

City of Binghamton Water Street Development Corporation

March 21, 2023

RESOLUTION 23-2 A RESOLUTION OF THE CITY OF BINGHAMTON WATER STREET DEVELOPMENT CORPORATION APPROVING AN UPDATED PROCUREMENT POLICY.

WHEREAS, the City of Binghamton Water Street Development Corporation (the "WSDC") is governed by Public Authorities Law; and

WHEREAS, Section 2824 (1) (e) of Public Authorities Law (PAL) requires boards of state and local authorities as defined by Title 1 Section 2 of PAL to adopt written policies and procedures for the procurement of goods and services; and

WHEREAS, the WSDC Board must, according to its bylaws, adopt Procurement Policies and Procedures; and

WHEREAS, it is the opinion of the Board and Corporation Counsel that the attached policy is well-suited to the mission, practices and goals of the WSDC; and

WHEREAS, the Board wishes to adopt procurement policies to align with PAL requirements and best practices for LDCs;

NOW, THEREFORE, the Board of Directors of the WSDC duly convened at a special meeting, does hereby:

RESOLVE, to adopt the attached Procurement Policy as may be approved by WSDC Corporation Counsel; and be it further:

RESOLVED, that the new policy will take effect immediately once adopted.

I, _____, hereby certify the above resolution was approved by the City of Binghamton Water Street Development Corporation at a special meeting held on March 21, 2023.

City of Binghamton Water Street Development Corporation

**CITY OF BINGHAMTON WATER STREET DEVELOPMENT CORPORATION
PROCUREMENT POLICY
ADOPTED PURSUANT TO SECTION 2824 (1) (e)
OF THE PUBLIC AUTHORITIES LAW**

I. Introduction - The policies and procedures set forth herein have been developed pursuant to Section 104-b of General Municipal Law (GML) which outlines the expectations for procurement policies and procedures related to goods and services.

II. Purpose – The City of Binghamton Water Street Development Corporation (the “Corporation” or “WSDC”) has adopted the policies and procedures set forth herein governing all procurement of Goods and Services. Goods and Services must be procured in a manner so as to assure the prudent and economical use of public moneys in the best interests of the taxpayers of Binghamton 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.

III. Determination - the Executive Director of the WSDC is designated to be responsible for determining whether a procurement of Goods and Services is subject to this policy or if it is exempt from such procurement, and the Executive Director of the WSDC is authorized to determine that the nature of a particular project or class of projects is exempt from the procurement policies described herein.

IV. Competitive Bidding - If the cost of the Goods or Services to be procured, based upon the written description prepared for the desired Goods or Services, will require an expenditure of more than \$10,000 the desired Goods or Services shall be procured through a Competitive Bidding process. The Board of Directors shall authorize award of contracts for such purchases.

V. Competitive Quotations

A. If the cost of the Goods or Services to be procured, based upon the written description prepared for the desired Goods or Services, will require an expenditure of less than \$5,000, the desired Goods or Services shall be procured through verbal quotations solicited from one or more vendors at the discretion of the Executive director.

B. If the cost of the Goods or Services to be procured, based upon the written description prepared for the desired Goods or Services, will involve an expenditure of more than \$5,000, the desired Goods or Services shall be procured through Competitive Quotations solicited from not less than three Vendors.

C. If, following reasonable efforts, insufficient numbers of Vendors exist for the solicitation of the requisite number of Competitive Quotations, then the Executive Director of the WSDC shall cause to be solicited Competitive Quotations from less than the requisite number of Vendors; provided, however, that the basis and other facts and circumstances or such efforts and/or findings relating to this provision shall be placed in writing.

D. The Executive Director of the WSDC shall cause to be made a record of the written description, the solicitation of the Competitive Quotations, the Competitive Quotations received and any other documents or materials prepared or received in connection with the procurement of Goods and Services of the Corporation.

E. Competitive Quotations need not be sealed and need not be opened and read at a stated time.

F. The Executive Director of the WSDC need not recommend the procurement of goods and services from the Vendor offering the lowest dollar quotation, but may recommend to the Members determinations of which quotations will fulfill or meet the best interests or needs of the Corporation, and each recommended determinations may be based on such factors as, without limitation, quality, features or options, reliability or reputation of the Vendor, availability of service, delivery time and location of the Vendor (local vis-a-vis non-local, in-state vis-avis out-of-state or country); and the Executive Director of the WSDC may negotiate terms and price with all Vendors submitting quotations (provided that all such negotiations will be on substantially the same basis and regarding substantially the same matters), and the determination of the Members pursuant to the Executive Director of the WSDC's recommendations made in good faith shall be final.

VI. Exemptions

A. Emergency Situation -An emergency exists if the delay caused by seeking competitive quotations would endanger the health, welfare or property of the Corporation or the City of Binghamton or of its citizens. An emergency exists if allowing time for the award of a contract to be approved at a meeting of the Board of Directors would cause a delay that would conflict with the stated intentions and goals of the Corporation to advance or complete a project. Approval of the Executive Director is necessary, which shall be documented and shall also include a description of the situation that gave rise to the emergency.

B. Sole Source Procurements -Defined as a situation when there is only one possible source from which to procure goods and/or services and it is shown that the item needed has unique benefits, the cost is reasonable for the product offered and there is no competition available.

C. City of Binghamton Contracts - When the Corporation is able to procure goods and services through City of Binghamton contracts, it will be unnecessary to obtain formal quotations or bids.

D. Insurance -All insurance policies shall be procured in accordance with the following procedures: Written quotations or proposals from at least two agents.

E. Professional Services - This category includes 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 interest, reputation,

education and training, professional judgment, integrity and continuity of service. Professional service agreements are not required to be awarded to the lowest responsible bidder, but rather the Corporation may use a selection process to determine the most qualified proposal to perform the services.

F. Special Exemptions- Goods or Services deemed by the Executive Director of the WSDC, in his or her sole discretion, not in the best interest of the Corporation to be procured in accordance with the Competitive Quotation requirements set forth herein, the Executive Director of the WSDC may procure such Goods or Services in such manner as the Executive Director of the WSDC determines to be in the best interest of the Corporation and which otherwise is in accordance with the policies of the Corporation,

VII. Authorization- The procurement of goods and services which will involve an expenditure of less than \$5,000 will be at the professional discretion of the Executive Director of the WSDC. Authorization for individual expenditures of \$5,000 and over shall require the formal review and approval of the Corporation's Board.

VIII. Annual Review – The Corporation shall annually review its procurement policies and procedures. Amendments to these policies and procedures may be made at any time during the year.

IX. M/WBE – The Corporation will comply with Article 15-A of Executive law with respect to Minority and Women Owned Business Enterprise (MWBE) requirements in procurement contracts. The Corporation's goal for M/WBE participation is 10%

City of Binghamton Water Street Development Corporation

March 21, 2023

RESOLUTION 23-3 A RESOLUTION OF THE CITY OF BINGHAMTON WATER STREET DEVELOPMENT CORPORATION APPROVING AN UPDATED DISPOSITION OF REAL PROPERTY GUIDELINES.

WHEREAS, the City of Binghamton Water Street Development Corporation (the "WSDC") is governed by Public Authorities Law; and

WHEREAS, Section 2896 of Public Authorities Law (PAL) requires boards of state and local authorities as defined by Title 1 Section 2 of PAL to adopt, by resolution, comprehensive guidelines which shall detail the public authority's operative policy and instructions regarding the use, awarding, monitoring and reporting of contracts for the disposal of property, and designate a contracting officer who shall be responsible for the public authority's compliance with, and enforcement of, such guidelines; and

WHEREAS, the WSDC Board wishes to adopt the attached guidelines; and

WHEREAS, it is the opinion of the Board and Corporation Counsel that the attached guidelines are well-suited to the mission, practices and goals of the WSDC; and

WHEREAS, the Board wishes to update its policies to align with PAL requirements and best practices for LDCs;

NOW, THEREFORE, the Board of Directors of the Binghamton Local Development Corporation duly convened at a special meeting, does hereby:

RESOLVE, to adopt the attached Disposition of Real Property Guidelines as may be approved by WSDC Corporation Counsel; and be it further:

RESOLVED, that the new guidelines will take effect immediately once adopted.

I, _____, hereby certify the above resolution was approved by the City of Binghamton Water Street Development Corporation at a special meeting held on March 21, 2023.

City of Binghamton Water Street Development Corporation

**CITY OF BINGHAMTON WATER STREET DEVELOPMENT CORPORATION
DISPOSITION OF REAL PROPERTY GUIDELINES
ADOPTED PURSUANT TO SECTION 2896
OF THE PUBLIC AUTHORITIES LAW**

SECTION 1. DEFINITIONS

- A. “Contracting officer” shall mean the Executive Director of the City of Binghamton Water Street Development Corporation (the “Corporation”) who shall 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 Public Authorities Law.
- C. “Property” shall mean personal property in excess of five thousand dollars (\$5,000) in value, and real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.

SECTION 2. DUTIES

- A. The Corporation shall:
 - (i) maintain adequate inventory controls and accountability systems for all property owned by the Corporation and under its control;
 - (ii) periodically inventory such property to determine which property may be disposed of;
 - (iii) produce a written report of such property in accordance with subsection B herewith; and
 - (iv) transfer or dispose of such property as promptly and practicably as possible in accordance with Section 3 below.
- B. The Corporation shall:
 - (i) publish, not less frequently than annually, a report listing all real property owned in fee by the Corporation. Such report shall consist of a list and full description of all real and personal property disposed of during such period. The report shall contain the price received by the Corporation and the name of the purchaser for all such property sold by the Corporation during such period; and
 - (ii) shall deliver copies of such report to the Comptroller of the State of New York, the Director of the Budget of State of New York, the Commissioner of the New

York State Office of General Services, and the New York State Legislature (via distribution to the majority leader of the senate and the speaker of the assembly).

SECTION 3. TRANSFER OR DISPOSITION OF PROPERTY

- A. **Supervision and Direction.** Except as otherwise provided herein, the duly appointed contracting officer (the “Contracting Officer”) shall have supervision and direction over the disposition and sale of property of the Corporation. The Corporation shall have the right to dispose of its property for any valid corporate purpose.
- B. **Custody and Control.** The custody and control of Corporation property, pending its disposition, and the disposal of such property, shall be performed by the Corporation.
- C. **Method of Disposition.** Unless otherwise permitted, the Corporation shall dispose of property for not less than its fair market value by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Corporation and/or contracting officer deems proper. The Corporation may execute such documents for the transfer of title or other interest in property and take such other action as it deems necessary or proper to dispose of such property under the provisions of this section. Provided, however, no disposition of real property, any interest in real property shall be made unless an appraisal of the value of such property has been made by an independent appraiser or City of Binghamton Assessor and included in the record of the transaction and provided further, that no disposition of any other property, which because of its unique nature or the unique circumstances of the proposed transaction is not readily valued by reference to an active market for similar property, shall be made without a similar appraisal.
- D. **Sales by the Commissioner of General Services (the “Commissioner”).** When the Corporation, if authorized to do so by applicable law, shall have deemed that transfer of property by the Commissioner will be advantageous to the State of New York, the Corporation may enter into an agreement with the Commissioner of pursuant to which Commissioner may dispose of property of the Corporation under terms and conditions agreed to by the Corporation and the Commissioner. In disposing of any such property, the Commissioner shall be bound by the terms hereof and references to the contracting officer shall be deemed to refer to such Commissioner.
- E. **Validity of Deed, Bill of Sale, Lease, or Other Instrument.** A deed, bill of sale, lease, or other instrument executed by or on behalf of the Corporation, purporting to transfer title or any other interest in property of the Corporation in accordance herewith shall be conclusive evidence of compliance with the provisions of these guidelines and all applicable law insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to the closing.

F. Bids for Disposal; Advertising; Procedure; Disposal by Negotiation; Explanatory Statement.

- (i) Except as permitted by all applicable law, all disposals or contracts for disposal of property made or authorized by the Corporation shall be made after publicly advertising for bids except as provided in subsection (iii) of this Section F.
- (ii) Whenever public advertising for bids is required under subsection (i) of this Section
 - a. the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property proposed for disposition;
 - b. all bids shall be publicly disclosed at the time and place stated in the advertisement; and
 - c. the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Corporation, price and other factors considered; provided, that all bids may be rejected at the Corporation's discretion.
- (iii) Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to subsections (i) and (ii) of this Section F but subject to obtaining such competition as is feasible under the circumstances, if:
 - a. the personal property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value, or if the personal property is to be sold in such quantity that, if it were disposed of under subsections (i) and (ii) of this Section F, would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;
 - b. the fair market value of the property does not exceed fifteen thousand dollars (\$15,000);
 - c. bid prices after advertising therefor are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;
 - d. the disposal will be to the state or any political subdivision or public benefit corporation, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

- e. under those circumstances permitted by subsection (v) below; or
 - f. such action is otherwise authorized by law.
- (iv) (A) An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:
- a. any personal property which has an estimated fair market value in excess of fifteen thousand dollars (\$15,000);
 - b. any real property that has an estimated fair market value in excess of one hundred thousand dollars (\$100,000), except that any real property disposed of by lease or exchange shall only be subject to clauses (3) and (4) of this subparagraph;
 - c. 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); or
 - d. any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.
- (B) Each such statement shall be transmitted to the persons entitled to receive copies of the report required under Section 2(B) above not less than ninety (90) days in advance of such disposal, and a copy thereof shall be preserved in the files of the Corporation.

G. Disposal of Property for less than Fair Market Value (“FMV”).

- (i) No assets owned, leased or otherwise in the control of the Corporation may be sold, leased, or otherwise alienated for less than its FMV except if:
 - a. the transferee is a government or public entity and terms of transfer require ownership and use to remain with the government or public entity; or
 - b. the purpose of transfer is within purpose, mission of the Corporation; or
 - c. the Corporation provides written notification to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate; provided, however, that such notification is subject to denial by the Governor, the Speaker of the Assembly, and the Temporary President of the Senate pursuant to the PAAA.

- (ii) If the Corporation proposes to make a transfer below FMV, the following information is required to be provided to the Corporation's Board of Directors and the public:
 - a. a full description of the asset;
 - b. an appraisal of the FMV of the asset;
 - c. a description of purpose of transfer, the kind and amount of the benefit to the public resulting from the transfer such as jobs and wages created or preserved;
 - d. a statement of the value to be received compared to FMV;
 - e. the names of any private parties participating in the transfer, and, if different than the information required by paragraph 4 immediately above, a statement of the value to the private party;
 - f. the names of other private parties that have made an offer for the asset being transferred, the value offered, and the purpose for which the asset would have been used.
- (iii) The Board of Directors of the Corporation must make a written determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.

The guidelines are subject to modification and amendment at the discretion of the Corporation board as may be approved by WSDC Corporation Counsel and shall be filed annually with all local and state agencies as required under all applicable law.

Approved and adopted this _____ day of _____ 2023

City of Binghamton Water Street Development Corporation

March 21, 2023

RESOLUTION 23-4 A RESOLUTION OF THE CITY OF BINGHAMTON WATER STREET DEVELOPMENT CORPORATION AUTHORIZING THE PRESIDENT TO ENTER INTO AN AGREEMENT WITH THE CITY OF BINGHAMTON FOR THE PURCHASE OF 183 WATER STREET FOR THE PURPOSE OF DEVELOPING A PARKING GARAGE

WHEREAS, the City of Binghamton owns certain real property located at 183 Water Street, Binghamton, NY 13901, Tax Parcel ID # 160.40-2-3 (the Premises); and

WHEREAS, the WSDC has made an offer to purchase the Premises for \$1.00 for the purpose of developing a parking garage; and

WHEREAS, the sale of the Premises is pending approval of the City of Binghamton Council; and

WHEREAS, The WSDC has contracted with United Pike Development JV, LLC for the development of this lot into a parking garage;

NOW, THEREFORE, the Board of Directors of the WSDC duly convened at a regular meeting, does hereby:

RESOLVE, to authorize the President to enter into an agreement with The City of Binghamton to purchase the Premises for \$1.00.

I, _____, hereby certify the above resolution was approved by the City of Binghamton Water Street Development Corporation at a special meeting held on March 21, 2023.

City of Binghamton Water Street Development Corporation