



6560 Dysinger Road  
Lockport, New York 14094-7970

Tel (716) 439-9535  
Fax (716) 439-9715

[www.LockportEconomicDevelopment.com](http://www.LockportEconomicDevelopment.com)  
Email: [LED@elockport.com](mailto:LED@elockport.com)

## Town of Lockport Industrial Development Agency

### **2017 Policy Manual**

Code of Ethics

Whistleblower

Travel

Investment

Property Disposition

Procurement Policy

Defense & Indemnification

Compensation of Chief Executive Officer

Real Property Acquisition

Financial Management Practices

Mission Statement & Performance Goals

Uniform Tax Exemption Policy and Guidelines

Sales and Use Tax Clawback Policy

**ADOPTED – July 12, 2007**

**Revised and Adopted January 11, 2018**



## **POLICY MANUAL**

### **TABLE OF CONTENTS**

	<b>Page Number</b>
Table of Contents	2
Code of Ethics	3
Whistleblower Policy	5
Travel Policy	8
Investment Policy	9
Property Disposition Policy	14
Procurement Policy	18
Defense & Indemnification Policy	23
Compensation of Chief Executive Officer	28
Real Property Acquisition Policy	28
Financial Management Practices	30
Mission Statement	30
Performance Goals	30
Uniform Tax Exemption Policy and Guidelines	31
Sales and Use Tax Clawback Policy	37

**TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY**  
**CODE OF ETHICS**

**Originally ADOPTED JULY 2007**

Statement of Purpose:

The Code of Ethics is a public statement by the Agency that sets clear expectations and principles to guide practice and inspire professional excellence. The Agency believes a commonly held set of principles can assist in the individual exercise of professional judgment. This Code speaks to the core values of public accountability and transparency. The purpose of having a code of ethics and practices is to protect the credibility of the Agency by ensuring high standards of honesty, integrity, and conduct of staff. To that end, this Code of Ethics attempts to accomplish this by articulating the ethical standards observed by the Agency in pursuing and implementing economic development initiatives, and setting rules and policies that prevent conflicts of interest.

Rule with respect to conflicts of interest:

No officer, member of the board or employee 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 or her duties in the public interest.

Standards:

a. No officer, member of the board or employee should accept other employment which will impair his or her or her independence of judgment in the exercise of his or her or her official duties.

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

c. No officer, member of the board or employee should disclose confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests.

d. No officer, member of the board or employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself, herself or others.

e. No officer, member of the board or employee should engage in any transaction as representative or agent of the Agency with any business entity in which he or she has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his or her official duties. If an officer, member or employee has or believe to have a conflict of interest, he or she must immediately disclose the same to the Chairman and the Chairman shall disclose the conflict at a meeting. In the case of a conflict, the member shall recuse him or herself from voting and any member, officer or employee shall abstain from any activity with regard to the entity which causes such conflict of interest.

f. An officer, member of the board or employee should not by his or her conduct give reasonable basis for the impression that any person can improperly influence him or her, unduly enjoy his or her favor in the performance of his or her official duties, or that he or she is affected by the kinship, rank, position or influence of any party or person.

g. An officer or employee should abstain from making personal investments in enterprises which he or she has reason to believe may be directly involved in decisions to be made by him or her, or which will otherwise create substantial conflict between his or her duty in the public interest and his or her private interest.

h. An officer or employee should endeavor to pursue a course of conflict which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.

i. No officer, except the Assistant Secretary, or employee 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, member of the board or

employee, should sell goods or services to any person, firm, corporation or association which receive financial assistance from the Agency.

j. If an officer or employee shall have a financial interest, direct or indirect, having a value of ten thousand dollars or more in any activity which is the subject of an Agency Project (as such term is defined in Article 18-A of the General Municipal Law, he or she must file with Agency a written statement that he or she has such a financial interest in such activity which statement shall be open to public inspection.

k. No officer, member of the board or employee of shall accept or arrange for any loan or extension of credit from the Agency or any affiliate of the Agency.

Violations:

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

TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY

**WHISTLEBLOWER POLICY**

**Originally Adopted February 2012**

**Purpose**

It is the policy of the Town of Lockport Industrial Development Agency (IDA) to afford certain protections to individuals who, in good faith, report violations of the Town of Lockport Industrial Development Agency's Code of Ethics or other instances of potential wrongdoing within the IDA. The Whistleblower Policy and Procedures set forth below are intended to encourage and enable employees to raise concerns in good faith within the IDA and without fear of retaliation or adverse employment action.

**Definitions**

"Good Faith": Information concerning potential wrongdoing is disclosed in "good faith" when the individual making the disclosure reasonably believes such information to be true and reasonably believes that it constitutes potential wrongdoing.

"IDA Employee": All board members, and officers and staff employed at this Public Authority whether full-time, part-time, employed pursuant to contract, employees on probation and temporary employees.

"Whistleblower": Any IDA Employee (as defined herein) who in good faith discloses information concerning wrongdoing by another IDA employee, or concerning the business of the IDA itself.

"Wrongdoing": Any alleged corruption, fraud, criminal or unethical activity, misconduct, waste, conflict of interest, intentional reporting of false or misleading information, or abuse of authority engaged in by an IDA Employee (as defined herein) that relates to the IDA.

"Personnel action": Any action affecting compensation, appointment, promotion, transfer, assignment, reassignment, reinstatement or evaluation of performance.

### **Section I: Reporting Wrongdoing**

All IDA Employees who discover or have knowledge of potential wrongdoing concerning board members, officers, or employees of this IDA; or a person having business dealings with this IDA; or concerning the IDA itself, shall report such activity in accordance with the following procedures:

- a) The IDA Employee shall disclose any information concerning wrongdoing either orally or in a written report to his or her supervisor, or to the IDA's ethics officer, general counsel or human resources representative.
- b) All IDA Employees who discover or have knowledge of wrongdoing shall report such wrongdoing in a prompt and timely manner.
- c) The identity of the whistleblower and the substance of his or her allegations will be kept confidential to the best extent possible.
- d) The individual to whom the potential wrongdoing is reported shall investigate and handle the claim in a timely and reasonable manner, which may include referring such information to the IDA Budget Office or an appropriate law enforcement agency where applicable.
- e) Should an IDA Employee believe in good faith that disclosing information within the IDA pursuant to Section 1(a) above would likely subject him or her to adverse personnel action or be wholly ineffective, the IDA Employee may instead disclose the information to the Authorities Budget Office or an appropriate law enforcement agency, if applicable. The Authorities Budget Office's toll free number (1-800-560-1770) should be used in such circumstances.

## **Section II: No Retaliation or Interference**

No IDA Employee shall retaliate against any whistleblower for the disclosure of potential wrongdoing, whether through threat, coercion, or abuse of authority; and, no IDA Employee shall interfere with the right of any other IDA Employee by any improper means aimed at deterring disclosure of potential wrongdoing. Any attempts at retaliation or interference are strictly prohibited and:

- a) No IDA Employee who in good faith discloses potential violations of this IDA's Code of Ethics or other instances of potential wrongdoing, shall suffer harassment, retaliation or adverse personnel action.
- b) All allegations of retaliation against a Whistleblower or interference with an individual seeking to disclose potential wrongdoing will be thoroughly investigated by this IDA.
- c) Any IDA Employee who retaliates against or had attempted to interfere with any individual for having in good faith disclosed potential violations of this IDA's Code of Ethics or other instance of potential wrongdoing is subject to discipline, which may include termination of employment.
- d) Any allegation of retaliation or interference will be taken and treated seriously and irrespective of the outcome of the initial complaint, will be treated as a separate matter.

## **Section III: Other Legal Rights Not Impaired**

The Whistleblower Policy and Procedures set forth herein are not intended to limit, diminish or impair any other rights or remedies that an individual may have under the law with respect to disclosing potential wrongdoing free from retaliation or adverse personnel action.

- a) Specifically, these Whistleblower Policy and Procedures are not intended to limit any rights or remedies that an individual may have under the laws of the State of New York, including but not limited to the following provisions: Civil Service Law § 75-b, Labor Law § 740, State Finance Law § 191 (commonly known as the "False Claims Act"), and Executive Law § 55(1).
- b) With respect to any rights or remedies that an individual may have pursuant to Civil Service Law § 75-b or Labor Law § 740, any employee who wishes to preserve such rights shall prior to disclosing information to a government body, have made a good faith effort to provide the appointing authority or his or her designee the information to be disclosed and shall provide the

appointing authority or designee a reasonable time to take appropriate action unless there is imminent and serious danger to public health or safety. (See Civil Service Law § 75-b[2][b]; Labor Law § 740[3]).

**TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY**  
**TRAVEL POLICY**

**Originally Adopted July 2007**

The Town of Lockport Industrial Development Agency (hereinafter the "Agency") adopted the following travel policy for employees and Board Members on July 12, 2007.

Mileage shall be reimbursed to any employee or Board member at the current rate established by the Town of Lockport for any travel associated with their official duties, except for regular travel to and from work or regular travel to and from Board or subcommittee meetings held at a Town of Lockport governmental office. Tolls shall also be reimbursed. Reimbursement vouchers for mileage and tolls shall be reviewed periodically by the Audit Committee.

Meals shall not be reimbursed to an employee or Board member unless the period of travel (including length of stay at destination) is for a period of four hours or more. In such case, meals will be reimbursed. Meal reimbursement vouchers shall be approved by the Agency's Board of Directors.

If the destination is more than 50 miles or 200 miles or less from the Agency's office on Dysinger Road, Lockport, NY and overnight accommodations are necessary for an employee or Board member, approval shall be obtained in advance by the Chairman or Vice-Chairman. Vouchers for overnight accommodations shall be approved by the Agency's Board of Directors.

For any travel by an employee or Board member over 200 miles from the Agency's office on Dysinger Road, Lockport, NY and associated with their official duties, approval shall be obtained in advance by the Agency's Board of Directors. If immediate travel is required, approval by the Chairman or Vice-Chairman shall be obtained. Transportation arrangements shall be determined by the Board or Chairman and the most cost-effective and efficient method of travel shall be approved.

In such case, reimbursement for mileage and/or transportation arrangements, overnight accommodations, meals, tolls and other related expenses shall be approved by the Agency's Board of Directors.



# TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY

## INVESTMENT POLICY

Originally Adopted by a resolution of the Town of  
Lockport Industrial Development Agency on  
July 12, 2007.

### **I. Scope**

This investment policy applies to all moneys and other financial resources available for investment By the Town of Lockport Industrial Development Agency (the "Agency").

### **II. Objectives**

The primary objectives of the Agency's investment activities are, in priority order.

- To conform with all applicable federal, state and other legal requirements;
- To adequately safeguard principal;
- To provide sufficient liquidity to meet all operating requirements; and
- To obtain a reasonable rate of return.

### **III. Delegation of Authority**

The responsibility for administration of the investment program is delegated to the Agency's Treasurer who shall establish procedures for the operation of the investment program consistent with these investment guidelines. Such procedures shall include an adequate internal control structure to provide a satisfactory level of accountability based on a data base or records incorporating description and amounts of investments, transaction dates, and other relevant information.

### **IV. Prudence**

All participants in the investment process shall seek to act responsibly as custodians of the public trust and shall avoid any transaction that might impair public confidence in Agency.

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering

the safety of the principal as well as the probable income to be derived.

All participants involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions.

**V. Diversification**

It is the policy of the Agency to diversify its deposits and investments by financial institution such that the Agency's deposits and investments do not exceed FDIC coverage and collateral pledged by such institution.

**VI. Internal Controls**

It is the policy of the Agency that all moneys collected by any officer or employee of the Agency be transferred to the CFO within 5 days of receipt for deposit into an Agency account.

The CFO is responsible for establishing and maintaining an internal control structure to provide reasonable, but not absolute, assurance that deposits and investments are safeguarded against loss from unauthorized use or disposition, that transactions are executed in accordance with management's authorization and recorded properly, and is managed in compliance with applicable laws and regulations.

**VII. Designation of Authorized Depositories**

The banks and trust companies authorized for the deposit of monies, up to the amounts which are collateralized:

Depository Name  
Citizens Bank  
Evans Bank  
M&T Bank  
Citibank (New York State)  
Chase Bank  
Bank of Akron  
Key Bank  
Bank of America

**VIII. Collateralizing of Deposits**

In accordance with the provisions of General Municipal Law, §10, all deposits of the Agency, including certificates of deposit and special time deposits, in excess of the amount insured under the provisions of the Federal Deposit Insurance Act shall be secured by a pledge of "eligible securities" with an aggregate market value, as provided by General Municipal Law, §10, equal to the aggregate amount of such deposits (a list of eligible collateral securities are included as Appendix A to this policy).

**IX. Safekeeping and Collateralization**

Eligible securities used for collateralizing deposits shall be held by the depositaries trust department and/or a third party bank or trust company subject to security and custodial agreements.

The security agreement shall provide that eligible securities are being pledged to secure local government deposits together with agreed upon interest, if any and any costs or expenses arising out of the collection of such deposits upon default. It shall also provide the conditions under which the securities may be sold, presented for payment, substituted or released and the events which enable the Agency to exercise its rights against the pledged securities. In the event that the securities are not registered or inscribed in the name of the local government, such securities shall be delivered in a form suitable for transfer or with an assignment in blank to the Agency or its custodial bank.

The custodial agreement shall provide securities held by the bank or trust company, or agent of and custodian for, the local government, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be commingled with or become part of the backing for any other deposit or other liabilities. The agreement should also describe that the custodian shall confirm the receipt, substitution or release of the securities. The agreement shall provide for the frequency of revaluation of eligible securities and for the substitution of securities when a change in the rating of a security may cause ineligibility. Such agreement shall include all provisions necessary to provide the local government a perfected interest in the securities.

**X. Authorized Investments**

As authorized by General Municipal Law, §11, the Agency authorizes the CFO to invest moneys not required for immediate expenditure for terms not to exceed its projected cash flow needs in the following types of investments:

- Special time deposit accounts;

- Certificates of deposit;
- Obligations of the United States of America;
- Obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America;
- Obligations of the State of New York

All investment obligations shall be payable or redeemable at the option of the Agency within such times as the proceeds will be needed to meet expenditures for purposes for which the moneys were provided and, in the case of obligations purchased with the proceeds of bonds or notes, shall be payable or redeemable at the option of the Agency within one year of the date of purchase.

#### **XI. Monthly Reporting Requirements**

At each regularly scheduled monthly meeting of the Agency's Board of Directors, the CFO shall prepare a report of the Agency's cash and investments balances as of the last day of the preceding month. At a minimum such report shall contain:

- The name of each financial institution
- Type of account (checking, savings, certificate of deposit, etc.)
- Current rate of interest
- Account balance as of the last day of the previous month
- Maturity date in the case where funds are not currently available

#### **APPENDIX A**

Schedule of securities eligible for collateralization of Agency deposits:

- i. Obligations issued, or fully insured or guaranteed as to the payment of principal and interest, by the United States of America, an agency thereof or a United States government sponsored corporation.
- ii. Obligations partially insured or guaranteed by any agency of the United States of America, at a proportion of the Market Value of the obligation that represents the amount of the insurance or guaranty.
- iii. Obligations issued or fully insured or guaranteed by the State of New York, obligations issued by a municipal corporation, school district or district corporation of such State or obligations of any public benefit corporation

which under a specific State statute may be accepted as security for deposit of public moneys.

- iv. Obligations issued by states (other than the State of New York) of the United States rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization.
- v. Obligations of Puerto Rico rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization.
- vi. Obligations of counties, cities and other governmental entities of a state other than the State of New York having the power to levy taxes that are backed by the full faith and credit of such governmental entity and rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization.
- vii. Obligations of domestic corporations rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization.
- viii. Any mortgage related securities, as defined in the Securities Exchange Act of 1934, as amended, which may be purchased by banks under the limitations established by bank regulatory agencies.
- ix. Commercial paper and bankers' acceptances issued by a bank, other than the Bank, rated in the highest short term category by at least one nationally recognized statistical rating organization and having maturities of no longer than 60 days from the date they are pledged.
- x. Zero coupon obligations of the United States government marketed as "Treasury strips".

**TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY**  
**PROPERTY DISPOSITION GUIDELINES**

**ORIGINALLY ADOPTED JULY 2007**

The Town of Lockport Industrial Development Agency (the "Agency"), a New York public benefit corporation, in compliance with the New York State Public Authorities Law, has established these Guidelines for the Disposal of Property (the "Guidelines").

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

**Designation of Contracting Officer**

The Agency hereby designates the Chief Executive Officer as the Agency's Contracting Officer, in compliance with the provisions of New York State Public Authorities Law. The Contracting Officer shall hold this position until the Members of the Agency designate a new Contracting Officer or until such time as the Members adopt new Property Disposal Guidelines.

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

**Application of Guidelines**

The procedures outlined in these Guidelines shall apply to the Agency's disposal from time to time of all personal property having a fair market value at the time of disposal of more than five thousand dollars (\$5,000) and all interests in real property. As used in these Guidelines, "property" shall include personal and real property. Personal and real property are distinguished from each other as appropriate in some Sections of these Guidelines.

The Agency shall dispose of personal property with a fair market value at the time of disposal of Five Thousand Dollars (\$5,000.00) or less in a prudent manner. Property of only nominal value may be donated to a not-for-profit or governmental agency or disposed of in any manner practicable.

## **Purpose**

The Agency has adopted these Guidelines to comply with the provisions of NYS Public Authorities Law and to realize a favorable return on the disposal of Agency property.

## **Fair Market Value**

Before disposing of property, the Contracting Officer shall take reasonable measures to determine the fair market value of the property to be disposed. Fair market value of property that is unique in nature and therefore not subject to fair market value pricing shall be determined through an appraisal by a qualified professional. Prior to its disposal, the fair market value of all real property shall be established by an appraisal conducted by a qualified professional.

## **Advertised Bid**

All disposals of Agency property shall be made after public advertisement for bids for the purchase of Agency property. The Contracting Officer shall order the advertising for bids in such a manner and in such publications as the Contracting Officer deems reasonably necessary to permit full and fair competition for the property consistent with the fair market value and nature of the property.

All advertisements for soliciting bids on Agency property shall state the method, place and deadline for the submission of bids, and request any other information the Contracting Officer deems necessary to evaluate bids being solicited.

All advertisements and announcements soliciting bids shall state the place and time at which the content of all bids received for the property advertised shall be publicly disclosed. The content of all bids received shall be publicly disclosed as announced in the solicitation for bids.

## **Award of Property Subject to Bid**

Award of the property for which bids have been solicited shall be made within a timeframe reasonable for the evaluation of the bids received. The Contracting Officer shall evaluate the bids and select the bid most advantageous to the Agency based upon (a) conformance with the invitation for bids, (b) the terms, including but not limited to the price offered, and (c) any other factors that warrant consideration.

Notwithstanding the foregoing, the Agency may reject as inadequate all bids received in response to a particular solicitation for bids if the Contracting Officer deems that it is in the best interest of the Agency to reject all bids.

### **Notification of Successful Bid**

The Agency shall notify the successful bidder in writing of the Agency's acceptance of the bid. This notice shall contain a description of the property, the amount of the successful bid and any other material terms of the bid. The bidder shall be required to make payment to the Agency Treasurer in a form and on terms acceptable to the Agency before taking possession of the property.

The Agency shall gather the following information regarding any successful bidder: name, address, and telephone number.

The Agency shall provide to the successful bidder a deed, bill of sale, lease or other appropriate instrument adequate to transfer to the successful bidder the interest in the property.

### **Contracts to Dispose of Property**

The Agency may solicit bids for contracts to dispose of the Agency property covered by these Guidelines. In the event that the Agency determines that the services of a company are necessary to assist the Agency in disposing of certain of its property, the Agency shall follow the same procedures in selecting an organization to dispose of property as the Agency follows under these Guidelines for disposal of property through advertised bid.

### **Disposal of property by Negotiation**

The Agency may dispose of property through negotiation or by public auction without regard to the above described procedures if the Contracting Officer determines that any of the following conditions exist:

- (a) introduction into the market of the personal property to be disposed of would adversely affect the local market for that kind of property, and a fair market price and other terms for the sale of the personal property can be obtained through negotiation;
- (b) the fair market value of the property does not exceed fifteen thousand dollars (\$15,000);
- (c) prices for the property that were obtained by advertised bid were not reasonable or the bid process did not generate open competition;
- (d) disposal of the property to the state or any



political subdivision at fair market value can be arranged through negotiation;

- (e) the property is being disposed of for less than fair market value, the terms of the disposal have been reached through public auction or negotiation, the disposal of the property is intended to further the health, safety, welfare or economic development interests of the state or any of its political subdivisions, and the Members of the Agency have approved the particular transaction by resolution; or
- (f) such action is otherwise authorized by law.

### **Documentation of Disposal by Negotiation**

The Contracting Officer shall cause to be prepared an explanation of the circumstances of the disposal when property is disposed of through the negotiation process described in Section 9, and any of the following are true:

- (a) personal property disposed of has an estimated fair market value in excess of fifteen thousand dollars (\$15,000);
- (b) real property sold has an appraised value in excess of one hundred thousand dollars (\$100,000.00);
- (c) real property leased has been leased for a period of five years or less and the estimated annual fair market rent is in excess of one hundred thousand dollars (\$100,000.00);
- (d) real property leased has been leased for a period of more than five years and the total estimated fair market rent over the term of the lease is more than one hundred thousand dollars (\$100,000.00);
- (e) the personal or real property has been disposed of by exchange; or
- (f) any part of the consideration for the property disposed of consists of real property.

The Contracting Officer shall cause any and all explanatory statements required under this Section 10 to be transmitted at least ninety (90) days in advance of disposal by negotiation to the recipients of the yearly report of dispositions required under Section 11 of these Guidelines.

### **Yearly Property Report**

Each year the Contracting Officer shall publish a report listing all real and personal property disposed of by the Agency during the previous twelve-month period. The report shall contain a full description of each item of property disposed of, the price received by the Authority, and the name of the individual(s) or entity that purchased the property.

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

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

TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY

**PROCUREMENT POLICY**

Originally Adopted July 8, 2010

**A. INTRODUCTION**

1. Scope - In accordance with Article 18-A of the General Municipal Law (the "IDA Act"), Section 104-b of the General Municipal Law, and the Public Authorities Accountability Act of 2005 and 2009, the Town of Lockport Industrial Development Agency is required to adopt procurement policies which will apply to the procurement of goods and services not subject to the competitive bidding requirements of Section 103 of the GML and paid for by an IDA for its own use and account.
2. Purpose - Pursuant to Section 104-b of the GML, the primary objectives of this policy are to assure the prudent and economical use of public monies in the best interests of the taxpayers of a political subdivision or district, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances and to guard against favoritism, improvidence, extravagance, fraud and corruption.

**B. PROCUREMENT**

1. Determination Required - Prior to commencing any procurement of goods and services, the Chief Executive Officer (the Administrative Director) or his designee shall determine whether competitive bidding or requirements set forth in this policy are required for such procurement.

**GUIDELINE 1.** Every prospective purchase of goods or services shall be evaluated to determine the applicability of GML, Section 103. Every IDA officer with the requisite purchasing authority (hereinafter known as Purchaser) shall estimate the cumulative amount of the items of supply or equipment needed in a given fiscal year. That estimate shall take in consideration past history to determine the likely yearly value

of the commodity to be acquired. All purchases and public works contracts shall be subject to the requirement of procuring goods and services of the maximum quality at the lowest cost.

**GUIDELINE 2.** All purchases of (a) supplies or equipment which will exceed \$10,000.00 in the fiscal year or (b) public works contracts over \$35,000.00 shall be formally bid pursuant to GML, Section 103.

**GUIDELINE 3.** All estimated **purchases** of:

1. Less than \$20,000.00 but greater than \$5,000.00 require a written request for a proposal (hereinafter known as RFP) and written/fax quotes from three (3) vendors.

2. Less than \$5,000.00 but greater than \$1,000.00 requires a verbal request for the goods and verbal or fax quotes from two (2) vendors.

3. Less than \$1,000.00 are left to the discretion of the Purchaser, subject to department head approval.

All estimated **public works** contracts of:

1. Less than \$35,000.00 but greater than \$5,000.00 require a written RFP and written/fax proposals from three (3) contractors.

2. Less than \$5,000.00 are left to the discretion of the Purchaser, subject to department head approval.

Any written RFP shall describe the desired goods, quantity and the particulars of delivery. The Purchaser shall compile a list of all vendors from whom written/fax/verbal quotes are offered.

**GUIDELINE 4.** Purchase or public works contracts in excess of \$5,000.00 shall be approved by the IDA Board. The Purchaser may accept a proposal in accordance with these guidelines prior to receipt of approval, but subject to approval. If no separate action by the IDA Board has been taken, the approval of vouchered billings by the IDA Board shall constitute approval.

**GUIDELINE 5.** The lowest responsible proposal or quote shall be awarded for purchases or public works contracts unless the Purchaser prepares a written justification providing reasons why it is in the best interest of the IDA to make an award to other than the low proposal. If a bidder is not deemed responsible, facts supporting that judgment shall also be documented and filed with the record supporting the procurement.

**GUIDELINE 6.** A good faith effort shall be made to obtain the required number of proposals or quotations. If the Purchaser is unable to obtain the required number of proposals or quotations, the Purchaser



# PURCHASES ONLY

TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY

## Procurement Policy Form

### PURCHASES

1. Describe item(s) or service(s): \_\_\_\_\_

2. Will cost for current fiscal year be less than \$10,000.00? YES [ ] NO [ ]

If no, competitive bidding required.

3. Use for purchases only.

A. Less than \$10,000.00 but greater than \$5,000.00:  
List at least 3 vendors and amount of quotes.

	<u>Vendor Name</u>	<u>Quantity</u>	<u>Price</u>
1.	_____		
2.	_____		
3.	_____		

Written or fax quotes must be attached.

B. Less than \$5,000.00 but greater than \$1,000.00:  
List at least 2 vendors oral or fax and amounts of quotes.

	<u>Vendor Name</u>	<u>Quantity</u>	<u>Price</u>
1.	_____		
2.	_____		
3.	_____		

If written quotes, attach.

4. Was lowest quote accepted: YES [ ] NO [ ]

If no, provide written explanation or reasons for accepting higher quote (must be in best interest of the Town of Lockport).

1. \_\_\_\_\_  
2. \_\_\_\_\_  
3. \_\_\_\_\_

DATED: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

**PUBLIC WORKS CONTRACTS ONLY**

TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY

**Procurement Policy Form**

**PUBLIC WORKS CONTRACTS**

1. Describe item(s) or service(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Will the cost be less than \$35,000.00? YES NO  
[ ] [ ]  
If no, competitive bidding required.

3. Use for public works contracts only.

A. Less than \$35,000.00 but greater than \$5,000.00:  
List at least 3 contractors and amount of quotes.

	<u>Contractor Name</u>	<u>Price</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

Written or fax quotes must be attached.

B. Less than \$5,000.00 but greater than \$1,000.00:  
List at least 2 vendors, and amounts of quotes.

	<u>Contractor Name</u>	<u>Price</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

If written quotes, attach.

4. Was lowest quote accepted: YES [ ] NO [ ]  
If no, provide written explanation or reasons for accepting  
higher quote (must be in best interest of the Town of  
Lockport Industrial Development Agency).

1. \_\_\_\_\_  
2. \_\_\_\_\_  
3. \_\_\_\_\_

DATED: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

**TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY**

**DEFENSE AND INDEMNIFICATION POLICY**

**Originally ADOPTED BY RESOLUTION - July 12, 2007**

**WHEREAS**, the Town of Lockport Industrial Development Agency (the "Agency"), a New York public benefit corporation, is required to enact a Defense and Indemnification policy of employees and Board members to be in compliance with the New York State Public Authorities Law; and

**WHEREAS**, the Agency is permitted by Public Officers Law §18(2) to adopt by resolution the provisions of Public Officers Law §18 which confers the benefits of this section upon its employees and Board members and holds the Agency liable for the cost incurred under these provisions; now therefore be it

**RESOLVED**, the Agency hereby adopts the provisions of Public Officers Law §18 which confers the benefits of that section upon its employees and Board members and holds the Agency liable for the cost incurred under the provisions of that section.

**Adopted Provisions of Public Officers Law §18**

1. As used in this section, unless the context otherwise requires:

(a) The term "public entity" shall mean (i) a county, city, town, village or any other political subdivision or civil division of the state, (ii) a school district, board of cooperative educational services, or any other governmental entity or combination or association of governmental entities operating a public school, college, community college or university, (iii) a public improvement or special district, (iv) a public authority, commission, agency or public benefit corporation, or (v) any other separate corporate instrumentality or unit of government; but shall not include the state of New York or any other public entity the officers and employees of which are covered by [section seventeen](#) of this chapter or by defense and indemnification provisions of any other state statute taking effect after January first, nineteen hundred seventy-nine.

(b) The term "employee" shall mean any commissioner, member of a public board or commission, trustee, director, officer,

employee, volunteer expressly authorized to participate in a publicly sponsored volunteer program, or any other person holding a position by election, appointment or employment in the service of a public entity, whether or not compensated, but shall not include the sheriff of any county or an independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

(c) The term "governing body" shall mean the board or body in which the general legislative, governmental or public powers of the public entity are vested and by authority of which the business of the public entity is conducted.

2. The provisions of this section shall apply to any public entity:

(a) whose governing body has agreed by the adoption of local law, bylaw, resolution, rule or regulation (i) to confer the benefits of this section upon its employees, and (ii) to be held liable for the costs incurred under these provisions; or

(b) where the governing body of a municipality, for whose benefit the public entity has been established, has agreed by the adoption of local law or resolution (i) to confer the benefits of this section upon the employees of such public entity, and (ii) to be held liable for the costs incurred under these provisions.

3. (a) Upon compliance by the employee with the provisions of subdivision five of this section, the public entity shall provide for the defense of the employee in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting within the scope of his public employment or duties. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or at the behest of the public entity employing such employee.

(b) Subject to the conditions set forth in paragraph (a) of this subdivision, the employee shall be entitled to be represented by private counsel of his choice in any civil action or proceeding whenever the chief legal officer of the public entity or other counsel designated by the public entity determines that a conflict of interest exists, or whenever a court, upon appropriate motion or otherwise by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by counsel of his choice,



provided, however, that the chief legal officer or other counsel designated by the public entity may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the public entity to such private counsel from time to time during the pendency of the civil action or proceeding with the approval of the governing body of the public entity.

(c) Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(d) Where the employee delivers process and a written request for a defense to the public entity under subdivision five of this section, the public entity shall take the necessary steps on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

4. (a) The public entity shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting within the scope of his public employment or duties; provided further that in the case of a settlement the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by the governing body of the public entity.

(b) Except as otherwise provided by law, the duty to indemnify and save harmless prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee.

(c) Nothing in this subdivision shall authorize a public entity to indemnify or save harmless an employee with respect to punitive or exemplary damages, fines or penalties, or money recovered from an employee pursuant to section fifty-one of the general municipal law; provided, however, that the public entity shall indemnify and save harmless its employees in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that an employee,

acting within the scope of his public employment or duties, has, without willfulness or intent on his part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of this state or of the United States.

(d) Upon entry of a final judgment against the employee, or upon the settlement of the claim, the employee shall serve a copy of such judgment or settlement, personally or by certified or registered mail within thirty days of the date of entry or settlement, upon the chief administrative officer of the public entity; and if not inconsistent with the provisions of this section, the amount of such judgment or settlement shall be paid by the public entity.

5. The duty to defend or indemnify and save harmless prescribed by this section shall be conditioned upon: (i) delivery by the employee to the chief legal officer of the public entity or to its chief administrative officer of a written request to provide for his defense together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten days after he is served with such document, and (ii) the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the public entity based upon the same act or omission, and in the prosecution of any appeal.

6. The benefits of this section shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this section be construed to affect, alter or repeal any provision of the workers' compensation law.

7. This section shall not in any way affect the obligation of any claimant to give notice to the public entity under section ten of the court of claims act, section fifty-e of the general municipal law, or any other provision of law.

8. Any public entity is hereby authorized and empowered to purchase insurance from any insurance company created by or under the laws of this state, or authorized by law to transact business in this state, against any liability imposed by the provisions of this section, or to act as a self-insurer with respect thereto.

9. All payments made under the terms of this section, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as

other public charges.

10. The provisions of this section shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

11. Except as otherwise specifically provided in this section, the provisions of this section shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to or conferred upon any unit, entity, officer or employee of any public entity by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

12. Except as otherwise provided in this section, benefits accorded to employees under this section shall be in lieu of and take the place of defense or indemnification protections accorded the same employees by another enactment; unless the governing body of the public entity shall have provided that these benefits shall supplement, and be available in addition to, defense or indemnification protection conferred by another enactment.

13. The provisions of this section shall also be applicable to any public library supported in whole or in part by a public entity whose governing body has determined by adoption of a local law, ordinance, bylaw, resolution, rule or regulation to confer the benefits of this section upon the employees of such public library and to be held liable for the costs incurred under these provisions.

14. If any provision of this section or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this section or the application of any such provision to any other person or circumstance.

**TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY**  
**POLICY FOR COMPENSATION OF CHIEF EXECUTIVE OFFICER**

Originally Adopted December 9, 2010

The following Policy is hereby adopted relative to the Chief Executive Officer. The Chief Executive Officer can be compensated by employment or by contract or may be compensated by a combination of the same, including a contract with the Town of Lockport for a Town Employee to serve as the Chief Executive Officer. The salary or contractual payment shall be reviewed by the Board annually.

He shall devote approximately 15 hours per week to IDA work and may perform his duties as Chief Executive Officer in conjunction with other Town duties, if he is a Town employee.

He shall be entitled to reimbursement for properly vouchered out-of-pocket expenses and mileage and travel.

**TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY**  
**REAL PROPERTY ACQUISITION POLICY**

ORIGINALLY ADOPTED SEPTEMBER 20, 2010

The Town of Lockport Industrial Development Agency (the "Agency"), a New York public benefit corporation, in compliance with the New York State Public Authorities Law, has established these Guidelines for the Acquisition of Real Property (the "Guidelines").

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

**Designation of Contracting Officer**

The Agency hereby designates the Administrative Director as the Agency's Contracting Officer, in compliance with the provisions of New York State Public Authorities Law. The Contracting Officer shall hold this position until the Agency designates a new Contracting Officer or until such time as the Agency adopts new Real Property Acquisition Policy.

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

## **Application of Guidelines**

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

## **Purpose**

The Agency has adopted these Guidelines to comply with the provisions of NYS Public Authorities Law and to protect the interests of the Agency in the acquisition of real property by the Agency for its own benefit.

## **Value of Real Property**

The Agency shall act prudently in the acquisition of real property. Prior to acquiring any parcel of real property except for property being gifted to the Agency, the Contracting Officer shall take reasonable measures to determine the fair market value of the property to be acquired. Prior to its acquisition, the value of real property shall be reviewed through analysis of comparables by the Lockport Town Assessor, the Administrative Director or Attorney. Other relevant factors such as location, uniqueness, condition and amenities shall be considered in conjunction with comparables. In the case of real property donated to the Agency, a review shall not be required. The Agency shall negotiate the purchase price after such determination of the fair market value.

The Agency shall attempt not to pay more than the value for any property being acquired. Where the property is such that it is required for Agency purposes and other property will not suffice, the Agency may under such circumstances pay any reasonable amount in excess of its determination in order to purchase the property.

## **Environmental and Title Review**

Prior to the acquisition of any interest in real property covered by this policy, the Agency shall take necessary steps to determine whether there are any environmental concerns and, if warranted, shall order a Phase I Environmental Report and if warranted by the results of the Phase I, a Phase II Environmental Report. The Agency shall comply with the New York State Environmental Quality Review Act in any property purchase.

The Agency shall have Agency General Counsel review the title documents supplied in connection with the acquisition and shall

require fee title insurance unless the Agency Counsel shall determine that title insurance should not be required.

The Agency General Counsel shall handle the purchase on behalf of the Agency.

### **Yearly Property Report**

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

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

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

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

## **FINANCIAL MANAGEMENT PRACTICES**

**Originally Approved May 20, 2010**

### **1. Account Transfers**

- a. Transfer Limits** - Bank transfers may be made by staff in order to assure adequate cash flows and proper investment of idle funds up to \$20,000 in any one month, unless otherwise approved by the Board of Directors.

## **MISSION STATEMENT**

**Originally Adopted March 10, 2010**

The Town of Lockport Industrial Development Agency will assist businesses to locate and expand within the Town of Lockport for the purpose of providing jobs, expanding the tax base and contributing to the quality of life in Lockport and the surrounding community.

## **PERFORMANCE GOALS**

In carrying out its Mission, the Town of Lockport Industrial Development Agency will be guided by its Three Year Strategic Plan and its current year Business Plan. The Board of Directors of the Town of Lockport Industrial Development Agency will yearly evaluate the performance of the Agency based on the following criteria:

1. number of jobs created and retained
2. number of businesses assisted
3. amount of private sector investment
4. amount of increase in property tax base

**TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY**  
**UNIFORM TAX EXEMPTION POLICY AND GUIDELINES**

**Adopted March, 2009**

Pursuant to the authority vested in it by Article 18-A of the General Municipal Law of the State of New York, the Town of Lockport Industrial Development Agency (the Agency) is exempt from real property, sales and mortgage taxes. The Agency may participate in certain projects and confer on those projects the advantages of such exemptions to encourage project success and enhance a project's ability to provide a positive impact on the economy and people of the Town of Lockport. The Agency may provide financial assistance in the form of issuance of its tax exempt or taxable bonds or by participation in straight lease transactions. The general policy of the Agency is to grant applicants financial assistance in the form of real property tax abatements and exemptions from sales, use and mortgage recording taxes to encourage the attraction, expansion, and retention of business and industry in the Town of Lockport.

**I. Qualifications**

In order to be eligible for agency benefits the applicant must demonstrate to the satisfaction of the Agency's Board of directors the following:

1. That there is a need within the Town for the project or the services offered by \_\_\_\_\_ the firm; and
2. That the project will lead to the creation or retention of a substantial number of \_\_\_\_\_ jobs and investment; and
3. That the benefits derived by the transaction are necessary to make the project \_\_\_\_\_ economically feasible.

The Agency has adopted this Uniform Tax Exemption policy to provide policies for the claiming of real property, sales and use tax and mortgage recording tax abatements.

## **II. Exemption from Real Property Taxes: Payments in Lieu of Taxes**

The Agency maintains a policy for the provision of real property tax exemptions with a corresponding PILOT Agreement to mimic abatements for qualified projects. Each project receiving an abatement will be subject to a Payment In Lieu Of Tax Agreement ("PILOT Agreement") in a form acceptable to the Agency. The abatement will generally be limited to value added by construction or renovation of the existing parcel involved. The payments under a PILOT Agreement will involve a phase in to a full tax equivalent over a period of up to twenty (20) years or longer depending on the needs of the Project. The Payment-In-Lieu-of-Taxes (PILOT) does not apply to special assessment district charges or ad valorem taxes which cannot be abated.

Any deviations from the standard policy will be made only with the specific approval of the Agency's members after giving consideration to one or more factors listed in Section VI, below, and those described in the New York State General Municipal Law Section 874(4)(a). Additionally, the Agency shall notify the affected local taxing jurisdictions of the proposed deviation from such policy and the reasons therefore.

The Agency will use existing tax data to negotiate the payment in lieu of tax agreement and, therefore, appraisals will not normally be required.

A copy of the PILOT Agreement will be forwarded to each of the affected taxing jurisdictions within fifteen (15) days of execution. Unless otherwise agreed to by the affected taxing jurisdictions, such payments shall be allocated among the affected taxing jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected taxing jurisdiction had the project not been tax exempt due to the status of the Agency involved in the project.

Pursuant to Section 874 of the New York General Municipal Law and Section 412-a of the Real Property Tax Law, no real estate tax exemption with respect to a particular project shall be effective until an Exemption Form is filed with the assessor of the county, city, town, village, and school district in which such project is located. Once an Exemption Form with respect to a particular project is filed with a particular Taxing Jurisdiction, the real property tax exemption for such project does not take effect until (1) a tax status date for such Taxing Jurisdiction occurs subsequent to such filing, (2) an assessment roll for such Taxing Jurisdiction is finalized subsequent to such tax status date, (3) such assessment roll becomes the basis for the preparation of a tax roll for such Taxing Jurisdiction, and (4) the tax year to which such tax roll relates commences.



### **III. Exemption from Sales and Use Taxes**

The Agency maintains a policy for the provision of sales and use tax exemptions.

Personal property that is purchased in connection with a qualified project shall be exempt from local and State sales and use taxes for the period commencing with the closing and ending on the date (as such date may be extended in the sole discretion of the Agency) by which project documents require completion to occur in respect of the undertaking of the project or other project activities. For purposes of this exemption, "personal property" may include building materials, fixtures, furnishings and equipment, as well as certain services that may relate to any of the foregoing, provided that such purchases and equipment rentals and services are made by an entity as agent for the Agency. As such, such purchases will then be afforded full exemption from local and New York State Sales and Use Taxes until the project is completed (i.e.: certificate of occupancy). Operating and maintenance expenses of projects are not incurred as agent of the Agency, and no sales tax exemption is provided thereof.

All project applicants must agree in writing to file with the New York State Department of Taxation, in form and at times required, an annual statement of the value of all sales and use taxes exemption claimed in connection with the facility in full compliance with Section 874(8) of the General Municipal Law.

### **IV. Exemption from Mortgage Recording Taxes**

The Agency maintains a policy for the provision of a mortgage recording tax exemption.

The Agency's Mortgage Recording Tax Exemption policy is to permit mortgage recording tax exemptions on all project related financing to the full extent permitted by New York State Law, whether or not the Agency has issued its bonds to finance the Project.

In addition, the Agency may, in its sole discretion, permit mortgage recording tax exemptions on non-project related financings, (e.g. second mortgages on the project to secure subordinated indebtedness of the project applicant). In determining whether to permit such exemptions on non-project related financing, the Agency shall consider such factors as it deems appropriate, including but not limited to the use of the property, the degree of investment, the degree and nature of the employment and the economic condition of the areas in which the facility is located.

## **V. Refinancing**

1. In the event that the Agency retains title to a project, it is the general policy of the Agency to abate mortgage recording taxes on any debt issued by the Agency for the purpose of refinancing prior debt issued by the Agency, and on any modifications, extensions, and renewals thereof, so long as the Agency fees relating to same have been paid. All PILOT payments, special assessments and bond payments shall be current before this occurs.
2. Any refinancing of a project is subject to the public hearing requirements for the project and financial assistance approval as discussed above.

## **VI. PILOT Mortgage**

The Agency may require the establishment of a PILOT Mortgage as a condition within the closing documents where a mortgage is involved, in order to secure the position of the PILOT payments versus other secured and unsecured claims.

The purpose of a PILOT Mortgage is to secure unpaid PILOT payments with a lien against the real estate, if they are not paid, that mimics a real property tax lien. The lender agrees that the PILOT Mortgage will have priority over any mortgage given to secure the rights of bondholders or to secure any conventional financing. This would make the PILOT a secured obligation. The Agency may negotiate alternative forms of collateral to insure payments under the PILOT.

## **VII. Deviations**

In addition to or in lieu of the foregoing the Agency may determine, on a case by case basis, to deviate from the guidelines described above or to provide enhanced benefits for a project expected to have significant impact in the Town of Lockport where the project will be located. Any deviations from the guidelines set forth above require the written notification by the Agency to the chief executive officer of each affected taxing jurisdictions at least 30 days prior to the meeting of the Agency at which the proposed deviation will be considered. Prior to taking final actions at such meeting, the Agency must review and respond to any correspondence received from any affected tax jurisdiction, and must allow any representative of an affected tax jurisdiction present at such meeting to address the Agency regarding the proposed deviation.

The Agency may consider any or all of the following factors in making such determination, no single one of which is determinative:

1. The nature of the proposed project (e.g. manufacturing, commercial, civic, etc.);
2. The nature of the property before the project begins (e.g. vacant land, vacant building, etc.);
3. The economic condition of the area at the time of the application and the economic multiplying effect the project will have on the area;
4. The extent to which the project will create or retain permanent, private sector jobs, the number of jobs to be created/retained and/or the salary ranges of such jobs;
5. The estimated value of tax exemptions to be provided;
6. The economic impact of the project and the proposed tax exemptions on affected taxing jurisdictions;
7. The impact of the proposed project on existing and proposed businesses and economic development projects in the vicinity;
8. The amount of private sector investment generated or likely to be generated by the proposed project;
9. The likelihood of accomplishing the proposed project in a timely fashion;
10. The effect of the proposed project upon the environment and surrounding property;
11. The extent to which the proposed project will require the provision of additional services including, but not limited to, educational, transportation, emergency medical or police and fire services;
12. The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts in which the project is located;
13. The extent to which the proposed project will provide a benefit (economic or otherwise) not otherwise available within the Town of Lockport in which the project is located.

### **VIII. Recapture of Benefits**

The Agency, in its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so), with respect to a particular project, that a project has failed to meet its intended goals and may require the project applicant to agree to the recapture by the Agency of the value of any or all exemptions from taxation granted with respect to the project by virtue of the Agency's involvement. Events, in the sole determination of the Agency, that trigger recapture may include, but are not limited to, the:

1. Sale or closure of facility;
2. Significant employment reduction;
3. Significant change in use in facility;
4. Significant change in business activities of project applicant or operator; or
5. Material noncompliance with or breach of terms of Agency transaction documents or of zoning or land use laws or regulations or federal, state or local environmental laws or regulations.

If the Agency determines to provide for the recapture with respect to a particular project, the Agency also shall, in its sole discretion and on a case-by-case basis, determine the timing and percentage of recapture.

### **IX. Effective Date**

This Uniform Tax Exemption Policy shall apply to all projects for which the Agency has adopted or adopts an inducement Resolution after April 15, 2009 and all refinancing of any project induced or closed before said date.

### **X. Amendments**

The Agency, by resolution of its members, and upon notice to all affected taxing jurisdictions as may be required by law, may amend or modify the foregoing policy as it may, from time to time, in its sole discretion determine.

## **POLICY FOR COMPLIANCE WITH § 875 OF THE GENERAL MUNICIPAL LAW RELATING TO STATE SALES AND USE TAXES**

It is the policy of the Town of Lockport Industrial Development Agency (The IDA) to adopt and enforce the provisions of General Municipal Law § 875 as if fully set forth herein, including but not limited to the following:

- 1) The Agency shall include within its resolutions and project documents establishing a project or appointing an agent or project operator for any project the terms and conditions of § 875, which shall be agreed to by every agent, project operator or other person or entity that shall enjoy sale or use tax exemption benefits as a condition precedent to receiving or benefiting from such benefits.
- 2) The Agency, Administrative Director, and staff shall keep records of such benefits provided and make such records available and file such reports as are required by § 875.
- 3) The Administrative Director of the Agency shall, on behalf of the Agency recover, recapture and receive such benefits which are in excess of amounts authorized, or were for property or services not authorized, or where the property was not used as agreed to with the IDA, and shall comply with § 875 (a) in all respects.
- 4) The Administrative Director shall, on behalf of the Agency, and the Agency shall comply with all other provisions of § 875 and the rules and regulations promulgated by the Commissioner of Taxation and Finance.
- 5) This policy is in addition to, and not in limitation of, all existing policies, practices, standard language for inducements, leases and any other agency documents utilized for its projects.
- 6) This policy shall be effective as of March 28, 2013 and shall apply to any action to which § 875 is applicable after that date.