

**MINUTES OF THE REGULAR MEETING  
OF THE  
POWER AUTHORITY OF THE STATE OF NEW YORK**

**February 23, 2010**

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Minutes of the Regular Meeting of the Power Authority of the State of New York held via videoconference at the following locations: 501 7<sup>th</sup> Ave., New York, NY; 95 Perry St., Buffalo, NY and Harris Beach, LLP, 99 Garnsey Rd., Pittsford, NY.

Members of the Board present were at the follow locations:

Michael J. Townsend, Chairman –Pittsford, NY  
Jonathan F. Foster, Vice Chairman – New York, NY  
D. Patrick Curley, Trustee – Buffalo, NY  
Elise M. Cusack, Trustee – Buffalo, NY  
Eugene L. Nicandri, Trustee – New York, NY

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Richard M. Kessel	President and Chief Executive Officer
Gil C. Quiniones	Chief Operating Officer
Terryl Brown	Executive Vice President and General Counsel
Elizabeth McCarthy	Executive Vice President and Chief Financial Officer
Edward A. Welz	Executive Vice President and Chief Engineer – Power Supply
Bert J. Cunningham	Senior Vice President – Corporate Communications
Steve DeCarlo	Senior Vice President – Transmission – WPO
Angelo Esposito	Senior Vice President – Energy Services and Technology
Paul Finnegan	Senior Vice President – Public, Governmental and Regulatory Affairs
James F. Pasquale	Senior Vice President – Marketing and Economic Development
Donald A. Russak	Senior Vice President – Corporate Planning and Finance
Joan Tursi	Senior Vice President – Enterprise Shared Services
John L. Canale	Vice President – Project Management
Thomas Davis	Vice President – Energy Risk and Assessment – WPO
Thomas DeJesu	Vice President – Public and Governmental Affairs, SENY
Rocco Iannarelli	Vice President – Human Resources
John Kahabka	Vice President – Environment, Health and Safety – WPO
Lesly Pardo	Vice President – Internal Audits
Francis Ryan	Vice President – Emergency Management – WPO
Bradford Van Auken	Vice President – Engineering
Dennis Eccleston	Chief Information Officer
Francine Evans	Chief of Staff – President’s Office
Sarah Barish Straus	Special Assistant – Project Development, President's Office – WPO
Ronni Epstein	Counsel for Legislative and Regulatory Affairs
Karen Delince	Corporate Secretary
Thomas Concadoro	Director – Accounting
Michael Huvane	Director – Business, Muni and Coop Marketing and Economic Development
Peter Ludewig	Director – Hydro Engineering
Mark O’Connor	Director – Real Estate
Michael Saltzman	Director – Media Relations – WPO
Angela D. Graves	Deputy Corporate Secretary
Mary Jean Frank	Associate Corporate Secretary
Lorna M. Johnson	Assistant Corporate Secretary

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Chairman Townsend presided over the meeting. Corporate Secretary Delince kept the Minutes.

1. Consent Agenda

*Chairman Michael Townsend said that the Economic Development Power Allocation Board had recommended that the Authority's Trustees approve item 1b (Power for Jobs Program – Extended Benefits) at their meeting the previous day. President Richard Kessel said that in the interest of full disclosure he wanted to mention that he had dealt with a number of the Power for Jobs (“PFJ”) customers when he worked at the Long Island Power Authority (“LIPA”), but that he had no conflicts with respect to any of them.*

a. **Approval of the Minutes**

*The Minutes of the Regular Meeting held on January 26, 2010 were unanimously adopted.*

**b. Power for Jobs Program – Extended Benefits**

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve electricity savings reimbursement payments (rebates) for 39 Power for Jobs (‘PFJ’) customers as listed in Exhibit ‘1b-A.’ The rebates are calculated for historical periods only. These customers have been recommended to receive such rebates by the Economic Development Power Allocation Board (‘EDPAB’). In addition, the Trustees are requested to approve payment for PFJ Restitution to the three companies listed in Exhibit ‘1b-B-1.’ These companies have been evaluated for Restitution and are due a payment. The Trustees have approved similar extended benefit payments at past Trustees’ meetings.

BACKGROUND

“In July 1997, the New York State Legislature approved a program to provide low-cost power to businesses and not-for-profit corporations that agree to retain or create jobs in New York State. In return for commitments to create or retain jobs, successful applicants received three-year contracts for PFJ electricity.

“The PFJ program originally made 400 megawatts (‘MW’) of power available and was to be phased in over three years. As a result of the initial success of the program, the Legislature amended the PFJ statute to accelerate the distribution of the power and increase the size of the program to 450 MW. In May 2000, legislation was enacted that authorized additional power to be allocated under the program. Legislation further amended the program in July 2002.

“Chapter 59 of the Laws of 2004 extended the benefits for PFJ customers whose contracts expired before the end of the program in 2005. Such customers had to choose to receive an ‘electricity savings reimbursement’ rebate and/or a power contract extension. The Authority was also authorized to voluntarily fund the rebates, if deemed feasible and advisable by the Trustees.

“PFJ customers whose contracts expired on or prior to November 30, 2004 were eligible for a rebate to the extent funded by the Authority from the date their contract expired through December 31, 2005. Customers whose contracts expired after November 30, 2004 were eligible for rebate or contract extension, assuming funding by the Authority, from the date their contracts expired through December 31, 2005.

“Approved contract extensions entitled customers to receive the power from the Authority pursuant to a sale-for-resale agreement with the customer’s local utility. Separate allocation contracts between customers and the Authority contained job commitments enforceable by the Authority.

“In 2005, provisions of the approved State budget extended the period PFJ customers could receive benefits until December 31, 2006. Chapter 645 of the Laws of 2006 included provisions extending program benefits until June 30, 2007. Chapter 89 of the Laws of 2007 included provisions extending program benefits until June 30, 2008. Chapter 59 of the Laws of 2008 included provisions extending the program benefits until June 30, 2009. Chapter 217 of the Laws of 2009 included provisions extending the program benefits until May 15, 2010.

“At its meeting of October 18, 2005, EDPAB approved criteria under which applicants whose extended benefits EDPAB had reduced for non-compliance with their job commitments could apply to have their PFJ benefits reinstated in whole or in part. EDPAB authorized staff to create a short-form application, notify customers of the process, send customers the application and evaluate reconsideration requests based on the approved criteria.

“PFJ Restitution was created by Chapter 645 of the Laws of 2006 that extended the PFJ program for six months to June 2007; the law states: ‘for the period beginning January 1, 2006, for recipients who choose to elect a contract extension, and whose unit cost of electricity under the contract extension exceeds the unit cost of electricity of the electric corporation, the Power Authority shall reimburse the recipient for all dollars paid in excess of the unit cost of electricity of the electric corporation.’ Customers eligible to apply for restitution are those who chose to

extend their PFJ electric service contract beyond January 1, 2007 but terminated their service on June 30, 2007, June 30, 2008 or on or after June 30, 2009.

#### DISCUSSION

“At its meeting on February 22, 2010, EDPAB recommended that the Authority’s Trustees approve electricity savings reimbursement rebates to the 39 businesses listed in Exhibit ‘1b-A.’ Collectively, these organizations have agreed to retain more than 51,000 jobs in New York State in exchange for the rebates. The rebate program will be in effect until May 15, 2010, the program’s sunset.

“The Trustees are requested to approve the payment and funding of rebates for the companies listed in Exhibit ‘1b-A’ in a total amount currently not expected to exceed \$4.5 million. Staff recommends that the Trustees authorize a withdrawal of monies from the Operating Fund for the payment of such amount, provided that such amount is not needed at the time of withdrawal for any of the purposes specified in Section 503(1)(a)-(c) of the General Resolution Authorizing Revenue Obligations, as amended and supplemented. Staff expects to present the Trustees with requests for additional funding for rebates to the companies listed in Exhibit ‘1b-A’ in the future for other rebate months.

“Restitution is based on whether the net amount paid by the customer for PFJ service exceeded the ‘unit cost of electricity’ of the host utility over the measurement period for the same quantity of electricity. Under current law, the measurement period begins January 1, 2006 and ends with the date that the eligible customer ceases to be in the PFJ electricity program.

“The host utilities, in conjunction with the Authority and the Public Service Commission, determine what the otherwise applicable full-service electric rates of the host utility would have been for service throughout the measurement period, calculate what the customer charges would have been under those rates, compare that total to the total actual charges paid by the customer for PFJ and determine whether the customer had net savings overall in the PFJ program or is due a Restitution payment.

“Staff has evaluated an additional five customers for Restitution. Three customers are eligible for Restitution payment and are presented for approval on Exhibit ‘1b-B-1.’ Two customers listed in Exhibit ‘1b-B-2’ had overall PFJ program savings; therefore no payment is required.

#### FISCAL INFORMATION

“Funding of rebates for the companies listed in Exhibit ‘1b-A’ is not expected to exceed \$4.5 million. Payments will be made from the Operating Fund. To date, the Trustees have approved \$206.7 million in rebates.

“Funding of restitution payments for the companies listed on Exhibit ‘1b-B-1’ is not expected to exceed \$1 million. Payments will be made from the Operating Fund. This is the fourth payment request to date, which will bring the total approved for PFJ Restitution payments to \$5.71 million. Additional requests will follow based on subsequent evaluation of other restitution eligible customers.

#### RECOMMENDATION

“The Executive Vice President and Chief Financial Officer, the Senior Vice President – Marketing and Economic Development and the Director of Marketing recommend that the Trustees approve the payment of electricity savings reimbursements to the Power for Jobs customers listed in Exhibit ‘1b-A’ and payment of PFJ Restitution for the customers listed in Exhibit ‘1b-B-1.’

“The Executive Vice President and General Counsel and I concur in the recommendation.”

The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**WHEREAS, the Economic Development Power Allocation Board (“EDPAB”) has recommended that the Authority approve electricity savings reimbursements to the Power for Jobs (“PFJ”) customers listed in Exhibit “1b-A”;**

**NOW THEREFORE BE IT RESOLVED, That to implement such EDPAB recommendations, the Authority hereby approves the payment of electricity savings reimbursements to the companies listed in Exhibit “1b-A,” and that the Authority finds that such payments for electricity savings reimbursements are in all respects reasonable, consistent with the requirements of the PFJ program and in the public interest; and be it further**

**RESOLVED, That based on staff’s recommendation, it is hereby authorized that payments be made for electricity savings reimbursements as described in the foregoing report of the President and Chief Executive Officer in the aggregate amount of up to \$4.5 million, and it is hereby found that amounts may properly be withdrawn from the Operating Fund to fund such payments; and be it further**

**RESOLVED, That based on staff’s recommendation, it is hereby authorized that payments be made for PFJ Restitution payments as described in the foregoing report of the President and Chief Executive Officer in the aggregate amount of up to \$1 million and it is hereby found that amounts may properly be withdrawn from the Operating Fund to fund such payments; and be it further**

**RESOLVED, That such monies may be withdrawn pursuant to the foregoing resolution upon the certification on the date of such withdrawal by the Senior Vice President – Corporate Planning and Finance or the Treasurer that the amount to be withdrawn is not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further**

**RESOLVED, That the Senior Vice President – Marketing and Economic Development or his designee be, and hereby is, authorized to negotiate and execute any and all documents necessary or desirable to effectuate the foregoing, subject to the approval of the form thereof by the Executive Vice President and General Counsel; and be it further**

**RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**

New York Power Authority  
Power for Jobs - Extended Benefits  
Recommendation for Electricity Savings Reimbursements

Line	Company	City	County	IOU	KW	Jobs Committed	Jobs in Application	Over (under)	% Over (under)	Compliance	Recommended Allocation (KW)	Type	Service
1	Northeast Solite Corp.	Mount Marion	Ulster	CHGE	600	60	57	-3	-5%	Yes	600	Large	Manufactures nonmetallic mineral products
	<b>Total Central Hudson</b>		<b>Subtotal</b>	<b>1</b>	<b>600</b>	<b>60</b>	<b>57</b>				<b>600</b>		
2	Greater Jamaica Development Corp.	Jamaica	Queens	Con Ed	375	151	144	-7	-5%	Yes	375	NFP	Urban & Community Development
3	Memorial Sloan-Kettering Cancer Center	New York	New York	Con Ed	5,000	9,840	9,756	-84	-1%	Yes	5,000	NFP	Medical Center
4	Mount Sinai Medical Center	New York	New York	Con Ed	2,000	10,327	10,759	432	4%	Yes	2,000	NFP	Medical Center
5	New Museum of Contemporary Art	New York	New York	Con Ed	50	88	84	-4	-5%	Yes	50	NFP	Art Center
6	Norampac New York City, Inc.	Maspeth	Queens	Con Ed	600	204	181	-23	-11%	Yes*	600	Large	Corrugated paper packaging & displays
7	North General Hospital	New York	New York	Con Ed	400	1,120	1,029	-91	-8%	Yes	400	NFP	Hospital
8	NYU Medical Center	New York	New York	Con Ed	4,000	11,364	12,387	1,023	9%	Yes	4,000	NFP	Medical Center
9	Pepsi Cola Bottling Company	College Point	Queens	Con Ed	2,200	1,003	1,098	95	9%	Yes	2,200	Large	Manufacturer & distributes of soft drinks
10	The Brooklyn Historical Society	Brooklyn	Kings	Con Ed	30	18	17	-1	-6%	Yes	30	NFP	Community Services
	<b>Total Con Ed</b>		<b>Subtotal</b>	<b>9</b>	<b>14,655</b>	<b>34,115</b>	<b>35,455</b>				<b>14,655</b>		
11	American Technical Ceramics	Huntington Station	Suffolk	LIPA	200	386	289	-97	-25%	Yes*	200	Small	Ceramic Capacitor
12	Good Samaritan Hospital	West Islip	Suffolk	LIPA	800	3,137	3,071	-66	-2%	Yes	800	NFP	Healthcare Center
13	Kleer-Fax Inc.	Amityville	Suffolk	LIPA	200	130	105	-25	-19%	Yes*	200	Small	Mfr. paper and plastic products for the office
14	Silver Lake Cookie Company	Islip	Suffolk	LIPA	400	195	196	1	1%	Yes	400	Large	Manufacturer of specialty cookies
15	Ultimate Precision Metal	Farmingdale	Suffolk	LIPA	250	116	89	-27	-23%	Yes*	250	Small	Manufactures controlled enclosures
	<b>Total LIPA</b>		<b>Subtotal</b>	<b>5</b>	<b>1,850</b>	<b>3,964</b>	<b>3,750</b>				<b>1,850</b>		
16	CWM Chemical Services, LLC	Model City	Niagara	N. Grid	330	65	75	10	15%	Yes	330	Small	Industrial Waste treatment, storage, & disposal
17	Diemolding Corporation	Canastota	Madison	N. Grid	184	201	82	-119	-59%	Yes*	184	Small	Thermoset plastic forming
18	Edward John Noble Hospital	Gouverneur	St. Lawrence	N. Grid	100	237	230	-7	-3%	Yes	100	NFP	Healthcare center
19	Fiber Glass Industries Inc.	Amsterdam	Montgomery	N. Grid	700	148	146	-2	-1%	Yes	700	Large	Produces high strength woven fabrics
20	Fitzpatrick & Weller, Inc.	Ellicottville	Cattaraugus	N. Grid	1,000	86	81	-5	-6%	Yes	1,000	Large	Lumber & wood components
21	G L & V Sandy Hill Inc.	Hudson Falls	Washington	N. Grid	750	99	85	-14	-14%	Yes*	750	Large	Full service foundry & machine shop
22	Higbee Inc.	Syracuse	Onondaga	N. Grid	100	47	42	-5	-11%	Yes	100	Small	Mfr. of gaskets and sealing products

**February 23, 2010  
Exhibit "1b-A"**

Line	Company	City	County	IOU	KW	Jobs Committed	Jobs in Application	Over (under)	% Over (under)	Compliance	Recommended Allocation (KW)	Type	Service
23	Interface Solutions, Inc.	Fulton	Oswego	N. Grid	940	139	99	-40	-29%	Yes*	940	Large	Vinyl flooring and fiber gasket backing
24	Intertek Testing Services	Cortland	Cortland	N. Grid	600	311	353	42	14%	Yes	600	Large	Independent test lab
25	Luvata Buffalo, Inc. (OAB Holdings)	Buffalo	Erie	N. Grid	5,000	617	540	-77	-12%	Yes*	5,000	Large	Metal manufacturing
26	Lydall Manning	Green Island	Albany	N. Grid	1,100	114	103	-11	-10%	Yes	1,100	Large	Specialty Paper Manufacturer
27	Meloon Foundries, Inc.	Syracuse	Onondaga	N. Grid	275	52	42	-10	-19%	Yes*	275	Small	Non-Ferrous Sand Casting Foundry
28	Nathan Littauer Hospital & Nursing Home	Gloversville	Fulton	N. Grid	400	698	720	22	3%	Yes	400	NFP	Hospital and Nursing Home
29	Natrium Products, Inc.	Cortland	Cortland	N. Grid	90	21	21	0	0%	Yes	90	Small	Baking soda manufacturer
30	Power Pallet	Schenectady	Schenectady	N. Grid	250	112	123	11	10%	Yes	250	Small	Produces wood pallets & skids
31	Revere Copper Products	Rome	Oneida	N. Grid	2,000	412	374	-38	-9%	Yes	2,000	Large	Copper & brass products
32	Spray Nine Corporation	Johnstown	Fulton	N. Grid	300	106	71	-35	-33%	Yes*	300	Small	Specialty cleaning chemical
33	St. Joseph's Hospital Health Center	Syracuse	Onondaga	N. Grid	1,000	3,209	3,023	-186	-6%	Yes	1,000	NFP	Healthcare Center
34	Stone Construction Equipment Inc.	Honeoye	Ontario	N. Grid	300	198	96	-102	-52%	Yes*	300	Small	Light construction equipment
35	Syracuse Plastics, Inc.	Liverpool	Onondaga	N. Grid	400	42	43	1	2%	Yes	400	Large	Maker of plastic parts and components
36	Syracuse University	Syracuse	Onondaga	N. Grid	2,000	4,575	4,648	73	2%	Yes	2,000	NFP	Institution of Higher Education
37	Turbine Engine Components Technologies	Whitesboro	Oneida	N. Grid	1,200	288	234	-54	-19%	Yes*	1,200	Large	Precision forging plant
	<b>Total National Grid</b>		<b>Subtotal</b>	<b>23</b>	<b>19,019</b>	<b>11,777</b>	<b>11,231</b>				<b>19,019</b>		
38	Merritt Machinery, LCC	Lockport	Niagara	NYSEG	75	9	7	-2	-22%	Yes*	75	Small	Hardwood, veneer and plywood machinery
	<b>Total NYSEG</b>		<b>Subtotal</b>	<b>1</b>	<b>75</b>	<b>9</b>	<b>7</b>				<b>75</b>		
39	International Business Machines - Rochester	Rochester	Monroe	RGE	1,150	592	584	-8	-1%	Yes	1,150	Large	Computer Manufacturer
	<b>Total RG&amp;E</b>		<b>Subtotal</b>	<b>1</b>	<b>1,150</b>	<b>592</b>	<b>584</b>				<b>1,150</b>		

Total	40	37,349	50,517	51,084
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37,349
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\* Company had all or part of their allocation restored through the reconsideration process, or will not have this month's rebate benefits reduced based on program policy and procedures.

New York Power Authority  
 Power for Jobs - Extended Benefits

Recommendation for Restitution Payments

Line	File	Company	City	County	IOU	KW	Type	Restitution Period		Program Status	Restitution Payments	Service
								Time Frame	Months			
1	925	Atofina Chemicals, Inc. (Arkema)	Geneseo	Livingston	Grid	850	Large	Jan '06 - Jun 08	30-months	Rebate	\$146,756	Chemical manufacturing plant
2	184	Crucible Specialty Metals	Syracuse	Onondaga	Grid	4,000	Large	Jan '06-Dec.'06	12-months	Rebate	\$750,000	Specialty steel manufacturer.
3	664	Syracuse Casting Sales Corp.	Cicero		Grid	300	Small	Jan '06-Dec.'06	12-months	Rebate	\$6,105	Produce highway drain grates and manhole covers
<b>National Grid Subtotal</b>						<b>5,150</b>					<b>\$902,861</b>	

Grand Total

5,150

902,861

New York Power Authority  
 Power for Jobs - Extended Benefits  
 Restitution Savings - No Payment Required

Line	File	Company	City	County	IOU	KW	Type	Restitution Period		Program Status	PFJ Savings	Service	Issued Savings Letter
								Time Frame	Months				
1	501	Norlite Corp.	Cohoes	Albany	Grid	500	Large	Jan '06 - Jun 08	30-months	Rebate	\$89,064	Manufacturer of Brass Fittings	
2	654	Stone Construction Equipment Inc.	Honeoye	Ontario	Grid	300	Small	Jan '06 - Jun 08	30-months	Rebate	\$59,353	Makes a broad range of light construction equipment	

<b>National Grid Subtotal</b>						<b>800</b>					<b>\$148,417</b>		
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<b>Grand Total</b>						<b>800</b>					<b>\$148,417</b>		
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**c. Allocation of 1,600 kW of Hydropower**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

“The Trustees are requested to approve an allocation of available Replacement Power (‘RP’) totaling 1,600 kW to two industrial companies.

**BACKGROUND**

“Under Section 1005(13) of the Power Authority Act, as amended by Chapter 313 of the Laws of 2005, the Authority may contract to allocate or reallocate directly, or by sale for resale, 250 MW of firm hydroelectric power as Expansion Power (‘EP’) and up to 445 MW of RP to businesses in the State located within 30 miles of the Niagara Power Project, provided that the amount of power allocated to businesses in Chautauqua County on January 1, 1987 shall continue to be allocated in such county.

“Each application for an allocation of EP or RP must be evaluated under criteria that include, but need not be limited to, those set forth in Public Authorities Law Section 1005(13) (a), which sets forth general eligibility requirements.

“Among the factors to be considered when evaluating a request for an allocation of hydropower are the number of jobs created as a result of the allocation; the business’ long-term commitment to the region as evidenced by the current and/or planned capital investment in the business’ facilities in the region; the ratio of the number of jobs to be created to the amount of power requested; the types of jobs created, as measured by wage and benefit levels, security and stability of employment and the type and cost of buildings, equipment and facilities to be constructed, enlarged or installed.

“Since 2003, the Authority, National Grid, Empire State Development Corporation, Niagara County, Erie County and the Buffalo Niagara Enterprise worked together in coordinating the marketing and allocating Authority hydropower. The entities noted above formed the Western New York Advisory Group (‘Advisory Group’) with the intent of better using the value of this resource to improve the economy of Western New York and the State of New York.

**DISCUSSION**

“Staff recommends and the Advisory Group supports the available power being allocated to the two companies set forth in Exhibit ‘1c-A.’ The Exhibit shows, among other things, the amount of power requested the recommended allocation and additional employment and capital investment information. These projects will help maintain and diversify the industrial base of Western New York and provide new employment opportunities. They are projected to result in the creation of 62 jobs.

“The Continental Carbonic Products, Inc project will result in the creation of 35 jobs. The associated jobs-per-MW ratio of 44 is 25% higher than the average ratio for allocations since the formation of the Advisory Group. The project will also require a capital investment of \$5.95 million that will result in a capital investment-per-MW ratio of \$7.44 million. The Sweeney Steel Service Corporation expansion project is projected to result in the creation of 27 jobs with a related jobs-per-MW ratio of 34. This is more than 13% higher than the average ratio for allocations since the formation of the Advisory Group. Additional information on each project is contained in the application summaries attached as Exhibits ‘1c-A-1’ and ‘1c-A-2.’

**RECOMMENDATION**

“The Manager of Business Power Allocations and Compliance recommends that the Trustees approve the allocation of 1,600 kW of hydropower to the companies listed in Exhibit ‘1c-A.’

“The Chief Operating Officer, the Executive Vice President and General Counsel, the Senior Vice President – Marketing and Economic Development, the Director of Marketing and I concur in the recommendation.”

The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That the allocation of 1,600 kW of Replacement Power, as detailed in Exhibit “1c-A,” be, and hereby is, approved on the terms set forth in the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**

New York Power Authority  
Replacement Power  
Recommendation for Allocation

Exhibit Number	Company Name	Program	City	County	Power Requested (kW)	New Jobs	Estimated Capital Investment	New Jobs Avg. Wage Benefits	Power Recommended (kW)	Contract Term
A-1	Continental Carbonic Products, Inc	RP	Median	Orleans	1,000	35	\$5,950,000	\$49,500	800	5 Years
A-2	Sweeney Steel Service, Corporation	RP	Buffalo	Erie	1,125	27	\$1,300,000	\$38,000	800	5 Years
<b>Total RP Recommended</b>						<b>62</b>	<b>\$7,250,000</b>		<b>1,600</b>	

\* The company will locate within 30 miles of the Niagara Project.

**APPLICATION SUMMARY**  
**Replacement Power**

<b>Company:</b>	Continental Carbonic Products, Inc.
<b>Location:</b>	Medina
<b>County:</b>	Orleans County
<b>IOU:</b>	National Grid
<b>Business Activity:</b>	Dry ice manufacturing
<b>Project Description:</b>	The project involves building a 115-ton-per-day dry ice manufacturing facility. The company would purchase land in Medina, construct a 25,000-sq.-ft. building, install manufacturing equipment and build necessary infrastructure to pipe liquid CO <sub>2</sub> to the plant. The project has an estimated 16-month timeline culminating in a total capital investment of \$5.95 million with 35 new jobs. Dry ice products would be sold to a wide variety of industries, including food processing, meat packaging, laboratory and research, blood/plasma services, etc.
<b>Existing Allocation:</b>	N/A
<b>Power Request:</b>	1,000 kW
<b>Power Recommended:</b>	800 kW
<b>Job Commitment:</b>	
<b>Existing:</b>	0 jobs
<b>New:</b>	35 jobs
<b>New Jobs/Power Ratio:</b>	44 jobs/MW
<b>New Jobs - Avg. Wage and Benefits:</b>	\$49,500
<b>Capital Investment:</b>	\$5.95 million
<b>Capital Investment/MW:</b>	\$7.44 million/MW
<b>Summary:</b>	Continental Carbonic Products is looking to site a dry ice manufacturing facility to service the Northeast. The company is scouting several locations, including Pennsylvania. Electricity cost is a significant percentage of production costs. The decision to locate the project in Western New York depends on the company's receiving a hydropower allocation. The company is working with the Orleans County Economic Development Agency and others for additional support.

**APPLICATION SUMMARY**  
**Replacement Power**

<b>Company:</b>	Sweeney Steel Service Corporation
<b>Location:</b>	Buffalo
<b>County:</b>	Erie
<b>IOU:</b>	National Grid
<b>Business Activity:</b>	Steel strapping
<b>Project Description:</b>	The company plans to remodel its existing facility to accommodate installation of steel strapping production lines. This will allow it to expand from one customer to a wider customer base, both domestically and internationally. Steel strapping is used primarily in the packaging industry to secure and attach items to pallets, skids and crating. The company would be installing a heat-treating line and 12 strand slitters.
<b>Existing Allocation:</b>	N/A
<b>Power Request:</b>	1,125 kW
<b>Power Recommended:</b>	800 kW
<b>Job Commitment:</b>	
<b>Existing:</b>	23 jobs
<b>New:</b>	27 jobs
<b>New Jobs/Power Ratio:</b>	34 jobs/MW
<b>New Jobs - Avg. Wage and Benefits:</b>	\$38,000
<b>Capital Investment:</b>	\$1.3 million
<b>Capital Investment/MW:</b>	\$1.63 million/MW
<b>Summary:</b>	Sweeney Steel is a metal service center specializing in flat-rolled products, primarily for the auto industry. This allocation would allow the company to develop new strapping production lines to compete domestically and internationally for business in the highly competitive packaging industry. Without this allocation, the company will not be able to develop this project to increase employment and current employment would also be at risk.

**d. Municipal and Rural Electric Cooperative  
Economic Development Program –  
Jamestown Board of Public Utilities**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

“The Trustees are requested to approve two allocations of hydropower under the Municipal and Rural Electric Cooperative Economic Development Program (‘Program’) to the Jamestown Board of Public Utilities (‘JBPU’).

**BACKGROUND**

“The 1991 amendment to the power sales agreement between the Authority and the Municipal and Rural Electric Cooperative Systems set aside a block of 54 MW from the 752 MW of hydropower allocated to the systems for economic development in the systems’ service territories. The total allocation was increased to 764.8 MW as a result of additional power from the Niagara Power Project upgrade.

“Power from this block can be allocated to individual systems to meet the increased electric load resulting from eligible new or expanding businesses in their service area. Recommended allocations under the Program will now be made using guidelines that were approved by the Trustees on September 23, 2008. Under the revised program, the first 100 kW allocated will be 100 % hydropower and any additional kW allocated will be 50% hydropower and 50% incremental power.

“As of January 30, 2009, 21,185 kW have been allocated. JBPU has submitted two applications for Economic Development power under the Program amounting to 5 MW of hydropower for consideration by the Trustees.

**DISCUSSION**

**“SKF Aeroengine North America**

JBPU has submitted an application on behalf of SKF Aeroengine (‘SKF’), a unit of SKF Industrial Division. SKF, which was founded in 1903 as Gurney Ball Bearing Company, continued to expand and in 1924 merged with Standard Steel and Bearings, a division of Marlin Rockwell Corporation. A year later, the company grew again with the purchase of Strom Ball Bearings in Chicago and established its headquarters in Jamestown.

The aerospace business manufactures ball and roller bearings for helicopters, main-shafts and gear-boxes for jet engines and all types of aircraft power assemblies. Today, it continues to be a leader in high-precision, custom-engineered ball and roller bearings for critical aeroengine and specialty applications. In 2003, SKF concluded that the useful life of the Jamestown facility for bearing production had been exceeded and announced that the plant would be closed and the work transferred to the SKF plants in Falconer, New York and Charleston, South Carolina. In February 2008, 30% of the bearing operations were transferred to Charleston and approximately 70% were transferred to Falconer. The heat-treatment process in bearing manufacturing is viewed as most critical to SKF not only from the operational point of view but also from the financial, since the aerospace bearing market is very competitive. The company is under constant pressure to reduce operating costs and increase productivity. In order to meet competitive challenges, SKF’s management is interested in taking advantage of the low electricity cost of JBPU to run a low-cost manufacturing operation in Falconer.

The company’s investment associated with the new heat-treatment facility and equipment total approximately \$18 million. The project could also bring about 40 new hourly and salaried jobs in the near future to New York, but, more importantly, keep the 691 existing jobs currently working on three shifts in the Jamestown area for many years to come. Furthermore, additional projects would probably follow, requiring the revamp of some office space into manufacturing space, purchase of new equipment and the construction of a new shipping and

office building area, requiring an additional capital investment amounting to \$23 million. An additional 2 MW of monthly peak demand will be needed to support the project and comply with the Empire State Development Corporation ('ESDC') incentive proposal, in exchange for protecting 691 jobs and a commitment for 731 jobs in Jamestown. The Trustees are requested to approve an allocation of 2 MW of hydropower to JBPU on behalf of SKF Aeroengine North America. The requested allocation is the equivalent to 366 jobs per MW of hydropower.

#### **"Plasticware LLC**

JBPU has submitted an application on behalf of Plasticware LLC ('Plasticware'). The company commenced operations in August 2007 following its acquisition of the former Alcoa Reynolds Food Packaging facility in Mount Vernon, Kentucky. The company is doing business as MVP Food Packaging at the Kentucky plant and is owned equally by Shefa Industries LLC, Shifra LLC and Adel LLC.

MVP Food Packaging is fully operational and supplying product to existing customers. However, while the business is growing, the company cannot expand in Kentucky without a major facility expansion. This has led the company to explore alternative locations that are also closer to the northeast market and Plasticware's headquarters in Rockland County, New York. The company has identified the former Sysco facility in Falconer as viable; that it is in a muni-electric district is key, due to projected energy costs. Plasticware has financing in place to purchase the facility, construct an on-site silo for pellet storage, make certain renovations and infrastructure improvements and buy additional machinery and equipment. However, Plasticware does not have the funds needed to relocate existing machinery and equipment and other items from Kentucky to New York State or to make certain production-related infrastructure improvements to its manufacturing process at this former food warehouse-distribution facility.

The total estimated investment associated with the relocation/expansion in New York is about \$25 million, of which \$18 million is for the purchase of machinery and equipment and \$7 million is to create office space. Without adequate assistance, the company is likely to remain in Kentucky and expand there. Therefore, to make this project work in New York State the delta of start-up costs to financing, estimated at \$4 million, will be aided by \$2 million in grant assistance from ESDC and the New York State Office of Community Renewal, as well as Empire Zone benefits. To make this project work in New York State, however, low-cost electricity is key.

"The company is estimating that monthly electric usage will peak at 16 MW. Plasticware will be creating 250 full-time jobs, with an annual estimated payroll of \$7.3 million. The company qualified for 8.1 MW, but after allocating 2 MW to SKF, only 3 MW is available for Plasticware. The Trustees are requested to approve an allocation of 3 MW of hydropower, or 83 jobs per MW, on behalf of Plasticware LLC to JBPU.

"With the approval of the two allocations, JBPU has reached 5 MW, the maximum total hydro allocation available to any one system under the Municipal and Cooperative Economic Development Program.

"In accordance with the Authority's marketing arrangement with its municipal and cooperative customers, the hydropower will be added to JBPU's contract demand at the time the project becomes operational and the additional jobs and load commitments are reached. The hydropower earmarked for the Program is presently sold to the municipal and rural electric cooperative customers on a withdrawable basis.

#### **RECOMMENDATION**

"The Director – Marketing Analysis and Administration recommends that the Trustees approve the allocation of power under the Municipal and Rural Electric Cooperative Economic Development Program to the Jamestown Board of Public Utilities in accordance with the above.

"The Executive Vice President and General Counsel, the Senior Vice President – Marketing and Economic Development and I concur in the recommendation."

The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That the allocation of power to the Jamestown Board of Public Utilities under the Municipal and Rural Electric Cooperative Economic Development Program is hereby approved as set forth in the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That the Senior Vice President – Marketing and Economic Development or his designee be, and hereby is, authorized to execute any and all documents necessary or desirable to effectuate this allocation, subject to the approval of the form thereof by the Executive Vice President and General Counsel; and be it further**

**RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**

**e. Lease of Office Space – Albany Office,  
KeyCorp Tower, 30 South Pearl Street**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

“The Trustees are requested to authorize the execution of a Second Amendment of Lease with PS Associates (‘Landlord’) for office space on the 10<sup>th</sup> floor of the KeyCorp Tower (‘Building’), 30 South Pearl Street, Albany, New York. The proposed second amendment of lease would increase the square footage from approximately 8,760 rsf currently to 12,620 rsf, adding an additional 3,860 rsf as shown on Exhibit ‘1e-A’ attached hereto, along with extending the term of the lease an additional year to terminate on February 28, 2015. The proposed second amendment of lease would hold the current base rent of \$20.00 per square foot plus electricity and adjustments for taxes and operating expenses over a base year as discussed in Exhibit ‘1e-B’ attached hereto.

**BACKGROUND**

“At their meeting of December 15, 1998, the Trustees approved the execution of a lease for approximately 16,035 rsf of office space at 30 South Pearl Street, Albany, New York as the new site for the Authority’s Albany office. The term of that lease was for 10 years expiring on February 28, 2009, with the option to renew for one additional five-year term. At their meeting of January 29, 2008, the Trustees approved the execution of an amendment of lease that reduced the square footage of the earlier approved lease to contain approximately 8,760 rsf. The term was extended for five years from March 1, 2009 through February 28, 2014.

**DISCUSSION**

“The earlier approved reduction of space recognized the diminished space needs of the Authority’s staff for the Albany office. The reduction was also predicated on a request by the Office of General Services/Cyber Securities to occupy the remainder of the 10<sup>th</sup> floor at 30 South Pearl, Albany, New York. Due to their changing needs, OGS/Cyber Securities is no longer interested in leasing the currently unoccupied portion of the 10<sup>th</sup> floor. Having recognized the need for a slight expansion in the Albany office, Authority staff contacted PS Associates, which is amenable to leasing an additional 3,860 rsf to the Authority on the terms set out in Exhibit ‘1e-B.’

**FISCAL INFORMATION**

“The Authority currently pays its lease obligations out of the operating fund. By increasing the area of the premises to 12,620 rsf, the Authority’s base annual rent without electricity, taxes and operating expenses will be \$252,400.

**RECOMMENDATION**

“The Director – Real Estate and the Director – Corporate Support Services recommend that the Trustees approve entering into a second amendment of lease agreement with PS Associates for commercial office space in the KeyCorp Tower at 30 South Pearl Street, Albany, New York on terms substantially in accordance with the foregoing and with Exhibit ‘1e-B’ attached hereto.

“The Executive Vice President and General Counsel, the Senior Vice President – Enterprise Shared Services and I concur in the recommendation.”

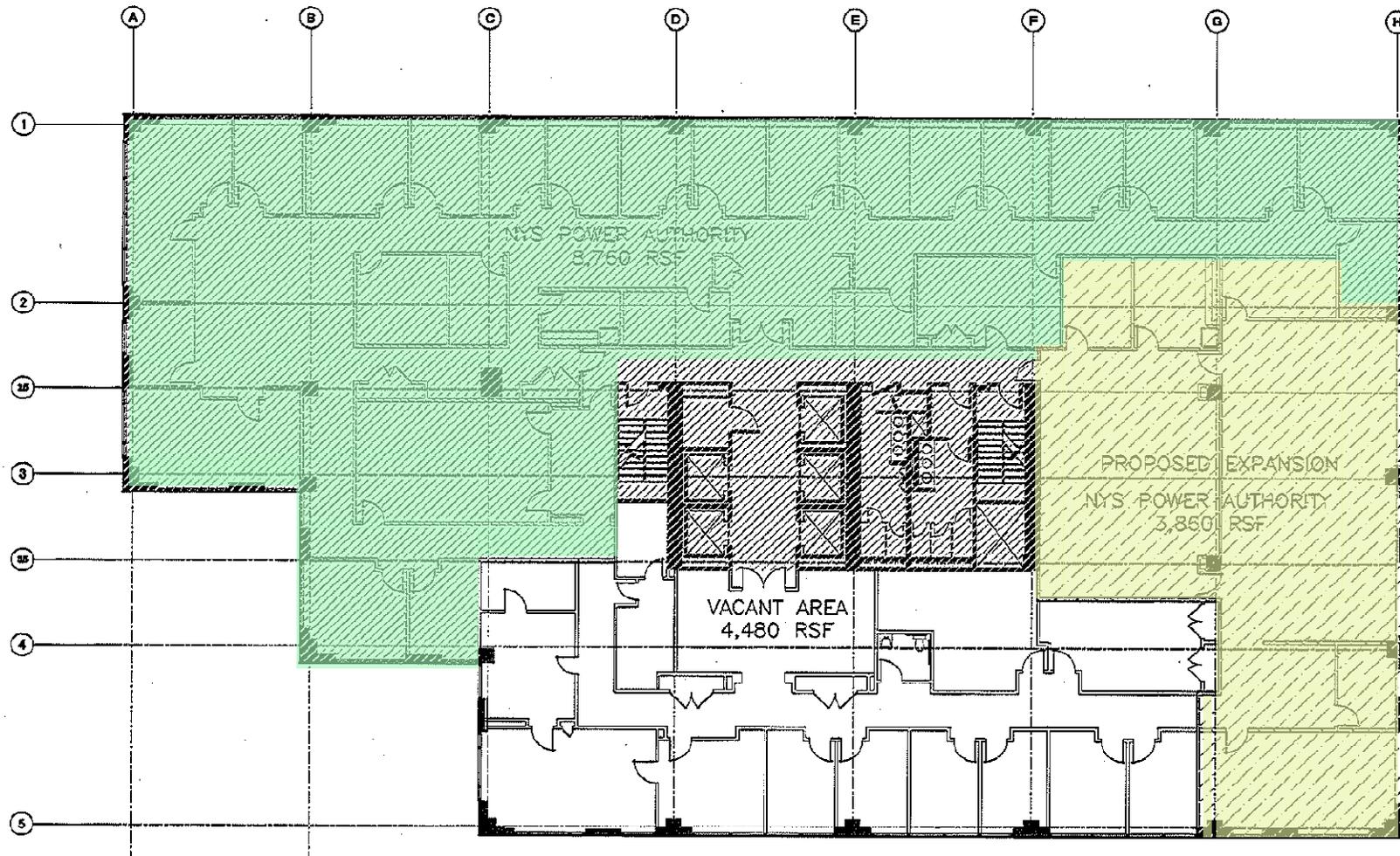
The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That the President and Chief Executive Officer or the Senior Vice President – Enterprise Shared Services be, and hereby is, authorized on behalf of the Authority to enter into a second amendment of lease for office space in the KeyCorp Tower with PS Associates on substantially the terms set forth in the foregoing report of the President and Chief Executive Officer and Exhibit ‘1e-B,’ subject to the approval of the second amendment of lease documents by the Executive Vice President and General Counsel or her designee; and be it further**

**RESOLVED, That the Senior Vice President – Enterprise Shared Services or the Director – Real Estate be, and hereby is, authorized on behalf of the Authority to execute any and all other agreements, papers or instruments that may be deemed necessary or desirable to carry out the foregoing, subject to the approval of the form thereof by the Executive Vice President and General Counsel or her designee; and be it further**

**RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel or her designee.**

# EXHIBIT A



-  EXISTING SPACE
-  ADDITIONAL SPACE

**OMNI PLAZA**  
30 South Pearl Street  
Albany, New York

**Basic Lease Terms**

Landlord:	PS Associates
Tenant:	New York Power Authority
Premises:	Approximately 8,760 rsf currently + <u>3,860</u> rsf additional space 12,620 rsf total
Term:	Commencing upon the substantial completion date estimated to be March 1, 2010 and terminating on February 28, 2015.
Fixed Rent:	Rent will be \$252,400 annually or \$20.00 per square foot.
Renewal Option:	One five-year option to renew with one year's notice.
Electric:	Actual electric usage based on sub-metering.
Operating Escalation:	Pro-rata share of increases in operating expenses over a base year of 1999.
Real Estate Tax Escalation:	Pro-rata share of increases in real estate taxes over a base year of 1999 for City/County/BID and July 1, 1998 – June 30, 1999 for school.
Parking:	Offsite parking.
Tenant Improvement:	Standard office build-out at Landlord's cost.
Brokerage Commissions:	Any brokerage commission associated with this second amendment will be paid by Landlord.

2. Discussion Agenda

a. Report of the President and Chief Executive Officer

*President Richard Kessel welcomed the Trustees to the Authority's New York City office. He said that next month staff would recommend to the Trustees that the New York City office lease be extended for a year while a study is conducted to determine the economics and feasibility of relocating the New York City office to the existing office space at the recently closed Poletti plant in Queens. He said that staff would report back to the Trustees in the fall as to their findings.*

*President Kessel said that last month's presentation on the Energy Services and Technology program drew rave reviews and that staff is working on a number of press conferences around the State at some of the highlighted projects. In New York City, those projects included work with the Police Department, the Port Authority and the Metropolitan Transportation Authority. He said that the Marketing and Economic Development program would be highlighted in a presentation at the March Trustees' Meeting.*

*President Kessel said that a month ago Governor Paterson, the new Mayor of Syracuse and other elected officials participated with him in a press conference about the Authority's 100 MW solar program. He said that a Request for Proposals ("RFP") seeking public-private partnerships to install up to 100 MW of solar photovoltaic ("PV") systems across the State had been issued on January 27 and that as of February 18 there had been 487 registrations on the RFP website and 130 registrations to attend the bidders' conference on March 2 at the State University of New York at Purchase. When fully implemented by the end of 2014, the initiative will reduce greenhouse emissions by an estimated 45,000 tons per year, quintuple the amount of solar energy currently produced in New York State, generate enough electricity to power approximately 15,000 homes and be the largest solar initiative in New York State history. The proposal due date is April 22, preliminary selections will be made by July 16 and staff plans to recommend contract awards to the Trustees at their September 29 meeting. The RFP is for proposals from developers to install, own and operate PV arrays and to sell all the energy and environmental attributes to the Authority subject to a 20-year power purchase agreement. The Authority will then enter into contracts with the project hosts, such as the school where the PV array is located, for the distribution of green power. Bid categories include government facilities; public and private K-12 schools; parking lot canopies at any governmental or educational facilities and systems tied into the Authority's municipal utilities and rural electric cooperative distribution systems. Bid regions include Western New York, Northern*

*New York, Central New York, Southeastern New York and New York City. President Kessel said that he would report back to the Trustees at their May meeting about the number and kinds of proposals received and that the Trustees would be actively involved in the process.*

*President Kessel mentioned the following upstate/downstate community outreach activities since the last Trustees' Meeting:*

- *Niagara Falls – Breakfast with Senator Maziarz and a news conference with Niagara Falls Mayor Dyster on the 100 MW solar initiative.*  
*Queens – Tour of 500 MW project and news conference on ceasing operations at the Poletti plant. President Kessel said that the Authority's employees at the Poletti plant were granted job security through the end of this year and the guarantee of a job somewhere at the Authority in 2011. He said that he has mixed feelings about the Plant's closing, since in doing so the Authority had lived up to its commitments, but had closed a robust operating plant that may be needed some day. He doesn't want to see the mistakes of the late 1990s and early 2000s repeated, especially since building a major facility is a six- or seven-year process at best.*
- *Long Island – News conference announcing Industrial Incentive Award to CA (formerly Computer Associates). President Kessel said that if it hadn't been for PFJ and the Energy Cost Savings Benefit program, CA would have moved out of state.*
- *New York City – Meeting with Mayor Bloomberg.*
- *Long Island – Meetings with Long Island Regional Planning Council.*
- *White Plains – Meeting with Mayor Bradley. The Authority will be helping the City with new electrical equipment and infrastructure at City Hall.*
- *Buffalo – Meeting with Mayor Brown and Congressman Higgins.*

*President Kessel said that he was returning to Western New York the following day to meet with a number of elected officials and that he was going to talk to Senator Maziarz today. In addition, later this week he will be meeting with the Newsday editorial board and giving a speech along with Robert Catell. Next week, he'll be going to Watertown and the week after that back to Buffalo. In March or April, he'll be meeting with the Jefferson County Legislature about the Great Lakes Wind Project.*

February 23, 2010

*Chairman Townsend thanked President Kessel for his report, saying that it demonstrates how active he is as he continues to work on the Authority's behalf.*

b. Report of the Chief Operating Officer

*Mr. Gil Quiniones provided the following report:*

*Systemwide generation and transmission performance surpassed monthly target projections in January. The strategic organizational realignment in the Power Authority's Operations Business Organization continues; the Transmission Business Group will assume responsibility for all NYPA transmission infrastructure, including assets in southeast New York that were previously managed by Power Supply's Engineering department.*

POWER SUPPLY

Plant Performance

*In January, systemwide net generation<sup>1</sup> was 2,243,554 megawatts (MWh),<sup>2</sup> exceeding the projected net generation of 2,238,709 MWh.*

*The plants were available to produce electricity 93.6 percent of the time during January, while the generation market readiness factor<sup>3</sup> was 99.9 percent, compared to a target of 99.4 percent.*

*While there were no significant unplanned generation events<sup>4</sup> in January, a few unscheduled outages<sup>5</sup> did occur. The total lost opportunity cost of all unscheduled outages in January was \$0.04 million, compared with generation revenue of \$27.5 million.*

*River flows for the month at the Niagara project were at historical averages and slightly above normal against long- and short-term forecasts. At St. Lawrence-FDR, flows were consistent with forecast and slightly above historical average.*

Transmission Performance

*The transmission reliability<sup>6</sup> for January was 93.4 percent, exceeding the target of 93.01 percent.*

*The two significant unplanned transmission events<sup>7</sup> from December continued into January, totaling 771 hours. The forced outage caused by a cable fault on the 345-kv Long Island Sound Cable<sup>8</sup> continues this month but the line is expected to return to service in February. Parts of the damaged equipment will be sent to Detroit Edison for testing to determine the as-yet unknown cause of the outage. A forced outage occurred at the Marcy Capacitor Bank#1<sup>9</sup> due to 12 blown fuses<sup>10</sup>, all of which will be replaced to restore the unit to operation. The cause of the outage is still unknown but event data will be evaluated.*

Life Extension and Modernization Programs

*Work on the 13<sup>th</sup> of the 16 units at the St. Lawrence-FDR project was started on schedule as part of the project's Life Extension and Modernization<sup>11</sup> (LEM) program on December 19, 2009. The unit is scheduled to return to service in late July following its refurbishment. The overall LEM project is scheduled for completion in 2013.*

*Work on the fourth and final unit at Blenheim-Gilboa remains on course for completion in June 2010. Refurbishment of the third unit was completed in May.*

*Planning for a LEM program at the Niagara project's Lewiston Pump-Generating Plant continued in January. A presentation will be made to senior management in the first quarter of this year.*

Transmission Initiatives

*We continue to meet with staff members from National Grid, Con Edison, and the Long Island Power Authority (LIPA), regarding a proposed transmission line that would deliver power from Canada and upstate renewable energy projects to New York City. As previously reported, a combined system planning study by NYPA and National Grid has identified three options for the new transmission line, with the potential for an additional 1,500 megawatts in transfer capability. More-detailed system planning studies with Con Edison and LIPA will be conducted after the project economics have been investigated further.*

*On January 27, Con Edison, LIPA, National Grid, and NYPA held a conference call to discuss the NYPA-National Grid proposed scope for additional economic studies. Con Edison and LIPA submitted written comments, which were subsequently integrated into the scope and on February 8, Con Edison and LIPA gave final approval of the scope. This final scope was sent to the consultants in a request for proposals to perform the economic studies and to estimate the studies' cost.*

*Additionally, NYPA held a multi-disciplinary internal meeting with our consultants at Navigant on February 2, to explore commercial arrangements to present to Con Edison and LIPA. Follow-up meetings of this group to craft several commercial scenarios will be necessary.*

*Finally, NYPA and National Grid are close to completing a non-disclosure agreement with Hydro-Quebec Trans Energie (HQTE), which operates the Quebec transmission system and markets system capacity. A conference call among the parties was held on February 8, to resolve the issue of the duration of the agreement and confidentiality obligations. The agreement will assist in carrying out further studies with HQTE.*

Organizational Realignment

*The assessment of potential operational interfaces between the Power Generation and Transmission groups is continuing, with completion anticipated in the first quarter of this year. The Transmission Business Group will assume responsibility for all NYPA transmission infrastructure, including infrastructure in southeast New York. Previously, Power Supply's Engineering department managed some of the southeast New York infrastructure. The new organization will better align transmission responsibilities in one area.*

*We are also reviewing potential organizational synergies between the Energy Control Center, Energy Resource Management (ERM) and Power Generation operations.*

Environmental

*There was one recordable environmental incident in January, a release of approximately two gallons of 50 percent ethylene glycol<sup>12</sup> in the Flexible Alternating Current Transmission Systems (FACTS)<sup>13</sup> building at the Clark Energy Center. The 2010 target for recordable environmental incidents is 25.*

ENERGY RESOURCE MANAGEMENT

*In January, ERM bid more than 2,094,280 MWh of NYPA generation into the New York Independent System Operator (NYISO)<sup>14</sup> markets, netting \$57.7 million in power supplier payments to the Authority.*

*The average differential for January in Zone A<sup>15</sup> day-ahead prices was \$9 per MWh, compared with a five year average of \$16 per MWh.*

*In January NYPA's Fuels Group transacted \$35 million in natural gas and oil purchases, compared with \$41 million in January 2009.*

*The intakes at Niagara experienced a significant ice blockage from January 27 through February 1. ERM reduced energy delivery on the 27th to ensure Niagara could meet its NYISO commitments on the 28th when loads were much higher. The remaining days were scheduled at reduced levels consistent with the amount of available water.*

*At Poletti, ERM effectively managed the remaining usable oil in inventory beginning December 18 with the expectation of depletion by mid-January. The last oil burn was January 18, where the inventory oil value was \$5.1 million. Gas prices on average were lower than inventory oil, but ERM recovered oil at cost or better.*

OFFICE OF THE CHIEF OPERATING OFFICER

ClimAID

*The New York State Energy Research & Development Authority is coordinating with researchers at several major universities in an effort to provide New York State with cutting-edge information on its vulnerability to climate change and to facilitate climate change adaptation strategies. The final ClimAID report, scheduled to be completed this spring, covers several sectors of New York State's infrastructure and economy, including a chapter on impacts and adaption strategies in the Energy sector.*

*NYPA has been providing feedback and input on the Energy chapter, in particular on the impact that climate change may have at our hydropower facilities.*

GLOSSARY

<sup>1</sup> *Net generation – The energy generated in a given time period by a power plant or group of plants, less the amount used at the plants themselves (station service) or for pumping in a pumped storage facility.*

<sup>2</sup> *Megawatt hour (MWh) – The amount of electricity needed to light ten thousand 100-watt light bulbs for one hour. A megawatt is equal to 1,000 kilowatts and can power about 800 homes, based on national averages.*

<sup>3</sup> *Generation Market Readiness – The availability of generating facilities for bidding into the NYISO market. It factors in available hours and forced outage hours which drive the results.*

<sup>4</sup> *Significant Unplanned Generation Events – Forced or emergency outages of individual generator units of duration greater than 72 hours, or with a total repair cost of greater than \$75,000, or resulting in greater than \$50,000 of lost revenues.*

<sup>5</sup> *Outage – The removal of a power plant or transmission line from service. Outages may be scheduled for purposes such as anticipated maintenance, or forced by unexpected events. A significant forced or emergency outage of an individual generating unit is an event of more than 72 hours in duration, entailing a repair cost of more than \$75,000 or resulting in more than \$50,000 of lost revenues. A significant forced or emergency outage of an individual transmission line is an event that directly affects the reliability of the state's transmission network, or the availability of any component of the network, for more than eight hours or has a repair cost of more than \$75,000.*

<sup>6</sup> *Transmission reliability – A measurement of the impact of forced and scheduled outages on the statewide system's ability to transmit power.*

<sup>7</sup> *Significant Unplanned Transmission Events – Forced or emergency outages of individual transmission lines which directly affect the reliability of the state's transmission network, or affect the availability of any component of the state's transmission network for greater than 8 hours, or that have a repair cost greater than \$75,000.*

<sup>8</sup> *Long Island Sound Cable – The Sound Cable Project, designated as Feeder Y49, is a 345 kV AC transmission circuit connecting the Consolidated Edison Company of New York, Inc. Sprain Brook Substation in Westchester County with the LIPA East Garden City Substation in Nassau County. The project is approximately 26.3 mile*

*long, including 18.4 miles of underground high pressure fluid filled pipe-type cable and 7.9 miles of underwater self-contained fluid filled cable submarine crossing in the Long Island Sound.*

<sup>9</sup> *Capacitor Bank – A collection of individual capacitor units, which can store an electrical charge and are used to support system voltage.*

<sup>10</sup> *Blown fuse – A fuse is a component of an electrical circuit that protects against excessive current. Fuses include a metal wire or strip, and when the fuse “blows”, that metal melts under excessive current, interrupting the circuit and preventing further damage from overheating or potential fire.*

<sup>11</sup> *Life Extension and Modernization programs—Major undertakings in which all the turbines at the St. Lawrence-Franklin D. Roosevelt and Blenheim-Gilboa projects are being replaced and the generators and other components significantly refurbished. The programs are intended to ensure that the projects operate at maximum efficiency far into the future.*

<sup>12</sup> *Ethylene Glycol – This compound is used to cool transformers.*

<sup>13</sup> *Flexible Alternating Current Transmission Systems (FACTS) – A sophisticated device for controlling voltage and power flows on transmission lines to increase the capability of an existing transmission system. In a pioneering effort, NYPA completed installation of the \$54 million convertible static compensator in 2004 at the Clark Energy Center’s Marcy Substation as the most advanced of a series of technologies known as FACTS, for Flexible Alternating Current Transmission Systems. The project, which also included the addition of conventional equipment at other substations, boosted the capability of the New York State system by nearly 200 megawatts without the need to build new lines. NYPA’s convertible static compensator was the first transmission control device in the world to permit the instantaneous transfer of power between two lines in the same substation.*

<sup>14</sup> *New York Independent System Operator (NYISO) – A not-for-profit organization that operates New York State’s transmission system, administers the state’s wholesale electricity markets and engages in planning and forecasting to ensure the future reliability of the statewide power system.*

<sup>15</sup> *Zone A – The West zone of the NYISO market that covers Western New York, including Niagara, Erie, Chautauqua, Cattaraugus, Orleans, and Genesee counties, and parts of Wyoming Monroe, Livingston, Ontario, and Allegany counties.*

*In response to a question from Chairman Townsend, Mr. Gil Quiniones said that the Authority is currently working with National Grid, Con Edison and LIPA to determine the feasibility of bringing Canadian hydropower, as well as wind power, to the SENY region. The technical feasibility study is complete and the economic analysis is in progress, with preliminary results expected in April, after which the next steps will be mapped out.*

c. Report of the Chief Financial Officer

*Ms. Elizabeth McCarthy provided the financial report to the Board.*

*In response to a question from Chairman Townsend, Ms. Elizabeth McCarthy said that \$25 million of the \$42 million downward adjustment in net revenues for the end of 2009 was primarily due to the Authority's having less power to sell than was projected. This, in turn, was caused by lower-than-expected lake levels resulting from lower-than-normal precipitation levels. Approximately \$15 million of the \$42 million was the result of lower current prices for power and energy than at the beginning of 2009. She said that Authority staff does not see any issues with the Authority's PFJ commitments, but that they would take a look at these again in March with updated data. Mr. Donald Russak said that the last of the four payments to New York State would be coming up in March as well. Responding to a question from Vice Chairman Jonathan Foster, Mr. Russak said that Philadelphia and Washington had seen more snow this winter than had New York State, but that weather patterns for the rest of the year are expected to be normal, although slightly below the long-term average. He said that while this would result in the Authority's net revenues being a little bit below budget, the Authority would still be on target to meet its financial obligations. Responding to another question from Vice Chairman Foster, Ms. McCarthy said that the Authority's Enterprise Risk program was in start-up mode. She said that the new Enterprise Risk group was working with Compliance and Internal Audit to develop a system for monitoring and tracking risk mitigation measures.*

**New York Power Authority**  
**Report of the Chief Financial Officer**  
**For the Month Ended January 31, 2010**



## **Report of the Chief Financial Officer For the Month Ended January 31, 2010 Executive Summary**

### **Results of Operations**

Net income for the month ended January 31, 2010 was \$37.6 million which was \$0.2 million less than anticipated primarily due to lower net margins on sales (\$8.6 million) substantially offset by higher non-operating income (\$7.4). Net margins were lower at Niagara primarily due to lower prices on market-based sales. At Niagara, average energy prices for sales into the market were approximately 16% lower than budgeted and capacity prices were 34% below budget. This negative variance was partially offset by positive results at St. Lawrence resulting mainly from higher sales due to higher net generation. Non-operating income included the positive impact of an unrealized gain (\$6.3 million) on the Authority's investment portfolio due to a decrease in market interest rates during the month as well as lower costs on variable rate debt.

### **Year-end Projection**

Significant changes in hydrologic and market conditions since the development of the forecast in late November have resulted in a downward adjustment in the year-end 2010 net income projection to \$266 million, \$42 million below the budget for the year of \$308 million. The two principal drivers of this change are lower lake levels and lower market prices. Precipitation over the Great Lakes during the past three months has been recorded at 52%, 92% and 41% of long-term average, respectively. This has resulted in a lowering of the net generation projection at Niagara and St. Lawrence by 0.6 twh and a projected net income reduction of approximately \$25 million. Based on the forward energy curve at January 22, 2010, market prices for energy and capacity are presently projected to be about 6% to 10% below the budget resulting in an estimated \$15 million reduction to projected net income.

### **Cash & Liquidity**

The Authority ended the month of January with total operating funds of \$1,023 million as compared to \$907 million at the end of 2009. The increase of \$116 million was in line with financial plan projections and was primarily attributed to the Value Sharing payment of \$72 million received from Entergy on January 15th. Looking forward, we are anticipating the operating fund balance to decrease to \$885 at the end of the 1st quarter reflecting scheduled debt service payments and a \$107 voluntary contribution to New York State if reaffirmed as feasible and advisable by the Authority's Trustees.

## **Enterprise Risk**

At the January 13, 2010 ERC meeting, the draft mitigation plan for Counterparty Credit Default was presented by the risk owner and approved by the Enterprise Risk Committee. The Counterparty Credit default mitigation plan presentation identified the current state, conditions and consequences, strategies considered to mitigate the risk, the selected risk mitigation strategy, and supporting actions. Additional meeting items included verification of risk mitigation plans for the four remaining prioritized critical risks and the Governance, Risk, and Compliance (GRC) software procurement status.

GRC software is a common data and reporting platform to be used by the Authority's Enterprise Risk Management, Ethics & Compliance, and Internal Audit groups that will serve as an organization-wide integrated risk repository as well as a repository for audit work papers and compliance with policies, laws and regulations. The GRC software procurement effort was successfully completed in January 2010. Software design and workflow configuration work is currently underway with the various NYPA departments and the project is on schedule for software rollout to occur in early April 2010. The Enterprise Risk team continues to work with Risk Owners and Supporting Risk Owners to complete mitigation plans.

## **Energy Risk**

At January 31, 2010, the fair market value of outstanding energy derivatives was an unrealized loss of \$203.4 million for financial contracts extending through 2017. For the month ended January 31, 2010, financial energy derivative settlements resulted in a gain of \$0.5 million.

**Net Income**  
**Month ended January 31, 2010**  
**(\$ in millions)**

	<b>Actual</b>	<b>Budget</b>	<b>Variance</b>
Niagara	\$12.2	\$22.4	(\$10.2)
St. Lawrence	3.3	1.9	1.4
BG	(0.1)	1.2	(1.3)
SENY	4.2	4.3	(0.1)
SCPP	(2.6)	(1.7)	(0.9)
Market Supply Power	(2.3)	(3.1)	0.8
Flynn	2.7	1.3	1.4
Transmission	3.7	2.7	1.0
Other	16.5	8.8	7.7
<b>Total</b>	<b>\$37.6</b>	<b>\$37.8</b>	<b>(\$0.2)</b>

**Major Factors**

**Better  
(Worse)**

**Niagara**

(\$10.2)

Primarily lower revenues on market based sales (\$8.1) due to lower prices and lower regulation revenues (\$0.7). Average energy prices for sales into the market were approximately 16% lower than budgeted (\$39/mwh) actual vs. \$55/mwh budgeted). Capacity prices were also 34% below budget. Regulation revenues were below budget primarily due to lower prices.

**St. Lawrence**

1.4

Higher volume of sales (7% higher generation) offset by lower prices.

**B-G**

(1.3)

Lower net revenues as a result of reduced generation due to the limited price differential between peak and off-peak energy prices.

**SCPP's**

(0.9)

Primarily higher site O&M due to outage work at Vernon Blvd (budgeted in March).

**Flynn**

1.4

Lower than anticipated fuel costs due to lower prices on natural gas and less than anticipated consumption of oil resulting in increased margins on fuel.

**Other facilities**

1.7

Includes lower congestion costs in the Market Supply Power market area.

**Other**

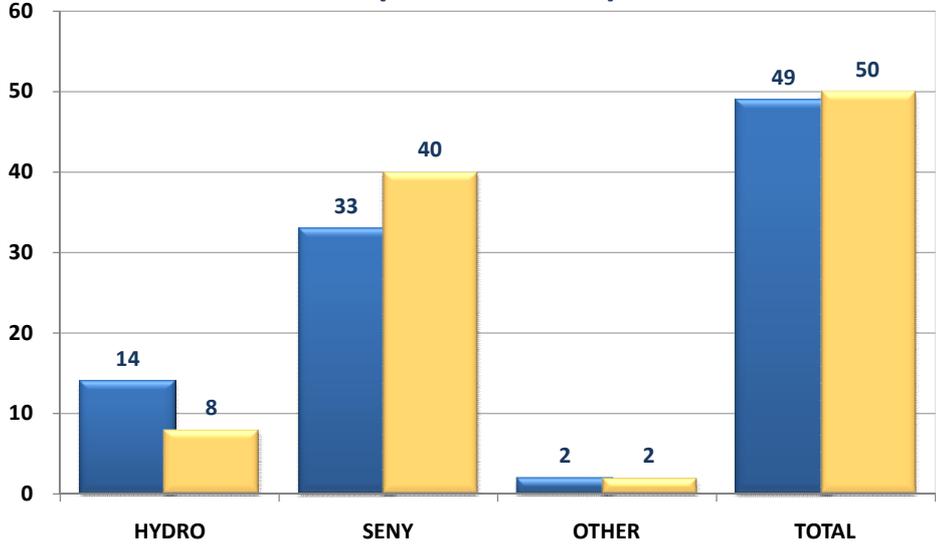
7.7

Primarily a mark-to-market gain (\$5.8) on Authority's investment portfolio due to a decrease in market interest rates during the month.

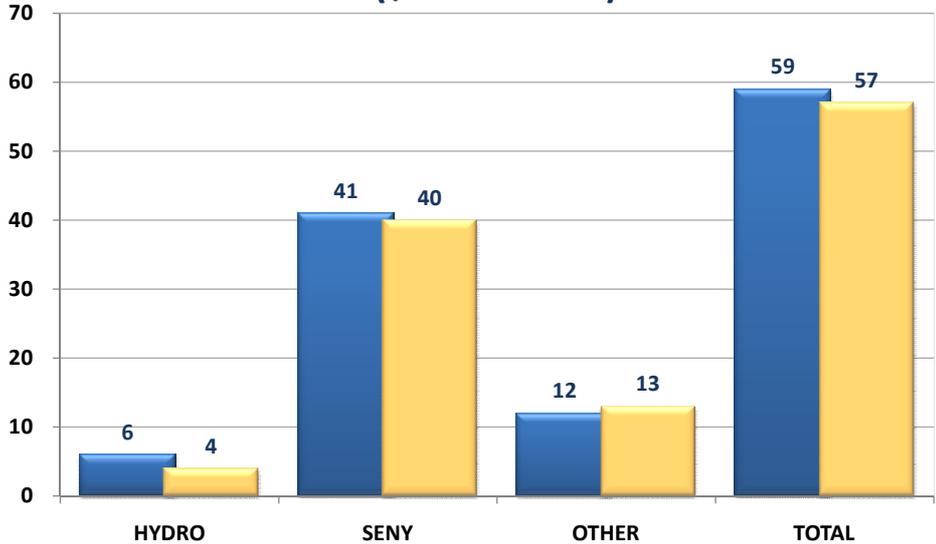
**Total**

**(\$0.2)**

### Market-Based Power Energy Sales Month ended January 31, 2010 (\$ in millions)



### Market-Based Power Energy Purchases Month ended January 31, 2010 (\$ in millions)



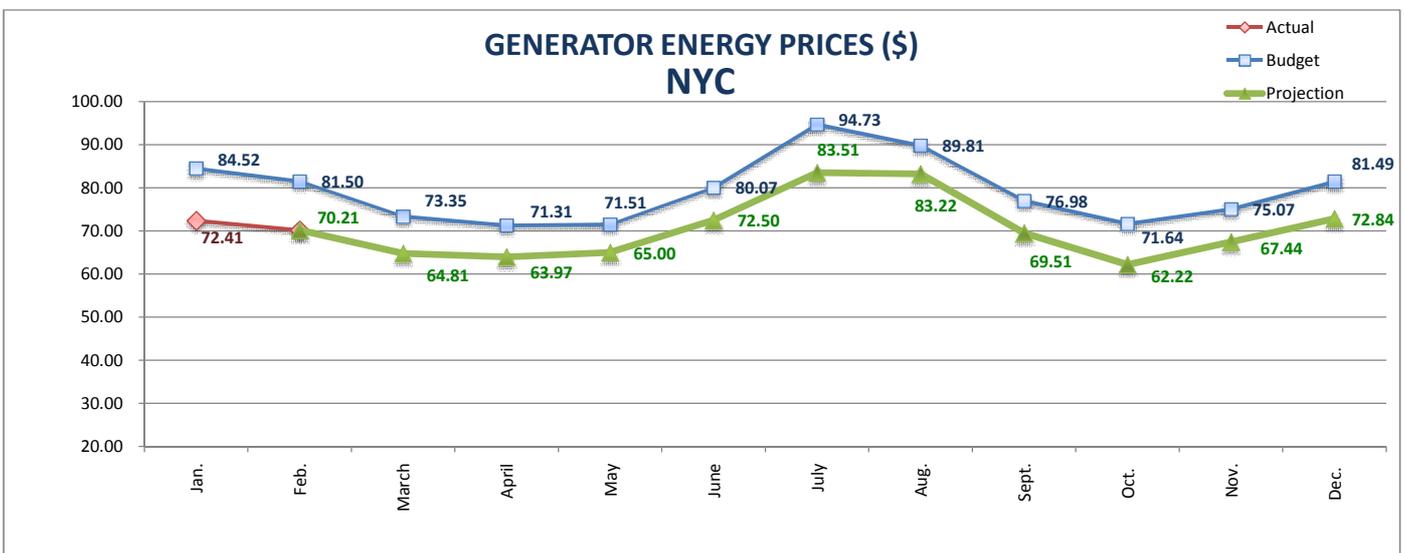
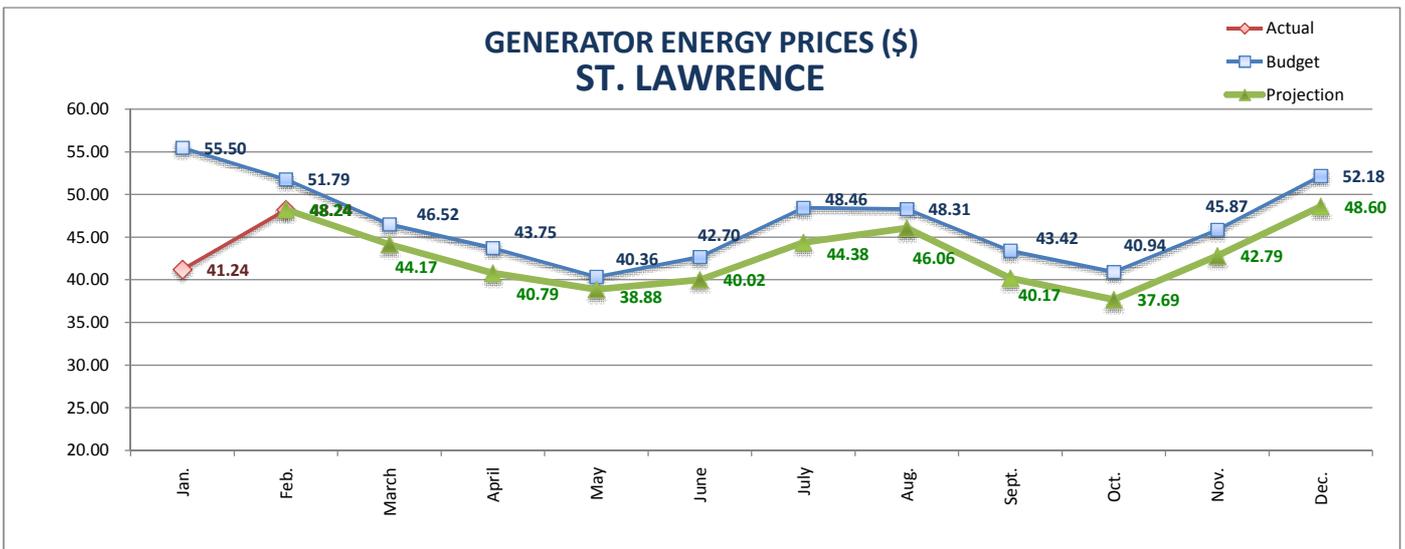
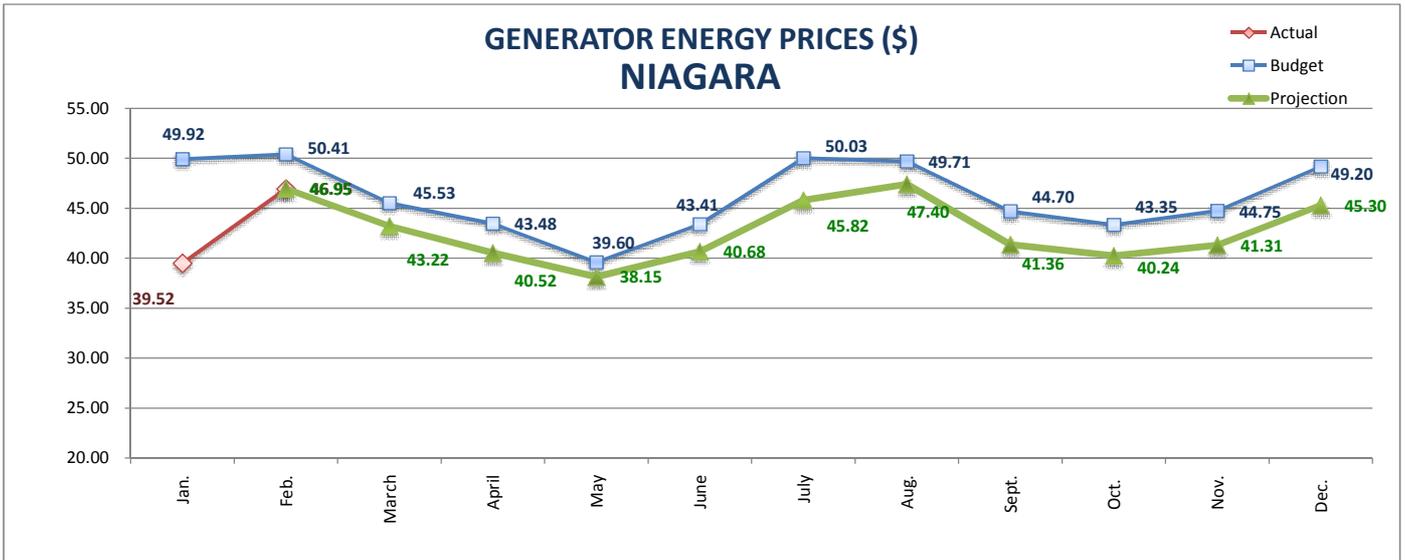
REVENUES		
SALES (MWH)		
	BUDGET	ACTUAL
Hydro*	204,696	159,802
Fossil	316,814	420,647
MSP	50,071	55,499
TOTAL	571,581	635,948
PRICES (\$/MWH)		
Hydro*	\$66.22	\$48.13
Fossil	\$105.14	\$95.50
MSP	\$47.13	\$42.57
AVERAGE	\$86.13	\$78.97

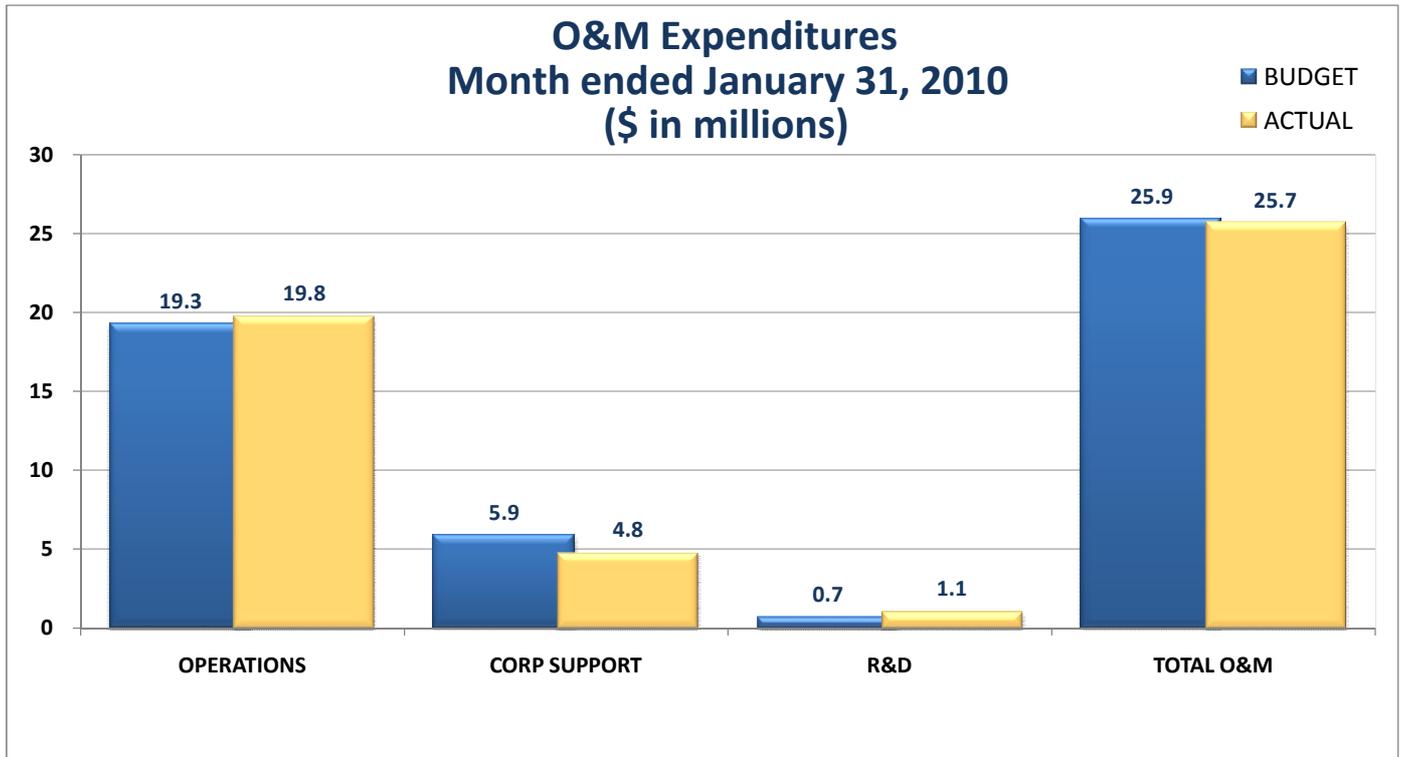
\* Includes Niagara, St. Lawrence, B-G, and Small Hydro.

REVENUES		
SALES (MWH)		
	BUDGET	ACTUAL
Niagara	66,617	80,707
St. Law.	41,668	42,051
PRICES (\$/MWH)		
Niagara	\$54.93	\$39.40
St. Law.	\$55.49	\$41.26

COSTS		
PURCHASES (MWH)		
	BUDGET	ACTUAL
Hydro	157,006	104,174
SENY	755,382	779,515
Other	254,207	259,060
TOTAL	1,166,595	1,142,749
COSTS (\$/MWH)		
Hydro	\$38.75	\$33.66
SENY	\$54.26	\$52.29
Other	\$47.08	\$49.47
AVERAGE	\$50.61	\$49.96

**RESULTS OF OPERATIONS**  
**Energy Prices**  
**Actual vs Budget**

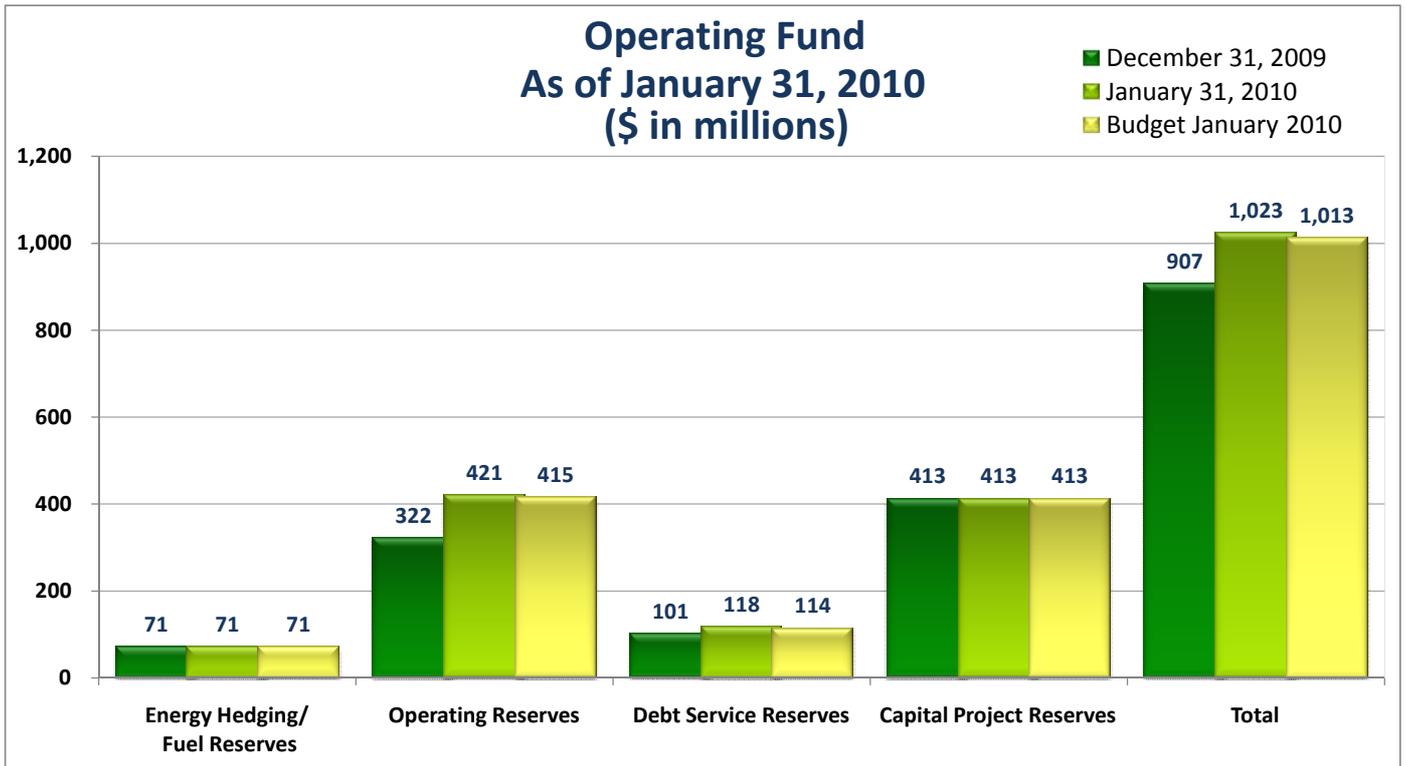




- For January, O&M expenses were \$0.2 lower than the budget.
- Corporate Support expenses were under budget by \$1.1 due mostly to timing differences related to spending for corporate support building maintenance, business customer energy efficiency audits and legal consultants.
- Operations expenditures were \$0.5 higher than budgeted due to higher expenditures at the SCPP's, resulting from charges for outage work at Vernon Blvd.

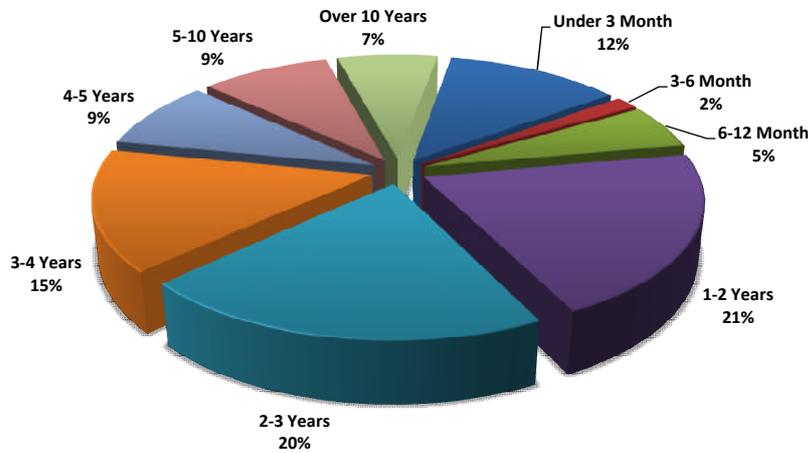
#### Other significant variances

The \$7.4 favorable variance in non-operating income results primarily from a mark-to-market gain on the Authority's investment portfolio (\$5.8) due to a decrease in market interest rates during the month. The budget anticipated a \$0.5 loss. In addition, January activity reflected lower than anticipated rates on NYPA's variable rate debt.



The increase in the January operating reserve balance resulted primarily from the receipt of a \$72 million payment from Entergy, relating to the Value Sharing Agreement.

**Maturity Distribution  
As of January 31, 2010**

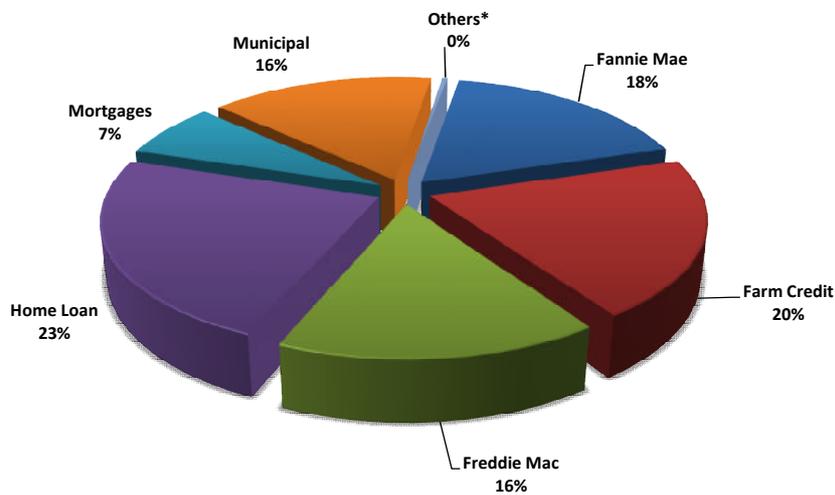


**MATURITY DISTRIBUTION**

(\\$ in millions)

Under 3 Months	\$132.5
3-6 Months	17.5
6-12 Months	60.5
1-2 Years	223.8
2-3 Years	221.0
3-4 Years	165.1
4-5 Years	94.4
5-10 Years	97.4
Over 10 Yrs	75.9
<b>Total</b>	<b>\$1,088.0</b>

**Asset Allocation  
As of January 31, 2010**

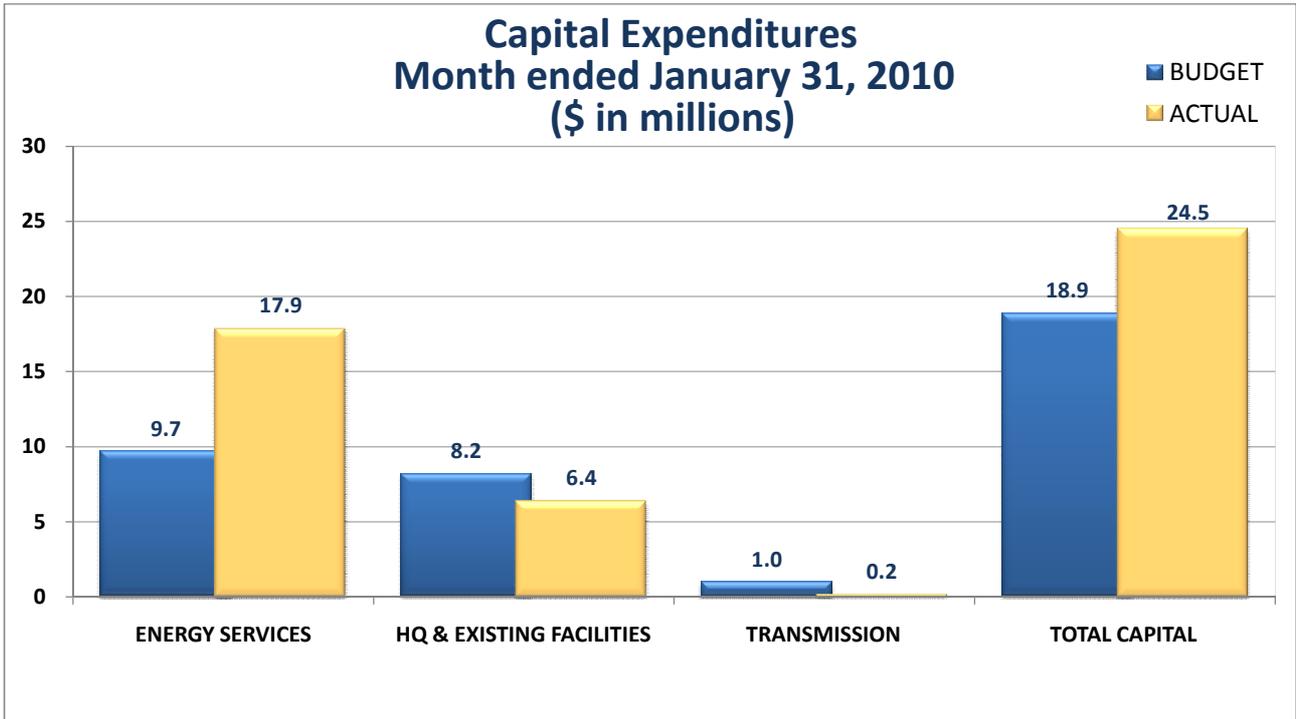


**ASSET ALLOCATION**

(\\$ in millions)

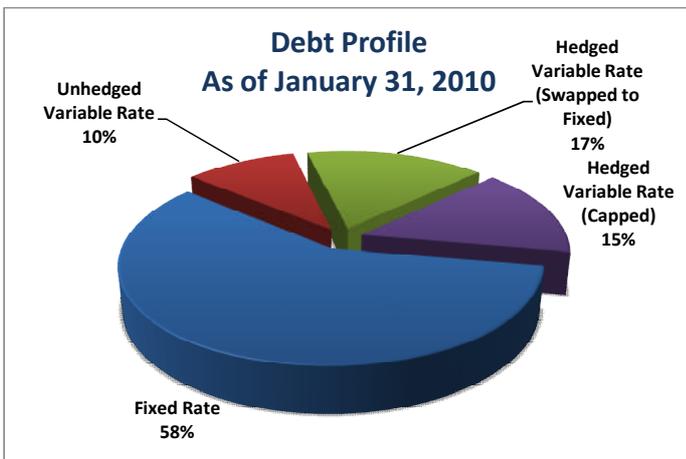
Farm Credit	\$190.9
Home Loan	218.7
Freddie Mac	173.4
Fannie Mae	254.9
MORTGAGES	76.4
MUNI	170.2
OTHERS*	3.6
	<b>\$1,088.0</b>

\*Includes CDs and Repos



- Lower capital expenditures at HQ and Existing Facilities were primarily due to timing differences related to B-G life extension and modernization project.
- Energy Services expenditures exceeded the budget due to accelerated construction activity related to NYCHA's Castle Hill Boiler and CUNY & Brooklyn College Steel Trap Replacement Project.
- Under the Expenditure Authorization Procedure, the President has authorized new expenditures on budgeted capital projects of \$9.3 for January as follows:

Niagara Switchyard Fan Building Upgrade	\$0.9
IT Initiatives	\$2.9
Fuel Cell Restacking	\$3.0
Crescent Trashrake Replacement	\$1.1
Vischer Ferry Trashrake Replacement	\$1.1
500 MW Replacement of Inlet Air Filters	\$0.3



DEBT PROFILE	
(\$ in millions)	
Fixed Rate	\$1,173.4
Unhedged Variable Rate	206.5
Hedged Variable Rate (Swapped)	331.7
Hedged Variable Rate (Capped)	300.0
<b>Total</b>	<b>\$2,011.6</b>



## ENERGY DERIVATIVES

### Results

For the month ended January 31, 2010, financial energy derivative settlements resulted in a gain of \$0.5 million. For calendar year 2009, financial energy derivative settlements resulted in a loss of \$178.8 million. Of that amount, \$161.7 million (over 90%) is subject to customer cost recovery mechanisms. The remainder is born by the Authority.

### ***Calendar Year 2009 Energy Derivative Settlements and Year-End Fair Market Valuation*** *(\$ in millions)*

	Settlements	Fair Market Value			
	2009	2010	2011	>2011	Total
NYP&A	(\$17.1)	\$1.9	-	-	\$1.9
Customer Contracts	(161.7)	(35.8)	(29.4)	(67.4)	(\$132.6)
<b>Total</b>	<b>(\$178.8)</b>	<b>(\$33.9)</b>	<b>(\$29.4)</b>	<b>(\$67.4)</b>	<b>(\$130.7)</b>

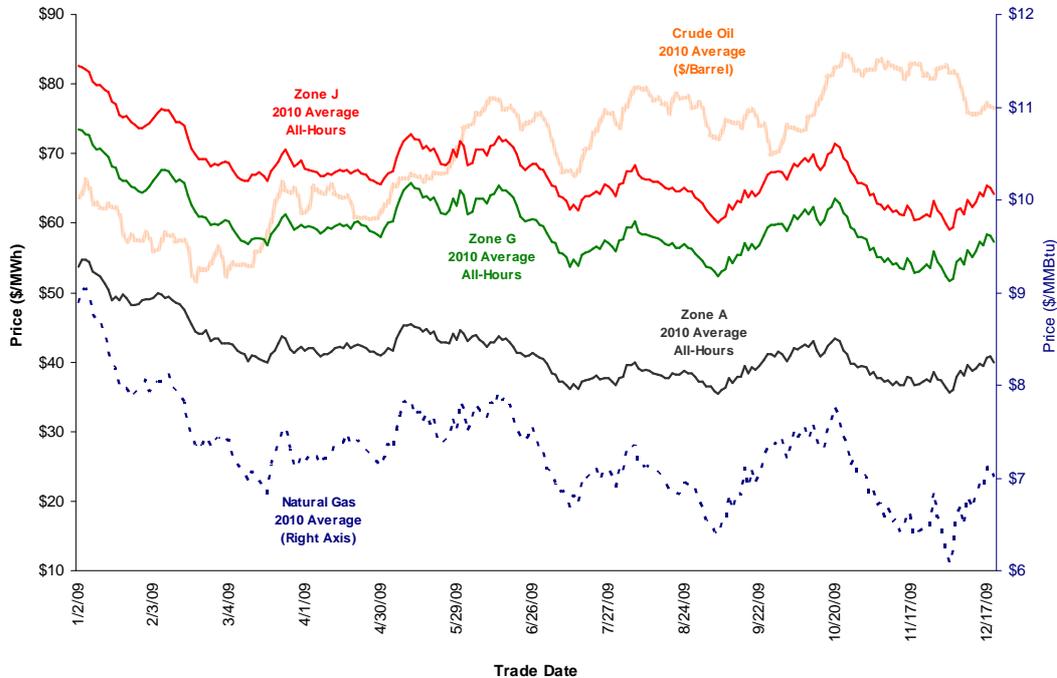
In total, at the end of 2009, the fair market value of outstanding positions was an unrealized loss of \$130.7 million for positions extending through 2017.

### Market Summary

The exhibit below shows the average price of January to December 2010 futures contracts and how they traded throughout 2009. While crude oil futures (used solely as a reference – the Authority no longer has generating facilities that utilize fuel oil) saw an upward trend, electric futures in Zone A, G and J and natural gas futures did not track the oil markets and saw relatively flat pricing. Electric energy futures continued to be highly correlated with natural gas futures; price movements were generally synchronized in the same upward or downward direction across commodities.



## Average Annual Price of 2010 Commodities as Traded During Year 2009

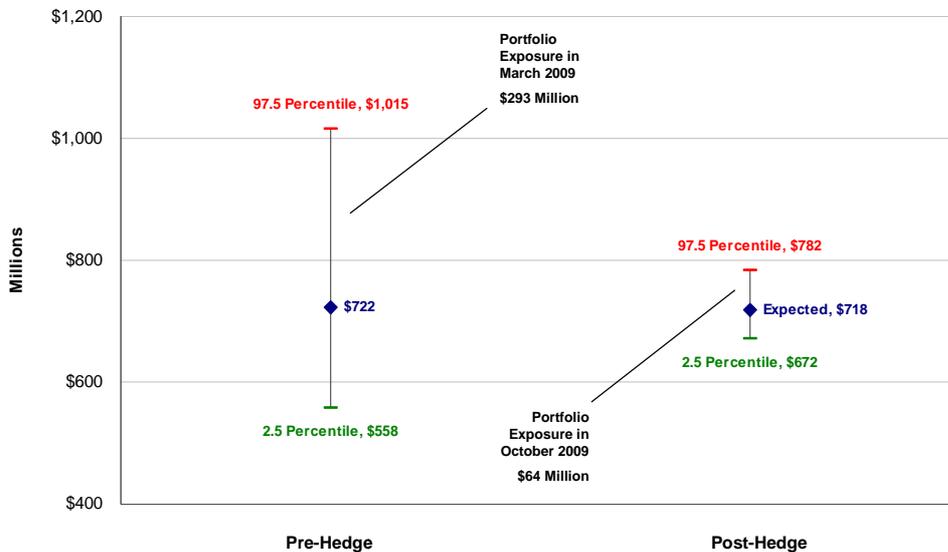


### Customer Hedging

Energy and fuel commodities are subject to volatile price fluctuations in response to available supply, market demand and the activities of market participants. To mitigate exposure to price volatility, the Authority enters into energy hedge positions, as requested by or on behalf of its Customers, to secure the purchase cost and/or revenue sale of energy and/or fuel commodities. The Customers understand the value of hedging; that its primary purpose is to manage market price volatility and not to time opportunistic prices.

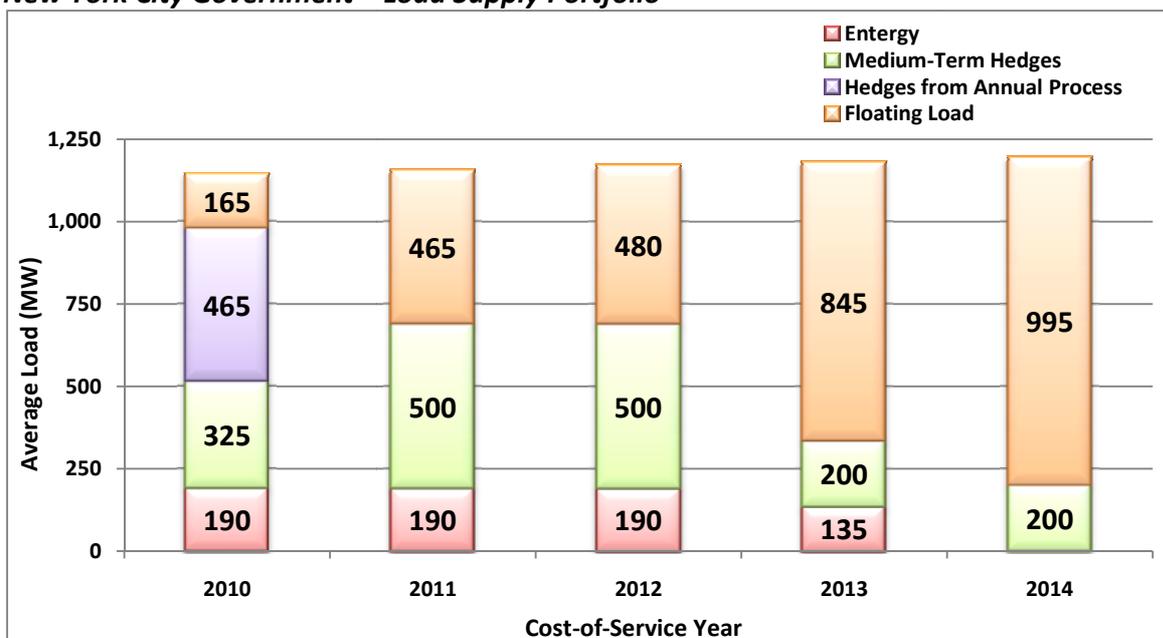
The New York City Government Customers and Authority undertake a joint Annual Planning and Pricing Process to ascertain the rates and recovery mechanisms for the upcoming rate year (rate year 2011 pricing would be determined during 2010). Working collaboratively with the Customers, the risk exposure of the portfolio was ascertained, risk tolerances were defined and an appropriate joint strategy was implemented for the 2010 rate year.

**New York City Government Year 2010 Risk Profile – Pre- and Post-Hedge**



To illustrate the impact of these hedges, the energy risk for the New York City Government Portfolio was quantified prior and post-transaction execution. In March 2009, the expected cost of serving the 2010 portfolio was \$722 million and was calculated to potentially exceed \$1 billion at the 97.5% percentile confidence level. In October 2009, with hedges in place, the upward price risk exposure of the portfolio has been reduced from \$293 to \$64 million. For the most part, this remaining exposure is due to the open floating position for which the Customer is assuming the risk.

**New York City Government – Load Supply Portfolio**



**STATEMENT OF NET INCOME**  
**For the Month Ended January 31, 2010**  
**(\$ in Millions)**

<u>Annual Budget</u>		<u>Actual</u>	<u>Budget</u>	<u>Variance Favorable/ (Unfavorable)</u>
	<b>Operating Revenues</b>			
<b>\$2,062.3</b>	Customer	<b>\$159.6</b>	<b>\$170.0</b>	<b>(\$10.4)</b>
591.7	Market-based power sales	50.2	49.2	1.0
54.4	Ancillary services	4.8	6.2	(1.4)
102.9	NTAC and other	9.2	8.4	.8
<b>749.0</b>	<b>Total</b>	<b>64.2</b>	<b>63.8</b>	<b>.4</b>
<b>2,811.3</b>	<b>Total Operating Revenues</b>	<b>223.8</b>	<b>233.8</b>	<b>(10.0)</b>
	<b>Operating Expenses</b>			
864.8	Purchased power	67.0	66.2	(.8)
340.8	Fuel consumed - oil & gas	41.1	39.8	(1.3)
91.0	Ancillary services	6.6	7.7	1.1
519.9	Wheeling	32.8	35.2	2.4
312.3	Operations and maintenance	25.7	25.9	.2
160.3	Depreciation and amortization	13.7	13.4	(.3)
141.7	Other expenses	10.6	11.5	.9
(10.4)	Allocation to capital	(.7)	(.5)	.2
<b>2,420.4</b>	<b>Total Operating Expenses</b>	<b>196.8</b>	<b>199.2</b>	<b>2.4</b>
<b>390.90</b>	<b>Net Operating Revenues</b>	<b>27.0</b>	<b>34.6</b>	<b>(7.6)</b>
	<b>Nonoperating Revenues</b>			
88.9	Post nuclear sale income	8.6	8.6	-
53.1	Investment income	4.6	4.4	.2
(5.8)	Mark to market - investments	5.8	(.5)	6.3
<b>136.2</b>	<b>Total Nonoperating Revenues</b>	<b>19.0</b>	<b>12.5</b>	<b>6.5</b>
	<b>Nonoperating Expenses</b>			
107.0	Contributions to New York State	-	-	-
112.3	Interest and other expenses	8.4	9.3	.9
<b>219.3</b>	<b>Total Nonoperating Expenses</b>	<b>8.4</b>	<b>9.3</b>	<b>.9</b>
<b>(83.1)</b>	<b>Net Nonoperating Income (Loss)</b>	<b>10.6</b>	<b>3.2</b>	<b>7.4</b>
<b>\$307.8</b>	<b>Net Income (Loss)</b>	<b>\$37.6</b>	<b>\$37.8</b>	<b>(\$.2)</b>

**COMPARATIVE BALANCE SHEETS  
January 31, 2010**

Assets	January 2010	January 2009	December 2009
<b>Current Assets</b>			
Cash	\$0.1	\$0.1	\$0.1
Investments in government securities	1,044.6	905.1	913.4
Interest receivable on investments	7.1	8.5	5.8
Accounts receivable - customers	173.8	208.1	158.7
Materials and supplies, at average cost:			
Plant and general	83.6	82.6	82.3
Fuel	25.8	36.2	21.7
Prepayments and other	98.0	206.4	103.8
<b>Total Current Assets</b>	<b>1,433.0</b>	<b>1,447.0</b>	<b>\$1,285.8</b>
<b>Noncurrent Assets</b>			
Restricted Funds			
Investment in decommissioning trust fund	944.9	814.3	942.4
Other	95.3	100.4	94.1
Total Restricted Funds	<b>1,040.2</b>	<b>914.7</b>	<b>1,036.5</b>
Capital Funds			
Investment in securities and cash	180.5	208.7	189.2
Total Capital Funds	<b>180.5</b>	<b>208.7</b>	<b>189.2</b>
Net Utility Plant			
Electric plant in service, less accumulated depreciation	3,334.2	3,359.6	3,347.8
Construction work in progress	151.3	163.7	144.8
Net Utility Plant	<b>3,485.5</b>	<b>3,523.3</b>	<b>3,492.6</b>
Other Noncurrent Assets			
Receivable - NY State	318.0	-	318.0
Deferred charges, long-term receivables and other	641.5	501.8	566.2
Notes receivable - nuclear plant sale	107.6	119.0	170.1
Total other noncurrent assets	<b>1,067.1</b>	<b>620.8</b>	<b>1,054.3</b>
<b>Total Noncurrent Assets</b>	<b>5,773.3</b>	<b>5,267.5</b>	<b>5,772.6</b>
<b>Total Assets</b>	<b>\$7,206.3</b>	<b>\$6,714.5</b>	<b>\$7,058.4</b>
<b>Liabilities and Net Assets</b>			
<b>Current Liabilities</b>			
Accounts payable and accrued liabilities	\$1,022.7	\$920.7	\$911.0
Short-term debt	286.9	271.6	289.2
<b>Total Current Liabilities</b>	<b>1,309.6</b>	<b>1,192.3</b>	<b>1,200.2</b>
<b>Noncurrent Liabilities</b>			
Long-term Debt			
Revenue bonds	1,192.5	1,232.8	1,192.7
Adjustable rate tender notes	137.5	144.0	137.5
Commercial paper	413.7	469.0	413.3
Total Long-term Debt	<b>1,743.7</b>	<b>1,845.8</b>	<b>1,743.5</b>
Other Noncurrent Liabilities			
Nuclear plant decommissioning	944.9	814.3	942.4
Disposal of spent nuclear fuel	215.8	215.5	215.8
Deferred revenues and other	134.3	140.0	136.0
Total Other Noncurrent Liabilities	<b>1,295.0</b>	<b>1,169.8</b>	<b>1,294.2</b>
<b>Total Noncurrent Liabilities</b>	<b>3,038.7</b>	<b>3,015.6</b>	<b>3,037.7</b>
<b>Total Liabilities</b>	<b>4,348.3</b>	<b>4,207.9</b>	<b>4,237.9</b>
<b>Net Assets</b>			
Accumulated Net Revenues - January 1	2,820.4	2,556.5	2,566.9
Net Income	37.6	(49.9)	253.6
<b>Total Net Assets</b>	<b>2,858.0</b>	<b>2,506.6</b>	<b>2,820.5</b>
<b>Total Liabilities and Net Assets</b>	<b>\$7,206.3</b>	<b>\$6,714.5</b>	<b>\$7,058.4</b>

**SUMMARY OF OPERATING RESERVE CASH FLOWS**  
**For the Month Ended January 31, 2010**  
**(\$ in millions)**

<b>Operating Reserve</b>	
Opening	\$322.0
Closing	421.0
	<hr/>
Increase/(Decrease)	<b>99.0</b>
 <b>Net Cash Generated from Operations</b>	
Niagara	19.0
St. Lawrence	7.6
Blenheim-Gilboa	2.4
SENY	(4.1)
SCPP	.9
Market Supply Power	(4.3)
Flynn	3.1
Transmission Facilities	12.5
	<hr/>
<b>Total Net Cash Generated from Operations</b>	<b>37.1</b>
 <b>(Uses)/Sources</b>	
Utility Plant Additions	(5.6)
Debt Service (Principal & Interest)	(10.2)
Investment Income	2.8
Fuel Margin Reserves	-
Entergy Payment (Value Sharing Agreements)	72.0
Other	2.9
	<hr/>
<b>Total (Uses)/Sources</b>	<b>61.9</b>
 <b>Net Decrease in Operating Reserve</b>	 <b>99.0</b>

**3. Contract for Sale of Hydropower to Long Island Power Authority to Benefit Brookhaven National Laboratory – Approval Following Public Hearing**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

“The Trustees are requested to authorize the proposed contract with the Long Island Power Authority (‘LIPA’) for the sale of 15 MW of New York Power Authority (‘NYPA’) hydropower to LIPA to be resold exclusively to the U. S. Department of Energy as owner of Brookhaven National Laboratory (‘BNL’ or ‘Brookhaven’ or ‘the Lab’). The form of the contract with LIPA, as well as the accompanying proposed Service Tariff No. 2B, is attached as Exhibit ‘3-A.’ This request follows the public hearing and comment period authorized by the Trustees at their December 15, 2009 meeting. The public hearing was held on January 19, 2010.

**BACKGROUND**

“BNL has been receiving power from NYPA since 1982. The current contract provides for the sale of up to 77 MW of power and associated energy. According to BNL, the power provided by NYPA has saved the Lab more than \$247 million over the course of the contract, which has allowed new cutting-edge research projects to be developed. Such projects include the National Synchrotron Light Source, a world-class particle accelerator instrumental to developments in the nanotechnology and medical research fields, plus two other particle accelerators involved in high-energy physics research and space exploration studies, the Relativistic Heavy Ion Collider and the Alternate Gradient Synchrotron, respectively.

“BNL, a major employer on Long Island, provides jobs for more than 3,000 employees and has an annual budget of \$500 million. The facility attracts scientists from all over the world, including many from New York research institutions and high-technology corporations. The Lab is an important component of New York State’s economy and is key to future technology growth and high-technology infrastructure in New York.

“Based on NYPA’s commitment of 15 MW of hydropower, BNL has begun construction of a new cutting-edge synchrotron light source to be known as the National Synchrotron Light Source II (‘NSLS-II’). The design and engineering for NSLS-II is currently proceeding. NSLS-II is slated to be operational by 2015 and to be staffed by several hundred new Brookhaven employees. As was previously explained to the Trustees, the research produced at Brookhaven will continue to provide substantial benefits to industries within New York State that rely on high technology.

“The 15 MW of power and energy under this contract comprises 14 MW of unallocated St. Lawrence/FDR Project power recaptured by NYPA in 2003 from the block sold to the Neighboring States as part of the St. Lawrence/FDR hydroelectric relicensing proceeding, and 1 MW of unallocated Niagara Project power. None of the megawatts allocated to BNL would harm any other NYPA customer or upstate consumers. The allocation is approved for a 15-year term.

“In order to effectuate Brookhaven’s receipt of hydropower, the allocation will be made via a sale to LIPA for Brookhaven’s exclusive use. LIPA is a political subdivision of the State authorized to resell such power. This arrangement requires the Trustees’ approval to initiate the formal contract approval process as set forth in Section 1009 of the Public Authorities Law.

**DISCUSSION**

“At their meeting of January 27, 2009, the Trustees approved commencement of negotiation of a contract with LIPA to allocate 15 MW of NYPA hydropower for BNL’s exclusive use.

“The proposed contract for the sale of 15 MW of NYPA hydropower to LIPA exclusively for resale to BNL, including proposed Service Tariff No. 2B, has been drafted as a result of extensive negotiations with LIPA.

The 15 MW allocation would be blended with market resources to meet BNL's requirements up to 77 MW. In order for BNL to receive the greatest benefit from the 15 MW allocation, NYPA will partially assign and transfer its power sales obligations under the current BNL contract to LIPA. NYPA will function as the Load Serving Entity ('LSE') for the entire BNL retail load. As LSE, NYPA is responsible for all New York Independent System Operator ('NYISO') charges arising under the NYPA/LIPA agreement. However, NYPA will recover all NYISO charges incurred related to sales under the NYPA/LIPA agreement directly from BNL under a separate NYPA/BNL agreement.

"Due to BNL's internal policy limiting energy purchase contracts to terms of no more than 10 years, the proposed contract is for 10 years with an option for NYPA to extend the Agreement for an additional five years provided NYPA and LIPA receive prior authorization from BNL. LIPA will make the necessary arrangements to resell this hydropower allocation to the Lab in accordance with the NYPA/LIPA contract. In the event that BNL ceases to take the hydro allocation, the sale-for-resale agreement would terminate. In addition, should NYPA attain the ability to sell hydropower directly to BNL, the sale-for-resale agreement would terminate, to be substituted by a direct sale contract. The NYPA/LIPA contract is subject to a public hearing and approval by the Governor, as set forth in Section 1009 of the Public Authorities Law. The NYPA/LIPA contract is also subject to approval by the State Comptroller pursuant to LIPA's authorizing statute.

"A public hearing was held in accordance with Section 1009 of the Public Authorities Law on January 19, 2010, at the Brookhaven Town Hall from 2-4 p.m. and 7-9 p.m. Following review of the comments on the public record, which is attached as Exhibit '3-B,' it has been determined that no additional items require addressing.

#### RECOMMENDATION

"The Director – Market Analysis and Administration recommends that the Trustees approve the terms of the proposed contract with the Long Island Power Authority. It is further recommended that, pursuant to Section 1009 of the Public Authorities Law, the Corporate Secretary be authorized to transmit copies of the contract to the Governor for approval.

"The Chief Operating Officer, the Executive Vice President and General Counsel, the Senior Vice President – Marketing and Economic Development and I concur in the recommendation."

*Ms. Karen Delince explained that at their December 2009 meeting, the Trustees had approved the public hearing that was held on January 19. Today, the Trustees were being asked to reconsider the proposed contract in light of the record of the public hearing. Mr. James Pasquale presented the highlights of staff's recommendations to the Trustees. President Kessel said that this allocation of low-cost hydropower was critically important to Brookhaven National Laboratory ("BNL") and was one of the reasons that the U. S. Department of Energy had awarded the Synchrotron II project to BNL. He said that after the record of the public hearing was closed, he had received a letter from Senators Maziarz and Griffo, who would have liked public hearings on this matter to have been held in Niagara and St. Lawrence counties. He said that in the future, the Authority would consider holding such public hearings in the areas where the hydropower is produced. In response to a question from Vice Chairman Foster, Mr. Pasquale said that BNL would be paying about 7 cents per kilowatt-hour for the electricity, compared to approximately 17 cents per kilowatt-hour it would have paid LIPA. He said that this is the standard Authority rate for hydropower, including the cost of transmitting the power from Niagara and St.*

*Lawrence to Long Island. Chairman Townsend said that he was glad that future hearings for such hydropower allocations would be held near the St. Lawrence and Niagara plants. He also said that this type of project is the kind that the Authority should be doing. In response to a question from Trustee D. Patrick Curley, Mr. Pasquale said that BNL's load factor is more than 80%. Trustee Eugene Nicandri said that it was his understanding that the 15 MW for this contract is coming from hydropower that was withdrawn from out-of-state entities and that he was pleased to see the hydropower being reallocated within New York State.*

The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That the Trustees hereby authorize for transmittal to the Governor the proposed contract for the sale of hydropower and energy generated by the New York Power Authority to the Long Island Power Authority for exclusive resale to Brookhaven National Laboratory; and be it further**

**RESOLVED, That the Corporate Secretary be, and hereby is, authorized to transmit copies of the proposed contract to the Governor, the Speaker of the Assembly, the Minority Leader of the Assembly, the Chairman of the Assembly Committee on Ways and Means, the Temporary President of the Senate, the Minority Leader of the Senate and the Chairman of the Senate Finance Committee, pursuant to Section 1009 of the Public Authorities Law; and be it further**

**RESOLVED, That the President and Chief Executive Officer or his designee be, and hereby is, authorized, subject to the approval of the form thereof by the Chief Operating Officer and the Executive Vice President and General Counsel, to enter into such other agreements and to do such other things as may be necessary or desirable to implement the contract with the Long Island Power Authority as set forth in the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**

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**CONTRACT FOR THE SALE OF FIRM HYDROELECTRIC POWER AND ENERGY  
FOR  
RESALE TO THE BROOKHAVEN NATIONAL LABORATORY  
BETWEEN  
THE NEW YORK POWER AUTHORITY  
AND  
THE LONG ISLAND POWER AUTHORITY**

**This Contract for the Sale of Firm Hydroelectric Power and Energy for Resale to the Brookhaven National Laboratory** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the **Power Authority of the State of New York**, created pursuant to Chapter 772 of the New York Laws of 1931 and existing under Title 1 of Article V of the New York Public Authorities Law ("NY PAL"), having an office for the transaction of business at 30 South Pearl Street, Albany, New York 12207 ("NYPA") and the **Long Island Power Authority** ("LIPA"), created pursuant to Chapter 517 of the New York Laws of 1986 and existing under Title 1-A of Article V of the NY PAL, having an office for the transaction of business at 333 Earle Ovington Boulevard, Suite 403, Uniondale, New York 11553 ("LIPA") for the sale of 15 megawatts ("MW") of firm hydroelectric power and energy from NYPA to LIPA for resale to United States Department of Energy ("DOE") as owner of Brookhaven National Laboratory (together with DOE, collectively referred to as "BNL"). NYPA and LIPA are from time to time referred to in this Agreement individually as a "Party" or collectively as the "Parties."

**RECITALS:**

- I.** NYPA is a New York State corporate municipal instrumentality and political subdivision of the State of New York engaged in the generation and transmission of electricity.
- II.** LIPA is a New York State corporate municipal instrumentality and political subdivision of the State of New York engaged in the transmission, distribution and sale of electricity.

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**III.** NYPA has available firm hydroelectric power and energy from both its St. Lawrence-FDR Project and its Niagara Project (collectively, the “Hydro Projects” as defined in Article 1.12 below) not currently allocated to end-use customers.

**IV.** NYPA’s Board of Trustees at their January 27, 2009 meeting authorized NYPA to enter into a contract for the sale of 15 MW of Hydroelectric Power (as defined in Article 1.13 below) to LIPA for resale to BNL.

**V.** The sale of Hydroelectric Power by NYPA to LIPA for resale to BNL is authorized under section 1005 (5) of the NY PAL.

**VI.** LIPA owns and operates electric distribution facilities capable of providing service to end-use customers in its service area.

**VII.** Hydroelectric Power generated from the Hydro Projects serve an important economic development function by providing competitively priced electricity to support economic activity and employment in New York State.

**VIII.** Since 1982, NYPA has provided firm power service to BNL, both a large employer and a leading physical sciences laboratory within the U. S. Department of Energy performing vital scientific research which benefits industries throughout New York State pursuant to the terms of the NYPA/BNL Agreement (as defined in Article 1.23 below) and, associated with such historical service, NYPA has maintained grandfathered transmission agreements, currently designated as contract number 76 in Attachment L to the New York Independent System Operator’s Open Access Transmission Tariff (“Transmission Agreements”).

**IX.** The Parties anticipate that LIPA and BNL will enter into a LIPA/BNL Agreement for the resale and delivery to BNL of the Hydroelectric Power sold to LIPA under this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants herein, NYPA and LIPA agree as follows:

### **1. DEFINITIONS**

**1.1. Agreement** means this Contract for the Sale of Firm Hydroelectric Power and Energy for Resale to the Brookhaven National Laboratory, dated as of [date], between NYPA and LIPA, including any Appendix attached hereto and any amendments to this Agreement that may be made from time to time in accordance herewith.

**1.2. Allocation** means the amount of Hydroelectric Power approved by NYPA’s Board of Trustees to be sold to LIPA for resale to and exclusive use by BNL, as set forth in Article 2.1.

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- 1.3. **Ancillary Services** shall have the meaning set forth in the NYISO Tariffs, as such definition may be modified from time to time.
- 1.4. **BNL** has the meaning set forth in the preamble.
- 1.5. **Commencement Date** shall be as set forth in Article 13.2.
- 1.6. **Conditions Precedent** shall be as set forth in Article 13.1.
- 1.7. **Contract Demand** will be the amount of Hydroelectric Power set forth in Article 2.1.
- 1.8. **Covered Matters** shall have the meaning set forth in Article 6.2.
- 1.9. **DOE** has the meaning set forth in the preamble.
- 1.10. **FERC** means the Federal Energy Regulatory Commission (or any successor organization).
- 1.11. **FERC Licenses** mean the first new license issued by FERC to NYPA for the continued operation and maintenance of the St. Lawrence-FDR Power Project, pursuant to Section 15 of the Federal Power Act, which new license became effective October 31, 2003 after expiration of the Project's original license issued in 1953, and further means the first new license issued by FERC to NYPA for the continued operation and maintenance of the Niagara Power Project, pursuant to Section 15 of the Federal Power Act, which new license became effective September 1, 2007 after expiration of the Project's original license issued in 1958.
- 1.12. **Hydro Projects** is a joint reference to both the St. Lawrence-FDR Power Project, FERC Project No. 2000 and the Niagara Power Project, FERC Project No. 2216.
- 1.13. **Hydroelectric Power** is as defined in NYPA's Service Tariff No. 2B and is intended to be available at all times except for limitations provided in this Agreement, the Service Tariff or the Rules.
- 1.14. **ICAP** refers to Installed Capacity as such term is defined in the NYISO Tariffs as may be modified from time to time.
- 1.15. **International Joint Commission (or "IJC")** is the commission that prevents and resolves disputes between the United States of America and Canada under the *1909 Boundary Waters Treaty* and pursues the common good of both countries as an independent and objective advisor to the two governments. The Commission rules upon applications for approval of projects

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affecting boundary or transboundary waters and may regulate the operation of these projects.

- 1.16. **LIPA** has the meaning set forth in the preamble.
- 1.17. **LIPA/BNL Agreement** refers to an agreement between LIPA and BNL for the purpose of reselling and delivering to BNL Hydroelectric Power purchased by LIPA under this Agreement.
- 1.18. **LIPA Parties** shall have the meaning set forth in Article 6.2.
- 1.19. **Load Serving Entity (or “LSE”)** shall have the meaning set forth in the NYISO Tariffs, as such definition may be modified from time to time.
- 1.20. **MW** is an abbreviation for megawatts as set forth in the preamble.
- 1.21. **NRA** means the federal Niagara Redevelopment Act (16 USC §§836, 836a).
- 1.22. **NYISO** means the New York Independent System Operator or any successor organization.
- 1.23. **NYISO Tariffs** means the NYISO’s Open Access Transmission Tariff or the NYISO’s Market Administration and Control Area Services Tariff, as applicable, or any successor tariffs to such NYISO Tariffs.
- 1.24. **NYPA** has the meaning set forth in the preamble.
- 1.25. **NYPA/BNL Agreement** means the existing power sales agreement entered into between NYPA and BNL in 1982, as modified from time to time.
- 1.26. **NY PAL** has the meaning set forth in the preamble.
- 1.27. **Point of Withdrawal** means the load bus established with the NYISO for service to BNL as contemplated under this Agreement.
- 1.28. **Rules** are the applicable provisions of the NYPA's Rules and Regulations for Power Service (Part 454 of Chapter X of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York), as they may be modified from time to time.
- 1.29. **Service Tariff** is NYPA’s Service Tariff No. 2B, a schedule establishing rates and other conditions for sale of Hydroelectric Power to LIPA for resale to BNL.
- 1.30. **State Comptroller** means the Comptroller of the State of New York.
- 1.31. **Transmission Agreements** has the meaning set forth in Recital VIII.

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- 1.32. UCAP** means Unforced Capacity as such term is defined in the NYISO Tariffs as may be modified from time to time.

### **2. SERVICES PROVIDED BY NYPA**

- 2.1.** NYPA, consistent with section 1005 (5) of the NY PAL, shall generate, sell and deliver or cause to be delivered to LIPA at the Point of Withdrawal 15 MW of Hydroelectric Power from the Hydro Projects, consisting of 14 MW from the St. Lawrence-FDR Project and 1 MW from the Niagara Project. The Contract Demand under this Agreement shall be 15 MW, or such other amount as may be mutually agreed upon by the Parties.
- 2.2.** The Parties agree that this 15 MW Allocation of Hydroelectric Power is for the exclusive use of BNL.
- 2.3.** NYPA represents that the Hydroelectric Power sold under this Agreement is not subject to the federal preference provisions of the NRA. LIPA represents that such resale to BNL under the LIPA/BNL Agreement is in accordance with section 1020-dd of the NY PAL.
- 2.4.** NYPA shall sell to LIPA 15 MW of firm capacity associated with the Allocation. NYPA shall ensure that such capacity associated with the Allocation qualifies as ICAP under the NYISO Tariff. NYPA and LIPA agree to cooperate in good faith to enable such ICAP to satisfy a portion of applicable LSE responsibilities associated with the BNL retail load served by this Agreement and the NYPA/BNL Agreement, as described in Section 2.7 below. Such cooperation shall include LIPA's conveyance of the same amount of firm capacity to NYPA and such certifications and confirmations as may be required under the NYISO Tariffs with respect to installed capacity suppliers, LSEs and bilateral transactions.
- 2.5.** NYPA shall sell and arrange for delivery to LIPA at the Point of Withdrawal firm energy associated with the Allocation based on 15 MW multiplied by the forecasted load factor for BNL's total usage in each month. Such load factor shall not be greater than unity (1.0). The firm energy shall be made available at the Point of Withdrawal at 69 kilovolts, as three-phase alternating current at a frequency of 60 Hertz.
- 2.6.** NYPA has the right to reduce the amount of firm energy provided to LIPA in any month under this Agreement in the event of low flow (i.e., hydrologic) conditions that reduce the amount of such energy produced at the Hydro Projects. Any such reductions will be scheduled prior to the start of the month and made on a pro rata basis to all NYPA customers purchasing Hydroelectric Power from either of the Hydro Projects. The amount of firm energy not sold to LIPA under this Agreement due to low flow conditions may be replaced with

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resources supplied by NYPA to BNL under the NYPA/BNL Agreement, up to the Contract Demand.

- 2.7.** The Parties agree that NYPA is, and intend for NYPA to continue to be, the LSE for the entire BNL retail load. Accordingly, NYPA shall perform all LSE functions under the NYISO Tariff related to the (i) sale and delivery of energy and sale of capacity to LIPA under this Agreement, and (ii) the consumption of the Allocation by the BNL retail load. NYPA shall be responsible for all NYISO charges arising under this Agreement, including but not limited to:
- A. NYISO charges associated with the scheduling and delivery of all energy and capacity (*i.e.*, ICAP/UCAP) sold under this Agreement, as well as the consumption of the Allocation by the BNL retail load;
  - B. the procurement of Ancillary Services, marginal losses, the NYPA Transmission Adjustment Charge (“NTAC”) and congestion costs applicable to NYPA’s scheduling and delivery of energy and capacity sold under this Agreement, as well as the consumption of the Allocation by the BNL retail load; and
  - C. the procurement of any other products or services required by the NYISO related to the sale, scheduling or delivery of energy or capacity sold under this Agreement as well as the consumption of the Allocation by the BNL retail load.
- 2.8.** Notwithstanding the foregoing, to the extent the NYISO imposes any charges upon LIPA with respect to the sale and delivery of firm energy and the sale of firm capacity to LIPA under this Agreement or the consumption of the Allocation by the BNL retail load, those costs will either be (a) reimbursed by NYPA, or (b) deducted from LIPA’s payment to NYPA, as directed by NYPA in written notice to LIPA.
- 2.9.** Nothing in this Agreement precludes NYPA from recovering all NYISO charges it has incurred related to sales under this Agreement directly from BNL under the NYPA/BNL Agreement.
- 2.10.** NYPA shall provide at least 30 days prior written notice to LIPA for any changes or termination of the Contract Demand, unless otherwise agreed upon in writing by the Parties.

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### **3. SERVICES PROVIDED BY LIPA**

- 3.1.** LIPA shall purchase Hydroelectric Power associated with the Allocation from NYPA at the Point of Withdrawal and resell and deliver to BNL the Hydroelectric Power associated with the Allocation at the rates and charges set by NYPA in accordance with Article 4 below and such bills rendered by LIPA to BNL pursuant to the LIPA/BNL Agreement shall not include any mark-up or a profit component. LIPA's bills to BNL rendered pursuant to the LIPA/BNL Agreement are subject to increase in accordance with rates, terms and conditions specified in LIPA's *Tariff for Electric Service*.
- 3.2.** The Parties agree that this Agreement does not grant to NYPA any rights to transmission service over LIPA's transmission or distribution system with respect to the sale and delivery of either energy or capacity from NYPA to LIPA under this Agreement.
- 3.3.** As of the Commencement Date of this Agreement, NYPA hereby partially assigns and transfers to LIPA the rights and obligations associated with NYPA's supply of 15 MW of Direct Firm Power Service (as such term is defined in the NYPA/BNL Agreement) to BNL under the NYPA/BNL Agreement. Such partial assignment of the obligation to provide 15 MW of Direct Firm Power Service to BNL under the NYPA/BNL Agreement shall be conditioned upon and only effective to the extent that LIPA receives full delivery of 15 MW of the Hydroelectric Power associated with the Allocation from NYPA pursuant to Articles 2.4, 2.5 and 3.10 of this Agreement.

LIPA hereby accepts the partial assignment and transfer of such rights and obligations to provide 15 MW of Direct Firm Power Service to BNL under the NYPA/BNL Agreement, subject to the conditions of this partial assignment stated herein and the requirement that this partial assignment shall not impose any costs or liabilities upon LIPA prior to the Commencement Date of this Agreement, or as a result of the termination of this Agreement. Such partial assignment shall terminate, and the rights and obligations to provide 15 MW of Direct Firm Power Service to BNL shall revert to NYPA, immediately upon termination or expiration of this Agreement.

NYPA expressly retains all other rights and obligations under the NYPA/BNL Agreement, including those rights and obligations relating to the transmission of all Direct Firm Power Service to BNL under the NYPA/BNL Agreement.

- 3.4.** NYPA hereby agrees to utilize its grandfathered transmission congestion contracts ("TCCs") associated with the Transmission Agreements used for deliveries of Hydroelectric Power associated with the Allocation to BNL under the NYPA/BNL Agreement to schedule and deliver all energy to LIPA under this Agreement for resale of the Allocation to BNL in accordance with the

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partial assignment of the obligation to provide 15 MW of Firm Power Service from NYPA to LIPA pursuant to Article 3.3. In the event that it is determined that NYPA's grandfathered TCCs associated with deliveries of energy to BNL may not be utilized to facilitate the scheduling and delivery of energy by NYPA to LIPA under this Agreement, pursuant to the partial assignment described in Article 3.3 (above), then NYPA hereby agrees to make all necessary arrangements pursuant to the NYISO Tariffs to procure transmission service required for the sale and delivery of energy from NYPA to LIPA for resale to BNL under this Agreement.

- 3.5.** Nothing herein shall affect nor is intended to affect NYPA's rights and obligations including the quantity of transmission service purchased by NYPA under the Transmission Agreements, including the grandfathered transmission agreement dated as of October 1, 1981, as amended, between NYPA and LIPA.
- 3.6.** Nothing in this Agreement, express or implied, shall relieve or limit NYPA from its obligations (1) to uphold its LSE responsibilities in accordance with the NYISO Tariffs, and (2) to provide Hydroelectric Power free and clear of all liens, claims and encumbrances.
- 3.7.** LIPA shall supply NYPA with hourly meter data on a monthly basis for NYPA's use under the NYPA/BNL Agreement.
- 3.8.** The resale by LIPA of Hydroelectric Power to BNL shall be consistent with the terms and conditions provided herein. The LIPA/BNL Agreement shall include a provision that prohibits BNL from reselling any of the Hydroelectric Power purchased from LIPA.
- 3.9.** Nothing in this Agreement prohibits LIPA's application of the gross receipts tax and New York State assessment in its charges for service to BNL in accordance with applicable state and federal laws, regulations and tariffs.
- 3.10.** Except as provided in Article 2.4 and consistent with Article 2.7, LIPA shall have no obligation to purchase or supply any ICAP or UCAP related to BNL's load. Notwithstanding the parties' intent as described in the above referenced Articles, to the extent the NYISO imposes on LIPA the responsibility to provide any ICAP or UCAP related to BNL's retail load or otherwise imposes any charges or penalties upon LIPA with respect to the provision of ICAP or UCAP related to BNL's retail load, NYPA will, as applicable and pursuant to written notice from NYPA to LIPA, (a) arrange for LIPA to retain capacity conveyed by NYPA pursuant to Article 2.4 and provide to LIPA all additional quantities of capacity with appropriate locational characteristics as may be necessary to meet its responsibilities to the NYISO at no charge, or (b) reimburse LIPA for such NYISO charges or penalties, or (c) deduct such charges or penalties from LIPA's payment to NYPA.

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- 3.11.** LIPA shall have no obligation to purchase Hydroelectric Power associated with this Allocation from NYPA nor to resell and deliver such Hydroelectric Power to BNL to the extent that BNL is in arrears on any payment due to LIPA or in the event of an early termination of the LIPA/BNL Agreement as contemplated in Article 13.3 in this Agreement.
- 3.12.** LIPA shall have no obligation to make deliveries to BNL in the event that NYPA fails to make deliveries of the Hydroelectric Power associated with the Allocation to LIPA.

### **4. RATES**

- 4.1.** Rates shall be as set forth in the Service Tariff, which shall be subject to modification from time to time. NYPA will provide LIPA with 30 days written notice of any such modification.
- 4.2.** LIPA shall pay NYPA the sum of charges indicated in Articles 4.2.1, 4.2.2., and 4.2.3 below for Hydroelectric Power purchased from NYPA for the billing periods under this Agreement.
  - 4.2.1. Demand Charge. The demand charge specified in the Service Tariff or any modification thereof applied to the Contract Demand.
  - 4.2.2. Energy Charge. The energy charge specified in the Service Tariff applied to the energy apportioned to service under this Agreement.
  - 4.2.3. Any taxes, surcharges, or other assessments by federal, state, or local governments that NYPA is required to pay associated with the sale of Hydroelectric Power under this Agreement.
- 4.3.** Except as provided in Article 3.1, LIPA agrees that the bills it receives from NYPA under this Agreement for the sale of Hydroelectric Power will not be marked up or have a profit component added thereto when LIPA resells the Hydroelectric Power to BNL; provided however, LIPA reserves the right to recover charges from BNL for transmission service through the LIPA/BNL Agreement if and to the extent such charges become due and cannot be recovered from NYPA as described in Article 2 and Article 3.

### **5. BILLING AND PAYMENT PROVISIONS**

- 5.1.** NYPA will submit bills to LIPA on or before the 10<sup>th</sup> business day of each Billing Period (as such term is defined in the Service Tariff) for Hydroelectric Power furnished during the preceding Billing Period. Payments by LIPA to NYPA for such service will be due 30 days after bills are rendered. LIPA will be subject

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to late payment charges as specified below. Payments shall be made by wire transfer to JP Morgan Chase Bank, ABA # 021000021, for credit to New York Power Revenue Fund Account # 008-030383, unless otherwise indicated in writing by NYPA.

- 5.2.** All bills rendered by NYPA to LIPA for Hydroelectric Power under this Agreement shall contain sufficient information to permit LIPA to confirm that such bills have been correctly computed or sufficient back-up data will be provided by NYPA to permit LIPA to verify bills. Upon LIPA's request, NYPA shall furnish to LIPA any additional information reasonably necessary to permit LIPA to audit NYPA billings.
- 5.3.** LIPA will add such other charges, including those charges identified in Article 3.9, as provided for in LIPA's *Tariff for Electric Service* and submit the invoice for the total amount to BNL. Such invoices to BNL shall separately state Hydroelectric Power charges separate from all other LIPA charges.
- 5.4.** If LIPA fails to pay any bill when due, an interest charge equal to the interest rate specified in section 2880 of the NY PAL multiplied by the principal sum unpaid shall be added on the first day of each succeeding calendar month until the amount due, including interest, is paid in full. In the event of a billing dispute, LIPA shall pay the full amount due, but NYPA shall refund to LIPA any disputed amounts determined to be billed in error within 30 days of such determination with interest calculated as above. NYPA shall have the right upon not less than 15 days advance written notice to discontinue furnishing Hydroelectric Power to LIPA for nonpayment of bills and to refuse to resume furnishing Hydroelectric Power to LIPA so long as any part of the amount due remains unpaid. The minimum charge for Hydroelectric Power as defined in the Service Tariff shall be pro rated to reflect the number of days in any Billing Period during which Hydroelectric Power is so discontinued.

## **6. LIABILITY AND INDEMNIFICATION**

- 6.1.** NYPA expressly agrees and acknowledges that LIPA's officers, trustees, employees, representatives and agents shall not be liable to NYPA for any monetary damages arising out of the performance of this Agreement. Further, in no case shall LIPA or any of its officers, trustees, employees, representatives or agents be liable to NYPA for any indirect, special, or consequential damages, economic losses or lost profits even if LIPA has been notified of the possibility of such damages or losses and regardless of whether such damages or losses are based on LIPA's, or its officers', Trustees', employees', representatives' or agents' negligence, breach of warranty, tort, strict liability or any other legal theory arising out of the performance of this Agreement.

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- 6.2. Without limiting any other remedies to which LIPA and LIPA’s officers, trustees, employees, representatives and agents may be entitled, NYPA shall: (a) indemnify and hold harmless LIPA, including LIPA’s successors, assigns, trustees, officers, employees, representatives and agents (the "LIPA Parties"), from and against any and all losses, liabilities, damages, costs and expenses including, without limitation, any consequential, indirect, incidental, punitive or special damages, as a result of any demands, claims or judgments asserted against the LIPA Parties by any third party (including BNL) arising out of, or related to, or resulting from acts or omissions of NYPA arising out of or related to this Agreement (the "Covered Matters"); and (b) at its own expense, defend the LIPA Parties in any dispute, action or proceeding on any of the Covered Matters.
- 6.3. The provisions of this Article 6 shall survive the expiration or termination of this Agreement for any reason.

**7. TRANSFER OF INTEREST IN CONTRACT**

No voluntary transfer of service or of the rights of either Party under this Agreement shall be made without the written approval of the other Party which Party’s approval shall not be unreasonably withheld, provided, that any successor to or assignee of the rights of either Party whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the provisions and conditions of this Agreement, to the same extent as though such successor or assignee were the original Party, and provided further, that the execution of a mortgage or trust deed, or judicial or foreclosure sales made thereunder, shall not be deemed a voluntary transfer within the meaning of this Article.

**8. WAIVERS**

- 8.1. Any waiver at any time by either LIPA or NYPA of their rights with respect to a default or of any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any subsequent default or matter.
- 8.2. No waiver by either Party of any rights with respect to any matter arising in connection with this Agreement shall be effective unless made in writing and signed by the Party waiving such rights.

**9. RULES AND SERVICE TARIFFS**

- 9.1. NYPA’s Rules as may later be amended from time to time by NYPA, are incorporated by reference into this Agreement. Unless otherwise specifically provided for in this Agreement, the terms, charges and conditions for service shall be subject to the Rules.

## **DRAFT FORM OF CONTRACT FOR PUBLIC HEARING**

- 9.2.** Service Tariff No. 2B, as now in effect or later amended from time to time by NYPA, or such superseding tariff as NYPA may later promulgate is incorporated into this Agreement with the same force and effect as if herein set forth at length.
- 9.3.** In the event of any inconsistencies, conflicts or differences between the provisions of the Service Tariff and the Rules, the provisions of Service Tariff shall govern. In the event of any inconsistencies, conflicts or differences between the provisions of this Agreement and the Service Tariff, the provisions of this Agreement shall govern.
- 9.4.** NYPA shall provide at least 30 days prior written notice to LIPA of any proposed change in the Rules and the Service Tariff.

### **10. SUPPLEMENTAL PROVISIONS**

Certain provisions required by law (Standard Clauses for NYS Contracts) are attached to this Agreement in Appendix A and are hereby incorporated as part of this Agreement with the same force and effect as if herein set forth at length and may be modified from time to time as required.

### **11. NOTIFICATION**

- 11.1.** All correspondence relating to this Agreement shall be directed to the following:

**NYPA:**

Ms. Caroline Garcia  
Manager – Contract Administration  
New York Power Authority  
123 Main Street  
White Plains, New York 10601  
Fax: 914-390-8156  
Email: carol.garcia@nypa.gov

Copy:

Gary D. Levenson, Esq.  
Principal Attorney  
New York Power Authority  
123 Main Street  
White Plains, New York 10601  
Fax: 914-390-8040  
Email: gary.levenson@nypa.gov

## **DRAFT FORM OF CONTRACT FOR PUBLIC HEARING**

### **LIPA:**

Mr. Paul DeCotis  
Vice President of Power Markets  
Long Island Power Authority  
333 Earl Ovington Blvd., Suite 403  
Uniondale, New York 11553  
Fax: 516-222-9137  
Email: pdecotis@lipower.org

### Copy:

Lynda Nicolino, Esq.  
General Counsel  
Long Island Power Authority  
333 Earl Ovington Blvd., Suite 403  
Uniondale, New York 11553  
Fax: 516-222-9137  
Email: lnicolino@lipower.org

- 11.2.** Except where otherwise herein specifically provided, any notice, communication or request required or authorized by this Agreement by either Party to the other shall be deemed properly given: a) if sent by U.S. First Class mail addressed to the Party at the address set forth above, b) if sent by a nationally recognized overnight delivery service, two (2) calendar days after being deposited for delivery to the appropriate address set forth above, c) if delivered by hand, with written confirmation of receipt, d) if sent by facsimile to the appropriate fax number as set forth above, with written confirmation of receipt, or e) if sent by electronic mail to the appropriate address as set forth above, with written confirmation of receipt. Either Party may change the addressee and/or address for correspondence sent to it by giving written notice in accordance with the foregoing.

## **12. MISCELLANEOUS TERMS**

- 12.1.** LIPA may have disclosed to the public the estimated total cost of this Agreement with NYPA prior to LIPA's Board of Trustees authorization of the execution of this Agreement.
- 12.2.** Nothing in this Agreement, expressed or implied, is intended to confer on any person, other than the Parties hereto, any rights or remedies, under or by reason of this Agreement.
- 12.3.** Counterparts. This Agreement may be executed in counter parts, each of which shall be an original and all of which shall constitute a single agreement.

## ***DRAFT FORM OF CONTRACT FOR PUBLIC HEARING***

- 12.4. Amendments.** No amendment or modification to this Agreement shall be enforceable unless reduced to writing, executed by both Parties, and approved by the State Comptroller.

### **13. TERM AND TERMINATION**

- 13.1. Conditions Precedent:** This Agreement shall become legally binding and effective only upon satisfaction of the following conditions precedent (each of Articles 13.1.1, 13.1.2 and 13.1.3 are collectively referred to as the “Conditions Precedent”):

13.1.1. NYPA Conditions: (a) receipt of approval by NYPA’s Board of Trustees to execute this Agreement; (b) receipt of approval of this Agreement by the Governor of the State of New York, pursuant to section 1009 of the NY PAL; (c) execution of this Agreement by NYPA and LIPA, and (d) execution of an amended and restated NYPA/BNL Agreement.

13.1.2. LIPA Conditions: (a) receipt of approval by LIPA’s Board of Trustees to execute this Agreement; (b) execution of this Agreement by NYPA and LIPA; (c) receipt of approval by LIPA’s Board of Trustees to execute the LIPA/BNL Agreement; (d) execution of the LIPA/BNL Agreement by LIPA and BNL; (e) receipt of approval of this Agreement by the New York State Attorney General (as to form) and by the New York State Comptroller pursuant to section 1020-cc of the NY PAL.

13.1.3. BNL Conditions: (a) receipt of approval from DOE to execute LIPA/BNL Agreement; (b) execution of the LIPA/BNL Agreement by LIPA and BNL; (c) receipt of approval from DOE to execute an amended and restated NYPA/BNL Agreement; and (d) execution of an amended and restated NYPA/BNL Agreement.

- 13.2.** The term of this Agreement shall be for a period of 10 years from the Commencement Date, which shall be the first day of the month following receipt of all Conditions Precedent, but may be extended for an additional five years by NYPA provided NYPA and LIPA receive prior notice from BNL in a form acceptable to the Parties indicating that BNL desires to continue to receive the Allocation for the length of such extension.

- 13.3.** This Agreement shall terminate: a) upon expiration; b) upon early termination of the LIPA/BNL Agreement; or c) in the event that NYPA can sell directly to BNL; provided, however, that NYPA shall be afforded a reasonable transition period to include the time necessary to establish a valid contract for the sale of hydroelectricity between NYPA and BNL. The obligation to make all payments

## ***DRAFT FORM OF CONTRACT FOR PUBLIC HEARING***

due, including any final reconciliation, shall survive the termination of this Agreement.

### **14. SEVERABILITY AND VOIDABILITY**

If any term or provision of this Agreement shall be invalidated, declared unlawful or ineffective in whole or in part by an order of the FERC, action or order by NYISO or a court of competent jurisdiction, such action or order shall not be deemed to invalidate the remaining terms or provisions hereof, and the Parties shall renegotiate the terms of this Agreement to address such term or provision deemed to be invalidated, declared unlawful or ineffective.

### **15. APPLICABLE LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of New York to the extent that such laws are not inconsistent with the FERC License and the NRA, as well as, rulings by the IJC and without regard to conflicts of law provisions.

### **16. REPRESENTATIONS AND WARRANTIES**

**16.1** NYPA represents and warrants to LIPA that as of the date of execution of this Agreement:

- A. NYPA is a public authority of the State of New York, is duly organized and validly existing, under the Power Authority Act, Title 1 of Article 5 of the NY PAL, Chapter 43-A of the Consolidated Laws of the State of New York, as amended. NYPA has the power pursuant to the Power Authority Act (sections 1000 – 1017 of the NY PAL) to execute the Agreement and to perform its obligations under the Agreement, and all such actions have been duly authorized by all necessary proceedings on its part; and
- B. The execution, delivery and performance of this Agreement by NYPA will not conflict with its governing documents, any applicable laws, or any covenant, agreement, understanding, decree or order to which NYPA is a party or by which it is bound or affected; and
- C. The Agreement has been duly and validly executed and delivered by NYPA, and no other authorization for NYPA's execution and delivery of the Agreement or performance by NYPA of its obligations thereunder is required under the Act; and
- D. The Agreement constitutes a legal, valid and binding obligation of NYPA, enforceable in accordance with its terms against NYPA, except to the extent that its enforceability may be limited by bankruptcy,

## ***DRAFT FORM OF CONTRACT FOR PUBLIC HEARING***

insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity.

- E. NYPA holds the legal power and authority to perform this partial assignment and its officers have been duly authorized to do so.

**16.2** LIPA represents and warrants to NYPA that as of the date of execution of this Agreement:

- A. LIPA is a public authority of the State of New York, is duly organized and validly existing, under the Long Island Power Authority Act, Title 1-A of Article 5 of the NY PAL, Chapter 43-A of the Consolidated Laws of the State of New York, as amended. LIPA has the power pursuant to the Long Island Power Authority Act (sections 1020 – 1020-ii of the Act) to execute the Agreement and to perform its obligations under the Agreement, and all such actions have been duly authorized by all necessary proceedings on its part; and
- B. The execution, delivery and performance of this Agreement by LIPA will not conflict with its governing documents, any applicable laws, or any covenant, agreement, understanding, decree or order to which LIPA is a party or by which it is bound or affected; and
- C. The Agreement has been duly and validly executed and delivered by LIPA, and no other authorization for LIPA's execution and delivery of the Agreement or performance by LIPA of its obligations thereunder is required under the Act; and
- D. The Agreement constitutes a legal, valid and binding obligation of LIPA, enforceable in accordance with its terms against LIPA, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity.

**DRAFT FORM OF CONTRACT FOR PUBLIC HEARING**

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their respective officers there unto duly authorized on the date first above written.

**AGREED:**

**LONG ISLAND POWER AUTHORITY**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**AGREED:**

**POWER AUTHORITY OF THE STATE OF NEW YORK**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED BY:

Office of the State Comptroller

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

Office of the New York State Attorney General

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**DRAFT FORM OF CONTRACT FOR PUBLIC HEARING**

STATE OF NEW YORK )

COUNTY OF WESTCHESTER )

On the \_\_\_ day of \_\_\_\_\_, [2010] before me personally came \_\_\_\_\_, to me known to be the individual described in the foregoing instrument in his capacity as \_\_\_\_\_ of the Power Authority of the State of New York, the corporate municipal instrumentality and political subdivision of the State of New York described in and which executed the foregoing instrument, who being duly sworn did acknowledge that (s)he executed same on behalf of, and that (s)he was authorized to execute same on behalf of the aforementioned entity.

\_\_\_\_\_  
Notary Public

**DRAFT FORM OF CONTRACT FOR PUBLIC HEARING**

STATE OF NEW YORK )

COUNTY OF NASSAU\_\_\_\_\_ )

On the \_\_ day of \_\_\_\_\_, [2010] before me personally came \_\_\_\_\_, to me known to be the individual described in the foregoing instrument in his capacity as \_\_\_\_\_ of the Long Island Power Authority, the corporate municipal instrumentality and political subdivision of the State of New York described in and which executed the foregoing instrument, who being duly sworn did acknowledge that (s)he executed same on behalf of, and that (s)he was authorized to execute same on behalf of the aforementioned entity.

\_\_\_\_\_  
Notary Public

# ***DRAFT FORM OF CONTRACT FOR PUBLIC HEARING***

## **Appendix A**

### **PROVISIONS REQUIRED BY LAW**

#### **STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, “the Agreement” or “this Agreement”) agree to be bound by the following clauses which are hereby made a part of the Agreement (the word “Contractor” herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or other party):

**NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this Agreement may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the Agreement without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this Agreement concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**COMPTROLLER’S APPROVAL.** In accordance with Section 112 of the New York State Finance Law (the “State Finance Law”), this Agreement shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in that office.

**WORKER’S COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this Agreement shall be void and of no force and effect unless the Contractor provides and maintains coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

**NON-DISCRIMINATION REQUIREMENTS.** In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other New York State and Federal statutory and constitutional non-discrimination provisions, the Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability, marital status, sexual orientation, genetic predisposition or carrier status. Furthermore, in accordance with Article 220–e of the New York Labor Law, and to the extent that this Agreement shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, national origin, sexual orientation, genetic predisposition or carrier status; (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee for the performance of work under this Agreement.

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**WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

**NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this Agreement was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on the Contractor's behalf.

**INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this Agreement exceeds \$5,000, The Contractor agrees, as a material condition of the Agreement, that neither The Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC app. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the Agreement's execution, such Agreement, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other contract with the State, including any contract for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State, its representatives, or the State Comptroller.

## ***DRAFT FORM OF CONTRACT FOR PUBLIC HEARING***

**RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Agreement (hereinafter, collectively, “the Records”). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this Agreement, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the “Statute”) provided that: (i) The Contractor shall timely inform the State in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**EQUAL EMPLOYMENT FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the New York Executive Law: (i) the Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, genetic predisposition or carrier status and shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation; (ii) at the request of the State, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, genetic predisposition or carrier status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and (iii) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of this Agreement, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, genetic predisposition or carrier status. Contractor shall include the provisions of (i), (ii) and (iii) above, in every subcontract over twenty-five thousand dollars (\$25,000.00) for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the “Work”) except where the Work is for the beneficial use of the Contractor.

**CONFLICTING TERMS.** In the event of a conflict between the terms of the Agreement (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

## ***DRAFT FORM OF CONTRACT FOR PUBLIC HEARING***

**GOVERNING LAW.** This Agreement shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**LATE PAYMENT.** Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by Section 2880 of the NY PAL and the guidelines adopted by LIPA thereto.

**PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the Contractor to establish to meet with the approval of the State.

In addition, when any portion of this Agreement involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the New York Laws of 1992), the Contractor hereby stipulates that the Contractor either (i) has no business operations in Northern Ireland, or (ii) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Article 165 of, the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts. Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
One Commerce Plaza  
Albany, New York 12245.

## ***DRAFT FORM OF CONTRACT FOR PUBLIC HEARING***

A directory of certified minority and women–owned business enterprises is available from:

NYS Department of Economic Development  
Minority and Women’s Business Development Division  
One Commerce Plaza  
Albany, New York 12245

The Omnibus Procurement Act of 1992 requires that by signing this Agreement, Contractor certifies that:

(a) The Contractor has made commercially reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and woman–owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92–261), as amended;

(c) The Contractor agrees to make commercially reasonable efforts to provide notification to New York State residents of employment opportunities on this Project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Consultant acknowledges that the State may seek to obtain offset credits from foreign countries as a result of this Agreement and agrees to cooperate with the State in these efforts.

**RECIPROCITY AND SANCTIONS PROVISIONS.** The Contractor is hereby notified that if its principal place of business is located in a state that penalizes New York State vendors, and if the goods or services it offers are substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 amendments (Chapter 684, Laws of 1994) require that the Contractor be denied contracts which it would otherwise obtain.

**PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any Contractor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) the Contractor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the

## ***DRAFT FORM OF CONTRACT FOR PUBLIC HEARING***

names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

### **CONTRACTOR CERTIFICATION OF COMPLIANCE WITH STATE FINANCE LAW**

**SECTION 139-j.** Contractor certifies and affirms that it understands and agrees to comply with the procedures of the Governmental Entity relative to permissible contacts as required by the State Finance Law § 139-j (3) and § 139-j (6)(b).

**OPTIONAL TERMINATION BY LIPA.** LIPA reserves the right to terminate this Agreement in the event it is found that the certification filed by Contractor in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the LIPA may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Agreement.

**CONTINGENT FEES.** Contractor hereby certifies and agrees that (a) Contractor has not employed or retained and will not employ or retain any individual or entity for the purpose of soliciting or securing any State contract or any amendment or modification thereto pursuant to any agreement or understanding for receipt of any form of compensation which in whole or in part is contingent or dependent upon the award of any such contract or any amendment or modification thereto; and (b) Contractor will not seek or be paid an additional fee that is contingent or dependent upon the completion of a transaction by the State.

**NON-PUBLIC PERSONAL INFORMATION.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the contractor's agents, officers, employees or subcontractors.



POWER AUTHORITY OF THE STATE OF NEW YORK  
30 SOUTH PEARL STREET  
ALBANY, NY 12207

Schedule of Rates for Sale of Hydroelectric Power  
To Long Island Power Authority for Resale  
To Brookhaven National Laboratory

Service Tariff No. 2B

Date of Issue: \_\_\_\_\_, 2010

Date Effective: \_\_\_\_\_, 2010

**DRAFT FORM OF CONTRACT FOR PUBLIC HEARING**

New York Power Authority  
Service Tariff No. 2B

Original Leaf No. 2

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**>>> To be finalized with final approved version <<<**

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Date of Issue: \_\_\_\_\_, 2010

Date Effective: \_\_\_\_\_, 2010

**DRAFT FORM OF CONTRACT FOR PUBLIC HEARING**

New York Power Authority  
Service Tariff No. 2B

Original Leaf No. 3

**Schedule of Rates for Firm Power Service**

**I. Applicability**

To sales of Hydroelectric Power to Long Island Power Authority ("LIPA") for exclusive resale to Brookhaven National Laboratory ("BNL") for firm power service.

**II. Abbreviations and Terms**

A. The following abbreviations are used:

kW	kilowatt(s)
kWh	kilowatt-hour(s)
NYPA	New York Power Authority
NYISO	New York Independent System Operator
NY PAL	New York Public Authorities Law

B. The term "Agreement" means the Contract for the Sale of Firm Hydroelectric Power and Energy for Resale to the Brookhaven National Laboratory dated as of [date] between the New York Power Authority and the Long Island Power Authority.

C. The term "Authority" means New York Power Authority, an alternative name for the Power Authority of the State of New York.

D. The term "BNL" means Brookhaven National Laboratory, a federal facility owned by the U.S. Department of Energy located in Upton, New York in the LIPA service territory.

E. The term "Contract Demand" shall have the meaning set forth in the Agreement.

F. The term "Firm Power" means capacity (kW) that is intended to be always available from the Projects subject to the curtailment provisions set forth in the Agreement between Authority and LIPA. Firm Power shall not include peaking power.

G. The term "Firm Energy" means energy (kWh) associated with Firm Power.

H. The term "Hydroelectric Power" means Firm Power and Firm Energy from the Projects (defined below) managed and sold by Authority in accordance with section 1005 (5) of the NY PAL.

Date of Issue: \_\_\_\_\_, 2010

Date Effective: \_\_\_\_\_, 2010

**DRAFT FORM OF CONTRACT FOR PUBLIC HEARING**

New York Power Authority  
Service Tariff No. 2B

Original Leaf No. 4

- I. The term "LIPA" means the Long Island Power Authority, a political subdivision of the New York State authorized under section 1020-dd of the NY PAL to distribute Hydroelectric Power to BNL.
- J. The Term "LIPA Tariff" means the tariff governing LIPA's provision of electric service to its customers, as may be modified from time to time.
- K. The term "Projects" means the Authority's Niagara and St. Lawrence-FDR Hydroelectric Projects.
- L. The term "Rate Year" means the period July 1 of any year through June 30 of the following year.
- M. The term "Rules" means Authority's rules and regulations set forth in 21 NYCRR §450 *et seq.*, as may be modified from time to time.
- N. The term "Service Tariff" means this Service Tariff No. 2B.

Date of Issue: \_\_\_\_\_, 2010

Date Effective: \_\_\_\_\_, 2010

Issued by James F. Pasquale, Senior Vice President  
Power Authority of the State of New York  
30 South Pearl Street, Albany, NY 12207

**DRAFT FORM OF CONTRACT FOR PUBLIC HEARING**

New York Power Authority  
Service Tariff No. 2B

Original Leaf No. 5

**III. Monthly Rates and Charges**

A. Monthly Base Rates

The monthly base rates for Firm Power and Firm Energy paid by LIPA to Authority are based on the following demand and energy charges.

Rate Year	Demand Charge \$/kW-mo.	Energy Charge Mills/kWh
July 1, 2009 through June 30, 2010	5.64	9.64
July 1, 2010 through June 30, 2011	6.15	10.52
July 1, 2011 through June 30, 2012	6.71	11.48
July 1, 2012 through June 30, 2013	7.32	12.52
July 1, 2013 through June 30, 2014	7.99	13.66

Beginning with the Rate Year starting July 1, 2014, and for each Rate Year thereafter, such rates shall be subject to an Annual Adjustment Factor set forth in Section V herein. The monthly base rates set forth above exclude any applicable charges added by LIPA pursuant to the LIPA Tariff.

B. Minimum Monthly Charge

The product of the demand charge set forth above and the Contract Demand. In the event that the Agreement terminates before the last day of a Billing Period, the Minimum Monthly Charge shall be pro rated for the number of days in the Billing Period during which the Agreement was in effect.

C. Billing Period

Any period of approximately thirty (30) days, generally ending with the last day of each calendar month.

D. Billing Demand

The billing demand shall be the Contract Demand.

Date of Issue: \_\_\_\_\_, 2010

Date Effective: \_\_\_\_\_, 2010

**DRAFT FORM OF CONTRACT FOR PUBLIC HEARING**

New York Power Authority  
Service Tariff No. 2B

Original Leaf No. 6

E. Billing Energy

The billing energy shall be determined by applying the billing methodology as agreed to in the Agreement.

F. Payment Information

Bills computed under Service Tariff No. 2B are due and payable by electronic wire transfer in accordance with the Rules. Such wire transfer shall be made to J P Morgan Chase NY, NY / ABA021000021 / NYPA A/C # 008-030383, unless otherwise indicated in writing by Authority. In the event that there is a dispute on any items of a bill rendered by Authority, LIPA shall pay such bill in full and adjustments, if warranted, will be made thereafter, subject to interest charges as provided in the Agreement.

Date of Issue: \_\_\_\_\_, 2010

Date Effective: \_\_\_\_\_, 2010

**DRAFT FORM OF CONTRACT FOR PUBLIC HEARING**

New York Power Authority  
Service Tariff No. 2B

Original Leaf No. 7

**IV. General Provisions**

A. Character of Service

Alternating current; sixty cycles, three-phase.

B. Adjustment of Charges

1. Taxes and Other Charges

The charges for Firm Power and Energy under this Service Tariff shall be subject to adjustment as Authority deems necessary to recover from LIPA any taxes, assessments or any other charges imposed on Authority by federal, state and local governments or that the Authority is required to collect from its customers if and to the extent such taxes, assessments or charges are not recovered by Authority pursuant to another provision of this Service Tariff.

2. Conflicts

The Authority's Rules shall apply to the service provided under this Service Tariff. In the event of any inconsistencies, conflicts or differences between the provisions of this Service Tariff and the Rules, the provisions of this Service Tariff shall govern.

3. Niagara and St. Lawrence-FDR Hydroelectricity Rates Notice

When the monthly rates charged by Authority for the sale of Niagara and St. Lawrence-FDR hydroelectricity change, Authority shall so notify LIPA in writing thirty (30) days prior to such change.

4. Resale Without Mark-up

All resales of Hydroelectric Power by LIPA to BNL shall be made without mark-up and in accordance with the provisions of section 1005 (5) of the NY PAL, except that LIPA shall add such charges as are provided for under the LIPA Tariff.

5. BNL Resales Prohibited

LIPA resales to BNL shall be under terms that prohibit BNL from reselling any quantity of Hydroelectric Power purchased from LIPA.

Date of Issue: \_\_\_\_\_, 2010

Date Effective: \_\_\_\_\_, 2010

**DRAFT FORM OF CONTRACT FOR PUBLIC HEARING**

New York Power Authority  
Service Tariff No. 2B

Original Leaf No. 8

**V. Annual Adjustment Factor**

A. Adjustment of Rates

1. The Annual Adjustment Factor will be based upon a weighted average of three indices described below. For each new Rate Year, the index value for the latest available calendar year ("Index Value for the Measuring Year") will be compared to the index value for the calendar year immediately preceding the latest available calendar year (the Index Value for the Measuring Year -1"). The change for each index will then be multiplied by the indicated weights. As described in detail below, these products are then summed, producing the Annual Adjustment Factor. The Annual Adjustment Factor will be multiplied by the base rate for the current Rate Year to produce the base rates for the new Rate Year.

Index 1, "BLS Industrial Power Price" (35% weight): The average of the monthly Producer Price Index for Industrial Electric Power, commodity code number 0543, not seasonally adjusted, as reported by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS") electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 1, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Index 2, "EIA Average Industrial Power Price" (40% weight): The average weighted annual revenue per kWh for electric sales to the industrial sector in the ten states of CT, MA, ME, NH, NJ, NY, OH, PA, RI and VT ("Selected States") as reported by Coal and Electric Data and Renewables Division; Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration ("EIA"); U.S. Department of Energy Form EIA-861 Final Data File. For Index 2, the Index Value for the Measuring Year will be the index for the calendar year two years preceding July 1 of the new Rate Year.

Index 3, "BLS Industrial Commodities Price Less Fuel" (25% weight): The monthly average of the Producer Price Index for Industrial Commodities less fuel, commodity code number 03T15M05, not seasonally adjusted, as reported by the U.S. Department of Labor, BLS electronically on its internet site and consistent with its printed publication, "Producer Price Index Detailed Report". For Index 3, the Index Value for the Measuring Year will be the index for the calendar year immediately preceding July 1 of the new Rate Year.

Date of Issue: \_\_\_\_\_, 2010

Date Effective: \_\_\_\_\_, 2010

**DRAFT FORM OF CONTRACT FOR PUBLIC HEARING**

New York Power Authority  
Service Tariff No. 2B

Original Leaf No. 9

2. Annual Adjustment Computation Guide

Step 1: For each of the three Indices, divide the Index Value for Measuring Year by the Index Value for the Measuring Year-1.

Step 2: Multiply the ratios determined in Step 1 by percentage weights for each Index. Sum the results to determine the weighted average. This is the Annual Adjustment Factor.

Step 3: Multiply the current Rate Year base rate by the Annual Adjustment Factor calculated in Step 2 to determine the new Rate Year base rate.

3. Authority shall provide LIPA with notice of any adjustment to the current base rate per the above and with all data and calculations necessary to compute such adjustment by June 1<sup>st</sup> of each year to be effective on July 1 of such year, commencing in 2014. The values of the latest officially published (electronically or otherwise) versions of the indices and data provided by the BLS and EIA as of June 1 shall be used notwithstanding any subsequent revisions to the indices.

4. If during the term of the Agreement any of the three above indices ceases to be available or ceases to be reflective of the relevant factors or of changes which the indices were intended by NYPA to reflect, NYPA will substitute a new Index by mutual agreement between NYPA and BNL.

Date of Issue: \_\_\_\_\_, 2010

Date Effective: \_\_\_\_\_, 2010

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PUBLIC HEARING

Contract with Long Island Power Authority  
for Sale of Hydropower to Benefit  
Brookhaven National Laboratory

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January 19, 2010  
2:00 p.m.

One Independence Hill  
Farmingville, New York

B E F O R E :

KAREN DELINCE,  
Hearing Officer

MINUTES OF PUBLIC HEARING

Lisa H. Edelstein, RPR  
Court Reporter

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MS. DELINCE: We are ready  
to begin.

Good afternoon. My name is  
Karen Delince. I'm the corporate  
secretary of the New York Power  
Authority, NYPA. This public hearing  
is being conducted by NYPA to provide  
an overview and receive public  
comment on a proposed contract with  
the Long Island Power Authority,  
LIPA, for the sale of 15 megawatts of  
NYPA hydropower to LIPA to be resold  
exclusively to the U.S. Department of  
Energy as owner of Brookhaven  
National Laboratory.

Pursuant to Section 1009 Sub  
1 of the Public Authorities Law,  
notice of this hearing was published  
in the following six newspapers once  
a week for the four weeks leading up  
to the hearing: Newsday, the Long  
Island Business News, The Village  
Times Herald, The Port Times Record,  
The Village Beacon Record and the

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Times of Middle Country. During the 30-day period prior to today's hearing, copies of the proposed contract and service tariff have been available for inspection at NYPA's office in White Plains, as well as NYPA's website.

Also pursuant to 1009 Sub 1 of the Public Authorities Law, notice of this hearing and copies of the proposed contract and service tariff were sent to Governor David Paterson; President Pro Tem of the New York State Senate Malcolm Smith; Speaker of the Assembly Sheldon Silver; Chairman of the State Finance Committee Carl Kruger; Chairman of the Assembly Ways and Means Committee Herman Farrell; Senate Minority Leader Dean Skelos and Assembly Minority Leader Brian Kolb.

If you plan to make an oral statement at this hearing and have not yet filled out the form at the

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sign-in desk, please do so now. I ask that you give copies of your written statement to the reporter and Ms. Frank at the sign-in desk before you deliver your comments. If your oral statement summarizes your written statement, both will appear in the record of the hearing.

The record of this hearing will remain open through close of business Friday, January 22, 2010 for the submission of any additional comments and statements. These should be addressed to NYPA's Corporate Secretary at 123 Main Street, 11P, White Plains, New York 10601 or may be faxed to (914)390-8040 or e-mailed to [secretarys.office@nypa.gov](mailto:secretarys.office@nypa.gov). Please see Ms. Frank on your way out if you have additional questions.

Full stenographic minutes of the hearing will be made available and they will incorporate any written

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submission into the record and they will be reviewed by our trustees. A transcript will be available at NYPA's office and on the website [www.nypa.gov](http://www.nypa.gov).

At this point I will turn the microphone, whatever microphone we have, over to Michael Tarney and he is NYPA's analyst in our marketing department and he will provide you with additional details of the proposed contract and service tariff. When he is done, I will call on the speakers one by one, so Michael.

MR. TARNEY: Good afternoon. My name is Michael Tarney. I'm a contract administrative analyst for marketing and economic development at the New York Power Authority.

A SPEAKER: Could you speak up, please? We can't quite hear you.

MR. TARNEY: I'm here today to present an overview of the proposed contract with the Long

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Island Power Authority or LIPA for the sale of 15 megawatts of NYPA hydropower to LIPA to be resold exclusively to the U.S. Department of Energy as owner of Brookhaven National Laboratory or BNL.

BNL has been receiving power from NYPA since 1982. The current contract provides for the sale of up to 77 megawatts of power and associated energy. According to BNL, the power provided by NYPA has saved it more than \$247,000,000 over the course of the contract, which has allowed new cutting-edge research projects to be developed. Such projects include the National Synchrotron Light Source, a world-class particle accelerator instrumental to developments in the nanotechnology and medical research fields, plus two other particle accelerators involved in high-energy physics research and space

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exploration studies, the Relativistic Heavy Ion Collider and the Alternate Gradient Synchrotron, respectively.

BNL, a major employer on Long Island, provides jobs for more than 3,000 employees and has an annual budget of \$500,000,000. The facility attracts scientists from all over the world, including many from New York research institutions and high-technology corporations. BNL is an important component of New York State's economy and is key to future technology growth and high-technology infrastructure in New York.

Based on NYPA's commitment of 15 megawatts of hydropower, BNL has begun construction of a new cutting-edge synchrotron light source to be known as the National Synchrotron Light Source II or NSLS-II. The design and engineering for NSLS-II is currently proceeding. NSLS-II is slated to be operational

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by 2015 and to be staffed by several hundred new Brookhaven employees. The research produced at BNL will continue to provide substantial benefits to industries within New York State that rely on high technology.

The hydropower would come from NYPA's St. Lawrence/FDR and Niagara Power Projects. The 15 megawatts of power and energy under this contract comprises 14 megawatts of unallocated St. Lawrence/FDR Project power recaptured by NYPA in 2003 from the block sold to the neighboring states as part of the St. Lawrence/FDR hydroelectric relicensing proceeding and 1 megawatt of unallocated Niagara Project power. None of the megawatts allocated to BNL would harm any other NYPA customer or upstate consumers. The allocation is approved for a 15-year term.

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In order to effectuate BNL's receipt of hydropower, the allocation will be made via a sale to LIPA for BNL's exclusive use. LIPA is a political subdivision of the State authorized to resell such power.

At their meeting of January 27, 2009, NYPA's trustees approved commencement of negotiation of the contract with LIPA to allocate 15 megawatts of hydropower for BNL's exclusive use.

The 15 megawatts allocation would be blended with market resources to meet BNL's requirements up to 77 megawatts.

Due to BNL's internal policy limiting energy purchase contracts to terms of no more than 10 years, the proposed contract is for 10 years with an option for NYPA to extend the agreement for an additional 5 years provided NYPA and LIPA receive prior authorization from BNL. LIPA will

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make the necessary arrangements to resell this hydropower allocation to the Lab in accordance with the NYPA/LIPA contract. In the event that BNL ceases to take the hydro allocation, the sale-for-resale agreement will terminate. The NYPA/LIPA contract is subject to a public hearing and approval by the Governor, as set forth in Section 1009 of the Public Authorities Law.

As Ms. Delince stated earlier, the Power Authority will accept your comments on the proposed contract until close of business Friday, January 22, 2010.

I will now turn the forum back over to Ms. Delince. Thank you.

MS. DELINCE: Okay. Thank you, Mr. Tarney.

I will now call on people who wish to make oral statements one by one and I will start with Mr. Bob Shand.

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MR. SHAND: This certainly is intimate. It was nice of you to provide us the opportunity to speak.

My name is Bob Shand. I'm the business manager of IBEW Local 1049. I represent over 3,500 men and women who work on the LIPA and National Grid properties and actually I have about 500 people who work in generation here on Long Island and although this may seem a conflict to our interest, I'm here in support of the proposal. I think it's good.

We've always, as a Local, we've always stood up for what's important and what's good for Long Island. We certainly think the Brookhaven National Lab is critically important to the economy on Long Island. This proposal will allow us to go ahead building that project and that will provide hundreds of jobs in its construction and another hundred more jobs -- hundreds of more jobs in

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the maintenance of the project while  
it's alive.

So with that, certainly with  
the Long Island economy in mind, on  
behalf of my Local, I'm standing here  
in support of this proposal today, so  
thank you.

MS. DELINCE: Thank you,  
Mr. Shand.

Next is Thomas Bermel.

MR. BERMEL: That was quick.  
Nobody else? How did I get up so  
quick?

Hello. My name is Tom  
Bermel, B-E-R-M-E-L. I live in East  
Patchogue. I'm not affiliated with  
any company or anything. I'm just a  
resident.

When I read this piece about  
a deal to bring down hydro energy  
from upstate New York down to Long  
Island to Brookhaven National Lab, I  
put together a few questions and I'll  
start shooting right now.

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Number one, what is the  
opinion --

MS. DELINCE: Excuse me. We  
are not here to respond to questions.  
This is not --

MR. BERMEL: I understand  
that. I now realize I will not get  
any answers to my questions from any  
representatives of LIPA or NYPA or  
BNL or anybody, but I'm just throwing  
it out there and putting in my two  
cents.

MS. DELINCE: Okay. You can  
put your questions on the record.

MR. BERMEL: That's fine.  
That's what I intend -- that's what  
I'm attempting to do.

Number one, what is the  
opinion on this deal of the LIPA  
watchdog?

Number two, who is the  
current LIPA watchdog? Is he  
sleeping in the doghouse? Where has  
the LIPA watchdog been hiding for the

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last few years ever since Gordian Raacke relinquished that title of LIPA watchdog?

What is the position of LILCO, d/b/a LIPA on this project? Who is that going to benefit?

Next, if they're going to try to import 15 megawatts from upstate new York and it's quite a coincidence that right here in Brookhaven Town Hall since the Town of Brookhaven went into the energy business with Caithness, that the Caithness Power Plant located only a few miles here from Town Hall, why wouldn't BNL contract with Caithness right down the street to buy the excess megawatts that Caithness will be producing and, again, there will not be any power lost in transmission?

What is the cost of these so-called hydro megawatts coming down from upstate? Again, questions that

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need to be answered.

If cheap hydropower can be brought down from upstate new York in this case for the Brookhaven National Lab, why can't it be brought down for the businesses and the ratepayers and the residents of Long Island?

LIPA's main mission for 10, 11, 12 years now ever since they have been in existence should be, and if I'm not mistaken in their charter, was to reduce the cost of electricity for the ratepayers. Under the previous administration of Richard Kessel, that mission has failed. Why would anyone with LIPA want to do business with Richard Kessel is beyond me. Where is the transparency?

While all these programs are nice, they're nothing more than Band-Aids and this also integrates with the recently announced proposed solar project out at the Pine

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Barrens. Again, why are we doing a project that -- solar project at the Pine Barrens when energy can be bought from Caithness? To do a solar project alone doesn't make any sense because energy would only be produced half the time. The sun is only out -- the sun is not out at night, so why not have a windmill project integrated with the solar project? That's a little common sense, but I don't know if that's -- I don't know if the elevator goes all the way to the top.

It's a sad state these days when our taxes are now surpassing our mortgage payments and now it's gotten even worse when our electric utility bills are surpassing our mortgage and our tax payments on a monthly basis.

The main thrust that I would like to also bring up here today is for LIPA to think in terms of long term and in the big picture because

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all these Band-Aids are nice, all these little programs are all nice and well but, as I said, they're all Band-Aids. How about the big long-term picture of an energy super highway from Niagara Mohawk downstate, down to Long Island with the expansion and upgrading of the transmission and delivery services? This would not only create hundreds of jobs and be good for the economy, as this previous gentleman said, it would reduce electricity bills, which is LIPA's goal or should be their goal.

Not only that, that will create expansion in jobs because companies that now pay thousands and thousands of dollars for monthly utility bills could use that money to expand their business, hire some new employees, spend money back into the local economy rather than give the money to an electric utility, but

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this is the business that the State wants to be in, so the State should take the long-term big picture approach. This has got to stop, these high utility bills, especially electric bills have got to stop. Bringing down hydro energy from Niagara Mohawk or what I guess is now National Grid, they have the capability to bring all the hydro energy that we need down here on Long Island. Instead of all that energy going to Michigan and Ohio and Indiana, let's bring some of that back down here to New York where it's produced.

Thank you very much for a few minutes.

MS. DELINCE: Thank you.

Is there anyone else present who would like to make a statement? Well, we'll stay here until 4:00, this ends at 4:00, in case anybody else comes along and wants to make a

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statement.

(A recess was taken.)

MS. DELINCE: Having no one else present who wishes to make an oral statement, this meeting is officially closed. Thank you.

(Time noted: 4:00 p.m.)

o o o

(Time noted: 7:00 p.m.)

MS. DELINCE: Good evening.

My name is Karen Delince. I'm the corporate secretary of the New York Power Authority, NYPA. This public hearing is being conducted by NYPA to provide an overview and receive public comment on a proposed contract with the Long Island Power Authority, LIPA, for the sale of 15 megawatts of NYPA hydropower to LIPA to be resold exclusively to the U.S. Department of Energy as owner of Brookhaven National Laboratory.

Pursuant to Section 1009 Sub 1 of the Public Authorities Law,

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the Assembly Ways and Means Committee  
Herman Farrell; Senate Minority  
Leader Dean Skelos and Assembly  
Minority Leader Brian Kolb.

If you plan to make an oral  
statement at this hearing and have  
not yet filled out the form at the  
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Corporate Secretary at 123 Main  
Street, 11P, White Plains, New York  
10601 or may be faxed to

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(914)390-8040 or e-mailed to  
secretarys.office@nypa.gov. Please  
see Ms. Frank on your way out if you  
have additional questions.

Full stenographic minutes of  
the hearing will be made available  
and they will incorporate any written  
submission into the record and they  
will be reviewed by our trustees. A  
transcript will be available at  
NYPA's office and on the website  
www.nypa.gov.

At this point I will turn it  
over to Michael Tarney, NYPA's  
analyst contract administrator from  
marketing.

Thank you.

MR. TARNEY: Good evening.  
My name is Michael Tarney. I'm a  
contract administrative analyst for  
marketing and economic development at  
the New York Power Authority. I'm  
here today to present an overview of  
the proposed contract with the Long

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Island Power Authority or LIPA for the sale of 15 megawatts of NYPA hydropower to LIPA to be resold exclusively to the U.S. Department of Energy as owner of Brookhaven National Laboratory or BNL.

BNL has been receiving power from NYPA since 1982. The current contract provides for the sale of up to 77 megawatts of power and associated energy. According to BNL, the power provided by NYPA has saved it more than \$247,000,000 over the course of the contract, which has allowed new cutting-edge research projects to be developed. Such projects include the National Synchrotron Light Source, a world-class particle accelerator instrumental to developments in the nanotechnology and medical research fields, plus two other particle accelerators involved in high-energy physics research and space

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exploration studies, the Relativistic Heavy Ion Collider and the Alternate Gradient Synchrotron, respectively.

BNL, a major employer on Long Island, provides jobs for more than 3,000 employees and has an annual budget of \$500,000,000. The facility attracts scientists from all over the world, including many from New York research institutions and high-technology corporations. BNL is an important component of New York State's economy and is key to future technology growth and high-technology infrastructure in New York.

Based on NYPA's commitment of 15 megawatts of hydropower, BNL has begun construction of a new cutting-edge synchrotron light source to be known as the National Synchrotron Light Source II or NSLS-II. The design and engineering for NSLS-II is currently proceeding. NSLS-II is slated to be operational

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by 2015 and to be staffed by several hundred new Brookhaven employees. The research produced at BNL will continue to provide substantial benefits to industries within New York State that rely on high technology.

The hydropower would come from NYPA's St. Lawrence/FDR and Niagara Power Projects. The 15 megawatts of power and energy under this contract comprises 14 megawatts of unallocated St. Lawrence/FDR Project power recaptured by NYPA in 2003 from the block sold to the neighboring states as part of the St. Lawrence/FDR hydroelectric relicensing proceeding and 1 megawatt of unallocated Niagara Project power. None of the megawatts allocated to BNL would harm any other NYPA customer or upstate consumers. The allocation is approved for a 15-year term.

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In order to effectuate BNL's receipt of hydropower, the allocation will be made via a sale to LIPA for BNL's exclusive use. LIPA is a political subdivision of the State authorized to resell such power.

At their meeting of January 27, 2009, NYPA's trustees approved commencement of negotiation of the contract with LIPA to allocate 15 megawatts of hydropower for BNL's exclusive use.

The 15 megawatts allocation would be blended with market resources to meet BNL's requirements up to 77 megawatts.

Due to BNL's internal policy limiting energy purchase contracts to terms of no more than 10 years, the proposed contract is for 10 years with an option for NYPA to extend the agreement for an additional 5 years provided NYPA and LIPA receive prior authorization from BNL. LIPA will

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make the necessary arrangements to resell this hydropower allocation to the Lab in accordance with the NYPA/LIPA contract. In the event that BNL ceases to take the hydro allocation, the sale-for-resale agreement will terminate. The NYPA/LIPA contract is subject to a public hearing and approval by the Governor, as set forth in Section 1009 of the Public Authorities Law.

As Ms. Delince stated earlier, the Power Authority will accept your comments on the proposed contract until close of business Friday, January 22, 2010.

I will now turn the forum back over to Ms. Delince. Thank you.

MS. DELINCE: Okay. Thank you, Mr. Tarney.

I'd like to know, is there anybody here who would like to make an oral statement? Okay. Well, we will be here until 9:00 should

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anybody wish to speak.

(A recess was taken.)

MS. DELINCE: Having no  
speakers this evening, I declare this  
hearing closed. Thank you.

(Time noted: 9:00 p.m.)

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C E R T I F I C A T I O N

I, LISA H. EDELSTEIN, a Registered Professional Reporter and a Notary Public, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.



-----  
LISA H. EDELSTEIN



January 19, 2010

Office of the Corporate Secretary  
New York Power Authority  
123 Main Street  
White Plains, NY 10601

**Subject: Hearing on Hydropower Plan for Brookhaven National Laboratory**

On behalf of Brookhaven National Laboratory (BNL), I'd like to express the entire Laboratory community's tremendous appreciation for the benefits that result from the low-cost electricity provided by the New York Power Authority (NYPA) and New York State (NYS). Throughout our 29-year relationship with NYPA, we have been able to maintain the economic vitality of the Lab with electricity rates that are lower than local sources of supply. We strongly support the continuation and expansion of the various NYPA programs designed to provide low-cost power, not just for BNL, but as a major economic development tool for organizations throughout NYS.

Brookhaven Laboratory is a major employer in the downstate region, with over 2,900 employees that include a high proportion of scientists, engineers, and technicians. More than 4,300 researchers from universities, industry and other research institutions come to BNL each year to use our facilities; approximately one-third of these visiting researchers represent New York State institutions.

NYPA low-cost power is crucial to the continued operations of our large science facilities and the success of our research programs. It allowed us to compete nationally for the National Synchrotron Light Source II (NSLS-II), a premiere world-class research facility. NSLS-II – with an estimated construction cost of \$912 million and an annual operating budget of \$150 million – will support more than 1,200 jobs during construction and 500 full-time employees when operational. This project has allowed BNL to retain key jobs that would have been otherwise lost to other areas of the country. In the future, BNL will be competing for another \$1 billion science facility called eRHIC and once again, our success will depend in large part on the availability of low-cost electric power.

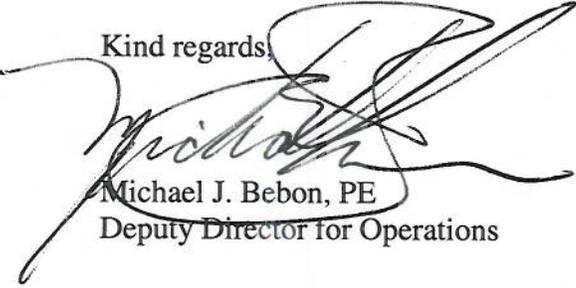
A BNL economic impact study illustrates the Laboratory's contribution to the NYS economy. For example, for the period of 1993-2003, the Lab's employees injected more than \$4.76 billion in direct spending into the New York State economy. This increased the state's output of goods and services by almost \$9.2 billion and created almost 79,000 secondary jobs in the state. BNL's annual impact on the NYS economy is currently estimated at \$1 billion/year. Going forward, BNL's activities are expected to create nearly 7,000 jobs annually. Further,

NYPA programs saved BNL over \$293 million in energy costs since the start of our relationship. These savings have largely been reinvested in NYS through construction projects, personnel, materials, and other services.

In our opinion, the NYPA is an extremely effective economic tool, and a tremendous asset for NYS. The availability of stable, low-cost power should be increased. This is even more important in this era of wildly fluctuating energy prices that wreak havoc on budgets and operations.

Once again, we would like to emphasize our strong support for NYPA and for the continuation of its economic development programs. We look forward to the opportunity to continue our exceptional 29-year partnership with NYS and the NYPA, a partnership that has created thousands of jobs, enabled groundbreaking discoveries and made New York state a place where great science and technology flourishes.

Kind regards,



Michael J. Bebon, PE  
Deputy Director for Operations

MJB/mt

cc: File: NYPA

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**4. Annual Review and Approval of Guidelines and Procedures for the Disposal of Real Property and Guidelines and Procedures for the Acquisition of Real Property**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

“The Trustees are requested to review and approve the following, which comply with the requirements of the Public Authorities Accountability Act of 2005 (‘PAAA’), as amended by Chapter 506 of the Laws of 2009, effective as of March 1, 2010: (1) Guidelines and Procedures for the Disposal of New York Power Authority Real Property (‘Real Property Disposal Guidelines’) for transfers of land or interests in land; and (2) Guidelines and Procedures for the Acquisition of Real Property by the New York Power Authority (‘Real Property Acquisition Guidelines’). The Guidelines are set forth in Exhibits ‘4-A’ and ‘4-B’ attached hereto.

**BACKGROUND**

“On January 13, 2006, Governor Pataki signed the PAAA into law, codifying the Model Governance Principles established for public authorities in 2004 by the Governor’s Advisory Committee on Authority Governance. This statute was subsequently amended by Chapter 506 of the Laws of 2009 signed into law by Governor Paterson on December 11, 2009. Among its provisions, the PAAA, as subsequently amended, established restrictions on the disposal of real property and required public authority board members to establish written policies and procedures for the disposal and acquisition of real property.

“At their meeting of March 27, 2007, the Trustees reviewed and approved the amended Real Property Disposal Guidelines in accordance with the above and Executive Orders issued by Governor Spitzer providing for restrictions on politics and nepotism in contracting. At their meeting of April 24, 2007, the Trustees reviewed and approved further amendments to the Real Property Disposal Guidelines necessitated by the Public Employee Ethics Reform Act (‘PEERA’) of 2007, which became effective on April 25, 2007 and included modified versions of the restrictions contained in the prior Executive Orders. At their meeting of March 25, 2008, the Trustees reviewed and approved the Real Property Disposal Guidelines with no substantive changes. Additionally, at their meeting of March 31, 2009, the Trustees reviewed and approved the Real Property Disposal Guidelines and the Procedure for Acquisition of Real Property with no substantive changes.

**DISCUSSION**

**Real Property Disposal Guidelines**

“In compliance with the PAAA, the Authority established and is required to annually review and approve Real Property Disposal Guidelines, which guidelines are set forth in Exhibit ‘4-A.’ The Real Property Disposal Guidelines set forth the methodology the Authority uses in the following areas:

- Maintaining an inventory of real property interests owned or under the jurisdiction of the Authority;
- Disposal of such interests when they become surplus to the Authority’s needs;
- Making annual reports of such transactions; and
- Designating a Contracting Officer responsible for implementing such Guidelines.

“Chapter 506 of the Laws of 2009 made substantial amendments to the Public Authorities Law (‘PAL’), including changes to certain procedures governing the disposal of Real Property. In order to make the Real Property Disposal Guidelines compliant with the law, staff recommends the following changes, which are more fully set forth in the attached redlined version of Exhibit ‘4-A.’ The more significant of the statutory changes are highlighted below:

- **Establishes new statutory requirements for the disposal of Real Property in circumstances where such disposal is for less than Fair Market Value** (e.g., disposal of Real Property for less than Fair Market Value will require approval by the Authority’s Board of Trustees; before approving such disposals, the Authority Board of Trustees shall make a written determination that there is no reasonable alternative to the below-market transfer that would achieve the same purpose of such transfer; in addition, certain such disposals would also require written notification to the Governor, the Speaker of the Assembly and the Temporary President of the Senate, subject to their approval or denial of the individual disposal transaction – as more fully described in Section 5.3 of the Real Property Disposal Guidelines.)
- **Establishes additional reporting requirements for disposals of Real Property made without competitive bidding and where the sale price for such disposals is less than Fair Market Value** (e.g., in such cases, a detailed explanation of the justification for making the disposal without competitive bidding shall be prepared and a certification shall be signed by the Chief Executive Officer and the Chief Financial Officer of the Authority stating that they have reviewed the terms of such disposal and have determined that it complies with applicable law – as more fully described in Section 6.1 of the Real Property Disposal Guidelines).

### **Real Property Acquisition Guidelines**

“In compliance with the PAAA, the Authority established and annually reviews Real Property Acquisition Guidelines, which are set forth in Exhibit ‘4-B.’ The Real Property Acquisition Guidelines set forth the methodology the Authority will use in the following specific areas:

- Acquisition and evaluation of Real Property;
- Duties of the Director of Real Estate;
- Environmental compliance;
- Ethical considerations; and
- Annual reporting.

“Chapter 506 of the Laws of 2009 made substantial amendments to the Public Authorities Law (‘PAL’), including changes to certain procedures governing the acquisition of Real Property. In order to make the Real Property Acquisition Guidelines compliant with the law, staff recommends the following changes, which are more fully set forth in the attached redlined version of Exhibit ‘4-B.’ The more significant of the statutory changes are highlighted below:

- **Establishes additional reporting requirements for acquisitions of Real Property made without competitive bidding and where the purchase price is for more than the Fair Market Value** (e.g., in such cases, a detailed explanation of the justification for making the purchase without competitive bidding shall be prepared and a certification shall be signed by the Chief Executive Officer and the Chief Financial Officer of the Authority stating that they have reviewed the terms of such acquisition and have determined that it complies with applicable law – as more fully described in Section 6.1 of the Real Property Acquisition Guidelines).

### **FISCAL INFORMATION**

“There will be no financial impact on the Authority.

### **RECOMMENDATION**

“The Senior Vice President – Enterprise Shared Services and the Director of Real Estate recommend that the Trustees approve the amended Guidelines and Procedures for the Disposal of New York Power Authority Real

Property, the amended Guidelines and Procedures for the Acquisition of Real Property by the New York Power Authority as set forth in the attached Exhibits.

“The Chief Operating Officer, the Executive Vice President and General Counsel, the Executive Vice President – Chief Financial Officer, the Vice President – Internal Audits and I concur in the recommendation.”

*Ms. Karen Delince said that the amendments to the real property disposal and acquisition guidelines were made pursuant to Chapter 506 of the Laws of 2009. Mr. Mark O’Connor presented the highlights of staff’s recommendations to the Trustees. He said that the Authority has very little surplus real property.*

The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That pursuant to the provisions of the Public Authorities Accountability Act of 2005, the Authority hereby reviews and approves the Guidelines and Procedures for the Disposal of Real Property and the Guidelines and Procedures for the Acquisition of Real Property as set forth in Exhibits “4-A” and “4-B” attached hereto; and be it further**

**RESOLVED, That Authority staff may take any and all steps necessary or convenient to implement such Guidelines; and be it further**

**RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**

**GUIDELINES**

**AND**

**PROCEDURES**

**FOR THE**

**DISPOSAL OF NEW YORK POWER AUTHORITY**

**REAL PROPERTY**

**INDEX**

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**GUIDELINES AND PROCEDURES FOR THE DISPOSAL OF  
NEW YORK POWER AUTHORITY REAL PROPERTY**

**I. PURPOSE**

The purpose of these Guidelines and Procedures for the Disposal of Real Property ("Guidelines"), which comply with Title 5-A, Article 9 of the Public Authorities Law, is to establish the procedures which detail the Authority's operative policy and instructions regarding the disposal of real property and designate a contracting officer who is responsible for the Authority's compliance with, and enforcement of, such Guidelines.

**II. DEFINITIONS**

- 2.1 "Contracting Officer" shall mean the officer or employee of the Authority who shall be appointed by resolution of the Authority's Trustees to be responsible for enforcement of the Guidelines for the Disposal of Real Property. The "Contracting Officer" is hereby designated to be the Senior Vice President – Enterprise Shared Services, or equivalent(s) or designee.
- 2.2 For the purposes of these Guidelines, "Dispose" or "Disposal" shall mean transfer of title or any other beneficial interest in real property in accordance with these Guidelines. Disposal does not include a release of an easement.
- 2.3 For the purposes of these Guidelines, "Real Property" shall mean real property, including land, tenements and hereditaments owned by the Authority, and any other interest in such real property, to the extent that such interest may be conveyed to another person or entity for any purpose, excluding an interest securing a loan or other financial obligation of another party.

- 2.4 "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for the Real Property in an arms-length transaction in the appropriate marketplace and under similar circumstances.
- 2.5 The term "Relative" shall mean any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee's grandparents or the spouse of such descendant as referred to in Subsection 5.11.1.

### **III. COMPLIANCE OVERVIEW**

The Public Authorities Accountability Act ("PAAA") requires the Authority to establish policy guidelines to accomplish the following:

- 3.1 Maintain inventory controls and accountability systems for all Real Property under the Authority's control.
- 3.2 Periodically inventory Authority Real Property to determine which Real Property shall be Disposed of.
- 3.3 Dispose of Authority Real Property interests in accordance with the PAAA.
- 3.4 Prepare annual reports of Real Property Disposal transactions.

### **IV. DUTIES OF THE DIRECTOR OF REAL ESTATE**

- 4.1 The Director of Real Estate or equivalent(s) or designee shall maintain adequate inventory controls and accountability systems for all Real Property under the Authority's control.

- 4.2 The Director of Real Estate or equivalent(s) or designee shall annually inventory Authority Real Property to determine which Authority Real Property shall be Disposed of and shall prepare a report identifying such Real Property for Disposal.
- 4.3 The Director of Real Estate or equivalent(s) or designee shall produce for publishing written reports of such Real Property as set forth in Article VI of these Guidelines.
- 4.4 The Director of Real Estate or equivalent(s) or designee shall arrange for the Disposal of any Real Property identified for Disposal by the Authority in accordance with these Guidelines and the Authority's Expenditure Authorization Procedures and as soon as reasonably practical under the circumstances.

**V. PROCEDURES FOR THE DISPOSITION OF AUTHORITY REAL PROPERTY**

- 5.1 The Authority may Dispose of Real Property for not less than the Fair Market Value of such Real Property by sale, exchange, or transfer, for cash, credit or other property, without warranty, and upon such other terms and conditions as the Contracting Officer deems proper under the provisions of the PAAA and as implemented by these Guidelines. Fair Market Value of the Authority Real Property subject to Disposal shall be established by independent appraisal as appropriate and consistent with the intent of the PAAA. Such appraisal documents shall be included in the record of the Real Property Disposal transaction.

- 5.2 Except as set forth in Section 5.3 of the Guidelines, any Disposal of Real Property shall only be made after publicly advertising for bids in accordance with the following:
- 5.2.1 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 Real Property;
  - 5.2.2 all bids shall be publicly disclosed at the time and place stated in the advertisement; and
  - 5.2.3 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 Authority, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.
- 5.3.a The Disposal of Authority Real Property may be negotiated or made by public auction without regard to Section 5.2 but subject to obtaining such competition as is feasible under the circumstances, if:
- 1. the Fair Market Value of the Real Property does not exceed fifteen thousand dollars (\$15,000.00); or
  - 2. bid prices after advertising therefore are not reasonable, either as to all or some part of the Real Property, or have not been independently arrived at in open competition; or
  - 3. the Disposal will be to the state or any political subdivision, and the estimated Fair Market Value of the Real Property and other satisfactory terms of Disposal are obtained by negotiation; or
  - 4. under those circumstances permitted by Section 5.3; or
  - 5. such action is otherwise authorized by law.
- 5.3.b.1 No Real Property owned, leased or otherwise in the control of the Authority may be sold, leased, or otherwise alienated for less than its Fair Market Value except if:

- a. the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the Real Property will remain with the government or any other public entity;
- b. the purpose of the transfer is within the purpose, mission or governing statute of the Authority; or
- c. in the event the Authority seeks to transfer Real Property for less than its Fair Market Value to other than a governmental entity, which Disposal would not be consistent with the Authority's mission, purpose or governing statutes, the Authority shall provide written notification thereof to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate, and such proposed transfer shall be subject to denial by the Governor, the Senate, or the Assembly. Denial by the Governor shall take the form of a signed certification by the Governor. Denial by either House of the Legislature shall take the form of a resolution by such House. The Governor and each House of the Legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the Legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the Governor, Senate, and Assembly, the Authority may effectuate such transfer.

5.3.b.2. In the event a below Fair Market Value Real Property transfer is proposed, the following information must be provided to the Authority's Board of Trustees and the public:

- a. a full description of the Real Property;
- b. an appraisal of the Fair Market Value of the Real Property and any other information establishing the Fair Market Value sought by the Authority's Board of Trustees;
- c. a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the Real Property is situated as are required by the transfer;
- d. a statement of the value to be received compared to the Fair Market Value;

- e. the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (iv) of this paragraph, a statement of the value to the private party; and
- f. the names of other private parties who have made an offer for such Real Property, the value offered, and the purpose for which the Real Property was sought to be used.

5.3.b.3. Before approving the Disposal of any Real Property for less than Fair Market Value, the Authority's Board of Trustees shall consider the information described in Paragraph 5.3.5b and make a written determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.

5.4 An explanatory statement detailing the Disposal by negotiation of Authority Real Property subject to the PAAA as set forth in Section 5.3 shall be made for any Disposal of:

- 5.4.1 Real Property with a Fair Market Value in excess of one hundred thousand dollars (\$100,000.00) except that Real Property Disposed of by lease or exchange shall only be subject to 5.4.2 of this Section 5.4;
- 5.4.2 Real Property Disposed of by lease if the fair annual rent over the term of the lease is in excess of fifteen thousand dollars;; and
- 5.4.3 Any Real Property or real and related personal property Disposed of by exchange, regardless of value, or any property any part of the consideration is for Real Property:

5.5 Each explanatory statement prepared in accordance with Section 5.4 above shall be transmitted to the State Comptroller, the Director of the Budget, the Commissioner of General Services, the State Legislature and the State Authorities Budget Office not less than 90 days in advance of such Disposal, and a copy shall be kept by the Authority.

5.6 In the Authority's discretion, when it shall be deemed advantageous to the Authority and the State, the Authority may enter into an agreement with the

Office of the Commissioner of General Services ("OGS") under which OGS may Dispose of the Authority's Real Property under terms and conditions agreed to by the Authority and the OGS. In Disposing of any such Real Property of the Authority, the OGS shall be bound by the relevant provisions of the PAAA.

- 5.7 The Guidelines shall not apply to any transfers of jurisdiction by the Authority pursuant to Public Lands Law §3(4).
- 5.8 The Director of Real Estate or equivalent(s) or designee shall provide all relevant documentation to the Environmental Division for the purposes of determining, if applicable, whether the Disposal of Real Property is in compliance with the State Environmental Quality Review Act, and for whether it adheres to the American Society of Testing and Material's guidelines for Environmental Site Assessments, if applicable.
- 5.9 No Authority employee who is involved in the award of Authority grants or contracts, may ask any purchaser(s), grantor(s), lessor(s) or officer(s), director(s) or employee(s) of such current or prospective purchaser(s), contractor(s) or grantee(s) to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- 5.10 No Authority employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section

5.9 above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.

5.11 No Authority employee may take part in any contracting decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If such situation arises, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

5.11.1 For purposes of this Section 5.11, the term "Relative" is defined in Section 2.5 of these Guidelines.

## **VI. AUTHORITY REAL PROPERTY REPORTS**

6.1 The Director of Real Estate or equivalent(s) or designee shall publish the following reports in accordance with these Guidelines:

6.1.1 Pursuant to Section 2800 of the Public Authorities Law, the Director of Real Estate shall furnish a report for incorporation in the Authority's annual report which is distributed to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller and the State Authorities Budget Office. This report shall include (a) a listing of all Real Property having an estimated Fair Market Value greater than fifteen thousand dollars (\$15,000.00) that the Authority Disposed of during such reporting period and the name of the purchaser of the Real Property and the price paid by the purchaser for the Real Property, and (b) a description of the total amounts of Real Property sold without competitive bidding, including (i) the nature of the Real Property, (ii) the names of the counterparties, and (iii) where the price for the Real Property sold is less than Fair Market Value, a detailed explanation of the justification for making the sale without competitive bidding, and a

certification by the Authority's Chief Executive Officer and Chief Financial Officer that they have reviewed the terms of such sale and determined that it complies with applicable law.

- 6.1.2 Pursuant to Public Authorities Law § 2896(3)(a), the Director of Real Estate or equivalent(s) or designee shall prepare for distribution to the State Comptroller, the Director of the Budget, the Commissioner of General Services, the State Legislature and the State Authorities Budget Office, an annual report which shall include a list and description of all Real Property including such Real Property Disposed of during the fiscal reporting period. Regarding Disposals, this annual report shall include the price received by the Authority and the name of the purchaser of the Real Property.
- 6.2 The Authority may be called upon periodically to submit information regarding the Disposal of Real Property to organizations implementing the PAAA or other statutes regulating the Disposal of Real Property.
- 6.3 The Authority's Governance Committee meets at least three times per year and staff from Enterprise Shared Services – Real Estate or the equivalent(s) may prepare and present ongoing reports regarding the Disposal of Real Property.

## **VII. APPROVAL OF GUIDELINES BY THE AUTHORITY'S BOARD**

- 7.1 The Guidelines shall be annually reviewed and approved by the Authority's Trustees. On or before the thirty-first day of March in each year, the Authority shall file with the State Comptroller a copy of the most recently reviewed and approved Guidelines, including the name of the Authority's designated Contracting Officer. At the time of filing such Guidelines with the State Comptroller, the Authority shall also post such Guidelines on its internet website.

Exhibit ~~"4-A-1"~~<sup>"B"</sup>  
~~February 23, 2010~~<sup>March 31, 2009</sup>

**GUIDELINES**

**AND**

**PROCEDURES**

**FOR THE**

**DISPOSAL OF NEW YORK POWER AUTHORITY**

**REAL PROPERTY**

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**GUIDELINES AND PROCEDURES  
FOR THE DISPOSAL OF  
NEW YORK POWER AUTHORITY REAL PROPERTY**

**I. PURPOSE**

The purpose of these Guidelines and Procedures for the Disposal of Real Property ("Guidelines"), which comply with Title 5-A, Article 9 of the Public Authorities Law, is to establish the procedures which detail the Authority's operative policy and instructions regarding the disposal of real property and designate a contracting officer who is responsible for the Authority's compliance with, and enforcement of, such Guidelines.

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**II. DEFINITIONS**

2.1 "Contracting Officer" shall mean the officer or employee of the Authority who shall be appointed by resolution of the Authority's Trustees to be responsible for enforcement of the Guidelines for the Disposal of Real Property. The "Contracting Officer" is hereby designated to be the Senior Vice President – Enterprise Shared Services, or equivalent(s) or designee.

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2.2 For the purposes of these Guidelines, "Dispose" or "Disposal" shall mean transfer of title or any other beneficial interest in real property in accordance with these Guidelines. Disposal does not include a release of an easement.

2.3 For the purposes of these Guidelines, “Real Property” shall mean real property, including land, tenements and hereditaments owned by the Authority, and any other interest in such real property, to the extent that such interest may be conveyed to another person or entity for any purpose, excluding an interest securing a loan or other financial obligation of another party.

2.4 “Fair Market Value” shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for the Real Property in an arms-length transaction in the appropriate marketplace and under similar circumstances.

~~2.5~~ 2.4 The term “Relative” shall mean any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee’s grandparents or the spouse of such descendant as referred to in Subsection 5.11.1.

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COMPLIANCE OVERVIEW

**III. CONTROLLING LEGISLATION**

The Public Authorities Accountability Act ~~of 2005~~ (“PAAA”) requires the Authority to establish policy guidelines to accomplish the following:

- 3.1 Maintain inventory controls and accountability systems for all Real Property under the Authority’s control.
- 3.2 Periodically inventory Authority Real Property to determine which Real Property shall be Disposed of.
- 3.3 Dispose of Authority Real Property interests in accordance with the PAAA.
- 3.4 Prepare annual reports of Real Property Disposal transactions.

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IV. **DUTIES OF THE DIRECTOR OF REAL ESTATE**

- 4.1 The Director of Real Estate or equivalent(s) or designee shall maintain adequate inventory controls and accountability systems for all Real Property under the Authority's control.
- 4.2 The Director of Real Estate or equivalent(s) or designee shall annually inventory Authority Real Property to determine which Authority Real Property shall be Disposed of and shall prepare a report identifying such Real Property for Disposal.
- 4.3 The Director of Real Estate or equivalent(s) or designee shall produce for publishing written reports of such Real Property as set forth in Article VI of these Guidelines.
- 4.4 The Director of Real Estate or equivalent(s) or designee shall arrange for the Disposal of any Real Property identified for Disposal by the Authority in accordance with these Guidelines and the Authority's Expenditure Authorization Procedures and as soon as reasonably practical under the circumstances.

V. **PROCEDURES FOR THE DISPOSITION OF AUTHORITY REAL PROPERTY**

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- 5.1 The Authority may Dispose of Real Property for not less than the Fair Market Value ~~fair market value~~ of such Real Property by sale, exchange, or transfer, for cash, credit or other property, without warranty, and upon such other terms and conditions as the Contracting Officer deems proper under the provisions of the

PAAA and as implemented by these Guidelines. Fair ~~Market Value~~ market value of the Authority Real Property subject to Disposal shall be established by independent appraisal as appropriate and consistent with the intent of the PAAA. Such appraisal documents shall be included in the record of the Real Property Disposal transaction.

5.2 Except as set forth in Section 5.3 of the Guidelines, any Disposal of Real Property shall only be made after publicly advertising for bids in accordance with the following:

5.2.1 \_\_\_\_\_ 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 Real Property;

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—5.2.2 \_\_\_\_\_ all bids shall be publicly disclosed at the time and place stated

in the advertisement; and

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—5.2.3 \_\_\_\_\_ 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 Authority, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

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5.3.a \_\_\_\_\_ The Disposal of Authority Real Property may be negotiated or made by public auction without regard to Section 5.2 but subject to obtaining such competition as is feasible under the circumstances, if:

—5.3.1. \_\_\_\_\_ the ~~Fair Market Value~~ fair market value of the Real Property does not exceed fifteen thousand dollars (\$15,000.00); or

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~~5.3.2.~~ bid prices after advertising therefore are not reasonable,

either

as to all or some part of the Real Property, or have not been independently arrived at in open competition; or

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~~5.3.3.~~ the Disposal will be to the state or any political subdivision,

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and the estimated Fair Market Value ~~fair market value~~ of the Real Property and other satisfactory terms of Disposal are obtained by negotiation; or

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4. under those circumstances permitted by Section 5.3; or

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~~5.3.4.~~ the Disposal is for an amount less than the estimated fair market value of the Real Property, the terms of such Disposal are obtained by public auction or negotiation, the Disposal of the Real Property is intended to further the public health, safety or welfare or an economic development interest of the state or a political subdivision (to include but not limited to, the prevention or remediation of a substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the Authority's enabling legislation permits), and the purpose and the terms of such Disposal are documented in writing and approved by the Authority's Trustees; or

~~5.3.5.~~ such action is otherwise authorized by law.

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5.3.b.1 No Real Property owned, leased or otherwise in the control of the Authority may be sold, leased, or otherwise alienated for less than its Fair Market Value except if:

~~February 23, 2010~~ ~~March 31, 2009~~

- ~~a. the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the Real Property will remain with the government or any other public entity;~~
- ~~b. the purpose of the transfer is within the purpose, mission or governing statute of the Authority; or~~
- ~~c. in the event the Authority seeks to transfer Real Property for less than its Fair Market Value to other than a governmental entity, which Disposal would not be consistent with the Authority's mission, purpose or governing statutes, the Authority shall provide written notification thereof to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate, and such proposed transfer shall be subject to denial by the Governor, the Senate, or the Assembly. Denial by the Governor shall take the form of a signed certification by the Governor. Denial by either House of the Legislature shall take the form of a resolution by such House. The Governor and each House of the Legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the Legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the Governor, Senate, and Assembly, the Authority may effectuate such transfer.~~

~~5.3.b.2. In the event a below Fair Market Value Real Property transfer is proposed, the~~

~~following information must be provided to the Authority's Board of Trustees and the public:~~

- ~~a. a full description of the Real Property;~~
- ~~b. an appraisal of the Fair Market Value of the Real Property and any other information establishing the Fair Market Value sought by the Authority's Board of Trustees;~~
- ~~c. a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the Real Property is situated as are required by the transfer;~~
- ~~d. a statement of the value to be received compared to the Fair Market Value;~~

- e. the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (iv) of this paragraph, a statement of the value to the private party; and
- f. the names of other private parties who have made an offer for such Real Property, the value offered, and the purpose for which the Real Property was sought to be used.

5.3.b.3. Before approving the Disposal of any Real Property for less than Fair Market Value, the Authority's Board of Trustees shall consider the information described in Paragraph 5.3.5b and make a written determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.

5.4 An explanatory statement detailing the Disposal by negotiation of Authority Real Property subject to the PAAA as set forth in Section 5.3 shall be made for any Disposal of:

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5.4.1 Real Property with a Fair Market Value ~~fair market value~~ in excess of one hundred thousand dollars (\$100,000.00) except that Real Property Disposed of by lease or exchange shall only be subject to 5.4.2 ~~through 5.4.4~~ of this Section 5.4;

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5.4.2 Real Property ~~Disposed of by lease~~ leased for a term of five years or less, if the ~~estimated~~ fair annual rent ~~exceeds one hundred thousand dollars (\$100,000.00) for any of such years;~~

~~5.4.3 Real Property leased for a term of more than five years if total estimated rent over the term of the lease is in excess of fifteen one hundred thousand dollars; (\$100,000.00); and~~

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~~5.4.3~~ 5.4.4 Any Real Property or real and related personal property Disposed of by exchange, regardless of value, or any property any part of the consideration is for Real Property:

5.5 Each explanatory statement prepared in accordance with Section 5.4 above shall be transmitted to the State Comptroller, the Director of the Budget, the Commissioner of General Services, the State Legislature and the State Authorities ~~Budget Office~~ ~~Legislature~~ not less than 90 days in advance of such Disposal, and a copy shall be kept by the Authority.

5.6 In the Authority's discretion, when it shall be deemed advantageous to the Authority and the State, the Authority may enter into an agreement with the Office of the Commissioner of General Services ("OGS") under which OGS may Dispose of the Authority's Real Property under terms and conditions agreed to by the Authority and the OGS. In Disposing of any such Real Property of the Authority, the OGS shall be bound by the relevant provisions of the PAAA.

5.7 The Guidelines shall not apply to any transfers of jurisdiction by the Authority pursuant to Public Lands Law §3(4).

5.8 The Director of Real Estate or equivalent(s) or designee shall provide all relevant documentation to the Environmental Division for the purposes of determining, if applicable, whether the Disposal of Real Property is in compliance with the State Environmental Quality Review Act, and for whether it adheres to the American Society of Testing and Material's guidelines for Environmental Site Assessments, if applicable.

5.9 No Authority employee who is involved in the award of Authority grants or contracts, may ask any purchaser(s), grantor(s), lessor(s) or officer(s), director(s)

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or employee(s) of such current or prospective purchaser(s), contractor(s) or grantee(s) to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.

5.10 No Authority employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 5.9 above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.

5.11 No Authority employee may take part in any contracting decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If such situation arises, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

~~5.11.1~~ 5.11.1 For purposes of this Section 5.11, the term "Relative" is defined in Section ~~2.52-4~~ of these Guidelines.

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## VI. AUTHORITY REAL PROPERTY REPORTS

6.1 The Director of Real Estate or equivalent(s) or designee shall publish the following reports in accordance with these Guidelines:

6.1.1 Pursuant to Section 2800 of the Public Authorities Law, the Director of Real Estate shall furnish a report for incorporation in the Authority's annual report which is distributed to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, and the State Comptroller and the State Authorities Budget Office. This report shall include: (a) a listing of all ~~Authority~~ Real Property having an estimated ~~Fair Market Value~~ fair market value greater than fifteen thousand dollars (\$15,000.00) that the Authority ~~intends to Dispose of;~~ (b) a listing of all Real Property having an estimated fair market value greater than fifteen thousand dollars (\$15,000.00) intended for Disposal but still owned by the Authority at the end of the fiscal reporting period; and (c) a listing of all Real Property having an estimated fair market value greater than fifteen thousand dollars (\$15,000.00) Disposed of during ~~such~~ the fiscal reporting period ~~and including~~ the name of the purchaser of the Real Property and the price paid by the purchaser for the Real Property, and (b) a description of the total amounts of Real Property sold without competitive bidding, including (i) the nature of the Real Property, (ii) the names of the counterparties, and (iii) where the price for the Real Property sold is less than Fair Market Value, a detailed explanation of the justification for making the sale without competitive bidding, and a certification by the Authority's Chief Executive Officer and Chief Financial Officer that they have reviewed the terms of such sale and determined that it complies with applicable law.

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6.1.2 Pursuant to Public Authorities Law § 2896(3)(a), the Director of Real Estate or equivalent(s) or designee shall prepare for distribution to the State Comptroller, the Director of the Budget, the Commissioner of General Services, the State Legislature and the State Authorities Budget Office, Legislature, an annual report which shall ~~include~~ consist of a list and description of all Real Property including such Real Property Disposed of during the fiscal reporting period. Regarding Disposals, this annual report shall include the price received by the Authority and the name of the purchaser of the Real Property.

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6.2 The Authority may be called upon periodically to submit information regarding the Disposal of Real Property to organizations implementing the PAAA or other statutes regulating the Disposal of Real Property.

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- 6.3 The Authority’s Governance Committee meets at least three times per year and staff from Enterprise Shared Services – Real Estate or the equivalent(s) may prepare and present ongoing reports regarding the Disposal of Real Property.

**VII. APPROVAL OF GUIDELINES BY THE AUTHORITY'S BOARD**

- 7.1 The Guidelines shall be annually reviewed and approved by the Authority’s Trustees. On or before the thirty-first day of March in each year, the Authority shall file with the State Comptroller a copy of the most recently reviewed and approved Guidelines, including the name of the Authority’s designated Contracting Officer. At the time of filing such Guidelines with the State Comptroller, the Authority shall also post such Guidelines on its internet website.

**VIII. REFERENCES**

- ~~8.1 — Chapter 766 of the Laws of 2005~~
- ~~8.2 — Public Lands Law §3 (4)~~
- ~~8.3 — Chapter 14 of the Laws of 2007~~

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**Exhibit "4-B"**  
**February 23, 2010**

**GUIDELINES**

**AND**

**PROCEDURES**

**FOR THE**

**ACQUISITION OF REAL PROPERTY**

**BY THE NEW YORK POWER AUTHORITY**

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**GUIDELINES AND PROCEDURES FOR THE ACQUISITION OF REAL PROPERTY BY  
THE NEW YORK POWER AUTHORITY**

**I. PURPOSE**

1.1 These Guidelines and Procedures for the Acquisition of Real Property (“Guidelines”), which comply with Title 2, Article 9 of the Public Authorities Law, establish the procedures which detail the Authority’s policy and instructions regarding the acquisition of real property and designate a contracting officer who is responsible for the Authority’s compliance with, and enforcement of, such Guidelines.

**II. DEFINITIONS**

2.1 “Contracting Officer” shall mean the officer or employee of the Authority who shall be responsible for enforcement of the Guidelines for the acquisition of real property. The “Contracting Officer” is hereby designated to be the Senior Vice President – Enterprise Shared Services, or the equivalent(s), or designee.

2.2 “Acquisition” or “Acquire” shall mean to obtain title to or any other beneficial interest in real property in accordance with applicable statutes and these Guidelines.

2.3 “Fair Market Value” shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for the Real Property in an arms-length transaction in

the appropriate marketplace and under similar circumstances.

2.4 “Real Property” shall mean real property, including land, tenements and hereditaments owned by the Authority, and any other interest in such real property, to the extent that such interest may be conveyed to another person or entity for any purpose, excluding an interest securing a loan or other financial obligation of another party.

2.5 “Relative” is any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee’s grandparents or the spouse of such descendant, as referred to in Article 5 of these Guidelines.

### **III. COMPLIANCE OVERVIEW**

3.1 These Guidelines are being adopted consistent with the Public Authorities Accountability Act (“PAAA”).

3.2 The Authority may Acquire Real Property through purchase, eminent domain, state transfers of jurisdiction, lease and by other legal means.

3.3 The Authority’s New York statutory authority for land acquisition includes, without limitation, the Public Authorities Law, the Real Property Law, the Public Lands Law, the Eminent Domain Procedure Law and the Highway Law, as amended.

**IV. DUTIES OF THE DIRECTOR OF REAL ESTATE**

- 4.1 The Director of Real Estate or the equivalent(s) or designee will maintain adequate inventory controls and accountability systems for all Real Property under the Authority's control.
- 4.2 Real Property to be Acquired by the Authority will be in support of existing operating and transmission facilities or in support of new initiatives being pursued by the Authority. The Director of Real Estate or the equivalent(s) or designee will, in consultation with the other appropriate Authority staff (by oral or written communication), determine what Lands are necessary or convenient for Acquisition by the Authority.
- 4.3 The compensation for and the procedure for such Acquisition must be consistent with these Guidelines and the Authority's Real Estate Expenditure Authorization Procedures as amended.
- 4.4 The Director of Real Estate or the equivalent(s) or designee will arrange for the transfer or Acquisition of any Real Property identified for Acquisition by the Authority in accordance with these Guidelines and the Authority's Real Estate Expenditure Authorization Procedures and as soon as reasonably practical under the circumstances.
- 4.5 The Director of Real Estate or the equivalent(s) or designee will provide all relevant

documentation to the Authority's Environmental Division to determine whether the Acquisition of Real Property is in compliance with the State Environmental Quality Review Act, and whether it adheres to the American Society of Testing and Material's Guidelines for Environmental Site Assessments, if applicable.

**V. ETHICAL CONSIDERATIONS**

- 5.1 No Authority employee who is involved in the Acquisition of Real Property, may ask any purchaser, grantor, lessor or officers, directors or employees of such current or prospective purchaser, grantor or lessor to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- 5.2 No Authority employee may take part in any Acquisition decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If such situation arises, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

- 5.2.1 For purposes of this Section 5.2, the term “Relative” is defined in Section 2.5 of these Guidelines.

**VI. ACQUISITION REPORTS BY THE AUTHORITY**

6.1 The Director of Real Estate or equivalent(s) or designee shall publish the following reports in accordance with these Guidelines:

- 6.1.1 Pursuant to Section 2800 of the Public Authorities Law, the Director of Real Estate shall furnish a report for incorporation in the Authority’s annual report which is distributed to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller and the State Authorities Budget Office. This report shall include (a) a listing of all Real Property having an estimated Fair Market Value greater than fifteen thousand dollars (\$15,000.00) that the Authority Acquired during such reporting period and the name of the seller of the Real Property and the price paid by the Authority for the Real Property, and (b) a description of the total amounts of Real Property purchased without competitive bidding, including (i) the nature of the Real Property, (ii) the names of the counterparties, and (iii) where the price for the Real Property purchased exceeds Fair Market Value, a detailed explanation of the justification for making the purchase without competitive bidding, and a certification by the Authority’s Chief Executive Officer and Chief Financial Officer that they have reviewed the terms of such purchase and determined that it complies with applicable law.
- 6.1.2 The Authority may be called upon periodically to submit information regarding the Acquisition of Real Property to organizations implementing the PAAA or other statutes regulating the Acquisition of Real Property, such as the Authority Budget Office through the Public Authorities Reporting System (“PARIS”).
- 6.1.3 The Authority’s Governance Committee meets at least three times per year and staff from Enterprise Shared Services – Real Estate or the equivalent may, upon request, prepare and present ongoing reports regarding the Acquisition of Real Property.

Exhibit "~~4-B-1~~A"  
~~March 31~~February 23, 2019

GUIDELINES

AND

PROCEDURES

FOR THE

ACQUISITION OF REAL PROPERTY

BY THE NEW YORK POWER AUTHORITY

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**GUIDELINES AND PROCEDURES FOR THE ACQUISITION OF REAL PROPERTY BY  
THE NEW YORK POWER AUTHORITY**

**I. PURPOSE**

1.1 These Guidelines and Procedures for the Acquisition of Real Property (“Guidelines”), which comply with Title 2, Article 9 of the Public Authorities Law, establish the procedures which detail the Authority’s policy and instructions regarding the acquisition of real property and designate a contracting officer who is responsible for the Authority’s compliance with, and enforcement of, such Guidelines.

**II. DEFINITIONS**

2.1 “Contracting Officer” shall mean the officer or employee of the Authority who shall be responsible for enforcement of the Guidelines for the acquisition of real property. The “Contracting Officer” is hereby designated to be the Senior Vice President – Enterprise Shared Services, or the equivalent(s), or designee.

2.2 “Acquisition” or “Acquire” shall mean to obtain title to or any other beneficial interest in real property in accordance with applicable statutes and these Guidelines.

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2.3 “Fair Market Value” shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for the Real Property in an arms-length transaction in the appropriate marketplace and under similar circumstances.

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2.32.4 “Real Property” shall mean real property, including land, tenements and hereditaments owned by the Authority, and any other interest in such real property, to the extent that such interest may be conveyed to another person or entity for any purpose, excluding an interest securing a loan or other financial obligation of another party.

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2.42.5 “Relative” is any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee’s grandparents or the spouse of such descendant, as referred to in Article 5 of these Guidelines.

### III. CONTROLLING LEGISLATION COMPLIANCE OVERVIEW

3.1 These Guidelines are being adopted consistent with the Public Authorities Accountability Act of 2005 (“PAAA”).

3.2. The Authority may Acquire Real Property through purchase, eminent domain, state transfers of jurisdiction, lease and by other legal means.

3.3 The Authority’s New York statutory authority for land acquisition includes, without limitation, the Public Authorities Law, the Real Property Law, the Public Lands Law, the Eminent Domain Procedure Law and the Highway Law, as amended.

**IV. DUTIES OF THE DIRECTOR OF REAL ESTATE**

- 4.1 The Director of Real Estate or the equivalent(s) or designee will maintain adequate inventory controls and accountability systems for all Real Property under the Authority's control.
  
- 4.2 Real Property to be Acquired by the Authority will be in support of existing operating and transmission facilities or in support of new initiatives being pursued by the Authority. The Director of Real Estate or the equivalent(s) or designee will, in consultation with the other appropriate Authority staff (by oral or written communication), determine what Lands are necessary or convenient for Acquisition by the Authority.
  
- 4.3 The compensation for and the procedure for such Acquisition must be consistent with these Guidelines and the Authority's Real Estate Expenditure Authorization Procedures as amended.
  
- 4.4 The Director of Real Estate or the equivalent(s) or designee will arrange for the transfer or Acquisition of any Real Property identified for Acquisition by the Authority in accordance with these Guidelines and the Authority's Real Estate Expenditure Authorization Procedures and as soon as reasonably practical under the circumstances.
  
- 4.5 The Director of Real Estate or the equivalent(s) or designee will provide all relevant documentation to the Authority's Environmental Division to determine whether the

Acquisition of Real Property is in compliance with the State Environmental Quality Review Act, and whether it adheres to the American Society of Testing and Material's Guidelines for Environmental Site Assessments, if applicable.

V. **ETHICAL CONSIDERATIONS**

5.1 No Authority employee who is involved in the Acquisition of Real Property, may ask any purchaser, grantor, lessor or officers, directors or employees of such current or prospective purchaser, grantor or lessor to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.

5.2 No Authority employee may take part in any Acquisition decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If such situation arises, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

5.2.1 For purposes of this Section 5.2, the term "Relative" is defined in Section 2.54 of these Guidelines.

**VI. ACQUISITION REPORTS BY THE AUTHORITY**

6.1 The Director of Real Estate or equivalent(s) or designee shall publish the following reports in accordance with these Guidelines:

6.1.1 Pursuant to Section 2800 of the Public Authorities Law, the Director of Real Estate shall furnish a report for incorporation in the Authority’s annual report which is distributed to the Governor, the Chairman and Ranking Minority Member of the Senate Finance Committee, the Chairman and Ranking Minority Member of the Assembly Ways and Means Committee, the State Comptroller and the State Authorities Budget Office. This report shall include (a) a listing of all Real Property having an estimated Fair Market Value greater than fifteen thousand dollars (\$15,000.00) that the Authority Acquired during such reporting period and the name of the seller of the Real Property and the price paid by the Authority for the Real Property, and (b) a description of the total amounts of Real Property purchased without competitive bidding, including (i) the nature of the Real Property, (ii) the names of the counterparties, and (iii) where the price for the Real Property purchased exceeds Fair Market Value, a detailed explanation of the justification for making the purchase without competitive bidding, and a certification by the Authority’s Chief Executive Officer and Chief Financial Officer that they have reviewed the terms of such purchase and determined that it complies with applicable law.

~~6.1.2~~ 6.1.2 The Authority may be called upon periodically to submit information regarding the Acquisition of Real Property to organizations implementing the PAAA or other statutes regulating the Acquisition of Real Property, such as the

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Authority Budget Office through the Public Authorities Reporting System  
("PARIS").

~~6.26.1.3~~ The Authority's Governance Committee meets at least three times per year and staff from Enterprise Shared Services – Real Estate or the equivalent may, upon request, prepare and present ongoing reports regarding the Acquisition of Real Property.

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## VII. REFERENCES

~~7.1 Chapter 766 of the Laws of 2005~~

~~7.2 Public Lands Law §3 (4)~~

**5. Annual Review and Approval of the Authority's Amended Guidelines and Procedures for the Disposal of Personal Property and Guidelines for Procurement Contracts**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

“The Trustees are requested to review and approve the following two Guidelines, which comply with the requirements of the Public Authorities Accountability Act (‘PAAA’) of 2005 and Section 2879 of the Public Authorities Law, respectively, and which are now amended to comply with Chapter 506 of the Laws of 2009, effective as of March 1, 2010: (1) Guidelines and Procedures for the Disposal of Personal Property (hereinafter ‘Personal Property Guidelines’) and (2) Guidelines for Procurement Contracts (hereinafter ‘Procurement Guidelines’). Such Guidelines are set forth in Exhibits ‘5-A’ and ‘5-B,’ respectively, as attached hereto.

**BACKGROUND**

“On January 13, 2006, Governor Pataki signed the PAAA into law. The subject law codified the Model Governance Principles established for public authorities in 2004 by the Governor’s Advisory Committee on Authority Governance, which was chaired by Ira Millstein. Among its provisions, the PAAA established new rules for the disposal of personal property owned by public authorities. The law also required each authority to draft guidelines consistent with the legislation dealing with these issues, to review and approve such guidelines annually, and to prepare an annual report of the disposal of personal property, including the full description, price received and name of the purchaser for all such property disposed of by the Authority during such period. (Such Report will be presented to the Trustees at the March 23, 2010 meeting.)

In order to comply with the PAAA, staff drafted the Personal Property Guidelines set forth in Exhibit ‘5-A,’ which were adopted by the Authority’s Trustees at their meeting of March 28, 2006 and have been amended as necessary and reviewed and approved annually since that date. The current Personal Property Guidelines were approved by the Trustees at their meeting of March 31, 2009.

“The Personal Property Guidelines set forth the methodology detailing the Authority’s policy and procedures regarding the use, award, monitoring and reporting of contracts for the disposal of personal property, and designate a Contracting Officer responsible for the Authority’s compliance with, and enforcement of, such Guidelines.

“Section 2879 of the PAL governs the administration and award of procurement contracts equal to or greater than \$5,000. In compliance with the applicable provisions of Section 2879 of the PAL, as amended, the Authority established comprehensive guidelines detailing its operative policy and instructions concerning the use, awarding, monitoring and reporting of procurement contracts.

“The Authority’s Procurement Guidelines were adopted by the Trustees at their meeting of October 31, 1989 and were implemented as of January 1, 1990. The Procurement Guidelines have been reviewed and amended annually as deemed advisable and necessary since that date. The current Procurement Guidelines were approved by the Trustees at their meeting of March 31, 2009.

“The Procurement Guidelines describe the Authority’s process for soliciting proposals and awarding contracts. Topics detailed in the Guidelines include solicitation requirements, evaluation criteria, contract award process, contract provisions, change orders, Minority / Woman-Owned Business Enterprise (‘M/WBE’) requirements, employment of former officers and reporting requirements.

## DISCUSSION

### Personal Property Guidelines

“Chapter 506 of the Laws of 2009 made substantial amendments to the Public Authorities Law (‘PAL’), including changes to certain procedures governing the disposal of Personal Property. In order to make the Personal Property Guidelines compliant with the law, staff recommends the following changes, which are more fully set forth in the attached redlined version of Exhibit ‘5-A.’ The more significant of the statutory changes are highlighted below:

- **Changes the basis for appraisals that must precede disposals of Personal Property** (i.e., no disposition of any 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 unless an appraisal of the value of such Property has been made by an independent appraiser – as more fully described in VI.A.1.);
- **Changes the criteria for the disposal of Personal Property through negotiation or public auction** (e.g., if the Property involved has qualities [other than its utilitarian purpose], such as artistic quality, antiquity, historical significance, rarity or other similar quality that would tend to increase its value, the disposal may be negotiated or made by public auction without regard to certain public advertising or other requirements and conversely, certain previously-allowed criteria for the disposal of Personal Property by negotiation are no longer permitted – as more fully described in VI.A.4.);
- **Establishes new statutory requirements for the disposal of Personal Property in circumstances where such disposal is for less than Fair Market Value** (e.g., disposal of Property for less than Fair Market Value will require approval by the Trustees; before approving such disposals, the Trustees shall make a written determination that there is no reasonable alternative to the below-market transfer that would achieve the same purpose of such transfer; in addition, certain such disposals would also require written notification to the Governor, the Speaker of the Assembly and the Temporary President of the Senate, subject to their approval or denial of the individual disposal transaction – as more fully described in VI.A.6.);
- **Establishes additional reporting and filing requirements for disposals of Personal Property made without competitive bidding and where the contract price for such disposals is less than Fair Market Value** (e.g., in such cases, a detailed explanation of the justification for making the disposal without competitive bidding shall be prepared and a certification shall be signed by the Chief Executive Officer and the Chief Financial Officer of the Authority stating that they have reviewed the terms of such disposal and have determined that it complies with applicable law and these Guidelines – as more fully described in VI.A.7.).

### Procurement Guidelines

“Chapter 506 of the Laws of 2009 made substantial amendments to the Public Authorities Law (‘PAL’) with several changes governing procurement contracts. In order to make the Procurement Guidelines compliant with the law, staff recommends the following changes, which are more fully set forth in the attached redlined version of Exhibit ‘5-B.’ The more significant of the statutory changes are highlighted below:

- **Establishes new requirements for goods or services purchased on a sole-source basis and the price exceeds Fair Market Value** (i.e., when a procurement is made on a sole-source basis, and the price for goods or services purchased exceeds Fair Market Value, a detailed explanation of the justification for making the purchase shall be prepared and a certification shall be signed by the Chief Executive Officer and the Chief Financial Officer of the Authority stating that they have reviewed the terms of such purchase and have determined that it complies with applicable law and these Guidelines – as more fully described in 3.M.)

- **Clarifies that contracts for legal, financial and other professional services, as well as banking relationships, the issuance of insurance policies or contracts and contracts with a contracting agency for the sale of bonds, notes or other securities, are subject to the provisions of Executive Law Article 15-A relating to participation by minority group members and women with respect to state contracts.**
- **In addition, Chapter 506 adds a new requirement making certain public authority contracts *potentially* subject to the review and approval of the State Comptroller. It also directs the State Comptroller to promulgate rules and regulations in connection with this review.** Staff anticipates further revisions to the Guidelines once those regulations are published.

Additionally, the more significant changes not related to Chapter 506 are highlighted below:

- **The definition of Non-Procurement contracts is expanded** to also include periodicals, subscriptions, reference materials or professional research tools, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums (as more fully described in 2.B.)
- **The following three new Contract Attachments are added to 7.B:**
  - 11. Appendix 'I' (NYPA NERC CIP Cyber Security Training Requirements)
  - 13. Appendix 'K' (Additional State and Federal Provisions Required for American Recovery and Reinvestment Act ('ARRA')-funded Projects)
  - 14. Appendix 'L' (DOE Federal Contract Provisions)

“Both Guidelines will become effective as of March 1, 2010 and will be posted on the Authority’s website. On or before the 31<sup>st</sup> day of March, the Personal Property Guidelines, as approved by the Trustees, will be filed with the State Comptroller, the Director of the Budget, the Commissioner of General Services, the State Legislature and the Authorities Budget Office; the Procurement Guidelines will be filed with the Division of the Budget, the Department of Audit and Control, the Department of Economic Development, the Senate Finance Committee, the Assembly Ways and Means Committee and the Authorities Budget Office, with the respective 2009 Annual Reports.

#### FISCAL INFORMATION

“There will be no financial impact on the Authority.

#### RECOMMENDATION

“The Vice President – Procurement and the Facilities Materials Superintendent recommend that the Trustees approve the revisions to the Guidelines and Procedures for the Disposal of Personal Property and the Guidelines for Procurement Contracts, as set forth in Exhibits ‘5-A’ and ‘5-B,’ respectively.

“The Chief Operating Officer, the Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Senior Vice President – Enterprise Shared Services, the Vice President – Internal Audit and I concur in the recommendation.”

*Ms. Delince said that the amendments to the personal property disposal and procurement guidelines were made pursuant to Chapter 506 of the Laws of 2009. Ms. Patricia Leto presented the highlights of staff’s recommendations to the Trustees. In response to a question from Chairman Townsend, Ms. Terryl Brown said that Authority staff are in discussions with the Office of the State Comptroller (“OSC”) about which Authority contracts may be subject to OSC review. President Kessel said that the reporting requirements have been extended to the end of this month and that he had asked Ms. Brown and Mr. Vincent Esposito to work*

*cooperatively with OSC and then report back to the Trustees. Trustee Nicandri said that the guidelines had been presented to the Governance Committee at their meeting earlier in the morning.*

The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That pursuant to the provisions of the Public Authorities Accountability Act of 2005, the Authority hereby reviews and approves the Guidelines and Procedures for the Disposal of Personal Property and the Guidelines for Procurement Contracts, as amended and set forth in Exhibits “5-A” and “5-B,” respectively, and attached hereto, in order to comply with Chapter 506 of the Laws of 2009; and be it further**

**RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things, take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.**

**GUIDELINES**

**AND**

**PROCEDURES**

**FOR THE**

**DISPOSAL OF NEW YORK POWER AUTHORITY**

**PERSONAL PROPERTY**

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**GUIDELINES AND PROCEDURES**  
**FOR THE**  
**DISPOSAL OF NEW YORK POWER AUTHORITY PERSONAL PROPERTY**

I. **PURPOSE**

These Guidelines and Procedures for the Disposal of Personal Property (hereinafter "Guidelines"), which comply with Title 5-A, Article 9 of the Public Authorities Law, establish the procedures which detail the Authority's policy and instructions regarding the use, award, monitoring and reporting of the disposal of personal property. In addition, the Guidelines designate a Contracting Officer who is responsible for the Authority's compliance with, and enforcement of, the Guidelines.

II. **DEFINITIONS**

A. "Contracting Officer" shall mean the officer or employee of a public authority who shall be appointed by resolution of the Authority's Board of Trustees to be responsible for the disposition of personal property. The "Contracting Officer" is hereby designated to be the Senior Vice President – Enterprise Shared Services, or equivalent(s), or a designee so stated in writing. The Authority's Contracting Officer shall not be responsible for compliance for dispositions of the Authority's personal property conducted by another state entity authorized to dispose of the Authority's personal property under the Public Authorities Accountability Act ("PAAA") or as otherwise authorized by law.

- B. "Dispose" or "disposal" shall mean transfer of title or any other beneficial interest in personal property in accordance with these Guidelines.
- C. "Property" shall mean personal property owned by the Authority with a value in excess of \$5,000, and any 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. For the purposes of these Guidelines, personal property may include, but is not limited to, materials, tools, equipment, or vehicles.
- D. "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for the Property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair Market Value may be determined by consulting industry-recognized sources, contacting original suppliers, depreciation analysis, appraisals, fair market valuations by public auction or other methods of valuation generally accepted in the industry in which such Property is utilized, as may be approved by the Contracting Officer or authorized designee.
- E. "Relative" is defined in Subsection X.G.1. of these Guidelines.

### **III. OBJECTIVE**

The objective of these Guidelines is to identify those Authority personnel responsible for authorizing the disposal of Property owned by the Authority and to ensure that the Authority receives fair and reasonable value for such Property. The transfer or sale of Property shall be accounted for in accordance with the Authority's

Corporate Accounting Policy No. CAP 4.3 dated 6/30/05, Revision 2 -- "Accounting for Materials and Supplies."

**IV. TRANSACTIONS NOT COVERED**

These Guidelines do not apply to any of the following transactions:

1. Disposal of real property interests;
2. Exchange of Property with other utilities or power plant owners, where such owners will provide an identical or in-kind replacement;
3. Transfer/re-deployment of Property from one Authority facility to another Authority facility.

**V. DESIGNATION OF PROPERTY DISPOSAL COORDINATORS**

- A. The Contracting Officer shall be responsible for the Authority's compliance with, and enforcement of, the Guidelines.
- B. The individual responsible for disposal of all Property at the Authority's facilities will be the Facilities Materials Superintendent ("FMS") currently located at the Clark Energy Center. For purposes of Property disposal, the FMS reports directly to the Contracting Officer or authorized designee.
- C. The Purchasing and Warehouse Manager from each facility will be the local Property Disposal Coordinator for his or her facility or location ("Facility PDC"). The Facility PDC reports to the FMS.
- D. The Contracting Officer will designate one or more individuals from the White Plains Office Procurement Division to be the Property Disposal Coordinator(s)

for the White Plains, Albany and New York corporate offices ("WPO PDC").

For purposes of Property disposal, the WPO PDC(s) will confer, interface with and report to the Contracting Officer or authorized designee.

- E. The Director of Fleet Operations ("DFO") or equivalent(s) or designee is responsible for the disposal of vehicles and rolling equipment. The DFO reports directly to the Contracting Officer.
- F. If appropriate, the responsible Facility PDC should confer (by oral or written communication) with the FMS and the WPO PDC(s) should confer (by oral or written communication) with the Contracting Officer to determine if a "centralized" sale of Property, as outlined in Article VII, is appropriate. If agreed, the responsible PDC should arrange for shipment of the Property to be sold from the site to the sale location. If a centralized sale is not appropriate, the responsible PDC should proceed in accordance with the "decentralized" procedures, as outlined in Article VIII.

**VI. PROCEDURES FOR DISPOSAL OF AUTHORITY PERSONAL PROPERTY**

Except for Disposals pursuant to Article VII, Article XII and Subsection VI.A.4 of these Guidelines, whenever practicable, the responsible PDC shall solicit proposals from at least 3 bidders, to purchase the Property to be disposed of, and will maintain records of such solicitations. The PDC should use "Attachment A" attached hereto or an appropriate substitute for solicitations under this Article VI.

**A. DISPOSAL METHODS FOR PERSONAL PROPERTY**

1. For the purposes of these Guidelines, Disposal methods may include, but are not limited to: sale (directly to the Buyer, through a third party, negotiation, well-advertised public auction that permits full and free competition consistent with the value and nature of the property or on any other centralized basis that achieves the same level of competition); return to the original equipment manufacturer or to the source; trade-ins; or disposal through the New York State Office of General Services ("OGS"). Use of the internet, in conjunction with the foregoing options, may also be utilized, as applicable. Provided, however, that no disposition of any 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 unless an appraisal of the value of such Property has been made by an independent appraiser and included in the record of the transaction. The Authority's Environment, Health and Safety Division should be consulted, on a case-by-case basis, regarding disposal of items that may be considered hazardous waste.
2. Solicitation via telephone, e-mail and/or direct mailings may be used where the estimated Fair Market Value of the Property to be disposed of is greater than \$5,000 but does not exceed \$15,000. All bids must be submitted in writing on the forms and in the manner prescribed by this procedure and by the date and time (the "Bid Due Date") included in the

solicitation.

3. All Disposals of Authority Property in excess of \$15,000 shall be made after publicly advertising for bids except as provided in Subsection 4 below, using the following process:
  - a. the appropriate advertisement for bids (Attachment "B" or an appropriate substitute) shall be made at such time prior to the Disposal, 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. This may include advertisements in one or more of the following publications, depending on the nature of the Property: local newspapers in the geographic area of the facility where the sale is taking place, trade journals, regional or nationwide publications (if the market for such sale is regional or nationwide), the New York State Contract Reporter, internet services or other communication outlets as appropriate;
  - b. all bids must be submitted in writing on the forms and in the manner prescribed by this procedure and by the Bid Due Date included in the solicitation;
  - c. all bids shall be publicly disclosed, at the time and place stated in the solicitation; and
  - d. the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforms to the bid solicitation and will be most advantageous to the Authority, price and other factors

considered; however, any bid may be rejected when in the public interest to do so.

4. Disposals of Property may be negotiated or made by public auction without regard to Subsection 3 of this Section, but subject to obtaining such competition as is feasible under the circumstances, if:
  - a. the 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 Property is to be disposed of in such quantity that, if it were Disposed of under Subsection 3 of this Section, 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 may be obtained by negotiation;
  - b. bid prices after advertising therefore are not reasonable, either as to all or part of the Property, or have not been independently determined in open competition;
  - c. the Disposal will be to the state or any political subdivision, and the estimated Fair Market Value of the Property and other satisfactory terms of Disposal are obtained by negotiation;
  - d. under those circumstances permitted by Subsection 6 of this Section;
  - e. if the estimated or actual fair market value of the property does not exceed \$15,000; or
  - f. such action is otherwise authorized by law.

5. An explanatory statement shall be prepared of the circumstances of each Disposal by negotiation of any Property which has an estimated Fair Market Value in excess of fifteen thousand dollars (\$15,000). In addition, an explanatory statement shall be prepared of the circumstances of each Disposal by negotiation of any Property disposed of by exchange, regardless of value. Each such statement shall be transmitted to the Commissioner of General Services, the State Legislature, the State Comptroller, and the Division of the Budget, not less than ninety days in advance of such Disposal, and a copy thereof shall be preserved in the Authority's files.
6. a. No Property owned or otherwise in the control of the Authority may be disposed or otherwise alienated for less than its Fair Market Value except if:
  - (i) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the Property will remain with the government or any other public entity;
  - (ii) the purpose of the transfer is within the purpose, mission or governing statute of the Authority; or
  - (iii) in the event the Authority seeks to transfer Property for less than its Fair Market Value to other than a governmental entity, which Disposal would not be consistent with the Authority's mission, purpose or governing statutes, the

Authority shall provide written notification thereof to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate, and such proposed transfer shall be subject to denial by the Governor, the Senate or the Assembly. Denial by the Governor shall take the form of a signed certification by the Governor. Denial by either House of the Legislature shall take the form of a resolution by such House. The Governor and each House of the Legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the Legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the Governor, Senate and Assembly, the Authority may effectuate such transfer provided, however, that with respect to a below-market transfer by the Authority that is not within the purpose, mission or governing statute of the Authority, if the governing statute provides for the approval of such transfer by the executive and legislative branches of the political subdivision in which the Authority resides, and if the

transfer is of Property obtained by the Authority from that political subdivision, then such approval shall be sufficient to permit the transfer.

b. In the event a below Fair Market Value Property transfer is proposed, the following information must be provided to the Authority's Board and the public:

- (i) a full description of the Property;
- (ii) an appraisal of the Fair Market Value of the Property and any other information establishing the Fair Market Value sought by the Board;
- (iii) a description of the purpose of the transfer and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the Property is situated as are required by the transfer;
- (iv) a statement of the value to be received compared to the Fair Market Value;
- (v) the names of any private parties participating in the transfer and, if different than the statement required by subparagraph (iv) of this Subsection, a statement of the value to the private party; and

- (vi) the names of other private parties who have made an offer for such Property, the value offered and the purpose for which the Property was sought to be used.
- c. Before approving the Disposal of any Property for less than Fair Market Value, the Board shall consider the information described in paragraph b of this Subsection and make a written determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.
- 7. In addition, in cases where a Disposal of Property is made without competitive bidding and where the proposed contract price for the Property disposed of is less than Fair Market Value, prior to finalizing the Disposal a detailed explanation of the justification for making the Disposal without competitive bidding shall be prepared, and a certification shall be signed by the Chief Executive Officer and Chief Financial Officer of the Authority stating that they have reviewed the terms of such Disposal and have determined that it complies with applicable law and these Guidelines.

**B. DISPOSAL OPTIONS IF NO BIDS ARE RECEIVED**

If solicitation pursuant to Section VI.A. does not produce any proposals to purchase the Property from the Authority, or if all proposals received are less than the Authority's Fair Market Value estimate, the appropriate PDC shall confer with the FMS and the Contracting Officer to decide (i) if re-soliciting is feasible; (ii) if shipment to a third-party contractor for Disposal would

result in higher-priced proposals; (iii) if disposal by other methods would be appropriate; and/or (iv) if the Fair Market Value estimate requires review or adjustment.

## **VII. CENTRALIZED DISPOSAL**

A. Subject to the approval of the Contracting Officer and in accordance with Article VI of these Guidelines, in either the initial document authorizing the disposal or through a subsequent communication, Property may be disposed of using any of the following methods:

1. Shipment of the material to a third-party vendor(s), selected by competitive bidding, which, pursuant to these Guidelines, will market the material for sale or dispose of such material in accordance with environmental and any other Authority requirements.
2. Consolidation of such Property at one of the Authority's facilities or an offsite warehouse for the purpose of conducting a sale managed by Authority staff, possibly with the assistance of an outside contractor.
3. Participation in public auctions such as through a private auctioneer or other utility provided the advertisement for bids through such methods permits full and free competition consistent with the value and nature of the property.

**VIII. DECENTRALIZED DISPOSAL**

- A. The Regional Manager, Project Manager, or head of a Department or Division requiring disposal of Property which he or she believes to be surplus, will submit to the responsible PDC a written description of the material, with the original price (if known), and estimate of the Property's Fair Market Value (if available). If practical, a photograph of the material or equipment in question should be provided. Such submission shall be made to the PDC designated at the location at which the Property is located, the responsible PDC.
- B. If the responsible PDC, in conference with either the FMS or the Contracting Officer, as appropriate, determines that other Authority facilities may have an interest in the Property, a notice should be sent to the other Authority facilities advising of its availability and requesting a response within a specified time frame. A record of the notice will be maintained by the responsible PDC. In the event that the responsible PDC and either the FMS or the Contracting Officer, as appropriate, determine there is no interest in such material at other Authority facilities, a written explanation should be prepared by the PDC to that effect and maintained in the file for that transaction.
- C. If no response to the notice is received, the responsible PDC will solicit bids for the purchase of such Property in accordance with the procedures described in Article VI.

**IX. PARTIES PROHIBITED FROM BIDDING**

- A. All current and former employees of the Authority and relatives of such employees or third parties acting on behalf of such employees shall not be eligible to bid for the purchase of Authority Property and are prohibited from subsequently acquiring it in any manner. Each bidder will be required, as part of his or her bid, to certify, by signing Attachment "A," that he or she is not a current or former employee of the Authority, is not related to any current or former employee of the Authority and is not acting on behalf of a current or former employee of the Authority or a relative of any such employee. No bid will be accepted unless accompanied by such certification.
- B. The term "related to" as used in paragraph A above means the relationship of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law or son-in-law.

**X. EVALUATION OF PROPOSALS; AWARD OF CONTRACT**

- A. Following the receipt of proposals for the Property, the responsible PDC shall evaluate the proposals submitted and determine whether the highest of such proposals is reasonable, given the estimated Fair Market Value of the Property.
- B. If the responsible PDC determines that the highest bid received is reasonable, the responsible PDC shall recommend to the Responsible

Officer(s), as hereinafter defined in Article XI, that such bid be accepted, and upon the written approval of the Responsible Officer(s), the sale shall be made to the person offering such proposal. After obtaining all necessary approvals in accordance with Article XI "Authorization Levels," a Sales Agreement appended hereto ("Attachment C") must be executed by the responsible Authority staff member and by the successful bidder prior to completion of the transaction.

- C. If either (a) the responsible PDC determines that the highest bid is not reasonable or (b) the Responsible Officer(s) decline(s) to authorize the sale, the Property will, except as provided in paragraph D below, be retained for future disposal in accordance with these Guidelines. Factors to be considered in determining whether a bid is reasonable include, but are not limited to: adequacy of the estimate of the Fair Market Value, anticipated improved future market conditions, potential for other means of disposal or redeployment, financial viability of the bidder, and condition of the Property.
- D. Notwithstanding any determination by the responsible PDC, the Responsible Officer(s), with the review and approval of the Contracting Officer, may direct the sale of the Property to the person or firm submitting the highest bid.
- E. No Authority employee who is involved in the award of Authority grants or contracts, may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made

campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.

- F. No Authority employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section E above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
  
- G. No Authority employee may take part in any contracting decision involving the payment of \$1,000 or more: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section G, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.
  - 1. For purposes of this Section G, the term "Relative" shall mean any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee's grandparents or the spouse of such descendant.

**XI. AUTHORIZATION LEVELS AND SIGNING AUTHORITY**

- A. For the purposes of these Guidelines, the Responsible Officer(s) will in each case review the appropriateness of the Fair Market Value estimate and the recommendation for contract award for disposal of the Property. Responsible Officers are designated as follows:
1. The Trustees, if the Fair Market Value of the Property is greater than \$1,000,000; or
  2. The President or the Chief Operating Officer or equivalent(s), if the Fair Market Value of the Property is up to \$1,000,000; or
  3. The Senior Vice President – Enterprise Shared Services or equivalent(s) or the Executive Vice President – Chief Administrative Officer or equivalent(s), if the Fair Market Value of the Property is up to \$500,000; or
  4. The Vice President – Procurement or equivalent(s), if the Fair Market Value of the Property is up to \$250,000; or
  5. The FMS, if the Fair Market Value of the Property is up to \$50,000; or
  6. The responsible PDC, with the prior written approval of either the FMS or the Contracting Officer, as appropriate, if the Fair Market Value of the Property is \$5,000 or less.
- B. For public auctions or similar centralized disposals, such authorization should be obtained prior to submitting Property to auction based on the estimated fair market value of the Property.

1. For purposes of these Guidelines, the Director - Fleet Operations ("DFO") or equivalent(s) and FMS are authorized to sign Disposal Sales Agreements based upon the provisions of Section XI.A above whereby the DFO is authorized to sign fleet-related sales agreements and the FMS may sign both fleet and non-fleet sales agreements.
- C. For decentralized disposals, such authorization should be obtained prior to signing of Sales Agreement or award of contract, in accordance with the Authorization Levels set forth in Section XI.A. Sales Agreements for individual disposal transactions through a decentralized sale should be signed in accordance with the limits set forth in the Authority's Expenditure Authorization Procedures – Attachment C.

## **XII. OTHER METHODS FOR DISPOSAL OF PERSONAL PROPERTY**

### **A. Trade-Ins**

This procedure is not intended to restrict the trade-in of equipment (i.e., computer or office equipment), materials, and/or vehicles for replacements from dealers furnishing replacement equipment, materials, and/or vehicles, where reasonable value can be obtained for the trade-in. Any such proposed trade-in must be included as part of the solicitation of bids for the replacement equipment, materials and/or vehicles and the trade-in value must be stated in the proposals from solicited bidders. Best efforts shall be utilized to secure a trade-in value that is equal to or exceeds the Fair Market Value.

B. **Return to the Original Equipment Manufacturer ("OEM") or to the Source**

Return of materials to the OEM or the source is permissible provided that the Authority receives full value for any materials equal to the price paid by the Authority or the estimated Fair Market Value of the Property. In the event a re-stocking fee is charged by the OEM or the source, the FMS or the Contracting Officer, as appropriate, shall be consulted to determine if such a re-stocking fee is reasonable and if there are other opportunities for sale of such material. Approval of all such returns to the OEM or the source when a re-stocking fee is charged, must be in accordance with the Authorization Levels delineated in Section XI.A.

C. **Disposal through the New York State Office of General Services (OGS)**

When it is determined advantageous to the Authority, the Authority may utilize OGS for Disposal of Authority-owned Property including but not limited to vehicles and rolling equipment, and/or may make use of on-line disposal methods offered by OGS. In addition, in accordance with New York State law, surplus computers and accessories (e.g. monitors and keyboards) and surplus office furniture and other equipment may, with the approval of the Contracting Officer, be transferred to OGS for disposition, in the case of computers and accessories to school districts located near Authority offices or operating facilities, or in the case of office furniture and office equipment, to other state entities. Disposal of these items in this

manner represents the best value to New York State in lieu of attempted re-sale of such materials.

### **XIII. METHODS OF PAYMENT**

The proceeds from the sale of Property in the form of cash or a certified check made payable to the Authority must be forwarded to the Authority's Treasurer by the Facility PDCs and to the Authority's Controller's Office by the FMS and WPO PDC. In certain cases involving a transfer of Property to other state agencies or authorities, the performance of documented services to the Authority equal to or greater in value to the Fair Market Value of the Property, will serve as payment for such Property. The authorization limits of Article XI shall apply to such transactions.

### **XIV. REPORTING REQUIREMENTS**

- A. The Authority shall publish, not less frequently than annually, a report of all Property disposed of during the reporting period, including the full description, price (if any) received and the name of the purchaser for all such Property disposed of by the Authority during such period. Such report shall be prepared in conjunction with the report required by the Authority's "Guidelines and Procedures for the Disposal of Real Property."
- B. Such report, as approved by the Trustees, shall be submitted to the Comptroller, the Director of the Budget, the Commissioner of General Services, the Legislature and the Authorities Budget Office.

- C. These Guidelines, as approved by the Trustees, shall be reviewed and approved annually by the Authority's Board of Trustees. On or before the thirty-first day of March in each year, the Authority shall file with the Comptroller a copy of the Guidelines most recently reviewed and approved by the Trustees, including the name of the Authority's designated Contracting Officer. At the time of filing such Guidelines with the Comptroller, the Authority shall also post such Guidelines on the Authority's internet website and maintain such Guidelines on the website.
- D. For disposal by negotiation or exchange (except when an identical or in-kind replacement is provided to the Authority) an explanatory statement shall be prepared and submitted to the parties described more fully in Subsection VI.B.5.
- E. The Authority's Governance Committee meets at least three times per year and staff from the Enterprise Shared Services Department or the equivalent(s) prepare and present ongoing reports regarding disposals of personal property and real property.
- F. The Authority may be called upon periodically to submit information regarding the Disposal of Personal Property to organizations implementing the PAAA or other statutes regulating the disposal of Property, such as the Authorities Budget Office through the Public Authorities Reporting Information System ("PARIS").

**BID SHEET**

The following personal property is available for sale "AS IS, WHERE IS" and the Power Authority gives no warranty whatsoever as to its condition.

LUMP SUM BID AMOUNT\* \$ \_\_\_\_\_

Subject to all terms and conditions set forth on the reverse hereof, the undersigned offers and agrees to purchase the above-described personal property at the bid amount indicated.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
FAX number

\_\_\_\_\_  
Telephone number

\* All sales are subject to New York State Sales Tax and Compensating Use Tax unless the Purchaser furnishes the Authority with an exemption certificate.

**PERSONAL PROPERTY SALE**  
**SALE NO. \_\_\_\_\_**  
**NEW YORK POWER AUTHORITY**  
**(ADDRESS OF PROJECT)**  
**Telephone: ( ) \_\_\_\_\_**  
**FAX: ( ) \_\_\_\_\_**

Subject to the terms and conditions stated below, bids will be received on the personal property, either by mail, fax or hand delivery at the (Location) \_\_\_\_\_ no later than (Date) \_\_\_\_\_.

The personal property is available for inspection, by appointment, at the (Project) \_\_\_\_\_ . For an appointment, please contact the Property Disposal Coordinator, (Name) \_\_\_\_\_ at (Telephone no.) \_\_\_\_\_.

Successful bidders will be required to pay by certified check, on notice from the Authority that the bid has been accepted, and remove the personal property from the Authority's premises within ten (10) calendar days after receipt of notice of award.

Envelopes containing bids submitted by mail should be marked on the outside to indicate that a bid on Sale No. \_\_\_\_ is enclosed.

Current and former employees of the Power Authority or relatives of such employees or third parties acting on behalf of such employees or relatives are ineligible to bid and are prohibited from subsequently acquiring such personal property in any manner.

1. **INSPECTION.** Bidders are invited, urged and cautioned to inspect the personal property being sold prior to submitting a bid. The personal property will be available for inspection at the time and place specified above. In no case will failure to inspect constitute grounds for the withdrawal of a bid after opening.
2. **CONDITION OF PROPERTY.** All personal property listed is offered for sale "AS IS, WHERE IS". The Authority does not in any way warrant the fitness of the personal property for any particular use or its merchantability and disclaims any other representations or warranties, express or implied, including, but not limited to, quality, character, performance or condition of the personal property or any of its component parts, assemblies, or accessories.
3. **CONSIDERATION OF BIDS.** Bids must be submitted in writing on the form provided by the Authority (see reverse side) and shall be submitted on all items listed. The Authority reserves the right to reject any and all bids, to waive technical defects in bids and to award sale of the items as may be in the best interest of the Authority.
4. **PAYMENT.** The Purchaser agrees to pay for the awarded personal property in accordance with the prices quoted in his/her bid. Payment of the full purchase price must be made within the time allowed for removal, and prior to the release of any personal property to the Purchaser.
5. **NEW YORK STATE SALES AND COMPENSATING USE TAX.** All sales will be subject to New York State Sales and Compensating Use Tax unless the Purchaser furnishes the Authority with an exemption certificate.

**ADVERTISEMENT FOR PROPOSALS**

The following described personal property, shall be sold "AS IS, WHERE IS" by the New York Power Authority ("the Authority").

1. Sealed bids are invited for the above, which will be available for inspection by inquiry at the (Location/Building) at the (Project and Address) between the hours of \_\_\_\_\_ a.m. to \_\_ p.m. on (Date/s). Bids must be submitted on the Authority's bid form, which can be obtained by calling (Telephone no.). No bid will be accepted unless it is on such form. Bids shall be accepted on or before \_\_\_\_ p.m. on (Date).
2. Current and former employees of the Authority or relatives of such employees or third parties seeking to act on behalf of such employees or relatives shall be ineligible to bid.
3. Successful bidders, on notice from the Authority, shall be required to pay by certified check and shall promptly remove the personal property from the Authority's property.
4. The Authority reserves the right to reject any and all bids.

**PERSONAL PROPERTY  
SALES AGREEMENT**

\_\_\_\_\_, the Buyer, and the Power Authority of the State of New York ("the Authority"), agree as follows:

- 1) The personal property identified herein is sold by the Authority and purchased by Buyer "AS IS, WHERE IS" at the price(s) shown, plus any applicable sales tax.
- 2) **THE AUTHORITY DOES NOT IN ANY WAY WARRANT THE FITNESS OF THE PERSONAL PROPERTY FOR ANY PARTICULAR USE OR ITS MERCHANTABILITY AND DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE QUALITY, CHARACTER, PERFORMANCE, OR CONDITION OF THE PERSONAL PROPERTY OR ANY OF ITS COMPONENT PARTS, ASSEMBLIES, OR ACCESSORIES.**
- 3) The Bidder warrants that he/she/it is not a current or former Authority employee, is not related to an Authority employee and did not bid on behalf of an Authority employee. Bidder is aware that Authority employees and their family members are precluded from subsequently receiving, or acquiring, in whole or in part, by any manner including gift, sale, loan or lease, the personal property acquired by the Bidder pursuant to this sale. The term "related to" as used in this paragraph means the relationships of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, or son-in-law. The Authority reserves the right to invoke any available legal or equitable remedy in the event of a breach by the Bidder of his or her warranty under this paragraph, including but not limited to, rescinding the sale and recovering the property sold and all costs associated with the sale and the rescission of said sale.
- 4) The Buyer shall indemnify and hold harmless the Authority and all of its officers, agents and employees from any loss, damage, remedial or response cost, liability or expense, on account of damage or contamination to property and injuries, including death, to all persons, including Buyer's employees, or any third parties, arising or in any manner growing out of the sale of any personal property or the performance of any work under this agreement and shall defend at its own expense any suits or other proceedings brought against the Authority and its officers, agents and employees, or any of them, on account thereof, and pay all expenses and satisfy all judgments which may be incurred by or rendered against them or any of them in connection therewith.
- 5) Except for disposals by public auction, the Buyer shall remove the personal property from the Authority's premises by \_\_\_\_\_ at Buyer's expense. The Buyer shall make payment upon delivery by certified check payable to the New York Power Authority.

Description of Personal Property:

Selling Price: \_\_\_\_\_

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

Buyer (Print or Type):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Seller:  
Power Authority of the State of New York  
123 Main Street  
White Plains, New York 10601

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Full Name (Printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

PRIVACY LAW NOTIFICATION

SECTION 94(1)(d) OF THE NEW YORK PUBLIC OFFICERS LAW REQUIRES THIS NOTICE TO BE PROVIDED WHEN COLLECTING PERSONAL INFORMATION FROM POTENTIAL PURCHASERS OF AUTHORITY PROPERTY.

This information is requested pursuant to Article 5, Title I of the Public Authorities Law. The principal purpose for which the information is collected is to assist the Power Authority of the State of New York in the sale of Authority personal property in accordance with Section 96(1) of the Personal Privacy Protection Law, particularly subdivisions (b), (e) and (f).

Failure to provide the requested information may result in ineligibility for participation in a program, sale or benefit provided by the Authority.

This information will be maintained by Fleet Operations, at the Power Authority of the State of New York, Clark Energy Center located at 6520 Glass Factory Road, Marcy, N.Y. 13403, (315) 724-8186 or, when appropriate, by the Procurement Department at the Corporate office or at one of the Authority facilities.

**GUIDELINES**

**AND**

**PROCEDURES**

**FOR THE**

**DISPOSAL OF NEW YORK POWER AUTHORITY**

**PERSONAL PROPERTY**

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**GUIDELINES AND PROCEDURES**  
**FOR THE**  
**DISPOSAL OF NEW YORK POWER AUTHORITY PERSONAL PROPERTY**

I. **PURPOSE**

These Guidelines and Procedures for the Disposal of Personal Property (hereinafter "Guidelines"), which comply with Title 5-A, Article 9 of the Public Authorities Law, establish the procedures which detail the Authority's policy and instructions regarding the use, award, monitoring and reporting of the disposal of personal property. In addition, the Guidelines designate a Contracting Officer who is responsible for the Authority's compliance with, and enforcement of, the Guidelines.

II. **DEFINITIONS**

A. "Contracting Officer" shall mean the officer or employee of a public authority who shall be appointed by resolution of the Authority's Board of Trustees to be responsible for the disposition of personal property. The "Contracting Officer" is hereby designated to be the Senior Vice President – Enterprise Shared Services, or equivalent(s), or a designee so stated in writing. The Authority's Contracting Officer shall not be responsible for compliance for dispositions of the Authority's personal property conducted by another state entity authorized to dispose of the Authority's personal property under the Public Authorities Accountability Act ("PAAA") or as otherwise authorized by law.

- B. "Dispose" or "disposal" shall mean transfer of title or any other beneficial interest in personal property in accordance with these Guidelines.
- C. "Property" shall mean personal property owned by the Authority with a value in excess of \$5,000, and any 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. For the purposes of these Guidelines, personal property may include, but is not limited to, materials, tools, equipment, or vehicles, ~~which are not expected to be of any future use to the Authority, i.e., typically surplus or obsolete materials and supplies.~~
- D. "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for the ~~material~~Property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair Market Value may be determined by consulting industry-recognized sources, contacting original suppliers, depreciation analysis, appraisals, fair market valuations by public auction or other methods of valuation generally accepted in the industry in which such Property is utilized, as may be approved by the Contracting Officer or authorized designee.
- E. "Relative" is defined in Subsection X.G.1. of these Guidelines.

### III. OBJECTIVE

The objective of these Guidelines is to identify those Authority personnel responsible for authorizing the disposal of Property owned by the Authority and to

ensure that the Authority receives fair and reasonable value for such Property. The transfer or sale of Property shall be accounted for in accordance with the Authority's Corporate Accounting Policy No. CAP 4.3 dated 6/30/05, Revision 2 -- "Accounting for Materials and Supplies."

#### **IV. TRANSACTIONS NOT COVERED**

These Guidelines do not apply to any of the following transactions:

1. Disposal of real property interests;
2. Exchange of Property with other utilities or power plant owners, where such owners will provide an identical or in-kind replacement;
3. Transfer/re-deployment of Property from one Authority facility to another Authority facility.

#### **V. DESIGNATION OF PROPERTY DISPOSAL COORDINATORS**

- A. The Contracting Officer shall be responsible for the Authority's compliance with, and enforcement of, the Guidelines.
- B. The individual responsible for disposal of all Property at the Authority's facilities will be the Facilities Materials Superintendent ("FMS") currently located at the Clark Energy Center. For purposes of Property disposal, the FMS reports directly to the Contracting Officer or authorized designee.
- C. The Purchasing and Warehouse Manager from each facility will be the local Property Disposal Coordinator for his or her facility or location ("Facility PDC"). The Facility PDC reports to the FMS.

- D. The Contracting Officer will designate ~~an~~ one or more individuals from the White Plains Office Procurement Division to be the Property Disposal Coordinator(s) for the White Plains, Albany and New York corporate offices ("WPO PDC"). For purposes of Property disposal, the WPO PDC(s) will confer, interface with and report to the Contracting Officer or authorized designee.
- E. The Director of Fleet Operations ("DFO") or equivalent(s) or designee is responsible for the disposal of vehicles and rolling equipment. The DFO reports directly to the Contracting Officer.
- F. If appropriate, the responsible Facility PDC should confer (by oral or written communication) with the FMS and the WPO PDC(s) should confer (by oral or written communication) with the Contracting Officer to determine if a "centralized" sale of Property, as outlined in Article VII, is appropriate. If agreed, the responsible PDC should arrange for shipment of the Property to be sold from the site to the sale location. If a centralized sale is not appropriate, the responsible PDC should proceed in accordance with the "decentralized" procedures, as outlined in Article VIII.

**VI. BIDDING PROCEDURES FOR DISPOSAL OF AUTHORITY PERSONAL PROPERTY**

Except for Disposals pursuant to Article VII, Article XII and Subsection VI.BA.4 of these Guidelines, whenever practicable, the responsible PDC shall solicit proposals from at least 3 bidders, to purchase the Property to be disposed of, and will maintain

records of such solicitations. The PDC should use "Attachment A" attached hereto or an appropriate substitute for solicitations under this Article VI.

**A. SOLICITATIONS FOR PERSONAL PROPERTY VALUED AT \$15,000 OR LESS**

~~Telephone notices and/or mailings may be used where the estimated Fair Market Value of the Property to be disposed of is equal to or less than \$15,000. All bids must be submitted in writing on the forms and in the manner prescribed by this procedure and by the date and time (the "Bid Due Date") included in the solicitation.~~

**BA. DISPOSAL METHODS FOR PERSONAL PROPERTY IN EXCESS OF \$5,000 IN VALUE**

1. For the purposes of these Guidelines, ~~d~~Disposal ~~options~~methods may include, but are not limited to: sale (directly to the Buyer, through a third party, negotiation, well-advertised public auction that permits full and free competition consistent with the value and nature of the property or on any other centralized basis that achieves the same level of competition); return to the original equipment manufacturer or to the source; trade-ins; or disposal through the New York State Office of General Services ("OGS"). Use of the internet, in conjunction with the foregoing options, may also be utilized, as applicable. Provided, however, that no disposition of any 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 unless an appraisal of the value of such Property has been made by an independent appraiser and included in the record of the transaction. The Authority's Environment, Health and Safety Division should be consulted, on a case-by-case basis, regarding disposal of items that may be considered hazardous waste.

2. Solicitation via telephone, e-mail and/or direct mailings may be used where the estimated Fair Market Value of the Property to be disposed of is greater than \$5,000 but does not exceed \$15,000. All bids must be submitted in writing on the forms and in the manner prescribed by this procedure and by the date and time (the "Bid Due Date") included in the solicitation.

~~2.3.~~ All Disposals of Authority Property in excess of \$15,000 shall~~should~~ be made after publicly advertising for bids except as provided in ~~Paragraph~~Subsection 4 below, using the following process:

~~3. Whenever public advertising for bids is required under paragraph 2:~~

a. the appropriate advertisement for bids (Attachment "B" or an appropriate substitute) shall be made at such time prior to the Disposal, 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. ~~Typically,~~ ~~this~~ ~~will~~may include advertisements in one or more of the following publications, depending on the nature of the Property: local newspapers ~~at~~in the

geographic area of the facility where the sale is taking place, trade journals, regional or nationwide publications (if the market for such sale is regional or nationwide), the New York State Contract Reporter, ~~or~~ internet services or other communication outlets as appropriate;

- b. all bids must be submitted in writing on the forms and in the manner prescribed by this procedure and by the Bid Due Date included in the solicitation;
  - c. all bids shall be publicly disclosed, at the time and place stated in the solicitation; and
  - d. the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforms to the bid solicitation and will be most advantageous to the Authority, price and other factors considered; however, any bid may be rejected when in the public interest to do so.
4. Disposals of Property may be negotiated or made by public auction without regard to Subsections ~~2 and~~ 3 of this Section, but subject to obtaining such competition as is feasible under the circumstances, if:
- a. the Property involved ~~is of a nature and quantity which,~~ 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 Property is to be disposed of in such quantity that, if it were Disposed of under

Subsections ~~2 and~~ 3 of this Section, 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 may be obtained by negotiation;

b. bid prices after advertising therefore are not reasonable, either as to all or part of the Property, or have not been independently determined in open competition;

c. the Disposal will be to the state or any political subdivision, and the estimated Fair Market Value of the Property and other satisfactory terms of Disposal are obtained by negotiation;

d. ~~the Disposal is for an amount less than the estimated Fair Market Value of the Property, the terms of such Disposal are obtained by public auction or negotiation, the Disposal of the Property is intended to further the public health, safety or welfare or an economic development interest of the state or a political subdivision (to include but not be limited to, the prevention or remediation of a substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the Authority's enabling legislation permits), and the purpose and the terms of such Disposal are documented in writing and approved by the Authority's Board of Trustees under those circumstances permitted by Subsection 6 of this Section;~~

- e. If the estimated or actual fair market value of the property does not exceed \$15,000; or
  - f. such action is otherwise authorized by law.
5. An explanatory statement shall be prepared of the circumstances of each Disposal by negotiation of any Property which has an estimated Fair Market Value in excess of fifteen thousand dollars (\$15,000). In addition, an explanatory statement shall be prepared of the circumstances of each Disposal by negotiation of any Property disposed of by exchange, regardless of value. Each such statement shall be transmitted to the Commissioner of General Services, the State Legislature, the State Comptroller, and the Division of the Budget, not less than ninety days in advance of such Disposal, and a copy thereof shall be preserved in the Authority's files.
6. a. No Property owned or otherwise in the control of the Authority may be disposed or otherwise alienated for less than its Fair Market Value except if:
- (i) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the Property will remain with the government or any other public entity;
  - (ii) the purpose of the transfer is within the purpose, mission or governing statute of the Authority; or
  - (iii) in the event the Authority seeks to transfer Property for less than its Fair Market Value to other than a governmental entity, which

Disposal would not be consistent with the Authority's mission, purpose or governing statutes, the Authority shall provide written notification thereof to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate, and such proposed transfer shall be subject to denial by the Governor, the Senate or the Assembly. Denial by the Governor shall take the form of a signed certification by the Governor. Denial by either House of the Legislature shall take the form of a resolution by such House. The Governor and each House of the Legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the Legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the Governor, Senate and Assembly, the Authority may effectuate such transfer provided, however, that with respect to a below-market transfer by the Authority that is not within the purpose, mission or governing statute of the Authority, if the governing statute provides for the approval of such transfer by the executive and legislative branches of the political subdivision in which the Authority resides, and if the transfer is of Property obtained by the Authority from that political subdivision, then such approval shall be sufficient to permit the transfer.

b. In the event a below Fair Market Value Property transfer is proposed, the following information must be provided to the Authority's Board and the public:

(i) a full description of the Property;

(ii) an appraisal of the Fair Market Value of the Property and any other information establishing the Fair Market Value sought by the Board;

(iii) a description of the purpose of the transfer and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the Property is situated as are required by the transfer;

(iv) a statement of the value to be received compared to the Fair Market Value;

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

(vi) the names of other private parties who have made an offer for such Property, the value offered and the purpose for which the Property was sought to be used.

c. Before approving the Disposal of any Property for less than Fair Market Value, the Board shall consider the information described in

paragraph b of this Subsection and make a written determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.

7. In addition, in cases where a Disposal of Property is made without competitive bidding and where the proposed contract price for the Property disposed of is less than Fair Market Value, prior to finalizing the Disposal a detailed explanation of the justification for making the Disposal without competitive bidding shall be prepared, and a certification shall be signed by the Chief Executive Officer and Chief Financial Officer of the Authority stating that they have reviewed the terms of such Disposal and have determined that it complies with applicable law and these Guidelines.

**CB. DISPOSAL OPTIONS IF NO BIDS ARE RECEIVED**

If solicitation pursuant to Sections VI.A. ~~and VI.B.~~ does not produce any proposals to purchase the Property from the Authority, or if all proposals received are less than the Authority's Fair Market Value estimate, the appropriate PDC shall confer with the FMS and the Contracting Officer to decide (i) if re-soliciting is feasible; (ii) if shipment to a third-party contractor for Disposal would result in higher-priced proposals; (iii) if disposal by other methods would be appropriate; and/or (iv) if the Fair Market Value estimate requires review or adjustment.

**VII. CENTRALIZED DISPOSAL**

A. Subject to the approval of the Contracting Officer and in accordance with Article VI of these Guidelines, in either the initial document authorizing the disposal or through a subsequent communication, Property may be disposed of using any of the following methods:

1. Shipment of the material to a third-party vendor(s), selected by competitive bidding, which, pursuant to these Guidelines, will market the material for sale or dispose of such material in accordance with environmental and any other Authority requirements.
2. Consolidation of such Property at one of the Authority's facilities or an offsite warehouse for the purpose of conducting a sale managed by Authority staff, possibly with the assistance of an outside contractor.
3. Participation in public auctions such as through a private auctioneer or other utility provided the advertisement for bids through such methods permits full and free competition consistent with the value and nature of the property.

**VIII. DECENTRALIZED DISPOSAL**

A. The Regional Manager, Project Manager, or head of a Department or Division requiring disposal of Property which he or she believes to be surplus, will submit to the responsible PDC a written description of the material, with the original price (if known), and estimate of the Property's

Fair Market Value (if available). If practical, a photograph of the material or equipment in question should be provided. Such submission shall be made to the PDC designated at the location at which the Property is located, the responsible PDC.

- B. If the responsible PDC, in conference with either the FMS or the Contracting Officer, as appropriate, determines that other Authority facilities may have an interest in the Property, a notice should be sent to the other Authority facilities advising of its availability and requesting a response within a specified time frame. A record of the notice will be maintained by the responsible PDC. In the event that the responsible PDC and either the FMS or the Contracting Officer, as appropriate, determine there is no interest in such material at other Authority facilities, a written explanation should be prepared by the PDC to that effect and maintained in the file for that transaction.
- C. If no response to the notice is received, the responsible PDC will solicit bids for the purchase of such Property in accordance with the procedures described in Article VI.

**IX. PARTIES PROHIBITED FROM BIDDING**

- A. All current and former employees of the Authority and relatives of such employees or third parties acting on behalf of such employees shall not be eligible to bid for the purchase of Authority Property and are prohibited from subsequently acquiring it in any manner. Each bidder will be required, as

part of his or her bid, to certify, by signing Attachment "A," that he or she is not a current or former employee of the Authority, is not related to any current or former employee of the Authority and is not acting on behalf of a current or former employee of the Authority or a relative of any such employee. No bid will be accepted unless accompanied by such certification.

- B. The term "related to" as used in paragraph A above means the relationship of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law or son-in-law.

**X. EVALUATION OF PROPOSALS; AWARD OF CONTRACT**

- A. Following the receipt of proposals for the Property, the responsible PDC shall evaluate the proposals submitted and determine whether the highest of such proposals is reasonable, given the estimated Fair Market Value of the Property.
- B. If the responsible PDC determines that the highest bid received is reasonable, the responsible PDC shall recommend to the Responsible Officer(s), as hereinafter defined in Article XI, that such bid be accepted, and upon the written approval of the Responsible Officer(s), the sale shall be made to the person offering such proposal. After obtaining all necessary approvals in accordance with Article XI "Authorization Levels," a Sales Agreement appended hereto ("Attachment C") must be executed by the

responsible Authority staff member and by the successful bidder prior to completion of the transaction.

- C. If either (a) the responsible PDC determines that the highest bid is not reasonable or (b) the Responsible Officer(s) decline(s) to authorize the sale, the Property will, except as provided in paragraph D below, be retained for future disposal in accordance with these Guidelines. Factors to be considered in determining whether a bid is reasonable include, but are not limited to: adequacy of the estimate of the Fair Market Value, anticipated improved future market conditions, potential for other means of disposal or redeployment, financial viability of the bidder, and condition of the Property.
- D. Notwithstanding any determination by the responsible PDC, the Responsible Officer(s), with the review and approval of the Contracting Officer, may direct the sale of the Property to the person or firm submitting the highest bid.
- E. No Authority employee who is involved in the award of Authority grants or contracts, may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- F. No Authority employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current

or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section E above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.

- G. No Authority employee may take part in any contracting decision involving the payment of \$1,000 or more: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section G, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

1. For purposes of this Section G, the term "Relative" shall mean any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee's grandparents or the spouse of such descendant.

## **XI. AUTHORIZATION LEVELS AND SIGNING AUTHORITY**

- A. For the purposes of these Guidelines, the Responsible Officer(s) will in each case review the appropriateness of the Fair Market Value estimate and the recommendation for contract award for disposal of the Property. Responsible Officers are designated as follows:

1. The Trustees, if the Fair Market Value of the Property is greater than \$1,000,000; or
  2. The President or the Chief Operating Officer or equivalent(s), if the Fair Market Value of the Property is up to \$1,000,000; or
  3. The Senior Vice President – Enterprise Shared Services or equivalent(s) or the Executive Vice President – Chief Administrative Officer or equivalent(s), if the Fair Market Value of the Property is up to \$500,000; or
  4. The Vice President – Procurement or equivalent(s), if the Fair Market Value of the Property is up to \$250,000; or
  5. The FMS, if the Fair Market Value of the Property is up to \$50,000; or
  6. The responsible PDC, with the prior written approval of either the FMS or the Contracting Officer, as appropriate, if the Fair Market Value of the Property is \$5,000 or less.
- B. For public auctions or similar centralized disposals, such authorization should be obtained prior to submitting Property to auction based on the estimated fair market value of the Property.
1. For purposes of these Guidelines, the Director - Fleet Operations ("DFO") or equivalent(s) and FMS are authorized to sign Disposal Sales Agreements based upon the provisions of Section XI.A above whereby the DFO is authorized to sign fleet-related sales agreements and the FMS may sign both fleet and non-fleet sales agreements.

- C. For decentralized disposals, such authorization should be obtained prior to signing of Sales Agreement or award of contract, in accordance with the Authorization Levels set forth in Section XI.A. Sales Agreements for individual disposal transactions through a decentralized sale should be signed in accordance with the limits set forth in the Authority's Expenditure Authorization Procedures – Attachment C.

## **XII. OTHER METHODS FOR DISPOSAL OF PERSONAL PROPERTY**

### **A. Trade-Ins**

This procedure is not intended to restrict the trade-in of equipment (i.e., computer or office equipment), materials, and/or vehicles for replacements from dealers furnishing replacement equipment, materials, and/or vehicles, where reasonable value can be obtained for the trade-in. Any such proposed trade-in must be included as part of the solicitation of bids for the replacement equipment, materials and/or vehicles and the trade-in value must be stated in the proposals from solicited bidders. Best efforts shall be utilized to secure a trade-in value that is equal to or exceeds the Fair Market Value.

### **B. Return to the Original Equipment Manufacturer ("OEM") or to the Source**

Return of materials to the OEM or the source is permissible provided that the Authority receives full value for any materials equal to the price paid by the Authority or the estimated Fair Market Value of the Property. In the event a re-stocking fee is charged by the OEM or the source, the FMS or the

Contracting Officer, as appropriate, shall be consulted to determine if such a re-stocking fee is reasonable and if there are other opportunities for sale of such material. Approval of all such returns to the OEM or the source when a re-stocking fee is charged, must be in accordance with the Authorization Levels delineated in Section XI.A.

C. **Disposal through the New York State Office of General Services (OGS)**

When it is determined advantageous to the Authority, the Authority may utilize OGS for Disposal of Authority-owned Property including but not limited to vehicles and rolling equipment, and/or may make use of on-line disposal methods offered by OGS. In addition, in accordance with New York State law, surplus computers and accessories (e.g. monitors and keyboards) and surplus office furniture and other equipment may, with the approval of the Contracting Officer, be transferred to OGS for disposition, in the case of computers and accessories to school districts located near Authority offices or operating facilities, or in the case of office furniture and office equipment, to other state entities. Disposal of these items in this manner represents the best value to New York State in lieu of attempted re-sale of such materials.

**XIII. METHODS OF PAYMENT**

The proceeds from the sale of Property in the form of cash or a certified check made payable to the Authority must be forwarded to the Authority's Treasurer by the

Facility PDCs and to the Authority's Controller's Office by the FMS and WPO PDC. In certain cases involving a transfer of Property to other state agencies or authorities, the performance of documented services to the Authority equal to or greater in value to the Fair Market Value of the Property, will serve as payment for such Property. The authorization limits of Article XI shall apply to such transactions.

#### **XIV. REPORTING REQUIREMENTS**

- A. The Authority shall publish, not less frequently than annually, a report of all Property disposed of during the reporting period, including the full description, price (if any) received and the name of the purchaser for all such Property disposed of by the Authority during such period. Such report shall be prepared in conjunction with the report required by the Authority's "Guidelines and Procedures for the Disposal of Real Property."
- B. Such report, as approved by the Trustees, shall be submitted to the Comptroller, the Director of the Budget, the Commissioner of General Services, ~~and~~ the Legislature and the Authorities Budget Office.
- C. These Guidelines, as approved by the Trustees, shall be reviewed and approved annually by the Authority's Board of Trustees. On or before the thirty-first day of March in each year, the Authority shall file with the Comptroller a copy of the Guidelines most recently reviewed and approved by the Trustees, including the name of the Authority's designated Contracting Officer. At the time of filing such Guidelines with the

Comptroller, the Authority shall also post such Guidelines on the Authority's internet website and maintain such Guidelines on the website.

- D. For disposal by negotiation or exchange (except when an identical or in-kind replacement is provided to the Authority) an explanatory statement shall be prepared and submitted to the parties described more fully in Subsection VI.B.5.
- E. The Authority's Governance Committee meets at least three times per year and staff from the Enterprise Shared Services Department or the equivalent(s) prepare and present ongoing reports regarding disposals of personal property and real property.
- F. The Authority may be called upon periodically to submit information regarding the Disposal of Personal Property to organizations implementing the PAAA or other statutes regulating the disposal of Property, such as the Authority's Budget Office through the Public Authorities Reporting Information System ("PARIS").

**BID SHEET**

The following personal property is available for sale "AS IS, WHERE IS" and the Power Authority gives no warranty whatsoever as to its condition.

LUMP SUM BID AMOUNT\* \$ \_\_\_\_\_

Subject to all terms and conditions set forth on the reverse hereof, the undersigned offers and agrees to purchase the above-described personal property at the bid amount indicated.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
FAX number

\_\_\_\_\_  
Telephone number

\* All sales are subject to New York State Sales Tax and Compensating Use Tax unless the Purchaser furnishes the Authority with an exemption certificate.

**PERSONAL PROPERTY SALE**  
**SALE NO. \_\_\_\_\_**  
**NEW YORK POWER AUTHORITY**  
**(ADDRESS OF PROJECT)**  
**Telephone: ( ) \_\_\_\_\_**  
**FAX: ( ) \_\_\_\_\_**

Subject to the terms and conditions stated below, bids will be received on the personal property, either by mail, fax or hand delivery at the (Location) \_\_\_\_\_ no later than (Date) \_\_\_\_\_.

The personal property is available for inspection, by appointment, at the (Project) \_\_\_\_\_ . For an appointment, please contact the Property Disposal Coordinator, (Name) \_\_\_\_\_ at (Telephone no.) \_\_\_\_\_.

Successful bidders will be required to pay by certified check, on notice from the Authority that the bid has been accepted, and remove the personal property from the Authority's premises within ten (10) calendar days after receipt of notice of award.

Envelopes containing bids submitted by mail should be marked on the outside to indicate that a bid on Sale No. \_\_\_\_ is enclosed.

Current and former employees of the Power Authority or relatives of such employees or third parties acting on behalf of such employees or relatives are ineligible to bid and are prohibited from subsequently acquiring such personal property in any manner.

1. **INSPECTION.** Bidders are invited, urged and cautioned to inspect the personal property being sold prior to submitting a bid. The personal property will be available for inspection at the time and place specified above. In no case will failure to inspect constitute grounds for the withdrawal of a bid after opening.
2. **CONDITION OF PROPERTY.** All personal property listed is offered for sale "AS IS, WHERE IS". The Authority does not in any way warrant the fitness of the personal property for any particular use or its merchantability and disclaims any other representations or warranties, express or implied, including, but not limited to, quality, character, performance or condition of the personal property or any of its component parts, assemblies, or accessories.
3. **CONSIDERATION OF BIDS.** Bids must be submitted in writing on the form provided by the Authority (see reverse side) and shall be submitted on all items listed. The Authority reserves the right to reject any and all bids, to waive technical defects in bids and to award sale of the items as may be in the best interest of the Authority.
4. **PAYMENT.** The Purchaser agrees to pay for the awarded personal property in accordance with the prices quoted in his/her bid. Payment of the full purchase price must be made within the time allowed for removal, and prior to the release of any personal property to the Purchaser.
5. **NEW YORK STATE SALES AND COMPENSATING USE TAX.** All sales will be subject to New York State Sales and Compensating Use Tax unless the Purchaser furnishes the Authority with an exemption certificate.

**ADVERTISEMENT FOR PROPOSALS**

The following described personal property, shall be sold "AS IS, WHERE IS" by the New York Power Authority ("the Authority").

1. Sealed bids are invited for the above, which will be available for inspection by inquiry at the (Location/Building) at the (Project and Address) between the hours of \_\_\_\_\_ a.m. to \_\_ p.m. on (Date/s). Bids must be submitted on the Authority's bid form, which can be obtained by calling (Telephone no.). No bid will be accepted unless it is on such form. Bids shall be accepted on or before \_\_\_\_ p.m. on (Date).
2. Current and former employees of the Authority or relatives of such employees or third parties seeking to act on behalf of such employees or relatives shall be ineligible to bid.
3. Successful bidders, on notice from the Authority, shall be required to pay by certified check and shall promptly remove the personal property from the Authority's property.
4. The Authority reserves the right to reject any and all bids.

**PERSONAL PROPERTY  
SALES AGREEMENT**

\_\_\_\_\_, the Buyer, and the Power Authority of the State of New York ("the Authority"), agree as follows:

- 1) The personal property identified herein is sold by the Authority and purchased by Buyer "AS IS, WHERE IS" at the price(s) shown, plus any applicable sales tax.
- 2) **THE AUTHORITY DOES NOT IN ANY WAY WARRANT THE FITNESS OF THE PERSONAL PROPERTY FOR ANY PARTICULAR USE OR ITS MERCHANTABILITY AND DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE QUALITY, CHARACTER, PERFORMANCE, OR CONDITION OF THE PERSONAL PROPERTY OR ANY OF ITS COMPONENT PARTS, ASSEMBLIES, OR ACCESSORIES.**
- 3) The Bidder warrants that he/she/it is not a current or former Authority employee, is not related to an Authority employee and did not bid on behalf of an Authority employee. Bidder is aware that Authority employees and their family members are precluded from subsequently receiving, or acquiring, in whole or in part, by any manner including gift, sale, loan or lease, the personal property acquired by the Bidder pursuant to this sale. The term "related to" as used in this paragraph means the relationships of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, or son-in-law. The Authority reserves the right to invoke any available legal or equitable remedy in the event of a breach by the Bidder of his or her warranty under this paragraph, including but not limited to, rescinding the sale and recovering the property sold and all costs associated with the sale and the rescission of said sale.
- 4) The Buyer shall indemnify and hold harmless the Authority and all of its officers, agents and employees from any loss, damage, remedial or response cost, liability or expense, on account of damage or contamination to property and injuries, including death, to all persons, including Buyer's employees, or any third parties, arising or in any manner growing out of the sale of any personal property or the performance of any work under this agreement and shall defend at its own expense any suits or other proceedings brought against the Authority and its officers, agents and employees, or any of them, on account thereof, and pay all expenses and satisfy all judgments which may be incurred by or rendered against them or any of them in connection therewith.
- 5) Except for disposals by public auction, the Buyer shall remove the personal property from the Authority's premises by \_\_\_\_\_ at Buyer's expense. The Buyer shall make payment upon delivery by certified check payable to the New York Power Authority.

Description of Personal Property:

Selling Price: \_\_\_\_\_

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

Buyer (Print or Type):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Seller:

Power Authority of the State of New York  
123 Main Street  
White Plains, New York 10601

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Full Name (Printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

PRIVACY LAW NOTIFICATION

SECTION 94(1)(d) OF THE NEW YORK PUBLIC OFFICERS LAW REQUIRES THIS NOTICE TO BE PROVIDED WHEN COLLECTING PERSONAL INFORMATION FROM POTENTIAL PURCHASERS OF AUTHORITY PROPERTY.

This information is requested pursuant to Article 5, Title I of the Public Authorities Law. The principal purpose for which the information is collected is to assist the Power Authority of the State of New York in the sale of Authority personal property in accordance with Section 96(1) of the Personal Privacy Protection Law, particularly subdivisions (b), (e) and (f).

Failure to provide the requested information may result in ineligibility for participation in a program, sale or benefit provided by the Authority.

This information will be maintained by Fleet Operations, at the Power Authority of the State of New York, Clark Energy Center located at 6520 Glass Factory Road, Marcy, N.Y. 13403, (315) 724-8186 or, when appropriate, by the Procurement Department at the Corporate office or at one of the Authority facilities.

**GUIDELINES FOR PROCUREMENT CONTRACTS**

**1. PURPOSE**

These Guidelines for Procurement Contracts ("Guidelines") comply with the applicable provisions of Article 4-C of the Economic Development Law, the Public Authorities Accountability Act, §2879 of the Public Authorities Law and §§139-j and 139-k of the State Finance Law, and establish the basis for the Authority to solicit and evaluate proposals from individuals and/or firms providing goods and/or services as defined in Article 2 below. Consistent with these Guidelines, individual facilities, White Plains office or departments may establish specific supplementary guidelines based on their own needs.

**2. DEFINITIONS**

- A. "Procurement Contracts" are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the Authority's White Plains office, facilities, Operations and Maintenance ("O&M") and capital projects, including but not limited to: goods such as office supplies, major electrical equipment, construction and maintenance work and services as more fully described in Section 2. C below.
- B. "Non-Procurement Contracts" include contracts for energy, capacity, ancillary services, transmission, distribution or related services in support of providing service to Authority customers; contracts for differences; financial hedge contracts (including but not limited to swaps, calls, puts or swap options) and credit rating services. In addition, Non-Procurement Contracts include direct placement of advertisements with radio, television and print media, periodicals, subscriptions, reference materials or professional research tools, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums, funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, or any cooperative projects and procurement activities conducted or sponsored by such organizations in which the Authority participates.
- C. "Services Contracts" are Procurement Contracts for services of a consulting, professional or technical nature provided by outside consultants/contractors (individuals, partnerships or firms who are not and do not employ officers or employees of the Authority) for a fee or other compensation. Services Contracts comprise three specific types: Personal Services, Non-Personal Services and Construction. Personal Services include, but are not limited to: accounting, architectural, engineering, financial advisory, legal, public relations, planning, management consulting, surveying, training (when specifically developed by consultant for the Authority) and construction management. Non-Personal

Services include, but are not limited to: skilled or unskilled temporary personnel, including clerical office staff, technicians or engineers working under Authority supervision; maintenance, repairs, and printing services. Construction consists of craft labor and other services utilizing laborers and/or mechanics not otherwise considered Non-Personal Services.

Note: Use of such services may be appropriate (1) when a consultant/contractor possesses special experience, background or expertise; (2) when there is insufficient Authority staff and retention of a consultant/contractor is more appropriate or economical than hiring additional permanent staff; (3) to provide independent external review or a second opinion; (4) to meet unusual schedule requirements or emergencies or (5) for a combination of these factors.

- D. “Goods” include equipment, material and supplies of any kind.
- E. “Contact” means any oral, written or electronic communication with the Authority under circumstances where a reasonable person would infer that the communication was intended to influence the procurement.
- F. “Relative” is any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee’s grandparents or the spouse of such descendant, as referred to in Subsection 9.E.1 of these Guidelines.
- G. “Minority and Women-Owned Business” (“M/WBE) is defined as any New York State certified business enterprise at least 51% of which is owned by black persons, Hispanics, Native Americans , Asians, Pacific Islanders and/or women, and as further described in the Authority’s Supplier Diversity Program Policy and Procedures and Executive Law Article 15-A.

### **3. SOLICITATION REQUIREMENTS**

- A. Preparation of the solicitation of proposals for Procurement Contracts is the joint responsibility of the White Plains Procurement Department, or the facilities’ Procurement Departments and the initiating department. Except as otherwise authorized by these Guidelines, a Request for Proposals (“RFP”) or Request for Quotations (“RFQ”) will be made available to a minimum of three providers and/or firms (if available) for purchases valued under \$25,000 and a minimum of five providers and/or firms (if available) for purchases valued at \$25,000 and greater, commensurate with the magnitude and nature of the goods and/or services, and the schedule for performance. Whenever possible and practicable, notification of the availability of an RFP’s and RFQ’s on our web site should be sent to more than five providers.

- B. Prospective bidders on Procurement Contracts may be prequalified by invitation. In such cases, proposals are requested only from those providers and/or firms whose prequalification submittals demonstrate sufficient ability and competence to supply the particular goods and/or perform the particular services required.
- C. The Authority may withdraw any pending solicitation (including but not limited to RFP's and RFQ's) at any time, for cause or no cause. Any person or entity submitting any responsive document to the Authority does so at its own cost or expense and will not be reimbursed by the Authority for the preparation of any responsive document, unless otherwise agreed to in writing and signed by an authorized Authority representative.
- D. In order to promote the use of Minority and Women-owned Business Enterprises "M/WBE's", the Authority will solicit offers from M/WBE's known to have experience in the type of goods and/or services to be provided, regardless of the type of contract. For the purpose of these Guidelines, the definition of a NYS certified M/WBE is in Section 2.G.

To foster increased use of M/WBE's, a single proposal may be sought, negotiated and accepted for purchases of goods and/or services not exceeding \$5,000 from a NYS-certified M/WBE that offers a reasonable price for such goods and/or services.

- E. It is the policy of New York State to promote the participation of and maximize the opportunities for New York State Business Enterprises and New York State residents in Procurement Contracts. The Authority will endeavor to promote such participation and to comply with the applicable statutory provisions. In furtherance of the Public Authorities Law §2879, the following definitions shall apply:
  - 1. "New York State Business Enterprise" is a business enterprise, including a sole proprietorship, partnership or corporation that offers for sale or lease or other form of exchange, goods sought by the Authority that are substantially manufactured, produced or assembled in New York State or services, excluding construction services, sought by the Authority that are substantially performed within New York State as further described in Public Authorities Law §2879.
  - 2. "New York State resident" is a person who maintains a fixed, permanent and principal home in New York State to which such person, whenever temporarily located, always intends to return as further described in Public Authorities Law §2879.

3. “Foreign Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale, lease or other form of exchange, goods sought by the Authority that are substantially produced outside New York State, or services other than construction services, sought by the Authority that are substantially performed outside New York State as further described in Public Authorities Law §2879. For purposes of construction services, Foreign Business Enterprise is a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.
- F. Pursuant to the Public Authorities Law §2879, the Authority will, where feasible, make use of the stock item specification of New York State manufacturers, producers and/or assemblers for any Procurement Contract for the purchase of goods when preparing an RFP, RFQ, purchase order, price inquiry, technical specifications or similar document.
- G. Goods and/or services may be procured pursuant to Procurement Contracts let by any department, agency, officer, political subdivision or instrumentality of the State or Federal government or any city or municipality where the White Plains Procurement Department, or facility Procurement Departments, and the initiating department determine that a reasonable potential exists for cost savings or other benefits to the Authority and have approved the specifications and proposed terms and conditions of such contract.
- H. Solicitations will include a scope of work that defines the goods required and/or the services to be performed; milestone dates; the Authority’s Supplier Diversity Program requirements, if applicable; all other applicable Authority requirements and any special methods or limitations that the Authority chooses to govern the work. Telephone solicitation, usually for procurements valued at \$25,000 or less, may be used where time constraints do not permit issuance of an RFP, where issuance of an RFP is otherwise impracticable or for goods that are catalog items or do not require a detailed bill of materials or specification.
- I. For all Procurement Contracts with a value equal to or greater than \$15,000 (except for those contracts noted below), the Authority will, prior to soliciting proposals, submit the following information to the Commissioner of the New York State Department of Economic Development (“DED”) to be included on the New York State Contract Reporter website, ([www.nyscr.com](http://www.nyscr.com)) (unless such posting would serve no useful purpose): (1) the Authority’s name and address; (2) the solicitation number; (3) a brief description of the goods and/or services sought, the location where goods are to be delivered and/or services provided and the contract term; (4) the address where bids or proposals are to be submitted; (5) the due date for

bids or proposals; (6) a description of any eligibility or qualification requirements or preferences; (7) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture or coproduction arrangement; (8) any other information deemed useful to potential contractors; (9) the name, address, and phone number of the person to be contacted for additional information and (10) a statement as to whether the goods and/or services sought have, in the immediately preceding three-year period, been supplied by a Foreign Business Enterprise. Such information will be submitted to the DED Commissioner in accordance with the schedule set forth by the DED. The due date for bids or proposals will be a minimum of 21 calendar days (including holidays) after the date of publication of such notice on the Contract Reporter website.

This provision does not apply to Procurement Contracts awarded on an emergency basis as described below in Section 3.M; Procurement Contracts being rebid or re-solicited for substantially the same goods and/or services, within 45 business days after the original due date; and/or Procurement Contracts awarded to not-for-profit human services providers.

Certain Procurement Contracts may require purchases: (1) on the spot market; (2) needed prior to the time limits for noticing on the Contract Reporter website or that do not lend themselves to the solicitation process. In accordance with paragraph 3(h) of §2879 of the Public Authorities Law, such purchases, including, but not limited to, oil or gas purchases on the spot market, are exempted from the noticing requirements of Article 4-C of the Economic Development Law subject to the approval of the Vice President of Procurement or equivalent(s) or designee and the head of the initiating department. From time to time or where appropriate, generic notices may be published on the Contract Reporter website notifying potential bidders of such opportunities and soliciting qualification statements for consideration by the Authority.

- J. Proposals for certain Services Contracts may also be solicited by competitive search, as follows:

For contracts where the scope of work cannot be well defined or quantified, or where selection requires evaluation of factors such as breadth and depth of experience in a unique or highly specialized field and suitability as an Authority representative, a “competitive search” will be conducted to determine which consultants are most qualified, for reasonable compensation terms, to perform the work. Depending on market conditions, at least five potential sources should be evaluated; if there are fewer than five sources, all sources should be evaluated. The White Plains Procurement Department or the appropriate facility Procurement Department will work with the initiating department to gather information from potential sources, that will include a

description of the consultant/firm's qualifications, résumés of key personnel, past experience and proposed billing rates.

- K. A Procurement Contract may be awarded on a sole source basis where:
1. Compatibility of equipment, accessories or spare or replacement parts is the paramount consideration.
  2. Services are required to extend or complement a prior procurement and it is impracticable or uneconomic to have a source other than the original source continue the work.
  3. A sole supplier's item is needed for trial use or testing, or a proprietary item is sought for which there is only one source.
  4. Other circumstances or work requirements exist that cause only one source to be available to supply the required goods and/or services.
  5. The contract is awarded to a NYS certified M/WBE firm for purchases not exceeding \$5,000, pursuant to Section 3.D.
- L. Subject to the Authority's Expenditure Authorization Procedures ("EAP's"), a Procurement Contract may be awarded without following the solicitation requirements that ordinarily apply (but using such competitive selection procedures as are practicable under the circumstances) where emergency conditions exist, such as:
1. A threat to the health or safety of the public or Authority employees or workers.
  2. Proper functioning of the Authority facilities or construction or operating projects requires adherence to a schedule that does not permit time for an ordinary procurement solicitation.
- M. Whenever an initiating department determines that a Procurement Contract should be awarded on either a sole source or an emergency basis, the head of the department will provide a written statement explaining the reasons therefor to the White Plains Procurement Department or the appropriate facility Procurement Department. When a procurement is made on a sole source basis, and the price for goods or services purchased exceeds fair market value, prior to making the purchase, the Business Unit Head of the initiating department shall provide a detailed explanation of the justification for making the purchase and a certification shall be signed by the Chief Executive Officer and Chief Financial Officer of the Authority stating that they have reviewed the terms of such purchase and determined that it complies with applicable law and procurement guidelines. In furtherance of Chapter 506 of the Laws of 2009 regarding the Public Authorities Law ("PAL"), the following definition shall apply: "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for property in an arms-length transaction in the appropriate

marketplace and under similar circumstances. Fair market value may be determined by industry-recognized sources, or other methods of valuation generally accepted in the industry in which such property is utilized, as may be approved by the Vice President of Procurement or authorized designee.

N. It is the policy of New York State to discourage improper communications intended to influence a governmental procurement. The Authority will endeavor to control such practices and will comply with the applicable statutory provisions. In furtherance of the State Finance Law §§139-j and 139-k, the following definitions shall apply:

1. Pursuant to Article 11-B of the State Finance Law a “Procurement Contract” is any contract or other agreement for a commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of other interest in real property that is the subject of a governmental procurement. Grants, contracts between the Authority and non-profit organizations pursuant to Article 11-B of the State Finance Law, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions are not Procurement Contracts.
2. The “Restricted Period” is the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from bidders/contractors intending to result in a procurement contract with the Authority and ending with the final contract award.
3. The Authority shall designate a person or persons who may be contacted, with respect to each Authority procurement. The bidders/contractors or persons acting on their behalf, shall only contact the Authority’s designated person or persons where a reasonable person would infer that the communication was intended to influence the procurement during the Restricted Period.

#### 4. EVALUATION OF PROPOSALS

- A. Proposals will be evaluated using a fair and equitable comparison of all aspects of the proposals against the specifics of the solicitation and against each other, including an analysis of each offer that considers: the quality of the goods and/or the competence of the bidder, the technical merit of the proposal and the price for which the goods and/or services are to be supplied.

In the event the price submitted by the bidder recommended to be awarded a contract exceeds the cost estimated, where a cost estimate is provided, on the solicitation at the time of bidding, the initiating department will prepare a written explanation to be reviewed by the White Plains Procurement Department and/or the appropriate facility Procurement Department and appropriate managers as stipulated in the EAP's. The following options should be considered: (1) rejecting the bids, resoliciting proposals and/or modifying the scope of work; (2) revising the cost estimate and proceeding with the contract award; and (3) negotiating with the low bidder(s), as determined by the Vice President of Procurement or equivalent(s) or designee, to reduce the price quoted. Factors to be considered in reaching the proper course of action include but are not limited: to the effects of a delay on both the schedule and the cost of the specific capital construction project or outage at an operating facility, the magnitude of the contract, available bidders, the ability to attract additional competition if the solicitation is reissued, and the accuracy of the original cost estimate. The recommended course of action and the reasons therefor must be fully documented in a memorandum for consideration by the appropriate level of management prior to approval and placed in the appropriate procurement file.

- B. Factors to be considered in evaluating the goods and/or services to be supplied and/or the competence of the bidder are: previous experience (including applicable experience in New York State and evaluations from other clients for whom the bidder has provided goods and/or services); the abilities and experience of the personnel to be assigned to the Authority's work and the ability to provide any needed advanced techniques such as simulation and modeling. The approach proposed in meeting the exact requirements of the scope of work will be given consideration in evaluating the technical merit of the proposal, together with a well-organized task structure, the ability to timely supply the goods and/or perform the proposed services and the ability to meet Supplier Diversity Program goals, if any. The need to purchase the goods from and/or subcontract performance of services to others will be evaluated as to their effects on cost, as well as quality, schedule and overall performance.

- C. For Services Contracts, (as defined in Section 2.C of these Guidelines), the technical merits of the proposals and the experience and capabilities of the bidders will be the primary factors in determining the individual or firm to be awarded the contract, provided that the price for performing such work is reasonable and competitive.
- D. For Procurement Contracts other than Personal Services (as defined in Section 2. of these Guidelines), the award should generally be made to the lowest-priced firm submitting a proposal that meets the commercial and technical requirements of the bid documents.
- E. Pursuant to §139-j of the State Finance Law, the Authority shall not award a Procurement Contract (as defined in Subsection 3.N.1. of these Guidelines) to a bidder/contractor who fails to provide timely, accurate and complete responses to inquiries about past determinations of non-responsibility (unless awarding the contract is necessary to protect public property or public health or safety and the bidder/contractor is the only source capable of supplying the required article of procurement within the necessary timeframe.)

A bidder's/contractor's knowing and willful violation of the Authority's policy providing for certain procurement disclosures shall result in a determination of non-responsibility of such bidder/contractor pursuant to State Finance Law §§139-j and 139-k only.

More than one determination of non-responsibility due to violations of State Finance Law §139-j in a four-year period shall render a bidder/contractor ineligible to submit bids for four years from the second determination of non-responsibility.

- F. An award to "other than low bidder" can be made only with the approval of appropriate management as stipulated in the EAP's, and should be based on such a proposal providing a clear advantage to the Authority over the lower-priced proposal. Factors justifying an "other than low bidder" award may include, but are not limited: to improved delivery schedules that will reduce outages, longer warranty periods, improved efficiency over the usable life of the equipment, reduced maintenance costs, the bidders' financial resources or the ability to meet or exceed Supplier Diversity Program goals.

- G. The specifications set forth in any solicitation prepared under these Guidelines were based upon information available at the time of the preparation of the solicitation. Thus, the Authority may diverge from the specifications of any solicitation if after review of the proposals responsive to such solicitation; the Authority deems it prudent in light of its experience, the circumstances of the solicitation and/or potential cost savings. Such divergence from the specifications should be immaterial, for example only, as to qualifications, quantity, quality, term, services and/or price.

**5. RECOMMENDATION OF AWARD**

- A. A recommendation for approval of a proposed award of a Procurement Contract is usually prepared in the form of a memorandum or e-mail by the department requiring the goods and/or services. The recommendation must include an evaluation of proposals as specified in Article 4 above, as well as proposed specific compensation terms that provide a clear breakdown of cost factors and methods of calculation, including, as applicable:
  - 1. Lump sum and/or unit prices for equipment and construction work.
  - 2. Hourly or daily rates for personnel.
  - 3. Markups for payroll taxes, fringe benefits, overhead and fees, if the proposal is based on reimbursement of actual payroll costs.
  - 4. Terms for reimbursement of direct out-of-pocket expenses, such as travel and living costs, telephone charges, services of others and computer services.
  - 5. Provisions, if any, for bonus/penalty arrangements based on target person-hours and/or target schedule.
- B. The recommendation will also review any substantive exceptions to commercial and technical requirements of a price inquiry, RFP, RFQ or bidding documents, including but not limited to payment terms, warranties and bond requirements, if any.

**6. AWARD OF CONTRACT**

- A. Services Contracts to be performed for a period of more than 12 months are approved and reviewed annually by the Trustees. Services Contracts for a period of less than 12-months are approved by authorized designees in accordance with existing EAP's. Extending a contract for services with an initial duration of less than 12 months beyond 12 months will be approved by the Trustees at the request of the initiating department and

will be reviewed by the Trustees annually. Extending a contract for services that has previously been approved by the Trustees for a cumulative term of more than 12 months requires further Trustees' approval. Extending a contract previously approved by the Trustees for 12 months or less requires approval by an authorized designee in accordance with existing EAP's.

- B. For Services Contracts to be performed for a period of more than 12 months that must be awarded prior to the next scheduled Trustees' meeting, the initial contract will be issued for the entire intended term of the contract. Based on its total value, such contract must be approved by the appropriate management as set forth in the EAP's. Such contract is subject to the Trustees' approval, at the next quarterly Trustees' meeting. If such approval is not granted, the contract will be terminated immediately.
- C. A contract or contract task is deemed to be for services in excess of 12 months where the contract does not specify a definite term and the work will not be completed within 12 months, and any "continuing services" contract with no fixed term that provides for the periodic assignment of specific tasks or particular requests for services. This includes Trustee-approved contracts for architect/ engineering services with the original engineers of operating facilities, as well as the original supplier of steam supply systems or boilers and turbine generating equipment. Each task authorized under such contracts (which may be referred to as a "Change Order," "Purchase Order" or "Task Number") is considered a separate commitment and must be separately approved in accordance with the EAP's.
- D. The term of a Personal Services contract is limited to a maximum of five (5) years, including any extensions.
- E. When time constraints or emergency conditions require extending an existing contract with an initial duration of less than a year beyond a year, and the cumulative monetary change order value does not exceed the appropriate limit set forth in the EAP's, the Business Unit Head, with the prior concurrence of the Vice President of Procurement or equivalent(s) or designee, may authorize extending such contract, subject to the Trustees ratifying such action as soon as practicable.
- F. When the total estimated contract value or the value of the extension exceeds the monetary limits set forth in the EAP's, interim approval by the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee is required, subject to the Trustees' ratifying such action as soon as practicable.

- G. When time constraints or emergency conditions require immediate commencement of services to be performed for a period of more than one year, and when the contract value exceeds the monetary approval limit for the President and Chief Executive Officer or Chief Operating Officer or equivalent(s), as set forth in the EAP's, the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee, with the prior concurrence of the Vice President of Procurement or equivalent(s) or designee, may authorize the commencement of such services. The initial compensation limitation may not exceed the authorization level for the President and Chief Executive Officer or equivalent(s) or Chief Operating Officer or equivalent(s) as set forth in the EAP's. Such contracts will be subject to the Trustees' approval, which will be solicited at their next scheduled Trustee meeting.
- H. The White Plains Procurement Department or the facilities' Procurement Departments prepare the contract for execution by the Authority and the successful bidder. No work by the selected contractor will commence until the contract is executed by both parties, except that mutually signed letters of award or intent may initiate work prior to formal execution. Authority signatories of such letters must be authorized to approve contract awards pursuant to the EAP's.
- I. Pursuant to Public Authorities Law §2879, the Authority shall notify the Commissioner of Economic Development of the award of any Procurement Contract for the purchase of goods and/or services from a Foreign Business Enterprise (as defined in Subsection 3.E.3 of these Guidelines) in an amount equal to or greater than \$1 million simultaneous with notifying the successful bidder therefor. The Authority shall not enter into the Procurement Contract for said goods and/or services until at least 15 days have elapsed from the notification of the award, except for a Procurement Contract awarded on an emergency or critical basis. The notification to the Commissioner shall include the name, address, telephone and facsimile number of the Foreign Business Enterprise, the amount of the proposed Procurement Contract and the name of the individual at the Foreign Business Enterprise or acting on behalf of same who is principally responsible for the proposed Procurement Contract.

## 7. CONTRACT PROVISIONS

- A. The following standard forms of contracts are available from the White Plains Procurement Department: purchase order format for standard procurements of goods and/or services; furnish-and-deliver format for major equipment purchases; letter agreements and agreement formats for consulting work and contract work orders (for construction work of small magnitude), construction contracts (for major construction work) and furnish, deliver and install contracts (for specialized, major procurements where single responsibility is required for procurement and installation). These contract forms are intended to govern the purchase of goods and/or performance of services. Authority departments proposing to initiate a Procurement Contract should review these forms to suggest any modifications and additions that may be required for the particular goods and/or services. Under no circumstances should contract forms be shown to proposed bidders without the prior approval of the Procurement Department, which, along with the facilities' Procurement Departments, is solely responsible for requesting proposals.
- B. The following types of provisions setting forth contractor responsibilities are to be contained in the standard forms of Procurement Contracts, except that any provisions listed below that are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location(s) where the work is to be performed or the type of compensation being paid therefor, need not be included. Other provisions may be added as necessary and appropriate.
1. Schedule of Services or Specifications
  2. Time of Completion
  3. Compensation or Itemized Proposals
  4. Relationship of Parties
  5. Delays
  6. Termination
  7. Changes in the Work
  8. Claims and Disputes
  9. Warranty
  10. Insurance
  11. Records, Accounts, Inspection and Audit
  12. Assignment
  13. Notices
  14. Indemnification
  15. Governing Law
  16. Proprietary Nature of Work
  17. Testimony
  18. Entire Agreement

### Contract Attachments

1. Compensation Schedule
2. Schedule of Services or Specifications
3. Appendix “A” (Miscellaneous Statutory Provisions)
4. Appendix “B” (Prompt Payment Provisions)
5. Appendix “C” (Minority and Women-Owned Business Enterprises Provisions)
6. Appendix “D” (Background Security Screening for Authority Contractors)
7. Appendix “E” (Omnibus Procurement Act of 1992 Requirements)
8. Appendix “F” (Computer Aided Drawing Requirements For New York Power Authority)
9. Appendix “G” (Equal Employment Opportunity Requirements)
10. Appendix “H” (Tax Law Requirements)
11. Appendix “I” (NEW YORK POWER AUTHORITY (NYPA) NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION CRITICAL INFRASTRUCTURE PROTECTION (NERC CIP) Cyber Security Training Requirements)
12. Appendix “J” (Bidder/Contractor Compliance with State Finance Law §§139-j and 139-k Providing for Certain Procurement Disclosures)
13. Appendix “K” (Additional State and Federal Provisions Required for American Recovery and Reinvestment Act (Pub.L. No. 111-5 Stat. 2009) (“ARRA”) Funded Projects)
14. Appendix “L” (DOE) Federal Contract Provisions

- C. Any firm, person or entity retained by the Authority to provide conceptual studies, designs or specifications is prohibited from being awarded future phases of work, including implementation, related to the original work. If there is no qualified response to the solicitation for future phases of work, including implementation, the approval of the Vice President of Procurement or equivalent(s) or designee, applicable Business Unit Head or equivalent(s), Assistant General Counsel or equivalent(s) and President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) is required to waive this restriction on a case-by-case basis.

## **8. CHANGE ORDERS**

- A. Change Orders to existing contracts are justified in the following cases:
1. To incorporate additional work related to the original scope, to delete work or to otherwise modify the original work scope;
  2. To exercise options previously included in the original contract to perform additional work or to extend the contract term;

3. To accommodate emergency conditions, defined in Section 3.L herein, that require the immediate performance of work by a firm already under contract;
  4. When rebidding would not be practical or in the best interests of the Authority's customers; and
  5. To meet the Authority's Supplier Diversity Program goals in accordance with Executive Law Article 15-A.
- B. All Change Orders must be approved in accordance with the Authority's EAP's, and should include specific schedules for completion of work at the earliest possible time.

9. **CONTRACTING DECISIONS INVOLVING CURRENT OR FORMER EMPLOYEES**

- A. Former Authority officers and employees are eligible to be considered for employment as contractors and/or consultants provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines; their employment is not barred by New York Public Officers Law §73(8); they obtain an opinion by the New York State Commission on Public Integrity that such employment is permissible; and upon approval of the President and Chief Executive Officer.
- B. Pursuant to the provisions of New York Public Officers Law §73(8):
1. No Authority officer or employee is eligible, within a period of two years after the termination of Authority service to appear or practice before the Authority or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before the Authority.
  2. No Authority officer or employee is eligible, at any time after the termination of Authority service, to appear, practice, communicate or otherwise render services before the Authority or any other state agency or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction that such person was directly concerned with and personally participated in during his or her period of service, or which was under his or her active consideration.

- C. No Authority employee who is involved in the award of Authority grants or contracts may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official or candidate for elective office or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- D. No Authority employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 9.C above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- E. No Authority employee may take part in any contracting decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which the Authority employee or a Relative of such Authority employee owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section 9.E, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.
  - 1. For purposes of Section 9.E, the term "Relative" is defined in Definitions, Section,2.F. of these Guidelines.

## **10. SUPPLIER DIVERSITY PROGRAM REQUIREMENTS**

The Authority strives to continue to foster the development of business opportunities on Authority contracts for M/WBE's. Article 15-A of the Executive Law established the NYS Office of Minority/Women Owned Business and Community Relations that is responsible for developing rules and regulations for implementation of this statute, certifying M/WBE's and reviewing and monitoring goal plans, compliance reports and contract provisions to be included in all non-construction contracts for more than \$25,000 and construction contracts for more than \$100,000. The definition of an M/WBE is included in Section 2.G of these Guidelines. The Authority aims to solicit proposals from NYS certified M/WBE's that are qualified to perform the required work. In addition, specific goals may be included in certain contracts for consulting work, construction and procurement of goods and other services requiring the contractor/vendor to subcontract a portion of the work to NYS certified M/WBE's as required by law. Bidders' proposals will include Preliminary Subcontracting Plans for M/WBE's, where required, and such bidders failure to meet these requirements may be grounds for rejection of the proposal, or

cancellation of the contract if a contractor did not make a good faith effort to meet its goals after contract award.

**11. REPORTING AND PROCUREMENT RECORD**

- A. The White Plains Procurement Department maintains records of Procurement Contracts, including bidders' names, the selection processes used and the status of existing contracts, including goods provided and/or services performed and fees earned, billed and paid. At the facilities, such records will be kept by the facilities' Procurement Departments. After the end of each calendar year, the Vice President Procurement or equivalent(s) will prepare and submit an annual report to the Trustees for their approval that will include:
1. A copy of the Guidelines;
  2. An explanation of the Guidelines and any amendments thereto since the last annual report;
  3. A list of all Procurement Contracts entered into since the last annual report, including all contracts entered into with New York State Business Enterprises and the subject matter and value thereof and all contracts entered into with Foreign Business Enterprises and the subject matter and value thereof;
  4. A list of fees, commissions or other charges paid;
  5. A description of work performed, the contract number the date of the contract and its duration, the name, address and M/WBE designation of the awardees, the total amount of the contract, the amount spent on the contract during the reporting period and for the term of the contract to date and the status of open Procurement Contracts during the report year;
  6. The type of contract (equipment, services, personal services or construction),
  7. The method of awarding the contract (e.g., competitive bidding, sole source or competitive search);
  8. The reasons why any procurements with a value greater than \$15,000 were not noticed in the Contract Reporter and
  9. The number of bids received..
- B. Such annual report, as approved by the Trustees, shall be submitted to the New York State Division of the Budget within 90 days of the end of such calendar year, with copies and shall be distributed to the New York State Department of Audit and Control, the DED, the New York State Senate Finance Committee, and the New York State Assembly Ways and Means Committee and any other entity as may be required by law. The annual

procurement report is posted on the Authority's website and copies shall be made available to the public upon reasonable written request therefor.

C. State Finance Law §§139-j and 139-k.

1. A statement describing the basis for a determination of a bidder's/contractor's non-responsibility (per State Finance Law §§139-j and 139-k only) and the Authority's decision not to award a bidder/contractor the Procurement Contract must be included in the procurement contract record.
2. The Authority shall notify the New York State Office of General Services of bidders/contractors who have been determined to be non-responsible bidders (per State Finance Law §§139-j and 139-k only) or debarred due to violations of §139-j of the State Finance Law.
3. All forms entitled "Record of Contact" shall be included in the respective procurement contract record.
4. A statement describing the basis for a termination of a Procurement Contract for providing an intentionally false certification must be included in the procurement contract record.

D. The Authority may be called upon periodically to submit information regarding the procurement of goods and/or services to organizations implementing the PAAA or other statutes regulating the procurement of goods and services, such as the Authorities Budget Office through the Public Authorities Reporting Information System ("PARIS").

**12. THIRD PARTY RIGHTS: VALIDITY OF CONTRACTS**

- A. These Guidelines are intended for the guidance of officers and employees of the Authority only. Nothing contained herein is intended, nor should it be construed, to confer on any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.
- B. Nothing contained in these Guidelines alters or affects the validity of, modifies the terms of or impairs any contract or agreement entered into in violation of these Guidelines.

## GUIDELINES FOR PROCUREMENT CONTRACTS

### 1. PURPOSE

These Guidelines for Procurement Contracts ("Guidelines") comply with the applicable provisions of Article 4-C of the Economic Development Law, the Public Authorities Accountability Act, §2879 of the Public Authorities Law and §§139-j and 139-k of the State Finance Law, and establish the basis for the Authority to solicit and evaluate proposals from individuals and/or firms providing goods and/or services as defined in Article 2 below. Consistent with these Guidelines, individual facilities, White Plains office or departments may establish specific supplementary guidelines based on their own needs.

### 2. DEFINITIONS

- A. "Procurement Contracts" are contracts for the acquisition of goods and/or services in the actual or estimated amount of \$5,000 or more. Such goods and/or services are those necessary to support the Authority's White Plains office, facilities, Operations and Maintenance ("O&M") and capital projects, including but not limited to: goods such as office supplies, major electrical equipment, construction and maintenance work and services as more fully described in Section 2. C below.
- B. "Non-Procurement Contracts" include contracts for energy, capacity, ancillary services, transmission, distribution or related services in support of providing service to Authority customers; contracts for differences; financial hedge contracts (including but not limited to swaps, calls, puts or swap options) and credit rating services. In addition, Non-Procurement Contracts include direct placement of advertisements with radio, television and print media, periodicals, subscriptions, reference materials or professional research tools, fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums. funding agreements, co-funding agreements, grants or memberships in various industry groups, professional societies or similar cooperative associations, ~~or~~ any cooperative projects and procurement activities conducted or sponsored by such organizations in which the Authority participates.
- C. "Services Contracts" are Procurement Contracts for services of a consulting, professional or technical nature provided by outside consultants/contractors (individuals, partnerships or firms who are not and do not employ officers or employees of the Authority) for a fee or other compensation. Services Contracts comprise three specific types: Personal Services, Non-Personal Services and Construction. Personal Services include, but are not limited to: accounting, architectural, engineering, financial advisory, legal, public relations, planning, management consulting, surveying, training (when specifically developed by consultant for the Authority) and construction management. Non-Personal

Services include, but are not limited to: skilled or unskilled temporary personnel, including clerical office staff, technicians or engineers working under Authority supervision; maintenance, repairs, and printing services. Construction consists of craft labor and other services utilizing laborers and/or mechanics not otherwise considered Non-Personal Services.

Note: Use of such services may be appropriate (1) when a consultant/contractor possesses special experience, background or expertise; (2) when there is insufficient Authority staff and retention of a consultant/contractor is more appropriate or economical than hiring additional permanent staff; (3) to provide independent external review or a second opinion; (4) to meet unusual schedule requirements or emergencies or (5) for a combination of these factors.

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D. "Goods" include equipment, material and supplies of any kind.

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E. "Contact" means any oral, written or electronic communication with the Authority under circumstances where a reasonable person would infer that the communication was intended to influence the procurement.

F. "Relative" is any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee's grandparents or the spouse of such descendant, as referred to in Subsection 9.FE.1 of these Guidelines.

G. "Minority and Women-Owned Business" ("M/WBE) is defined as any New York State certified business enterprise at least 51% of which is owned by black persons, Hispanics, Native Americans, Asians, Pacific Islanders and/or women, and as further described in the Authority's Supplier Diversity Program Policy and Procedures and Executive Law Article 15-A.

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### 3. SOLICITATION REQUIREMENTS

- A. Preparation of the sSolicitation of proposals for Procurement Contracts is the joint responsibility of the White Plains Procurement Department, or the facilities' Procurement Departments and the initiating department. Except as otherwise authorized by these Guidelines, a Request for Proposals ("RFP") or Request for Quotations ("RFQ") will be made available to a minimum of three providers and/or firms (if available) for purchases valued under \$25,000 and a minimum of five providers and/or firms (if available) for purchases valued at \$25,000 and greater, commensurate with the magnitude and nature of the goods and/or services, and the schedule for performance. Whenever possible and practicable, notification of the availability of an RFP's and RFQ's on our web site should be sent to more than five providers.
- B. Prospective bidders on Procurement Contracts may be prequalified by invitation. In such cases, proposals are requested only from those providers and/or firms whose prequalification submittals demonstrate sufficient ability and competence to supply the particular goods and/or perform the particular services required.
- C. The Authority may withdraw any pending solicitation (including but not limited to RFP's and RFQ's) at any time, for cause or no cause. Any person or entity submitting any responsive document to the Authority does so at its own cost or expense and will not be reimbursed by the Authority for the preparation of any responsive document, unless otherwise agreed to in writing and signed by an authorized Authority representative.

~~E.D.~~ E. In order to promote the use of Minority and Women-owned Business Enterprises "M/WBE's", the Authority will solicit offers from M/WBE's known to have experience in the type of goods and/or services to be provided, regardless of the type of contract. For the purpose of these Guidelines, the definition of a NYS certified M/WBE is in Section 2.G.

To foster increased use of M/WBE's, a single proposal may be sought, negotiated and accepted for purchases of goods and/or services not exceeding \$5,000 from a NYS-certified M/WBE that offers a reasonable price for such goods and/or services.

~~F.E.~~ It is the policy of New York State to promote the participation of and maximize the opportunities for New York State Business Enterprises and New York State residents in Procurement Contracts. The Authority will endeavor to promote such participation and to comply with the applicable statutory provisions. In furtherance of the Pursuant to Public Authorities Law §2879, the following definitions shall apply:

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1. ~~A~~ “New York State Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation that offers for sale or lease or other form of exchange, goods sought by the Authority that are substantially manufactured, produced or assembled in New York State or services, ~~excluding construction services~~, sought by the Authority that are substantially performed within New York State as further described in Public Authorities Law §2879.
2. ~~A~~ “New York State resident” is a person who maintains a fixed, permanent and principal home in New York State to which such person, whenever temporarily located, always intends to return as further described in Public Authorities Law §2879.
- ~~3.~~ ~~A~~ “Foreign Business Enterprise” is a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale, lease or other form of exchange, goods sought by the Authority that are substantially produced outside New York State, or services other than construction services, sought by the Authority that are substantially performed outside New York State as further described in Public Authorities Law §2879.
- ~~4.~~ ~~3.~~ For purposes of construction services, Foreign Business Enterprise is a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York State.

~~G.F.~~ Pursuant to the Public Authorities Law §2879, the Authority will, where feasible, make use of the stock item specification ~~forms~~ of New York State manufacturers, producers and/or assemblers for any Procurement Contract for the purchase of goods when preparing an RFP, RFQ, purchase order, price inquiry, technical specifications or similar document.

~~H.G.~~ Goods and/or services may be procured pursuant to Procurement Contracts let by any department, agency, officer, political subdivision or instrumentality of the State or Federal government or any city or municipality where the White Plains Procurement Department, or facility Procurement Departments, and the initiating department determine that a reasonable potential exists for cost savings or other benefits to the Authority and have approved the specifications and proposed terms and conditions of such contract.

~~I.H.~~ Solicitations will include a scope of work that defines the goods required and/or the services to be performed; milestone dates; the Authority’s Supplier Diversity Program requirements, if applicable; all other applicable Authority requirements and any special methods or limitations that the

Authority chooses to govern the work. Telephone solicitation, usually for procurements valued at \$25,000 or less, may be used where time constraints do not permit issuance of an RFP, where issuance of an RFP is otherwise impracticable or for goods that are catalog items or do not require a detailed bill of materials or specification.

¶I. For all Procurement Contracts with a value equal to or greater than \$15,000 (except for those contracts noted below), the Authority will, prior to soliciting proposals, submit the following information to the Commissioner of the New York State Department of Economic Development (“DED”) to be included on the ~~weekly~~-New York State Contract Reporter website, ([www.nyscr.com](http://www.nyscr.com)) (unless such posting would serve no useful purpose): (1) the Authority’s name and address; (2) the solicitation number; (3) a brief description of the goods and/or services sought, the location where goods are to be delivered and/or services provided and the contract term; (4) the address where bids or proposals are to be submitted; (5) the due date for bids or proposals; (6) a description of any eligibility or qualification requirements or preferences; (7) a statement as to whether the contract requirements may be fulfilled by a subcontracting, joint venture or coproduction arrangement; (8) any other information deemed useful to potential contractors; (9) the name, address, and phone number of the person to be contacted for additional information and (10) a statement as to whether the goods and/or services sought have, in the immediately preceding three-year period, been supplied by a Foreign Business Enterprise. Such information will be submitted to the DED Commissioner in accordance with the schedule set forth by the DED. The due date for bids or proposals will be a minimum of 21 calendar days (including holidays) after the date of publication of such notice on the Contract Reporter website.

This provision does not apply to Procurement Contracts awarded on an emergency basis as described below in Section 3.M; Procurement Contracts being rebid or re-solicited for substantially the same goods and/or services, within 45 business days after the original due date; and/or Procurement Contracts awarded to not-for-profit human services providers.

Certain Procurement Contracts may require purchases: (1) on the spot market; (2) needed prior to the time limits for noticing on the Contract Reporter website or that do not lend themselves to the solicitation process. In accordance with paragraph 3(h) of §2879 of the Public Authorities Law, such purchases, including, but not limited to, oil or gas purchases on the spot market, are exempted from the noticing requirements of Article 4-C of the Economic Development Law subject to the approval of the Vice President of Procurement or equivalent(s) or designee and the head of the initiating department. ~~From time to time or Where-where~~ appropriate, generic notices may be published ~~from time to time~~ on the Contract Reporter website notifying potential bidders of such opportunities and soliciting qualification statements for consideration by the Authority.

~~K.~~J. Proposals for certain Services Contracts may also be solicited by competitive search, as follows:

For contracts where the scope of work cannot be well defined or quantified, or where selection requires evaluation of factors such as breadth and depth of experience in a unique or highly specialized field and suitability as an Authority representative, a “competitive search” will be conducted to determine which consultants are most qualified, for reasonable compensation terms, to perform the work. Depending on market conditions, at least five potential sources should be evaluated; if there are fewer than five sources, all sources should be evaluated. The White Plains Procurement Department ~~or the appropriate facility Procurement Department~~ will work with the initiating department to gather information from potential sources, that will include a description of the consultant/firm’s qualifications, résumés of key personnel, past experience and proposed billing rates.

~~L.~~K. A Procurement Contract may be awarded on a sole source basis where:

1. Compatibility of equipment, accessories or spare or replacement parts is the paramount consideration.
2. Services are required to extend or complement a prior procurement and it is impracticable or uneconomic to have a source other than the original source continue the work.
3. A sole supplier’s item is needed for trial use or testing, or a proprietary item is sought for which there is only one source.
4. Other circumstances or work requirements exist that cause only one source to be available to supply the required goods and/or services.
5. The contract is awarded to a NYS certified M/WBE firm for purchases not exceeding \$5,000, pursuant to Section 3.D.

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M.L. Subject to the Authority's Expenditure Authorization Procedures ("EAP's"), a Procurement Contract may be awarded without following the solicitation requirements that ordinarily apply (but using such competitive selection procedures as are practicable under the circumstances) where emergency conditions exist, such as:

1. A threat to the health or safety of the public or Authority employees or workers.
2. Proper functioning of the Authority facilities or construction or operating projects requires adherence to a schedule that does not permit time for an ordinary procurement solicitation.

M. Whenever an initiating department determines that a Procurement Contract should be awarded on either a sole source or an emergency basis, the head of the department will provide a written statement explaining the reasons therefor to the White Plains Procurement Department or the appropriate facility Procurement Department. When a procurement is made on a sole source basis, and the price for goods or services purchased exceeds fair market value, prior to making the purchase, the Business Unit Head of the initiating department shall provide a detailed explanation of the justification for making the purchase and a certification shall be signed by the Chief Executive Officer and Chief Financial Officer of the Authority stating that they have reviewed the terms of such purchase and determined that it complies with applicable law and procurement guidelines. In furtherance of Chapter 506 of the Laws of 2009 regarding the Public Authorities Law ("PAL"), the following definition shall apply: "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair market value may be determined by industry-recognized sources, or other methods of valuation generally accepted in the industry in which such property is utilized, as may be approved by the Vice President of Procurement or authorized designee.

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N. It is the policy of New York State to discourage improper communications intended to influence a governmental procurement. The Authority will endeavor to control such practices and will comply with the applicable statutory provisions. In furtherance of the Pursuant to State Finance Law §§139-j and 139-k, the following definitions shall apply:

1. Pursuant to Article 11-B of the State Finance Law A-a “Procurement Contract” is any contract or other agreement for a commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of other interest in real property that is the subject of a governmental procurement. Grants, contracts between the Authority and non-profit organizations pursuant to Article 11-B of the State Finance Law, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders and eminent domain transactions are not Procurement Contracts.
2. The “Restricted Period” is the period of time commencing with the earliest written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from bidders/contractors intending to result in a procurement contract with the Authority and ending with the final contract award.
3. The Authority shall designate a person or persons who may be contacted, with respect to each Authority procurement, ~~by~~ The bidders/contractors or persons acting on their behalf, shall only contact the Authority’s designated person or persons where a reasonable person would infer that the communication was intended to influence the procurement during the Restricted Period.

#### 4. EVALUATION OF PROPOSALS

- A. Proposals will be evaluated using a fair and equitable comparison of all aspects of the proposals against the specifics of the solicitation and against each other, including an analysis of each offer that considers: the quality of the goods and/or the competence of the bidder, the technical merit of the proposal and the price for which the goods and/or services are to be supplied.

In the event the price submitted by the bidder recommended to be awarded a contract exceeds the cost estimated, where a cost estimate is provided, on the solicitation at the time of bidding, the initiating department will prepare a written explanation to be reviewed by the White Plains Procurement Department and/or the appropriate facility Procurement Department and appropriate managers as stipulated in the EAP's. The following options should be considered: (1) rejecting the bids, resoliciting proposals and/or modifying the scope of work; (2) revising the cost estimate and proceeding with the contract award; and (3) negotiating with the low bidder(s), as determined by the Vice President of Procurement or equivalent(s) or designee, to reduce the price quoted. Factors to be considered in reaching the proper course of action include but are not limited: to the effects of a delay on both the schedule and the cost of the specific capital construction project or outage at an operating facility, the magnitude of the contract, available bidders, the ability to attract additional competition if the solicitation is reissued, and the accuracy of the original cost estimate. The recommended course of action and the reasons therefor must be fully documented in a memorandum for consideration by the appropriate level of management prior to approval and placed in the appropriate procurement file.

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- B. Factors to be considered in evaluating the goods and/or services to be supplied and/or the competence of the bidder are: previous experience (including applicable experience in New York State and evaluations from other clients for whom the bidder has provided goods and/or services); the abilities and experience of the personnel to be assigned to the Authority's work and the ability to provide any needed advanced techniques such as simulation and modeling. The approach proposed in meeting the exact requirements of the scope of work will be given consideration in evaluating the technical merit of the proposal, together with a well-organized task structure, the ability to timely supply the goods and/or perform the proposed services and the ability to meet Supplier Diversity Program goals, if any. The need to purchase the goods from and/or subcontract performance of services to others will be evaluated as to their effects on cost, as well as quality, schedule and overall performance.
- C. For Services Contracts ~~-, (as defined in Section 2.C of these Guidelines)~~, the technical merits of the proposals and the experience and capabilities of the bidders will be the primary factors in determining the individual or firm to be awarded the contract, provided that the price for performing such work is reasonable and competitive.
- D. For Procurement Contracts other than Personal Services (as defined in Section 2.B of these Guidelines), the award should generally be made to the lowest-priced firm submitting a proposal that meets the commercial and technical requirements of the bid documents.

- E. Pursuant to §139-j of the State Finance Law, the Authority shall not award a Procurement Contract (as defined in Subsection 3.N.1. of these Guidelines) to a bidder/contractor who fails to provide timely, accurate and complete responses to inquiries about past determinations of non-responsibility (unless awarding the contract is necessary to protect public property or public health or safety and the bidder/contractor is the only source capable of supplying the required article of procurement within the necessary timeframe.)

A bidder's/contractor's knowing and willful violation of the Authority's policy providing for certain procurement disclosures shall result in a determination of non-responsibility of such bidder/contractor pursuant to State Finance Law §§139-j and 139-k only.

More than one determination of non-responsibility due to violations of State Finance Law §139-j in a four-year period shall render a bidder/contractor ineligible to submit bids for four years from the second determination of non-responsibility.

- F. An award to "other than low bidder" can be made only with the approval of appropriate management as stipulated in the EAP's, and should be based on such a proposal providing a clear advantage to the Authority over the lower-priced proposal. Factors justifying an "other than low bidder" award may include, but are not limited: to improved delivery schedules that will reduce outages, longer warranty periods, improved efficiency over the usable life of the equipment, reduced maintenance costs, the bidders' financial resources or the ability to meet or exceed Supplier Diversity Program goals.
- G. The specifications set forth in any solicitation prepared under these Guidelines were based upon information available at the time of the preparation of the solicitation. Thus, the Authority may diverge from the specifications of any solicitation if after review of the proposals responsive to such ~~solicitation~~, solicitation; the Authority deems it prudent in light of its experience, the circumstances of the solicitation and/or potential cost savings. Such divergence from the specifications should be immaterial, for example only, as to qualifications, quantity, quality, term, services and/or price.

5. **RECOMMENDATION OF AWARD**

- A. A recommendation for approval of a proposed award of a Procurement Contract is usually prepared in the form of a memorandum **or e-mail** by the department requiring the goods and/or services. The recommendation must include an evaluation of proposals as specified in Article 4 above, as well as proposed specific compensation terms that provide a clear breakdown of cost factors and methods of calculation, including, as applicable:
1. Lump sum and/or unit prices for equipment and construction work.
  2. Hourly or daily rates for personnel.
  3. Markups for payroll taxes, fringe benefits, overhead and fees, if the proposal is based on reimbursement of actual payroll costs.
  4. Terms for reimbursement of direct out-of-pocket expenses, such as travel and living costs, telephone charges, services of others and computer services.
  5. Provisions, if any, for bonus/penalty arrangements based on target person-hours and/or target schedule.
- B. The recommendation will also review any substantive exceptions to commercial and technical requirements of a price inquiry, RFP, RFQ or bidding documents, including but not limited to payment terms, warranties and bond requirements, if any.

6. **AWARD OF CONTRACT**

- A. Services Contracts to be performed for a period of more than 12 months are approved and reviewed annually by the Trustees. Services Contracts for a period of less than 12-months are approved by authorized designees in accordance with existing EAP's. Extending a contract for services with an initial duration of less than 12 months beyond 12 months will be approved by the Trustees at the request of the initiating department and will be reviewed by the Trustees annually. Extending a contract for services that has previously been approved by the Trustees for a cumulative term of more than 12 months requires further Trustees' approval. Extending a contract previously approved by the Trustees for 12 months or less requires approval by an authorized designee in accordance with existing EAP's.
- B. For Services Contracts to be performed for a period of more than 12 months that must be awarded prior to the next scheduled Trustees' meeting, the initial contract will be issued for the entire intended term of

the contract. Based on its total value, such contract must be approved by the appropriate management as set forth in the EAP's. Such contract is subject to the Trustees' approval, at the next quarterly Trustees' meeting. If such approval is not granted, the contract will be terminated immediately.

- C. A contract or contract task is deemed to be for services in excess of 12 months where the contract does not specify a definite term and the work will not be completed within 12 months, and any "continuing services" contract with no fixed term that provides for the periodic assignment of specific tasks or particular requests for services. This includes Trustee-approved contracts for architect/ engineering services with the original engineers of operating facilities, as well as the original supplier of steam supply systems or boilers and turbine generating equipment. Each task authorized under such contracts (which may be referred to as a "Change Order," "Purchase Order" or "Task Number") is considered a separate commitment and must be separately approved in accordance with the EAP's.
- D. The term of a Personal Services contract is limited to a maximum of five (5) years, including any extensions.
- E. When time constraints or emergency conditions require extending an existing contract with an initial duration of less than a year beyond a year, and the cumulative monetary change order value does not exceed the appropriate limit set forth in the EAP's, the Business Unit Head, with the prior concurrence of the Vice President of Procurement or equivalent(s) or designee, may authorize extending such contract, subject to the Trustees ratifying such action as soon as practicable.
- F. When the total estimated contract value or the value of the extension exceeds the monetary limits set forth in the EAP's, interim approval by the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee is required, subject to the Trustees' ratifying such action as soon as practicable.
- G. When time constraints or emergency conditions require immediate commencement of services to be performed for a period of more than one year, and when the contract value exceeds the monetary approval limit for the President and Chief Executive Officer or Chief Operating Officer or equivalent(s), as set forth in the EAP's, the President and Chief Executive Officer or Chief Operating Officer or equivalent(s) or designee, with the prior concurrence of the Vice President of Procurement or equivalent(s) or designee, may authorize the commencement of such services. The initial compensation limitation may not exceed the authorization level for the President and Chief Executive Officer or equivalent(s) or Chief Operating

Officer or equivalent(s) as set forth in the EAP's. Such contracts will be subject to the Trustees' approval, which will be solicited at their next scheduled Trustee meeting.

- H. The White Plains Procurement Department or the facilities' Procurement Departments prepare the contract for execution by the Authority and the successful bidder. No work by the selected contractor will commence until the contract is executed by both parties, except that mutually signed letters of award or intent may initiate work prior to formal execution. Authority signatories of such letters must be authorized to approve contract awards pursuant to the EAP's.
- I. Pursuant to Public Authorities Law §2879, the Authority shall notify the Commissioner of Economic Development of the award of any Procurement Contract for the purchase of goods and/or services from a Foreign Business Enterprise (as defined in Subsection 3.E.3 of these Guidelines) in an amount equal to or greater than \$1 million simultaneous with notifying the successful bidder therefor. The Authority shall not enter into the Procurement Contract for said goods and/or services until at least 15 days have elapsed from the notification of the award, except for a Procurement Contract awarded on an emergency or critical basis. The notification to the Commissioner shall include the name, address, telephone and facsimile number of the Foreign Business Enterprise, the amount of the proposed Procurement Contract and the name of the individual at the Foreign Business Enterprise or acting on behalf of same who is principally responsible for the proposed Procurement Contract.

## **7. CONTRACT PROVISIONS**

- A. The following standard forms of contracts are available from the White Plains Procurement Department: purchase order format for standard procurements of goods and/or services; furnish-and-deliver format for major equipment purchases; letter agreements and agreement formats for consulting work and contract work orders (for construction work of small magnitude), construction contracts (for major construction work) and furnish, deliver and install contracts (for specialized, major procurements where single responsibility is required for procurement and installation). These contract forms are intended to govern the purchase of goods and/or performance of services. Authority departments proposing to initiate a Procurement Contract should review these forms to suggest any modifications and additions that may be required for the particular goods and/or services. Under no circumstances should contract forms be shown to proposed bidders without the prior approval of the Procurement Department, which, along with the facilities' Procurement Departments, is solely responsible for requesting proposals.

B. The following types of provisions setting forth contractor responsibilities are to be contained in the standard forms of Procurement Contracts, except that any provisions listed below that are inapplicable or unnecessary because of the nature or duration of the work to be performed, the location(s) where the work is to be performed or the type of compensation being paid therefor, need not be included. Other provisions may be added as necessary and appropriate.

1. Schedule of Services or Specifications
2. Time of Completion
3. Compensation or Itemized Proposals
4. Relationship of Parties
5. Delays
6. Termination
7. Changes in the Work
8. Claims and Disputes
9. Warranty
10. Insurance
11. Records, Accounts, Inspection and Audit
12. Assignment
13. Notices
14. Indemnification
15. Governing Law
16. Proprietary Nature of Work
17. Testimony
18. Entire Agreement

Contract Attachments

1. Compensation Schedule
2. Schedule of Services or Specifications
3. Appendix "A" (Miscellaneous Statutory Provisions)
4. Appendix "B" (Prompt Payment Provisions)
5. Appendix "C" (Minority and Women-Owned Business Enterprises Provisions)
6. Appendix "D" (Background Security Screening for Authority Contractors)
7. Appendix "E" (Omnibus Procurement Act of 1992 Requirements)
8. Appendix "F" (Computer Aided Drawing Requirements For New York Power Authority)
9. Appendix "G" (Equal Employment Opportunity Requirements)
10. Appendix "H" (Tax Law Requirements)
- ~~10-11.~~ Appendix "I" (NEW YORK POWER AUTHORITY (NYPA)NORTH AMERICAN ELECTRIC RELIABILITY CORPORATION CRITICAL INFRASTRUCTURE PROTECTION (NERC CIP) Cyber Security Training Requirements)

- 12. Appendix “J” (Bidder/Contractor Compliance with State Finance Law §§139-j and 139-k Providing for Certain Procurement Disclosures)
- 13. Appendix “K” (Additional State and Federal Provisions Required for American Recovery and Reinvestment Act (Pub.L. No. 111-5 Stat. 2009) (“ARRA”) Funded Projects)
- ~~11~~.14. Appendix “L” (DOE) Federal Contract Provisions

- C. Any firm, person or entity retained by the Authority to provide conceptual studies, designs or specifications is prohibited from being awarded future phases of work, including implementation, related to the original work. If there is no qualified response to the solicitation for future phases of work, including implementation, the approval of the Vice President of Procurement or equivalent(s) or designee, applicable Business Unit Head or equivalent(s), Assistant General Counsel or equivalent(s) and President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) is required to waive this restriction on a case-by-case basis.

8. **CHANGE ORDERS**

- A. Change Orders to existing contracts are justified in the following cases:
  - 1. To incorporate additional work related to the original scope, to delete work or to otherwise modify the original work scope;
  - 2. To exercise options previously included in the original contract to perform additional work or to extend the contract term;
  - 3. To accommodate emergency conditions, defined in Section 3.L herein, that require the immediate performance of work by a firm already under contract;
  - 4. When rebidding would not be practical or in the best interests of the Authority’s customers; and
  - 5. To meet the Authority’s Supplier Diversity Program goals in accordance with Executive Law Article 15-A.
- B. All Change Orders must be approved in accordance with the Authority’s EAP’s, and should include specific schedules for completion of work at the earliest possible time.

9. **CONTRACTING DECISIONS INVOLVING CURRENT OR FORMER EMPLOYEES**

- A. Former Authority officers and employees are eligible to be considered for employment as contractors and/or consultants provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines; their employment is not barred by New York Public Officers Law §73(8); they obtain an opinion by the New York State Commission on Public Integrity that such employment is permissible; and upon approval of the President and Chief Executive Officer.
- B. Pursuant to the provisions of New York Public Officers Law §73(8):
  - 1. No Authority officer or employee is eligible, within a period of two years after the termination of Authority service to appear or practice before the Authority or receive compensation for any services rendered on behalf of any person, firm, corporation or association, in relation to any case, proceeding or application or other matter before the Authority.
  - 2. No Authority officer or employee is eligible, at any time after the termination of Authority service, to appear, practice, communicate or otherwise render services before the Authority or any other state agency or receive compensation for any such services rendered on behalf of any person, firm, corporation or other entity in relation to any case, proceeding, application or transaction that such person was directly concerned with and personally participated in during his or her period of service, or which was under his or her active consideration.
- C. No Authority employee who is involved in the award of Authority grants or contracts may ask any officer, director or employee of such current or prospective contractor or grantee to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official or candidate for elective office or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- D. No Authority employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 9.C above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.

- E. No Authority employee may take part in any contracting decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which the Authority employee or a Relative of such Authority employee owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If a contracting matter arises relating to this Section 9.E, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.
1. For purposes of Section 9.E, the term “Relative” is defined in Definitions, Section ~~2~~.2.F. of these Guidelines.

**10. SUPPLIER DIVERSITY PROGRAM REQUIREMENTS**

The Authority strives to continue to foster the development of business opportunities on Authority contracts for M/WBE's. Article 15-A of the Executive Law established - the NYS Office of- Minority/Women Owned Business and Community Relations that is responsible for developing rules and regulations for implementation of this statute, certifying M/WBE's and reviewing and monitoring goal plans, compliance reports and contract provisions to be included in all non-construction contracts for more than \$25,000 and construction contracts for more than \$100,000. The definition of an M/WBE is included in Section 2.G of these Guidelines. The Authority aims to solicit proposals from NYS certified M/WBE's that are qualified to perform the required work. In addition, specific goals may be included in certain contracts for consulting work, construction and procurement of goods and other services requiring the contractor/vendor to subcontract a portion of the work to NYS certified M/WBE's as required by law. Bidders' proposals will include Preliminary Subcontracting Plans for M/WBE's, where required, and such bidders failure to meet these requirements may be grounds for rejection of the proposal, or cancellation of the contract if a contractor did not make a good faith effort to meet its goals after contract award.

**11. REPORTING AND PROCUREMENT RECORD**

- A. The White Plains Procurement Department maintains records of Procurement Contracts, including bidders' names, the selection processes used and the status of existing contracts, including goods provided and/or services performed and fees earned, billed and paid. At the facilities, such records will be kept by the facilities' Procurement Departments. After the end of each calendar year, the Vice President – Procurement or equivalent(s) will prepare and submit an annual report to the Trustees for their approval that will include:
1. A copy of the Guidelines;
  2. An explanation of the Guidelines and any amendments thereto since the last annual report;
  3. A list of all Procurement Contracts entered into since the last annual report, including all contracts entered into with New York State Business Enterprises and the subject matter and value thereof and all contracts entered into with Foreign Business Enterprises and the subject matter and value thereof;
  4. A list of fees, commissions or other charges paid;
  5. A description of work performed, the contract number the date of the contract and its duration, the name, ~~and~~ address and M/WBE of designation of the awardee ~~awardees~~, the total amount of the contract, the amount spent on the contract during the reporting

period and for the term of the contract to date and the status of open Procurement Contracts during the report year;

~~5.6.~~ The type of contract (equipment, services, personal services or construction).

~~6.7.~~ The method of awarding the contract (e.g., competitive bidding, sole source or competitive search); ~~and~~

8. The reasons why any procurements with a value greater than \$15,000 were not noticed in the Contract Reporter and

~~7.9.~~ The number of bids received.

- B. Such annual report, as approved by the Trustees, shall be submitted to the New York State Division of the Budget within 90 days of the end of such calendar year, with copies and shall be distributed to the New York State Department of Audit and Control, the DED, the New York State Senate Finance Committee, and the New York State Assembly Ways and Means Committee and any other entity as may be required by law. The annual procurement report is posted on the Authority's website and copies shall be made available to the public upon reasonable written request therefor.
- C. State Finance Law §§139-j and 139-k.
1. A statement describing the basis for a determination of a bidder's/contractor's non-responsibility (per State Finance Law §§139-j and 139-k only) and the Authority's decision not to award a bidder/contractor the Procurement Contract must be included in the procurement contract record.
  2. The Authority shall notify the New York State Office of General Services of bidders/contractors who have been determined to be non-responsible bidders (per State Finance Law §§139-j and 139-k only) or debarred due to violations of §139-j of the State Finance Law.
  3. All forms entitled "Record of Contact" shall be included in the respective procurement contract record.
  4. A statement describing the basis for a termination of a Procurement Contract for providing an intentionally false certification must be included in the procurement contract record.
- D. The Authority may be called upon periodically to submit information regarding the procurement of goods and/or services to organizations implementing the PAAA or other statutes regulating the procurement of goods and services, such as the ~~Authority~~ Authorities Budget Office through the Public Authorities Reporting Information System ("PARIS").

**12. THIRD PARTY RIGHTS: VALIDITY OF CONTRACTS**

- A. These Guidelines are intended for the guidance of officers and employees of the Authority only. Nothing contained herein is intended, nor should it be construed, to confer on any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.
  
- B. Nothing contained in these Guidelines alters or affects the validity of, modifies the terms of or impairs any contract or agreement entered into in violation of these Guidelines.

**6. Amendments to the Authority’s Governance Committee and Audit Committee Charters**

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve amended Charters for both the Governance Committee and the Audit Committee set forth in Exhibits ‘6-A’ and ‘6-B’ of this item. The most significant amendments are discussed below.

BACKGROUND

“Recent amendments to the Public Authorities Law made by Chapter 506 of the Laws of 2009 (‘Chapter 506’), which prompted the January 2010 changes to the Authority By-Laws, also require changes to the Audit Committee and Governance Committee Charters. The Charters, which were in the process of being reviewed by the Authority and a consultant, were, therefore, reconsidered in light of the requirements of Chapter 506. The revisions reflect: (1) the requirements of Chapter 506; and (2) certain changes recommended by the Authority’s consultant that were approved by the Authority’s senior management. The proposed amended Audit Committee Charter is attached as Exhibit ‘6-A,’ and the proposed amended Governance Committee Charter is attached as Exhibit ‘6-B.’

DISCUSSION

Audit Committee Charter

“Article V(2) of the Authority’s By-Laws as amended on January 26, 2010 requires an Audit Committee that consists of three eligible Trustees who are independent members, who possess the necessary skills to understand the duties and functions of the Audit Committee, and who are familiar with corporate financial and accounting practices. It specifies that the Audit Committee is responsible for: recommending to the Trustees the hiring of a certified independent accounting firm for the Authority; establishing the compensation to be paid to the accounting firm; providing direct oversight of the performance of the independent audit performed by the accounting firm hired for such purposes; and performing such other responsibilities as the Trustees shall from time to time assign to it.

“Accordingly, amendments to the Audit Committee Charter would implement the following changes:

- Reference to the Inspector General has been eliminated.
- Committee membership is determined by the Board of Trustees.
- Committee member terms have been changed from 4 to 5 years to coincide with the Trustee term of office.
- A Committee member must be familiar with corporate financial and accounting practices and understand the duties and function of the Audit Committee.
- In addition to advising the Trustees on the selection of the certified independent accountant, the Committee must now establish the compensation to be paid to the accounting firm.
- The Committee is charged with direct oversight of the performance of the independent audit firm.
- Language regarding risk management has been added.

Governance Committee Charter

“Article V(3) of the Authority’s By-Laws as amended on January 26, 2010 requires the Governance Committee to consist of three eligible Trustees who are independent members and who possess the necessary skills to understand the duties and functions of the Governance Committee. It charges the Committee with the responsibility of the keeping the Trustees informed of current best governance practices; reviewing corporate governance trends; recommending updates to the Authority's corporate governance principles; advising appointing authorities on the skills and experiences required of potential Trustees; examining ethical and conflict of interest issues; performing Trustee self-evaluations; recommending by-laws which include rules and procedures for conduct of Trustee business; and performing such other responsibilities as the Trustees shall from time to time assign to it.

“Accordingly, amendments to the Governance Committee Charter would implement the following changes:

- A section delineating the roles and responsibilities of board members of public authorities has been added.
- Committee membership is determined by the Board of Trustees.
- Committee member terms have been changed from 4 to 5 years to coincide with the Trustee term of office.
- The Committee must review the Code of Conduct at least annually. (The interval for this responsibility was previously unspecified.)
- Committee members are required to possess the necessary skills to understand the duties of and functions of the Committee.
- The Committee must examine ethical and conflict of interest issues.
- The Committee must perform board self-evaluations.
- The Committee may recommend by-laws which include rules and procedures for conduct of board business.
- The Committee is now responsible for the review and approval of non-statutory officers hiring.

FISCAL IMPLICATIONS

“None.

RECOMMENDATION

“The Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer and I recommend that the Trustees approve the proposed amendments to the Governance Committee Charter and the Audit Committee Charter.”

*Ms. Delince said that the Audit and Governance Committee charters were amended pursuant to Chapter 506 of the Laws of 2009. Ms. Brown presented the highlights of staff's recommendations to the Trustees. She said that the Governance and Audit Committees had reviewed and approved the amendments to their charters.*

February 23, 2010

The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That the attached Audit Committee Charter and Governance Committee Charter be adopted in the form proposed in Exhibits “6-A” and “6-B.”**

GOVERNANCE COMMITTEE CHARTER

A. PURPOSE

The purpose of the Governance Committee ("Committee") is to: keep the Board of Trustees informed of current best governance practices; review corporate governance trends; recommend updates to the Authority's corporate governance principles; advise appointing authorities on the skills and experiences required of potential Trustees; examine ethical and conflict of interest issues; perform Trustee self-evaluations; review and recommend by-laws which include rules and procedures for conduct of Trustee business; and perform such other responsibilities as the Trustees shall assign to it.

B. MEMBERSHIP AND ORGANIZATION

(1) Committee Composition

The Committee shall be comprised of three independent members of the Board of Trustees who shall possess the necessary skills to understand the duties and functions of the Committee. Committee members and the Committee Chair shall be selected by a vote of the Board of Trustees.

(2) Term

Committee members shall serve for a period of five years subject to their term of office under Public Authorities Law § 1003. Committee members may be reelected to serve for additional periods of five years subject to their term of office. A Committee member may resign his or her position on the Committee while continuing to serve as a Trustee. In the event of a vacancy on the Committee due to death, resignation or otherwise, a successor will be selected to serve in the manner and for the term described above.

(3) Removal

A Committee member may be removed if he or she is removed as a Trustee for cause, subject to Public Authorities Law § 2827, or is no longer eligible to serve as a Committee member.

(4) Meetings and Quorum

The Committee shall hold regularly scheduled meetings at least three times per year. A Committee member may call a special meeting of the Committee individually, or upon the request of the Authority's President and Chief Executive Officer, Vice President of Labor Relations and Chief Ethics and Compliance Officer, Chief Operating Officer, Executive Vice President and General Counsel, or Senior Vice President Enterprise Shared Services.

In addition, the Committee shall meet at least three times per year with the Authority's Vice President of Labor Relations and Chief Ethics and Compliance Officer to discuss the effectiveness of the organization's overall compliance program and reported instances of Code of Conduct violations. These meetings may be held as part of a regular or special meeting in the Committee's discretion.

An agenda shall be prepared and distributed to each Committee member prior to each meeting and minutes shall be prepared in accordance with the New York Open Meetings Law. A majority of those present, but no less than two Committee members, at a regular or special meeting of the Committee shall constitute a quorum for the purposes of conducting the business of the Committee and receiving reports.

Any meeting of the Committee may be conducted by video conferencing.

To the extent permitted by law, the Committee may hold meetings or portions of meetings in executive session.

### C. FUNCTIONS AND POWERS

#### (1) Code of Conduct, Ethics, Compliance and Governance Practices

The Committee shall seek to: (1) ensure the effectiveness of management's monitoring of the Authority's compliance with the Authority's Code of Conduct and programs and Authority policies designed to ensure the Authority's compliance with legal and regulatory matters; and (2) promote honest and ethical conduct by Authority Trustees, officers and employees to enhance public confidence in the Authority. To accomplish these objectives the Committee shall:

- a. Review at least annually the Authority's Code of Conduct, and require the Corporate Secretary to make revisions to the Code for consideration and approval by the Board of Trustees.
- b. Provide oversight and guidance to the Authority's Vice President of Labor Relations and Chief Ethics and Compliance Officer relating to the programs and policies of the Authority designed to ensure compliance with applicable laws and regulations.
- c. Advise the Board of Trustees on current best governance practices and trends.
- d. Periodically review and as necessary recommend changes to the Authority's by-laws.
- e. Periodically review and as necessary recommend changes to the Authority's written corporate policies, including policies relating to conflicts of interest, corporate governance principles, equal opportunity employment, procurement of goods and services, acquisition and disposition of real and personal property or interests therein, record keeping and reporting of contacts by persons who attempt to influence the

Authority's procurement process, regulations and rate proceedings, and the protection of whistleblowers.

- f. Report at least annually to the Board of Trustees on matters relating to the Authority's compliance with the Code of Conduct and applicable legal and regulatory matters, and make such recommendations as the Committee deems appropriate.

(2) Trustee Performance

The Committee shall advise Trustee appointing authorities on the skills and experiences required of Trustees, and perform Trustee self-evaluations.

(3) Investigations and Meetings

The Committee shall have the authority to authorize investigations into any matter within the Committee's purview. The Committee may retain independent counsel, accountants, or other professions pursuant to the Authority's procurement and expenditure policies and procedures to assist it in the conduct of any such investigations. The Committee shall have the authority to meet with Authority staff on compliance issues.

(4) Hiring

The Committee shall review and approve the hiring of the following non-statutory officers: President and Chief Executive Officer, Chief Operating Officer, Executive Vice President and General Counsel, Executive Vice President and Chief Financial Officer and Corporate Secretary.

(5) Reports

The Vice President of Labor Relations and Chief Ethics and Compliance Officer and the Vice President Procurement and Real Estate shall report to the Committee at all regularly scheduled meetings.

The Committee shall have the authority to require Ethics, Procurement and Real Estate staff to prepare additional reports and to produce documents for Committee review.

Adopted By Trustees on

November 19, 2008

February 23, 2010

Exhibit "6-A-1"

GOVERNANCE COMMITTEE CHARTER

A. PURPOSE

The purpose of the Governance Committee ("Committee") is to ~~assist the Board by: (1) keeping; keep~~ the Board of Trustees ("~~Board~~") informed of current best ~~practices in corporate governance, (2) reviewing practices; review~~ corporate governance trends ~~for their applicability; recommend updates~~ to the Authority, ~~(3) updating the Authority's corporate governance principles and governance practices, and (4) advising those responsible for; advise~~ appointing ~~directors to the Board authorities~~ on the skills, ~~qualities and professional or educational; and~~ experiences ~~necessary to be effective Board members;~~

~~B. MEMBERSHIP~~ required of potential Trustees; examine ethical and conflict of interest issues; ~~perform Trustee self-evaluations; review and recommend by-laws which include rules and ORGANIZATION~~ procedures for conduct of Trustee business; and ~~perform such other responsibilities as the Trustees shall assign to it;~~

B. MEMBERSHIP AND ORGANIZATION

(1) Committee Composition

The Committee shall be comprised of three ~~(3)~~ independent members of the Board of Trustees ~~none of whom serve as Chairman of who shall possess~~ the Board ("~~Chairman~~") or in any ~~other position of Authority management necessary skills to understand the duties and functions of the Committee.~~ Committee members and the Committee Chair shall be ~~nominated by the Chairman and~~ selected ~~from eligible Trustees byby a~~ vote of the Board ~~of Trustees.~~

(2) Term

Committee members shall serve for a period of ~~four five~~ years subject to their term of office under ~~section 1003 of the~~ Public Authorities Law- ~~§ 1003.~~ Committee members may be ~~re-electedreelected~~ to serve for additional periods of ~~four five~~ years subject to their term of office. A Committee member may resign his or her position on the Committee while continuing to serve as a Trustee. ~~In the event of a vacancy on the Committee due to death, resignation, or~~ otherwise, a successor will be selected to serve in the manner and for the term described above.

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~~The Committee is charged shall seek to: (1) ensure the effectiveness of management's monitoring of the Authority's compliance with the oversight of the governance, ethics, the Office of Inspector General activities Authority's Code of Conduct and procurement programs and real estate activities of the Authority and its employees. In this regard, the Committee shall, policies designed to ensure the Authority's compliance with the approval of the Board,~~

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~~(1) establish policies to legal and regulatory matters; and (2) promote honest and ethical conduct by Authority Trustees, officers and employees so as to enhance public confidence in the Authority. To accomplish these objectives the Committee shall:~~

~~a. (2) review and update Review at least annually the Authority's Code of Conduct, By laws and and require the Corporate Secretary to make revisions to the Code for consideration and approval by the Board of Trustees.~~

~~b. Provide oversight and guidance to the Authority's Vice President of Labor Relations and Chief Ethics and Compliance Officer relating to the programs and policies of the Authority designed to ensure compliance with applicable laws and regulations.~~

~~c. Advise the Board of Trustees on current best governance practices and trends.~~

~~d. Periodically review and as necessary recommend changes to the Authority's by-laws.~~

~~e. Periodically review and as necessary recommend changes to the Authority's written corporate policies regarding, including policies relating to conflicts of interest, corporate governance principles, equal opportunity employment, the procurement of goods and services, the acquisition and disposition of real and personal property, or interests therein, the disclosure of the names of record keeping and reporting of contacts by persons who attempt to influence the Authority's procurement process, regulations and rate proceedings, and the protection of whistleblowers.~~

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~~f. Report at least annually to the Board of Trustees on matters relating to the Authority's compliance with the Code of Conduct and applicable legal and regulatory matters, and make such recommendations as the Committee deems appropriate.~~

~~(2) Trustee Performance~~

~~The Committee shall advise Trustee appointing authorities on the skills and experiences required of Trustees, and perform Trustee self-evaluations.~~

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~~(3) — review annually, the compensation and benefits of all Investigations and Meetings~~

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~~The Committee shall have the authority to authorize investigations into any matter within the Committee’s purview. The Committee may retain independent counsel, accountants, or other professions pursuant to the Authority’s procurement and expenditure policies and procedures to assist it in the conduct of any such investigations. The Committee shall have the authority to meet with Authority staff on compliance issues.~~

~~(4) Hiring~~

~~The Committee shall review and approve the hiring of the following non-statutory officers of the Authority, the Inspector General and the Vice President of Internal Audit, and: President and Chief Executive Officer, Chief Operating Officer, Executive Vice President and General Counsel, Executive Vice President and Chief Financial Officer and Corporate Secretary.~~

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~~(4) — review any reports received from the Office of the Inspector General, including its investigations relating to security, corruption, fraud, criminal activity, waste or abuse.~~

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~~D.(5) STAFF Reports~~

~~The Vice President of Labor Relations and Chief Ethics and Employee Resources, the Inspector General Compliance Officer and the Vice President Procurement and Real Estate shall report to the Committee at all regularly scheduled meetings.~~

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~~The Committee has shall have the power authority to require Ethics, Office of the Inspector General and Procurement and Real Estate staff to prepare additional reports and to produce documents for review. It also has the power to meet with any staff on compliance issues and to direct the Corporate Secretary to prepare such revisions to the Code of Conduct as the Committee may deem necessary, for approval by the Board review.~~

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AUDIT COMMITTEE CHARTER

A. PURPOSE

The purpose of the Audit Committee ("Committee") is to: recommend to the Board of Trustees the hiring of a certified independent accounting firm for the Authority; establish the compensation to be paid to the accounting firm; provide direct oversight of the performance of the independent audit conducted by the accounting firm hired for such purposes; provide direct oversight of the internal audit function; and perform such other responsibilities as the Trustees shall assign to it.

B. MEMBERSHIP AND ORGANIZATION

(1) Committee Composition

The Committee shall be comprised of three independent members of the Board of Trustees who shall possess the necessary skills to understand the duties and functions of the Committee and be familiar with corporate finance and accounting. Committee members and the Committee Chair shall be selected by a vote of the Board of Trustees.

(2) Term

Committee members shall serve for a period of five years subject to their term of office under the Public Authorities Law § 1003. Committee members may be reelected to serve for additional periods of five years subject to their term of office. A Committee member may resign his or her position on the Committee while continuing to serve as a Trustee. In the event of a vacancy on the Committee due to death, resignation or otherwise, a successor will be selected to serve in the manner and for the term described above.

(3) Removal

A Committee member may be removed if he or she is removed as a Trustee for cause, subject to Public Authorities Law § 2827, or is no longer eligible to serve as a Committee member.

(4) Meetings and Quorum

The Committee shall hold regularly scheduled meetings at least three times per year. A Committee member may call a special meeting of the Committee individually, or upon the request of the Authority's President and Chief Executive Officer, Chief Operating Officer, Executive Vice President and General Counsel, Chief Risk Officer, Chief Financial Officer, Controller, or head of the Office of Internal Audit ("OIA").

In addition, the Committee: (1) shall meet at least three times a year with the head of the OIA for the purpose of reviewing audit activities, audit findings, management's responses, remedial action plans, and providing the OIA with an opportunity to discuss items and topics of relevant to the Audit Committee; (2) shall meet at least twice a year with the Authority's independent accountants to discuss the audit work plans, objectives, results and recommendations; and (3) may meet independently with the Authority's President and Chief Executive Officer, Chief Operating Officer, Executive Vice President and General Counsel, Chief Risk Officer, Chief Financial Officer, Controller, or head of the OIA on matters or issues and items within the Committee's purview as it deems necessary. These meetings may be held as part of a regular or special meeting in the Committee's discretion.

An agenda shall be prepared and distributed to each Committee member prior to each meeting and minutes shall be prepared in accordance with the New York Open Meetings Law. A majority of those present, but no less than two Committee members, at a regular or special meeting of the Committee shall constitute a quorum for the purposes of conducting the business of the Committee and receiving reports.

Any meeting of the Committee may be conducted by video conferencing.

To the extent permitted by law, the Committee may hold meetings or portions of meetings in executive session.

#### C. FUNCTIONS AND POWERS

The Committee shall have the following responsibilities:

##### (1) General Powers

The Committee may call upon the resources of the Authority to assist the Committee in the discharge of its oversight functions. Such assistance may include the assignment of Authority employees to assist the Committee, and the retention of external advisors subject to the requirements of the Public Authorities Law and the Authority's Expenditure Authorization Procedures.

The Committee may direct any Authority employee to make oral or written reports to the Committee on issues and items within the Committee's purview.

The Committee may direct the Authority's internal auditors to conduct special audits of items and issues of concern to the Committee.

##### (2) Accounting, Financial Reporting, and Oversight of Independent Accountants and Controller

The Committee shall seek to enhance the integrity, quality, reliability and accuracy of the Authority's financial statements and accompanying notes, and shall oversee the relationship with the Authority's independent accountants. To accomplish this objective, the Committee shall:

- a. Provide advice to the Trustees on the selection, engagement, compensation, evaluation and discharge of the independent accountants.
- b. Review and discuss as necessary the Authority's financial statements including any material changes in accounting principles and practices with the independent accountants, the Controller, or members of Authority management.
- c. Review and approve the Authority's annual audited financial statements (including the independent accountants' associated management letter).
- d. Oversee the establishment of procedures for the effective receipt and treatment of (i) complaints regarding auditing, internal auditing and accounting matters, and (ii) the confidential submission of concerns raised by whistleblowers and other persons regarding accounting or auditing practices.
- e. Review at least annually the scope, objectives and results of the independent accountants' examination of the annual financial statements and accompanying notes, and report to the Trustees on the Committee's findings.
- f. Assure the independence of the independent accountants by approving any non-audit work for the Authority and examining the accountant's relationship with the Authority.
- g. Report to the Trustees on any matters relevant to the audit process or independent accountant communications, and make such recommendations as the Committee deems appropriate.

(3) Risk Management, Internal Controls and Oversight of the OIA

The Committee shall seek to enhance the Authority's risk management infrastructure, and ensure timely and effective identification and mitigation of critical business risks. To accomplish these objectives the Committee shall:

- a. Review and approve the appointment, evaluation and removal of the head of the OIA.
- b. Provide oversight of the OIA and the OIA's resources and activities to facilitate the OIA's improvement of internal controls.
- c. Require the head of the OIA to attend any meeting of the Committee and to prepare and deliver such reports as the Committee requests.
- d. Provide guidance to the Authority's Chief Risk Officer and enterprise risk management program on critical business objectives, risks and philosophy and tolerance for risk mitigation, and establish requirements for the Chief Risk Officer to report to the Committee.

- e. Report at least annually to the Board of Trustees on matters relating to the internal audit function and enterprise-wide risk management infrastructure, and make such recommendations as the Committee deems appropriate.

Adopted by Trustees on  
November 19, 2008

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February 23, 2010  
Exhibit "6-B-1"

## AUDIT COMMITTEE CHARTER

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### A. PURPOSE

The purpose of the Audit Committee shall be ("Committee") is to (1) assure that: recommend to the Authority's Board of Trustees ("Board") fulfills its responsibilities for the Authority's internal and external audit process, the financial reporting process and the risk assessment and internal controls over financial reporting; and (2) provide an avenue the hiring of communication between management, the a certified independent auditors, accounting firm for the Authority; establish the compensation to be paid to the accounting firm; provide direct oversight of the internal auditors, and performance of the Board of independent audit conducted by the accounting firm hired for such purposes; provide direct oversight of the internal audit function; and perform such other responsibilities as the Trustees shall assign to it.

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### B. MEMBERSHIP AND ORGANIZATION

#### (1) Committee Composition

The Committee shall be comprised of three (3) independent members of the Board of Trustees none of whom who shall serve as Chairman of possess the Board of Trustees ("Chairman") or in any other position of Authority management necessary skills to understand the duties and functions of the Committee and be familiar with corporate finance and accounting. Committee members and the Committee Chair shall be nominated by the Chairman and selected from eligible Trustees by a vote of the Board of Trustees.

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#### (2) Term

Committee members shall serve for a period of four five years subject to their term of office under Section 1003 of the Public Authorities Law § 1003. Committee members may be reelected to serve for additional periods of four five years subject to their term of office. A Committee member may resign his or her position on the Committee while continuing to serve as a Trustee. In the event of a vacancy on the Committee due to death, resignation or otherwise,

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a successor ~~shall~~will be selected to serve in the manner and for the term described above.

(3) Removal

A Committee ~~members~~member may be removed if ~~they are~~he or she is removed as ~~Trustees~~Trustee for cause, subject to ~~Section 2827 of the~~ Public Authorities Law § 2827, or ~~are~~is no longer eligible to serve as a Committee member.

(4) Meetings and Quorum

The Committee shall hold regularly scheduled meetings at least three times per year. A Committee member may call a special meeting of the Committee individually, or upon the request of the Authority's President and Chief Executive Officer, ~~the~~ Chief Operating Officer, ~~the~~ Executive Vice President and General Counsel, ~~the~~ Inspector General, ~~the~~ Chief Risk Officer, Chief Financial Officer, ~~the~~ Controller, or head of the Office of Internal Audit ("Internal OIA").

In addition, the Committee: (1) shall meet at least three times a year with the head of the OIA for the purpose of reviewing audit activities, audit findings, management's responses, remedial action plans, and providing the OIA with an opportunity to discuss items and topics of relevant to the Audit; (2) shall meet at least twice a year with the Authority's independent accountants to discuss the audit work plans, objectives, results and recommendations; and (3) may meet independently with the Authority's President and Chief Executive Officer, Chief Operating Officer, Executive Vice President and General Counsel, Chief Risk Officer, Chief Financial Officer, Controller, or head of the OIA on matters or issues and items within the Committee's purview as it deems necessary. These meetings may be held as part of a regular or special meeting in the Committee's discretion.

An agenda shall be prepared and distributed to each Committee member prior to each meeting and minutes shall be prepared in accordance with the New York Open Meetings Law. A majority of those present, but no less than two Committee members, at a regular or special meeting of the Committee shall constitute a quorum for the purposes of conducting the business of the Committee and receiving reports.

Any meeting of the Committee may be conducted by video conferencing.

To the extent permitted by law, the Committee may hold meetings or portions of meetings in executive session.

C. FUNCTIONS AND POWERS

The Committee shall have the following responsibilities:

(1) General Powers

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\_\_\_\_\_ The Committee may call upon the resources of the Authority to assist the Committee in the discharge of its oversight functions. Such assistance may include the assignment of Authority employees to assist the Committee, and the retention of external advisors subject to ~~Section 2879~~ the requirements of the Public Authorities Law and the Authority's Expenditure Authorization Procedures.

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\_\_\_\_\_ The Committee may direct any Authority employee to make oral or written reports to the Committee on issues and items within the Committee's purview.

\_\_\_\_\_ The Committee may direct the Authority's internal auditors to conduct special audits of items and issues of concern to the Committee.

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~~(2)~~ **Relationship to the Accounting, Financial Reporting, and Oversight of Independent Accountants and Controller**

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\_\_\_\_\_ The Committee shall seek to enhance the integrity, quality, reliability, ~~thoroughness~~ and accuracy of the Authority's financial statements and accompanying notes, and shall oversee the relationship with the Authority's independent accountants. To accomplish this objective, the Committee shall ~~meet to review and discuss the:~~

a. Provide advice to the Trustees on the selection, engagement, compensation, evaluation and discharge of the independent accountants.

b. Review and discuss as necessary the Authority's financial statements including any material changes in accounting principles and practices with the independent accountants, the Controller and other members of management as necessary. The Committee shall advise the Trustees in the selection and discharge of the independent accountants and shall meet at least twice a year, at regularly scheduled meetings or otherwise, with such independent accountants to discuss the independent accountants' work plans, objectives, opinion, and recommendations, or members of Authority management.

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c. The Committee shall Review and approve the Authority's annual audited financial statements (including the independent accountants' associated management letter).

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d. Oversee the establishment of procedures for the effective receipt and treatment of (i) complaints regarding auditing, internal auditing and accounting matters, and (ii) the confidential submission of concerns raised by whistleblowers and other persons regarding accounting or auditing practices.

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e. Review at least annually review the scope, objectives and results of the independent accountants' examination of the annual financial statements statements and accompanying notes, and shall report its findings to the Trustees. The Committee may at any time report on and make recommendations to the Trustees on any matter in connection with the independent accountant's audit process Committee's findings.

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~~(3)~~ **Relationship to the Office of Internal Audit**

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~~The Committee shall appoint the head of the Office of Internal Audit (“Internal Audit”) to serve at its pleasure and make recommendations concerning the staffing of Internal Audit and related functions. Internal Audit shall evaluate the authority’s internal controls and operations, identify internal control weaknesses that have not been corrected and make recommendations to correct those weaknesses. Internal Audit shall operate in accordance with generally accepted standards for internal auditing.~~

~~f. Assure the independence of the independent accountants by approving any non-audit work for the Authority and examining the accountant’s relationship with the Authority.~~

~~g. Report to the Trustees on any matters relevant to the audit process or independent accountant communications, and make such recommendations as the Committee deems appropriate.~~

(3) Risk Management, Internal Controls and Oversight of the OIA

~~The Committee shall have seek to enhance the Authority’s risk management infrastructure, and ensure timely and effective identification and mitigation of critical business risks. To accomplish these objectives the Committee shall:~~

~~a. Review and approve the appointment, evaluation and removal of the head of the OIA.~~

~~b. Provide oversight of Internal Audit, its the OIA and the OIA’s resources and activities so that Internal Audit is directed toward those activities and processes where the potential benefit to improving internal controls is the greatest. The Committee shall promote coordination between the internal auditors and independent accountants so that all material areas of activities are adequately covered to facilitate the OIA’s improvement of internal controls.~~

~~c. The Committee shall meet at least three times a year with the Authority’s Require the head of Internal Audit, and may direct the aforementioned individual the OIA to attend any meeting of the Committee, and to prepare and deliver such reports as requested the Committee requests.~~

~~d. ~~The~~ Provide guidance to the Authority’s Chief Risk Officer and enterprise risk management program on critical business objectives, risks and philosophy and tolerance for risk mitigation, and establish requirements for the Chief Risk Officer to report to the Committee shall report.~~

~~Report at least annually to the Board of Trustees as on matters relating to its findings concerning the internal audit function, and may enterprise-wide risk management infrastructure, and make such recommendations at any time as it the Committee deems appropriate.~~

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7. **Adoption of Finance Committee Charter**

The President and Chief Executive Officer submitted the following report:

**SUMMARY**

“The Trustees are requested to review and adopt the Finance Committee Charter (Exhibit ‘7-A’).”

**BACKGROUND**

“Recent amendments to the Public Authorities Law made by Chapter 506 of the Laws of 2009 (‘Chapter 506’), which prompted the January 2010 changes to the NYPA By-Laws, also require public authorities to establish a Finance Committee to review proposals for the issuance of debt. The By-Laws (Article V, Section 2), as amended, provide that the Finance Committee shall consist of three eligible Trustees who shall be independent members; that members of the Finance Committee must possess the necessary skills to understand the duties and functions of the Committee; and the Finance Committee must review proposals for the issuance of debt by the Authority and perform such other responsibilities as the Trustees shall from time to time assign to it.

**DISCUSSION**

“Consistent with the form of NYPA’s other committee charters, the proposed Finance Committee Charter sets forth the purpose, composition, term, removal, meeting, quorum, and functions and powers of the Committee. Specifically, the proposed Charter provides:

- Committee composition: three independent members of the Board with necessary skills.
- Term: five years.
- Removal: for cause subject to Public Authorities Law § 2827.
- Meetings: at least once per year.
- Quorum: two members.
- Functions and Powers: provide guidance to Trustees and management on capital structure, debt issuance, interest rate risk management and such other matters as the Board shall assign, and make recommendations regarding proposals for the issuance of debt.

**FISCAL IMPLICATIONS**

“None.”

**RECOMMENDATION**

“The Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer and I recommend that the Trustees approve the new Finance Committee Charter.”

*Ms. Delince said that the Finance Committee charter had been drafted pursuant to Chapter 506 of the Laws of 2009. Ms. Brown presented the highlights of staff’s recommendations to the Trustees.*

**February 23, 2010**

The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That the attached Finance Committee Charter  
be adopted in the form proposed.**

FINANCE COMMITTEE CHARTER

A. PURPOSE

The purpose of the Finance Committee ("Committee") is to provide guidance to the Board of Trustees and management concerning financial matters of the Authority; review proposals for the issuance of debt by the Authority; and perform such other responsibilities as the Trustees shall assign to it.

B. MEMBERSHIP AND ORGANIZATION

(1) Committee Composition

The Committee shall be comprised of three independent members of the Board of Trustees who shall possess the necessary skills to understand the duties and functions of the Committee. Committee members and the Committee Chair shall be selected by a vote of the Board of Trustees.

(2) Term

Committee members shall serve for a period of five years subject to their term of office under the Public Authorities Law § 1003. Committee members may be reelected to serve for additional periods of five years subject to their term of office. A Committee member may resign his or her position on the Committee while continuing to serve as a Trustee. In the event of a vacancy on the Committee due to death, resignation or otherwise, a successor will be selected to serve in the manner and for the term described above.

(3) Removal

A Committee member may be removed if he or she is removed as a Trustee for cause, subject to Public Authorities Law § 2827, or is no longer eligible to serve as a Committee member.

(4) Meetings and Quorum

The Committee shall hold a regular meeting at least once annually and may meet more often as needed to fulfill its responsibilities. A Committee member may call a special meeting of the Committee individually, or upon the request of the Authority's President and Chief Executive Officer, Chief Operating Officer, Executive Vice President and General Counsel, Executive Vice-President and Chief Financial Officer, Senior Vice President – Corporate Planning and Finance, or Treasurer.

An agenda shall be prepared and distributed to each Committee member prior to each such meeting and minutes shall be prepared in accordance with the New York Open Meetings Law. A majority of those present, but no less than two Committee members, at a regular or special meeting of the Committee shall constitute a quorum for the purposes of conducting the business of the Committee and receiving reports.

Any meeting of the Committee may be conducted by video conferencing.

To the extent permitted by law, the Committee may hold meetings or portions of meetings in executive session.

C. FUNCTIONS AND POWERS

The Committee shall provide guidance to the Board of Trustees and management concerning the Authority's practices relating to capital structure, debt issuances, interest rate risk management, and such other financial matters as the Board of Trustees shall assign to it.

The Committee shall review proposals for the issuance of Authority debt and the use of any related financial derivative instruments and make appropriate recommendations to the Board of Trustees.

The Committee may call upon the resources of the Authority to assist the Committee in the discharge of its responsibilities.

8. **Committee Appointments**

The Chairman submitted the following report:

**SUMMARY**

“In accordance with Article V the By-Laws of the Power Authority of the State of New York, as amended January 26, 2010 (‘By-Laws’), and in accordance with the Charters of the Audit Committee and the Governance Committee, the Trustees are requested to appoint Eugene L. Nicandri to the Audit Committee and Jonathan F. Foster to the Governance Committee effective February 23, 2010.

“In addition, in accordance with Article V the By-Laws, and in accordance with the Charter of the Finance Committee, the Trustees are requested to appoint Michael J. Townsend (Chair), Jonathan F. Foster and Eugene L. Nicandri to the new Finance Committee.

**BACKGROUND**

“The Public Authorities Law and the By-Laws require that three independent Trustees sit on each of the Audit, Governance and Finance Committees, and it is desirable for the Board of Trustees to fill those vacancies as soon as possible.

**RECOMMENDATION**

“I recommend that the Trustees approve the Committee appointments as submitted herein.”

*Ms. Delince said that the Committee appointments were recommended pursuant to Chapter 506 of the Laws of 2009. Chairman Townsend presented his recommendations for the Committee appointments.*

The following resolution, as submitted by the Chairman, is recommended for adoption.

**RESOLVED, That Eugene L. Nicandri is hereby selected as a member of the Audit Committee effective February 23, 2010.**

**RESOLVED, That Jonathan F. Foster is hereby selected as a member of the Governance Committee effective February 23, 2010.**

**RESOLVED, That Michael J. Townsend (Chair), Jonathan F. Foster and Eugene L. Nicandri are selected as members of the Finance Committee effective February 23, 2010.**

9. **Motion to Conduct an Executive Session**

*Mr. Chairman, I move that the Authority conduct an executive session pursuant to Sections 105(1)(f) of the Public Officers Law of the State of New York to discuss matters leading to the appointment, employment, promotion, discipline, suspension, dismissal or removal of a particular person or corporation.* On motion made and seconded, an Executive Session was held.

10. **Motion to Resume Meeting in Open Session**

*Mr. Chairman, I move to resume the meeting in Open Session.* On motion made and seconded, the meeting resumed in Open Session.

**11. Procurement (Services) Contract – Law  
Department – Competitive Search – Award**

The President and Chief Executive Officer submitted the following report:

SUMMARY

“The Trustees are requested to approve the award of a contract pursuant to a competitive search in accord with the Authority’s Procurement Guidelines for a three year term to the law firm of Ward Norris Heller & Reidy LLP (‘Ward’) in Rochester, New York in order for them to represent the Authority and its six named current and former Trustees in the action initiated against them by Niagara County and four individual residents currently pending in Niagara County Supreme Court and the Appellate Division, Fourth Department. The Trustees are also requested to approve funding in the amount \$300,000.

BACKGROUND

“Section 2879 of the Public Authorities Law and the Authority’s Guidelines for Procurement Contracts require the Trustees’ approval for procurement contracts involving services to be rendered for a period in excess of one year.

“An Article 78 proceeding was filed on May 26, 2009 in Niagara County Supreme Court by Niagara County ‘on behalf of its residents’ as lead petitioner along with four named individuals who purchase Niagara Project power through their local electric utility. Justice Ralph A. Boniello was assigned to the case.

“The basic allegations focus on two points. First, except for Authority contributions made to the State in connection with the PFJ program, petitioners allege that the Authority had no legal authority to make any contributions to the State, whether a straight cash payment or a temporary asset transfer. Their second critical allegation is that the funds paid to the State (and which should now be returned to the Authority) can only be used by the Authority for limited purposes such as reducing the cost-based rate, reducing Authority debt, funding capital projects, or maintaining and expanding industry in Western New York pursuant to both federal and state law.

“The Authority and the State made a motion to dismiss the petition in its entirety on September 2, 2009. Petitioners served a motion seeking the Court’s permission to file a complaint and discovery demands on October 7, 2009. Both motions were fully briefed by all parties and argued before Justice Boniello on October 28, 2009.

“On December 23, 2009, Justice Boniello issued a decision and order denying NYPA’s and the State’s motions to dismiss. The Court found petitioners had standing and they stated a cause of action under state and federal law. The Court granted petitioners’ motion to serve a complaint.

“On December 29, 2009, petitioners served Notice of Entry of that decision. NYPA and the State have moved for permission to appeal to the Appellate Division, Fourth Department. That motion is returnable February 16, 2010. A decision is expected shortly thereafter.

“On February 1, 2010, the Authority received petitioners’ complaint, filed January 25, 2010. Petitioners also served various discovery demands through which petitioners seek documents, interrogatory responses, and depositions. Specifically, petitioners requested the depositions of the six named current and former Authority Trustees and the Authority’s President and Chief Executive Officer, Richard Kessel.

DISCUSSION

“Due to the (1) short timeframe in which discovery responses are due; (2) voluminous discovery demands; (3) the deposition requests; and (4) the possibility of a request to depose certain members of the Authority’s litigation team due to their involvement in the transactions at issue, the Executive Vice President and General Counsel felt it prudent to engage outside counsel to handle this litigation. A competitive search was thereafter conducted pursuant to the Authority’s Procurement Guidelines.

“Two law firms, with pre-existing Authority contracts, were contacted, but each had a conflict or an appearance of one. Harris Beach, which lists the Authority’s Chairman Michael J. Townsend, as one of its members, advised the State concerning some of the disputed transactions. The second firm, Nixon Peabody, represented Niagara County during the relicensing process.

“A third firm, Ward Norris Heller & Reidy LLP, located in Rochester, was contacted. A fourth firm, Greenberg Traurig, LLP, located in Albany, was also contacted. The Ward Norris firm was recommended for the following reasons:

- (1) Harold A. Kurland, one of its partners, has extensive litigation experience at both the trial and appellate levels and is highly respected in the Rochester/Western New York area where this case is currently pending;
- (2) Sharon Porcellio, also a member of Ward Norris, represented the Authority during a protracted rate litigation in the past ten years and brings a wealth of knowledge about the Authority to this proposed Authority defense team; and
- (3) The rates the firm would charge are reasonable. Partner time would be billed at \$290 per hour, other attorney time would be billed anywhere from \$180 to \$270 per hour, and paralegals from \$120 to \$140 per hour.

“In order for the services of the firm to be used prior to the February Trustees’ meeting, the Executive Vice President and General Counsel authorized the approval of this contract on an interim basis subject to final approval by the Trustees. The Trustees’ authorization is necessary because it is likely that this matter will continue for longer than one year. Staff recommends a contract term of up to three years, at a cost of no more than \$300,000.

FISCAL INFORMATION

“The fiscal impact will be limited to no more than \$300,000.

RECOMMENDATION

“The Executive Vice President and General Counsel recommends that the Trustees approve of the award of contract to the law firm of Ward Norris Heller & Reidy LLP for the reasons discussed above.

“I concur with the recommendation.”

The following resolution, as submitted by the President and Chief Executive Officer, was unanimously adopted.

**RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, the award and funding of a procurement services contract with the law firm of Ward Norris Heller & Reidy LLP for a term of three years is hereby approved for the period of time so indicated, in the amount of \$300,000 or less and for the purposes listed, as recommended in the foregoing report of the President and Chief Executive Officer; and be it further**

**RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution,**

**February 23, 2010**

**subject to the approval of the form thereof by the Executive Vice  
President and General Counsel.**

12. **Next Meeting**

The Annual Meeting of the Trustees will be held on **Tuesday, March 23, 2010, at 11:00 a.m. at the Clarence D. Rappleyea Building, 123 Main Street, White Plains, New York**, unless otherwise designated by the Chairman with the concurrence of the Trustees.

**Closing**

On motion made and seconded, the meeting was adjourned by the Chairman at approximately 2:00 p.m.

A handwritten signature in black ink, appearing to read "Karen Delince". The signature is fluid and cursive, with the first name "Karen" and last name "Delince" clearly distinguishable.

Karen Delince  
Corporate Secretary