

(A) General. The following method of purchase will be used when required by this policy in order to achieve the highest savings:

<u>Estimated Amount of Purchase Contract¹</u>	<u>Method</u>
\$500-\$2,999	2 verbal quotations
\$3,000 and above	3 written/fax quotations or written request for proposals

^{1/} Purchase Contract refers to contracts for the purchase of equipment.

<u>Estimated Amount of Public Works Contract²</u>	<u>Method</u>
\$500-\$2,999	2 verbal quotations
\$3,000-\$4,999	2 written/fax quotations
\$5,000 and above	3 written/fax quotations or written request for proposals

(B) Number of Proposals or Quotations. A good faith effort shall be made to obtain the required number of proposals or quotations. If the Agency is unable to obtain the required number of proposals or quotations, the Agency will document the attempt made at obtaining the proposals. So long as a good faith attempt is made to obtain proposals, the failure to obtain the proposals will not be a bar to the procurement.

(C) Documentation. (1) Documentation is required of each action taken in connection with each procurement.

(2) Documentation and an explanation is required whenever a contract is awarded to other than the lowest responsible offeror. This documentation will include an explanation of how the reward will achieve savings or how the offeror was not responsible. A determination that the offeror is not responsible shall be made by the Agency and may not be challenged under any circumstances.

SECTION 504. CIRCUMSTANCES WHERE SOLICITATION OF ALTERNATIVE PROPOSALS AND QUOTATIONS NOT IN BEST INTEREST. Pursuant to General Municipal Law Section 104-b(2)(f), the procurement policy may contain circumstances when, or types of procurements for which, in the sole discretion of the members of the Agency, the solicitation of alternative proposals or quotations will not be in the best interest of the Agency. In the following circumstances, it may not be in the best interests of the Agency to solicit quotations or document the basis for not accepting the lowest bid:

(A) Professional Services. Professional services or services requiring special or technical skill, training or expertise. The individual, company or firm must be chosen based on accountability, reliability, responsibility, skill, conflict of interests, reputation, education and training, judgement, integrity, continuity of service and moral worth. Furthermore, certain professional services to be provided to the Agency, e.g., legal and accounting services, impact liability issues of the Agency and its members, including securities liability in circumstances where the Agency is issuing bonds. These qualifications and the concerns of the Agency regarding its liability and the liability of its members are not necessarily found or addressed in the individual, company or firm that offers the lowest price and the nature of these services are such that they do not readily lend themselves to competitive procurement procedures.

^{2/} Public Works Contract refers to contracts for services.

In determining whether a service fits into this category, the Agency shall take into consideration the following guidelines: (a) whether the services are subject to State licensing or testing requirements; (b) whether substantial formal education or training is a necessary prerequisite to the performance of the services; and (c) whether the services require a personal relationship between the individual and Agency members. Professional or technical services shall include but not be limited to the following: services of an attorney (including bond counsel); services of a physician; technical services of an engineer engaged to prepare plans, maps and estimates; securing insurance coverage and/or services of an insurance broker; services of a certified public accountant; investment management services; printing services involving extensive writing, editing or art work; management of municipally owned property; real estate brokerage services; appraisers; and computer software or programming services for customized programs, or services involved in substantial modification and customizing of pre-packaged software.

(B) Emergency Purchases. Emergency purchases pursuant to Section 103(4) of the General Municipal Law. Due to the nature of this exception, these goods or services must be purchased immediately and a delay in order to seek alternate proposals may threaten the life, health, safety or welfare of the public. This section does not preclude alternate proposals if time permits.

(C) Purchases of Secondhand Goods. Purchases of surplus and second-hand goods from any source. It is difficult to try to compare prices of used goods and a lower price may indicate an older product.

(D) Goods or Services Under \$500. The time and documentation required to purchase through this policy may be more costly than the item itself and would therefore not be in the best interests of the taxpayer. In addition, it is not likely that such de minimis contracts would be awarded based on unfair preference.

(E) Special Findings. In the event the Agency determines that the solicitation of alternative proposals or quotations is not in the best interests of the Agency, the Agency must make such determination by resolution duly adopted and entered into the minutes of the Agency. Such resolution should include any findings described in this Section 504 supporting such determination.

SECTION 505. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN. (A) All Agency documents soliciting bids or proposals for Agency contracts shall contain or make reference to the following provisions:

1. The Agency will not discriminate against employees or applicants for employment because of race, color, religion, sex, national origin, sexual orientation, gender, age, disability, or marital or domestic partner status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For purposes of this Section, affirmative action shall mean recruitment, employment, job assignment,

promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation; and

2. The Agency shall state, in all solicitations or advertisements for employees, that, in the performance of the Agency contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, color, religion, sex, national origin, sexual orientation, gender, age, disability, or marital or domestic partner status.

(B) Any contract awarded by the Agency will include the provisions of Section 505 (A) hereof in any subcontract, in such a manner that the provisions will be binding upon each subcontractor as to work in connection with the Agency contract.

(C) The provisions of this Section 505 shall not be binding upon contractors or subcontractors in the performance of work or the provision of services or any other activity that are unrelated, separate or distinct from the Agency contract as expressed by its terms.

(D) In the implementation of this Section 505, the Agency shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this Section. The Agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such law and if such duplication or conflict exists, the Agency shall waive the applicability of this Section 505 to the extent of such duplication or conflict.

(E) The Agency shall ensure that “certified businesses” (as defined in Section 310 of the Executive Law of the State of New York) shall be given the opportunity for meaningful participation in the performance of Agency contracts and to identify those Agency contracts for which certified businesses may best bid to actively and affirmatively promote and assist their participation in the performance of Agency contracts so as to facilitate the award of a fair share of Agency contracts to such businesses.

SECTION 506. POLICY REVIEW. This policy will be reviewed annually.

PART 22

PROJECT MONITORING AND ENFORCEMENT

SECTION 2201. PURPOSE AND AUTHORITY. The purpose of this Part is to outline the procedures utilized by the City of Albany Industrial Development Agency (the “Agency”) pursuant to Section 903-a of the General Municipal Law and Title One of Article 18-A of the General Municipal Law (collectively, the “Act”) to (A) monitor compliance with Agency requirements relating to the exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (the “Financial Assistance”) provided for authorized projects and (B) review satisfaction of the Agency requirements relating to job creation, retention and reporting. Under the Act, the Agency was created in order to advance the job opportunities, health, general prosperity, and economic welfare of the people of the State and to improve their standard of living.

SECTION 2202. JOB CREATION, RETENTION, AND PUBLIC BENEFITS. When considering applications for Financial Assistance, the Agency will consider and review the job creation and retention information contained in the application completed by the applicant. Further, the applicant for each approved project must enter into a project benefits agreement with the Agency (the “Project Benefits Agreement”) where the applicant agrees (A) that the amount of Financial Assistance to be received shall be contingent upon, and shall bear a direct relationship to the success or lack of success of such project in delivering certain described public benefits (the “Public Benefits”) and (B) the Agency will be entitled to recapture some or all of the Financial Assistance granted to the applicant if the project is unsuccessful in whole or in part in delivering the promised Public Benefits.

SECTION 2203. REQUIREMENTS OF THE APPLICANT.

(A) Background. Under the Act, the Agency is required to submit certain annual reports relating to Agency projects to the New York State Office of the Comptroller and to the New York State Authorities Budget Office. In order to satisfy its annual reporting requirements and other requirements under the Act, as well as policies of the Agency, the Agency will require applicants for Financial Assistance to satisfy the requirements described in Section 2203(B) below.

(B) Applicant Requirements. Each applicant for Financial Assistance from the Agency will agree to satisfy the following requirements as a condition to the receipt of such Financial Assistance:⁴

(1) Except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the “DOC”) and with the administrative entity (collectively with the DOC, the “JTPA Entities”) of the service delivery area created by the federal job training partnership act (Public Law 97-300) (“JTPA”), as replaced by the Workforce Investment Act of 1998 (Public Law 105-220), where the Project is located.

(2) Except as otherwise provided by collective bargaining agreements, where practicable, the applicant will first consider persons eligible to participate in the JTPA programs who shall be referred by the JTPA Entities for new employment opportunities created as a result of the project.

(3) The applicant agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the Applicant, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation.

(4) Within sixty (60) days after the end of each calendar year, the applicant shall furnish to the Agency a certificate of an Authorized Representative of the applicant stating that no event of default under an installment sale agreement or a lease agreement (hereinafter collectively referred to as the “Project Agreement”) has occurred or is continuing or, if any event of default exists, specifying the nature and period of existence thereof and what action the applicant has taken or proposes to take with respect thereto, and setting forth the unpaid principal balance of any bonds and accrued but unpaid interest thereon and that no defenses, offsets or counterclaims exist with respect to the indebtedness evidenced thereby.

(5) The applicant shall insure that all employees and applicants for employment with regard to the project are afforded equal employment opportunities without discrimination.

(6) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the applicant agrees to file with the Agency, no later than sixty (60) days after the end of each calendar year, reports regarding the number of people employed at the project facility and certain other matters, the initial said report to be in

⁴ The requirements described in Section 2203(B)(9) are applicable for projects where the application was received by the Agency after March 19, 2015, unless otherwise required in the documents entered into by the Agency with the project applicant.

substantially the form annexed as Schedule A attached hereto, and subsequent reports to be in the form annexed as Schedule B attached hereto.

(7) Pursuant to Section 874(8) of the Act, the applicant agrees to annually file and cause any other directly appointed operator of the project facility to file annually, with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (“Form ST-340”), a statement of the value of all sales and use tax exemptions claimed by the applicant and all contractors, subcontractors, consultants and other agents of the applicant under the authority granted to the applicant pursuant to an installment sale agreement and/or a lease agreement and/or a final inducement resolution and/or a sales tax exemption letter.

(8) The applicant agrees, if applicable, within sixty (60) days of the end of each calendar year, to furnish to the Agency a copy of each ST-340 submitted to the New York State Department of Taxation and Finance by the applicant pursuant to Section 874(8) of the Act.

(9) The applicant agrees, within sixty (60) days of the end of each calendar year until the project is terminated, to furnish to the Agency a copy of the NYS-45 – Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return – for the quarter ending December 31 (the “NYS-45”), and the US Dept. of Labor BLS 3020 Multiple Worksite report if applicable.

(10) The applicant agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the participation of individuals from minority groups as employees or applicants for employment with regard to the project.

SECTION 2204. PROJECT MONITORING.

(A) Monitoring. Agency project monitoring shall include but not be limited to the following:

(1) requesting and reviewing the items outlined in Section 2203(B) and any and all items required to be submitted by an applicant pursuant to the following, including but not limited to: statute, Agency policy, a Project Agreement, or a Project Benefits Agreement; and

(2) confirming with the City Treasurer’s Office and the City Assessor the status of any unpaid payment in lieu of tax (“PILOT”) payments; and

(3) providing for on-site visits of projects identified by the Agency in the calendar year.

(B) Annual Reports. Within seventy-five (75) days after the end of each calendar year, the staff of the Agency will provide the Agency with an annual report describing the compliance

by applicants with the requirements described in Section 2203(B) above and the results of the project monitoring described in Section 2204(A), including the filing of annual reports, the amount of sales tax exemption received for a project, and the number of jobs created and retained by the applicant.

(C) Agency Review. The Agency will review the report prepared by the staff of the Agency at a regular meeting of the Agency. After the review of the report prepared by the staff of the Agency, the Agency will take such action as it deems necessary, including but not limited to, (1) scheduling meetings with applicants to review non-compliance and to discuss remedial actions, (2) considering enforcement action against applicants that fail to comply with the requirements described in Section 2203(B) above, as described in Section 2205 below, (3) considering enforcement action against applicants based on the results of the project monitoring described in Section 2204(A), as described in Section 2205 below, and (4) preparation of letters of commendation or other forms of congratulation to those applicants that have created and/or retained jobs consistent with (or in excess of) the estimates contained in the applicant's original application to the Agency.

(D) PILOT Agreements. (1) Prior to distribution of the PILOT payment bills, the staff of the Agency will confirm with the City Treasurer's Office and the City Assessor the payment amounts for such PILOT bills for the current fiscal year.

(2) The staff of the Agency will also confirm with the City Treasurer's Office and the City Assessor the status of new projects closed in the prior calendar year and the termination of projects whose PILOT term expired or project facility was reconveyed to the applicant.

(E) Reconveyance. (1) Annually the staff of the Agency will review the Project Agreements of all Active Projects to determine if the Project Agreement has expired and the project facility should be reconveyed to the applicant and placed on the taxable roll of the City of Albany.

(2) Annually the staff of the Agency will confirm with the City Treasurer's Office and the City Assessor that a particular project facility should be reconveyed to the applicant and placed on the taxable roll of the City of Albany.

(3) Annually the staff of the Agency will also notify the applicant and work with the applicant and the Agency to file the appropriate documents to place the project on the taxable roll of the City of Albany.

SECTION 2205. ENFORCEMENT.

(A) General. Upon completion of the report prepared by the staff of the Agency described in Section 2204(C) above and review of such report by the members of the Agency, the Agency may, after consultation with the staff of the Agency and counsel, initiate enforcement action against applicants as determined by the Agency.

(B) Enforcement Action. Enforcement action by the Agency may include, but not be limited to, the following:

- (1) Requesting the information and/or compliance by a final notice letter.
- (2) Forwarding an event of default notice to the involved parties, including the lender.
- (3) Notifying appropriate New York State agencies of (a) the applicant's failure to comply with the requirements of Section 2203(B) above or (b) the negative results of the project monitoring in Section 2204(A) above.
- (4) Terminating the Financial Assistance provided by the Agency.
- (5) Recapturing some or all of the Financial Assistance granted to the applicant pursuant to the Project Benefits Agreement, if applicable.
- (6) In the event of any failure by an applicant to make any required PILOT payment, to coordinate with the City of Albany and any other affected taxing jurisdiction in the recovery of such due payment.

SCHEDULE A

INITIAL EMPLOYMENT REPORT

[Please Confirm/Complete Either of the Two Alternative Provisions]

The initial employment plan for the Project is as described in the Application dated _____, 20__ and delivered to the IDA.

OR

Project or Company Name: _____

1. Number of Full Time Employees at the Project Site before IDA status _____
2. Estimate of Jobs to be Created _____
3. Estimate of Jobs to be Retained _____
4. Estimated Average Annual Salary of Jobs to be Created _____
5. Estimated Annualized Salary Range of Jobs to be Created _____
6. Estimated Average Annual Salary of Jobs to be Retained _____
7. Please complete the following tables:

PROJECTED CONSTRUCTION EMPLOYMENT IMPACT

Please provide estimates of total construction jobs and the total annual wages and benefits of construction jobs at the Project:

Year	Number of Construction Jobs	Total Annual Wages and Benefits	Estimated Additional NYS Income Tax
Current Year		\$ _____	\$ _____
Year 1		\$ _____	\$ _____
Year 2		\$ _____	\$ _____
Year 3		\$ _____	\$ _____
Year 4		\$ _____	\$ _____
Year 5		\$ _____	\$ _____

PROJECTED PERMANENT EMPLOYMENT IMPACT

Please provide estimates of total number of existing permanent jobs to be preserved or retained as a result of the Project:

Year	Professional	Skilled	Semi-Skilled	Unskilled
Current Year				
Year 1				
Year 2				
Year 3				
Year 4				
Year 5				

Please provide estimates of total new permanent jobs to be created at the Project:

Year	Professional	Skilled	Semi-Skilled	Unskilled
Current Year				
Year 1				
Year 2				
Year 3				
Year 4				
Year 5				

SCHEDULE B
SUBSEQUENT EMPLOYMENT REPORT

FORM OF ANNUAL EMPLOYMENT VERIFICATION/COMPLIANCE REPORT

Project or Company Name: _____

1. Original Estimate of Jobs to be Created and Retained (from the project application)..... _____
2. Number of Current Full Time Employees (as of end of Report Year)..... _____
3. Number of Full Time Construction Jobs During Fiscal Year (Report Year)..... _____
4. If "Original Estimate of Jobs to be Created and Retained" does not equal "Number of Current Full Time Employees (as of end of Report Year)," please explain:

5. Did the Company receive a mortgage recording tax exemption in Report Year (Y/N)? _____
If yes, indicate the amount (\$) of mortgage recording tax exemption received in Report Year _____

6. Did the Company receive a real property tax exemption in Report Year (Y/N)? _____
If yes, indicate if the Company has paid its annual PILOT payments in Report Year (Y/N)... _____
If outstanding Report Year PILOT payments remain due, please explain:

7. Did the Company receive a sales tax exemption in Report Year (Y/N)? _____
If yes, ***please attach*** a copy of a filed NYS Dept. of Taxation and Finance Form **ST-340** Annual Report of Sales and Use Tax Exemptions for Report Year (applicable to projects with sales tax exemption letters for construction phase).

8. Does the Company have a Project Benefit Agreement (Y/N)? _____

If yes, ***please attach*** a copy of a filed Report Year **NYS-45** Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return for the last payroll date in the month of December of Report Year.

9. **Attach** an updated Certificate of Insurance naming the Agency as “Additional Insured.” Please refer to your Project Documents for information about required insurance.
10. Has an event of default under the Project Documents occurred or is continuing during the Report Year?

(Y/N) _____ If yes, please explain: _____

CERTIFICATION

I hereby certify that I am the owner of the project site or am the duly authorized representative and may sign this data submission on behalf of the owner(s) of said project site. I have read and understand all of the requirements contained within the Project Documents and I have read the foregoing Annual Employment Verification/Compliance Report and know the contents thereof; and that the same is true and complete and accurate to the best of my knowledge.

Name (Print)

Title

Signature

Phone Number

E-mail Address

Company Mailing Address

PART 25

POLICY RESPECTING RECAPTURE OF PROJECT BENEFITS

SECTION 2501. PURPOSE AND JUSTIFICATION. (A) The purpose of this Policy is to outline the procedures utilized by City of Albany Industrial Development Agency (the “Agency”) to review compliance with (1) the requirements of the Agency relating to job creation and/or retention, other expected public benefits and reporting and (2) the requirements of the State of New York (the “State”) relating to sales tax exemptions and reporting.

(B) The Agency was created pursuant to Section 903-a of Title 2 of Article 18-A of the General Municipal Law and Title 1 of Article 18-A the General Municipal Law (collectively, the “Act”) for the purpose of promoting employment opportunities for, and the general prosperity and economic welfare of, residents of the City of Albany and the State. Under the Act, the Agency was created in order to advance the job opportunities, health, general prosperity, and economic welfare of the residents of the City of Albany, New York (the “City”) and of the State.

(C) The Agency has been advised that a number of other industrial development agencies have adopted policies that (1) contain provisions allowing the industrial development agency to recapture certain financial benefits provided by said agency to a project applicant if said project applicant does not fulfill certain job creation promises contained in its application or fails to fulfill certain other promises made to said agency and (2) allow said agency to take into account exigent circumstances in deciding whether to exercise these provisions respecting the recapture of said financial benefits.

(D) Chapter 59 of the Laws of 2013 (Part J), effective March 28, 2013 (the “2013 Budget Law”), enacted March 28, 2013, established new recordkeeping, reporting, and recapture requirements for industrial development agency projects that receive sales tax exemptions.

(E) The new sales tax recording and reporting requirements required by the 2013 Budget Law include the following: (1) a requirement to keep records of the amount of sales tax benefits provided to each project and make those records available to the State upon request; (2) a requirement to report to the State, within 30 days after providing financial assistance, the amount of sales tax benefits intended to be provided to a project; and (3) a requirement that the Agency post on the internet and make available without charge copies of its resolutions and agreements appointing an agent or project operator or otherwise related to any project it establishes. A project operator (“Project Operator”) is appointed by the Agency through the filing of form ST-60 with the New York State Department of Taxation and Finance.

(F) The 2013 Budget Law requires that the Agency recapture State sales tax benefits where: (1) the project is not entitled to receive those benefits; (2) the exemptions exceed the amount authorized or are claimed for unauthorized property or services; or (3) the Project Operator failed to use property or services in the manner required by its agreements with the Agency.

(G) For purposes of this Policy, with respect to a particular calendar year and a particular project, the term “financial assistance” shall include the following:

(1) Proceeds of debt obligations issued by the Agency with respect to said project have been disbursed during the calendar year in question.

(2) Any tax exemption or abatement (a) which may have directly or indirectly benefitted the project or Project Operator shall during such calendar year and (b) which resulted from (i) the Agency’s title to, possession of or, control of or other interest in said project, or (ii) the designation by the Agency of said project occupant (or any sublessee, contractor, supplier or other operator of the project) as an agent of the Agency.

(3) Any grant made by the Agency with respect to said project or Project Operator shall during such calendar year.

(4) Any loan made by the Agency with respect to said project or Project Operator shall during such calendar year.

(H) For purposes of this Policy, with respect to a particular project, the term “Project Agreements” shall mean the project documents between the Agency and an applicant with respect to the applicant’s project. In addition to a lease agreement or installment sale agreement between the Agency and the applicant, the Project Agreements may also include a payment in lieu of tax agreement, a project agreement, and one or more recapture agreements, as well as security agreements intended to ensure compliance by the applicant with the requirements of the Project Agreements.

SECTION 2502. REQUIREMENTS FOR APPLICANTS. (A) Under the Act, the Agency is required to submit certain annual reports relating to Agency projects to the New York State Office of the Comptroller. In order to satisfy its annual reporting requirements and other requirements under the Act and certain other requirements imposed by the Act, as well as the new requirements imposed upon the Agency by the 2013 Budget Law, the Agency will require each applicant for financial assistance from the Agency agree to satisfy the following requirements as a condition to the receipt of such financial assistance:

(1) Any applicant requesting a sales tax exemption from the Agency must include in the application a realistic estimate of the value of the savings anticipated to be received by the applicant. Each applicant is hereby warned to provide a realistic estimate in the application, as the 2013 Budget Law and the regulations expected to be enacted thereunder are expected to require that the Agency recapture any benefit that exceeds the greater of (a) the amount listed in said application or (b) authorized by the Agency in a separate resolution.

(2) Any applicant requesting a sales tax exemption from the Agency must agree to annually file (and cause any sublessee, contractor, supplier or other operator of the project to file annually) with the State, on a form and in such manner as is prescribed by the State, a statement of the value of all sales and use tax exemptions claimed by the applicant and all contractors, subcontractors, consultants and other agents of the applicant under the authority granted to the applicant by the Agency.

(3) Any applicant requesting a sales tax exemption from the Agency must agree to furnish to the Agency a copy of each such annual report submitted to the State by the applicant or any sublessee, contractor, supplier or other operator of the project.

(4) As required by the 2013 Budget Law, the Project Agreements will provide that any sales tax benefits determined by the Agency to be subject to recapture pursuant to the 2013 Budget Law must be remitted by the applicant to the Agency within 20 days of a request therefor by the Agency.

(5) The applicant agrees that, as required by the 2013 Budget Law, the resolutions of the Agency with respect to the project and the Project Agreements will now be publicly available on the Agency's website. As provided in the New York Freedom of Information Law ("FOIL"), the applicant may request that certain information contained therein be redacted and, if the applicant can demonstrate to the satisfaction of the Agency that release of said information would result in substantial harm to the applicant's competitive position, the Agency may comply with such request.

(6) Except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the "DOC") and with the administrative entity (collectively with the DOC, the "JTPA Entities") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA"), as replaced by the Workforce Investment Act of 1998 (Public Law 105-220), where the Project is located.

(7) Except as otherwise provided by collective bargaining agreements, where practicable, the applicant will first consider persons eligible to participate in JTPA programs who shall be referred by JTPA Entities for new employment opportunities created as a result of the Project.

(8) The applicant agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the Applicant, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation.

(9) Within sixty (60) days after the end of each calendar year, the applicant shall furnish to the Agency a certificate of an Authorized Representative of the applicant

stating that no event of default under the Project Agreements has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the applicant has taken or proposes to take with respect thereto, and setting forth the unpaid principal balance of the Bonds and accrued but unpaid interest thereon and that no defenses, offsets or counterclaims exist with respect to the indebtedness evidenced thereby.

(10) The applicant shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination.

(11) The applicant agrees to file with the Agency, no later than sixty (60) days after the end of each calendar year, reports regarding the number of people employed at the project and certain other matters.

(B) In order to ensure that the project will create the public benefits anticipated by the Agency accruing to the residents and taxpayers of the City, the Project Agreements will require that each Agency Project Operator agree that, annually, within 60 days of the end of each calendar year during which a project has received any financial assistance from the Agency, such Agency Project Operator will complete and file with the Agency an annual report (the "Operator Annual Report") describing the status of the project during the calendar year just completed, including such information as: jobs projected to be created/retained; estimated salary of jobs to be created/retained; current number of jobs; construction jobs created through the year; exemptions from taxes and payments in lieu of tax made; status of local labor; and status of bond financing related to the project.

SECTION 2503. ENFORCEMENT.(A) The Agency will use the information contained in the Operator Annual Report, and may use site visits and follow-ups, to gauge the status of a project in relation to the original commitment of the applicant as stated in the project application.

(B) Should the staff or board members of the Agency find significant deficiencies in any area; the project will be further reviewed. Examples of situations that may trigger review and/or action by the Agency include:

(1) If the Project Operator shifts production activity to a facility outside of the City and, as a result, fails to achieve the economic benefits projected;

(2) If the Project Operator moves all operations outside the City, neglects to move operations to the City, or the project does not otherwise conform to the project described in the Project Agreements;

(3) If a significant shortfall in economic benefits is identified, as compared with the application, such as a significant shortfall in new job creation/retention and/or expected major investments in the business;

(4) Failure to comply with annual reporting requirements or provide the Agency with requested information; or

(5) Closure of a project within the time period the applicant receives Agency financial assistance.

(C) Should the staff or board members of the Agency find significant deficiencies in the achievement of the economic benefits promised as described in the application and the Project Agreements, the Project Operator will be asked to provide justification for said shortfalls. The board members of the Agency will compare these statements against industry standards, as well as the current market and economic conditions, to determine whether the Project Operator did all that it could to meet its obligations as outlined in the application and the Project Agreements.

(D) The board members of the Agency will determine on a case by case basis whether a hearing is appropriate to allow a Project Operator to be heard on the issue regarding said Project Operator's failure to achieve the projected economic benefits.

(E) Should the board members of the Agency find that (1) significant deficiencies in the achievement of the economic benefits promised as described in the application and the Project Agreements have occurred and (2) there appears to be no justification satisfactory to the Agency to explain these deficiencies, the Agency may determine to undertake any enforcement action available to the Agency under the Agency Agreements to seek redress for these deficiencies.

(F) Enforcement action taken by the Agency under the Agency Documents may include, but shall not be limited to, the following:

(1) Requesting cure of the deficiency by a final notice letter.

(2) Forwarding an event of default notice under the Project Agreements.

(3) Notifying appropriate New York State agencies of the Project Operator's failure to comply with such requirements.

(4) Terminating any or all of the Project Agreements early.

(5) Reducing the value of financial assistance moving forward.

(6) Terminating any future financial assistance.

(7) Requiring that the value of all the financial assistance utilized to date to be repaid in full or in part.

(G) In connection with the undertaking of a Project and/or the preparation of Project Agreements, the Agency also reserves the right to negotiate the terms and conditions of these recapture provisions.

SECTION 2504. EFFECTIVE DATE. This policy shall be effective with respect to any project undertaken by the Agency where receipt of the application for the project occurs after the date of approval of this Policy.

MEMO

TO: City of Albany Industrial Development Agency Governance Committee

FROM: City of Albany Industrial Development Agency Staff

RE: Annual Review of Governance Committee Charter

DATE: October 12, 2018

Pursuant to the Governance Committee Charter, it is a requirement and best practice that the committee review its charter annually.

SCHEDULE J

GOVERNANCE COMMITTEE CHARTER

Purpose

Pursuant to the Agency's by-laws, the purpose of the Governance Committee is to assist the Board by:

Keeping the Board informed of current best practices in corporate governance;

Reviewing corporate governance trends for their applicability to the Agency.

Updating the Agency's corporate governance principles and governance practices;
and

Advising those responsible for appointing directors to the Board on the skills, qualities and professional or educational experiences necessary to be effective Board members.

Powers of the Governance Committee

The Board of Directors has delegated to the Governance Committee the power and authority necessary to discharge its duties, including the right to:

Meet with and obtain any information it may require from Agency staff.

Obtain advice and assistance from in-house or outside counsel, accounting and other advisors as the committee deems necessary.

Retain, at the Agency's expense, such outside counsel, experts and other advisors as the Governance Committee may deem appropriate.

The Agency board will ensure that the Governance Committee has the sufficient resources to carry out its duties.

Composition and Selection

The membership of the committee shall be as set forth in accordance with and pursuant to the Agency's by-laws. The members shall serve until their resignation, retirement, removal by the Board or until their successors shall be appointed and qualified. When feasible, the immediate past Governance Committee Chair will continue serving as a member of the Committee for at least one year to ensure an orderly transition.

Governance committee members shall be prohibited from being an employee of the Agency or an immediate family member of an employee of the Agency. In addition, Governance Committee members shall not engage in any private business transactions with the Agency or receive compensation from any private entity that has material business relationships with the authority, or be an immediate family member of an individual that engages in private business transactions with the Agency or receives compensation from an entity that has material business relationships with the Agency.

The Governance Committee members should be knowledgeable or become knowledgeable in matters pertaining to governance.

Meetings

The Governance Committee will meet a minimum of twice a year, with the expectation that additional meetings may be required to adequately fulfill all the obligations and duties outlined in the charter.

Members of the Governance Committee are expected to attend each committee meeting, in person or via videoconference. The Governance Committee may invite other individuals, such as members of management, auditors or other technical experts to attend meetings and provide pertinent information, as necessary. A majority of the committee members present or participating through videoconference shall constitute a quorum.

Meeting agendas shall be prepared prior to every meeting and provided to Governance Committee members along with briefing materials five (5) calendar days before the scheduled Governance Committee meeting. The Governance Committee may act only on the affirmative vote of a majority of the members. Minutes of these meetings shall be recorded.

Minutes of the committee's meeting shall be prepared and filed in the records of the Agency and posted to the Agency's webpage.

Meetings of the committee are open to the public, and the committee shall be governed by the rules regarding public meetings set forth in the applicable provisions of the Public Authorities Law and Article 7 of the Public Officers Law that relate to public notice and the conduct of executive session.

Reports

The Governance Committee shall:

Report its actions and recommendations to the Board at the next regular meeting of the Board.

Report to the Board, at least annually, regarding any proposed changes to the governance charter or the governance guidelines.

Provide a self-evaluation of the Governance Committee's functions on an annual basis.

Responsibilities

To accomplish the objectives of good governance and accountability, the Governance Committee has responsibilities related to: (a) the Agency's Board; (b) evaluation of the Agency's policies; and (c) other miscellaneous issues.

Relationship to the Agency's Board

The Board of Directors has delegated to the Governance Committee the responsibility to review, develop, draft, revise or oversee policies and practices for which the Governance Committee has specific expertise, as follows:

Develop the Agency's governance practices. These practices should address transparency, independence, accountability, fiduciary responsibilities, and management oversight.

Develop the competencies and personal attributes required of Directors to assist those authorized to appoint members to the Board in identifying qualified individuals. In addition, the Governance Committee shall:

Develop and recommend to the Board the number and structure of committees to be created by the Board.

Develop and provide recommendations to the Board regarding Board member education, including new member orientation and regularly scheduled board member training to be obtained from state-approved trainers.

Develop and provide recommendations to the Board on performance evaluations, including coordination and oversight of such evaluations of the board, its committees and senior management in the Agency's governance process.

Evaluation of the Agency's Policies

The Governance Committee shall:

Develop, review on a regular basis, and update as necessary the Agency's code of ethics and written policies regarding conflicts of interest. Such code of ethics and policies shall be at least as stringent as the laws, rules, regulations and policies applicable to state officers and employees.

Develop and recommend to the Board any required revisions to the Agency's written policies regarding the protection of whistleblowers from retaliation.

Develop and recommend to the Board any required revisions to the Agency's equal opportunity and affirmative action policies.

Develop and recommend to the Board any required updates on the Agency's written policies regarding procurement of goods and services, including policies relating to the disclosure of persons who attempt to influence the Agency's procurement process.

Develop and recommend to the Board any required updates on the authority's written policies regarding the disposition of real and personal property.

Develop and recommend to the Board any other policies or documents relating to the governance of the Agency, including rules and procedures for conducting the business of the Agency's Board, such as the Agency's by-laws. The Governance Committee will oversee the implementation and effectiveness of the by-laws and other governance documents and recommend modifications as needed.

Other Responsibilities

The Governance Committee shall:

Annually review, assess and make necessary changes to the Governance Committee charter and provide a self-evaluation of the Governance Committee.