

**MINUTES OF THE MEETING  
OF  
THE GOVERNANCE COMMITTEE**

**March 27, 2012**

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A meeting of the Governance Committee was held at the Authority's offices at 123 Main Street, White Plains, New York at approximately 8:30 a.m.

**The following Members of the Governance Committee were present:**

*Trustee Eugene L. Nicandri, Chairperson*  
*Trustee D. Patrick Curley*  
*Trustee John S. Dyson*  
*Trustee Mark O'Luck*

**Also in attendance were:**

<i>Michael J. Townsend</i>	<i>Chairman</i>
<i>Gil Quiniones</i>	<i>President and Chief Executive Officer</i>
<i>Judith McCarthy</i>	<i>Executive Vice President and General Counsel</i>
<i>Edward Welz</i>	<i>Acting Chief Operating Officer</i>
<i>Donald Russak</i>	<i>Acting Chief Financial Officer</i>
<i>Joan Tursi</i>	<i>Senior Vice President – Corporate Support Services</i>
<i>Joseph Gryzlo</i>	<i>Vice President and Chief Ethics and Compliance Officer</i>
<i>Patricia Leto</i>	<i>Vice President – Procurement</i>
<i>Lesly Pardo</i>	<i>Vice President – Internal Audit</i>
<i>Brian McElroy</i>	<i>Treasurer</i>
<i>Karen Delince</i>	<i>Corporate Secretary</i>
<i>Dennis Eccleston</i>	<i>Chief Information Officer</i>
<i>Rod Mullin</i>	<i>Director – Fuel Planning and Operations</i>
<i>Mark O'Connor</i>	<i>Director – Real Estate</i>
<i>Saul Rojas</i>	<i>NERC Reliability Compliance Program Manager</i>
<i>Gary Schmid</i>	<i>Manager Network Services, Infrastructure</i>
<i>Lorna Johnson</i>	<i>Assistant Corporate Secretary</i>
<i>Louise Nestler</i>	<i>Assistant Ethics Officer</i>
<i>Sheila Baughman</i>	<i>Senior Secretary, Corporate Secretary's Office</i>

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Chairman Nicandri welcomed committee and staff members to the meeting.

1. **Adoption of the Proposed Meeting Agenda**

By motion made and seconded, the March 27, 2012 meeting agenda was adopted.

2. **Minutes of the Regular Meeting of November 15, 2011**

The minutes of the Committee's November 15, 2011 meeting were adopted.

**3. Review and Recommendation of Employee Corporate Policies**

Ms. Joan Tursi presented the highlights of staff's recommendation to the Committee. She said Section 2824 of the Public Authorities Law requires the Authority's Trustees to establish policies regarding the payment of salary, compensation, reimbursements and time and attendance of the Authority's employees. Also, Section 2 of the Authority's By-laws requires the Authority's Trustees to annually review and approve these policies.

Ms. Tursi said the proposed changes to the policies are to provide clarity, transparency and accountability and address organizational changes. She then outlined the significant changes to each policy. The policies are as follows:

- 3.1 Salary Administration Policy (EP 2.1)
- 3.2 Salaried Non-Exempt and Facility-Based Exempt Overtime (EP 2.4)
- 3.3 Employee Benefits Eligibility (EP 3.1)
- 3.4 Reimbursement of Employee Meal Costs (CAP 1.5)
- 3.5 Attendance & Flexible Hours (EP 4.6)
- 3.6 Vacation (EP 3.2)
- 3.7 Travel (CP 2-1)

In response to a question from Trustee Mark O'Luck, Ms. Tursi said the Salary Administration Policy was revised to provide restrictions on promotional increases. If a promotional increase is more than 10%, it has to be approved by the Compensation Committee, with final approval by the President and Chief Executive Officer. President Quiniones added that promotions for Vice President and above, has to be approved by the Governance Committee and the Board of Trustees.

Responding to further question from Trustee O'Luck, Ms. Tursi said that the incentive pay is usually a lump-sum payment awarded for special achievements. The language was added back to the policy in order that management would be able to make an award for outstanding achievements by employees working on major projects.

Responding to a question from Chairman Nicandri, Ms. Tursi said she would explore and report to the Committee the feasibility and advisability of monetary awards as it relates to employees acting above and beyond the call of duty in instances such as the flood at the Blenheim-Gilboa plant last August, where no parameters are established.

On motion made and seconded the revised corporate policies relating to salary, compensation, reimbursements and time and attendance of the Authority's employees were unanimously approved.

**4. Review and Recommendation of Guidelines and Procedures**

Ms. Tursi said Ms. Patricia Leto will report on the recommendations for the Authority's Guidelines for Procurement Contracts and the Guidelines and Procedures for the Disposal of Personal Property and Mr. Mark O'Connor will report on the recommendations for the Guidelines and Procedures for the Disposal of Real Property and Guidelines and Procedures for the Acquisition of Real Property.

**4.1 Guidelines and Procedures for Procurement Contract**

Ms. Leto said the Guidelines for Procurement Contracts have been revised to make it consistent with the law; clarify or improve the Authority's procurement process; and reflect any organizational changes in the Authority. Ms. Leto then highlighted the major revisions relating to the Comptroller's approval or filing of certain Change Orders and prohibitions regarding preparation of specifications by outside consultants.

**4.2 Guidelines and Procedures for the Disposal of Personal Property**

Ms. Leto said staff reviewed the Guidelines for Personal Property and no substantive changes were being recommended; only organizational changes were recommended.

**4.3 Guidelines and Procedures for the Disposal of Real Property**

Mr. O'Connor said the Guidelines have been developed by staff pursuant to the Public Authorities Accountability Act to ensure that the Authority's transactions as it relates to the acquisitions and dispositions of real property are transparent to the public while preserving the Authority's ability to assist in economic development.

Mr. O'Connor said the Authority has very little surplus real property; all properties deemed surplus has been identified in the recent relicensing process for St. Lawrence and Niagara Plants.

The Guidelines outline the procedures for:

- Acquisition, disposal and valuation of real property
- Inventory control over Authority assets
- Compliance overview
- Duties of the Director of Real Estate
- Ethical considerations
- Annual reporting

**4.4 Guidelines and Procedures for the Acquisition of Real Property**

Mr. O'Connor said that the only substantive change in the 2012 Guidelines is a change in title, which reflects operational changes made within the past year. The Senior Vice President – Corporate Support Services is named as the Authority's contracting officer.

Mr. O'Connor also said that under the Authority's current expenditure authorization procedure, all acquisitions by eminent domain and all acquisitions or disposals greater than \$10k must be submitted separately to the Authority's Trustees for approval.

By motions made and seconded the Guidelines for Procurement Contracts; Guidelines and Procedures for the Disposal of Personal Property; Guidelines and Procedures for the Disposal of Real Property; and Guidelines and Procedures for the Acquisition of Real Property were unanimously approved.

**5. Procurement and Real Estate Reports**

Ms. Joan Tursi said that status reports on procurement and real estate activities for the period ended December 31, 2011 will be presented.

**5.1 Procurement Contract Activity**

Ms. Patricia Leto highlighted the following procurement contract activities:

- The total expenditures for procurement contracts for the period ended December 31, 2011 exceeded \$371 million;
- 12% of the contracts were for construction work;
- 47% for the purchase of equipment and commodities;
- 10% for personal service contracts (professional consulting services);
- 2% for architectural and engineering services
- 2% for legal services
- 27% for other service-based contracts;
- approximately 97% of the total amount expended were for contracts that were competitively bid.

**5.2 Disposal of Personal Property**

Ms. Leto said that under the Public Authorities Accountability Act (“PAAA”), the Authority is required to prepare a report listing all personal property over \$5000 in value disposed of during the reporting period. For the period ended December 31, 2011, there were 15 such transactions. The Authority received \$803,328.12 for these transactions.

**Fleet Operations**

Ms. Leto said that during the reporting period ended December 31, 2011, the Authority participated in four fleet-related auctions conducted by JJ Kane Auctioneers. The Authority received \$725,080.85 after commission and transportation costs were deducted.

The total amount for all personal property with a value in excess of \$5,000 for the reporting period is \$1,528,408.97.

In response to a question from Trustee O’Luck, Ms. Leto said Authority staff estimates the value of the fleet for auction or uses an outside firm. Ms. Tursi added that the Authority usually receives more than estimated at the auctions because bidders are aware that the Authority’s vehicles are properly maintained.

### **5.3 Acquisition and Disposal of Real Property**

Mr. Mark O'Connor reported on the acquisition and disposal of real property, as well as leasing and permitting activities for the period ended December 31, 2011.

#### Acquisitions

The Real Estate division closed on several acquisitions during the reporting period. Of note, is a series of transactions with Noble Wind Energy which has helped to facilitate wind energy development in Clinton County. Also, staff closed on a substation and underground facilities to facilitate construction of the Astoria Energy Generating Facility in Queens, New York.

#### Danger Tree Permits

This program allows the Authority to acquire transmission right-of-way permits for vegetation which has grown to a sufficient height to threaten the safe operation of its transmission system. One of the components of the North American Electric Reliability Corporation ("NERC") compliance standards is a successful vegetation maintenance program. During this reporting period, staff closed on a total of 88 danger tree permits.

#### Land use permits

The Real Estate division issued 16 land use permits during calendar year 2011. These permits are issued by the Authority to allow others to use its land holdings (normally its easement rights) in a safe and productive way and consistent with the safe operation of its transmission facilities.

#### Headquarters Leasing

The Authority owns the building at 123 Main Street and occupies approximately 60% of it. Approximately 40% of the building is occupied by lease-paying tenants. This leasing operation generates about \$2.7 million in gross revenue. As indicated at the last meeting, JP Morgan Chase has vacated its leasehold on the 4<sup>th</sup> floor. Staff is currently attempting to market this space, with the Authority's broker, Newmark Knight Frank, but market conditions continue to be unfavorable. In the White Plains Central Business District, with 5.9 million square-foot of office space, more than 20% is considered open and available for leasing. Further, the trend is currently showing more available space placed on the market than is being absorbed. The trend is also toward negotiations of smaller deals. For example, at least three of the Authority's tenants have requested modifications to their existing leases because they are unable to meet their rental obligations. Staff is working to address this issue which reflects the overall economic conditions for the businesses involved. The Board of Trustees will be requested to approve any concessions made with tenants.

#### New York Office Lease

The Authority leases a small office space of approximately 7,100 rentable square feet at 501 7<sup>th</sup> Avenue in midtown Manhattan. This lease, by its terms, expires on August 31, 2012.

#### St. Lawrence lands

One of the major commitments the Authority made during the relicensing of the St. Lawrence/FDR Power Project was to convey certain identified lands as surplus to either municipalities or landowners who owned adjoining lands to these Authority lands. To date, staff has conveyed all of the lands committed to various municipalities of Lisbon, Louisville, Waddington and Massena. In addition, of the 520 parcels committed to private landowners, approximately 412 parcels have been conveyed. Staff is working to persuade the landowners to close on the remaining parcels.

In response to a question from Trustee O'Luck, Mr. O'Connor said that the land conveyed to the municipalities was in the amount of \$1 with payment waived; and the land conveyed to individual landowners was at fair market value. The lands were individually appraised and made public.

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In response to further question from Trustee O’Luck, President Quiniones said that with regard to office space in New York City, the Authority is exploring different options including sharing of space with other New York State agencies. However, a final decision has not yet been made.

**5.4 Supplier Diversity Program Activities**

Ms. Leto reported that for the period ended December 31, 2011, the Authority awarded \$61.2 million (18.6%) of its reportable expenditures to New York State (“NYS”) Certified Minority and Women-Owned Business Enterprises (M/WBEs). M/WBEs financial dealers transacted over \$421.8 million in principal sales and purchases for the Authority. The Authority also increased its contract allocations to MWBEs from 6% to 20% in support of the Governor’s goal for M/WBEs to account for 20% of NYS businesses. The bulk of these allocations will be through energy services projects.

In response to a question from Chairman Nicandri, Ms. Leto said that staff uses the NYS Registry list of MWBEs to verify that all applications being submitted are certified by NYS.

**5.5 Inventory Statistics**

Ms. Leto reported that as of December 31, 2011, the total stock value of the Authority's inventory was \$84,046,879. This includes spare part materials for the Blenheim-Gilboa Life Extension and Modernization project, purchase of spare gas compressor, compressor blades and Original Equipment Manufacturer ("OEM") valves for the 500 MW Project.

**5.6 Fossil Fuels Activity**

Mr. Rod Mullin reported that the total fuel purchases and related costs for the period ended December 31, 2011 was \$260 million. Of this total, \$251 million was spent on Natural Gas purchases and associated costs and \$9 million on Fuel Oil purchases and related costs. There were 30 natural gas and oil contracts, in total, all of which were competitively bid. To date, the Authority has transacted approximately \$5.5 million of business with the firm of YAKA Energy, a certified NYS M/WBE.

Mr. Mullin said that the natural gas industry has been experiencing low prices recently and this is expected to continue for some time. This is due primarily to weak demand, high storage, new sources of natural gas and new technology.

**5.7 Corporate Finance Activity**

Mr. Brian McElroy stated that for the year ending December 31, 2011, the Authority expended approximately \$4.5 million on financial related agreements primarily supporting the administration of the Authority's variable rate debt program, namely the Commercial Paper Notes and Adjustable Rate Tender Notes. Approximately 80% of the expenditures were related to the 2011 Revolving Credit Agreement which the Trustees approved in January 2011 for a term of three years. Mr. McElroy also noted that the Commercial Paper Notes are trading around 20 basis points and the Adjustable Rate Tender Notes recently reset for a six month term at 15 basis points.

In response to a question from Chairman Nicandri regarding recent headlines of the Port Authority's use of interest rate hedging instruments, Mr. McElroy said that the Authority has two open interest rate swaps matched with underlying variable rate debt. Therefore, the Authority does not have any un-covered positions.

**6. Recent Development and Status of NYPA's Ethics and Compliance Program**

Mr. Joseph Gryzlo provided an update of the Authority's Ethics and Compliance program. He said that the Ethics and Compliance office continues to receive ethics inquiries from staff, including union employees, the main category being with regard to outside employment. Outside Activities and Employment were the focus of NYPA's annual ethics training which was administered to all Trustees and employees during the first quarter of 2012. He added that union employees were not subject to the Authority's Code of Ethics until 2009 when it was revised. The Ethics office also received requests for interpretation of the Public Officers Law and the Authority's Code of Conduct involving issues related to conflicts of interest, endorsements, gifts and post-employment restrictions.

Financial Disclosure

Mr. Gryzlo said that the deadline for filing Financial Disclosure statements is May 15<sup>th</sup>. The Ethics office will be sending e-mails to the Trustees and staff who are required to file. Approximately 400 employees are required to file.

Inspector General's Office - Referrals

Mr. Gryzlo reported that the Ethics and Compliance office received two referrals from the New York State Inspector General's Office.

Training

Mr. Gryzlo said that the annual Federal Energy Regulatory Commission ("FERC") Standards of Conduct training has been completed by all Authority employees who are required to do so.

Compliance Update

Mr. Saul Rojas provided an update of the North American Electric Reliability Corporation ("NERC") Reliability Standard Compliance Program. He said that the Authority self-reported four potential violations to the Northeast Power Coordinating Council ("NPCC") in 2011:

- **PRC-005-1 R2 – Maintenance and Testing of Transmission and Generation Protection System:** *The NPCC is reviewing the results of NYPA's recently completed mitigation plan. NYPA will soon enter into settlement discussions with NPCC and a penalty is expected.*
- **PRC-018-1 R6 – Maintenance and Testing of Disturbance Monitoring Equipment:** *NYPA's self-reported violation of this requirement was processed through NERC's Find, Fix and Track process and filed with FERC on February 29, 2012. Therefore, no financial penalty was assessed.*
- **CIP-004-3 R2 and CIP-0043 R4 - Cyber Security — Personnel and Training:** *NYPA's self-reported violation of these requirements will be processed through NERC's Find, Fix and Track process; therefore, no financial penalty will be assessed.*

Responding to a question from Trustee O'Luck, Mr. Eccleston said staff ensures that the security of the Authority's cyber and transmission systems are protected against attacks. President Quiniones added that the Authority is investing the appropriate resources into the protection of its physical and cyber security. This is an ongoing process and standards are being set by NERC and FERC to address this issue.

Bulk Electric System Definition:

Mr. Rojas reported that FERC issued its final rule on the Electric Reliability Organization Definition of the Bulk Electric System ("BES") to include assets greater than 100 KV. He said NERC approved the new BES Definition and the Exception Process and filed them with FERC on January 25, 2012. FERC is expected to adopt the new definition and exception process by the end of 2012. The new BES definition will have substantive impacts on New York State's electric utilities, including NYPA. NYPA has identified 25 additional assets that will be

subject to NERC Reliability Standards under the new definition and is working with NPCC and NYISO to address this issue.

CIP Standard Version 5

Mr. Rojas reported that a new version of the Critical Infrastructure Protection (“CIP”) standards regarding cyber security in the electric utility industry is currently being developed and is expected to be adopted by FERC by the end of 2012 and be enforceable in 2014. He said staff will keep the Committee apprised of any new developments as it is expected that the new standards will have significant impacts on the Authority.

7. **Proposed Strategic Planning and Energy Committee Charter**

Ms. Judith McCarthy provided highlights of the proposed Strategic Planning and Energy Committee Charter.

By motion made and seconded, the Strategic Planning and Energy Committee Charter was unanimously approved.

8. **Motion to Conduct an Executive Session**

*Mr. Chairman, I move that the Authority conduct an executive session pursuant to the Public Officers Law of the State of New York section §105 to discuss matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation.*

On motion made and seconded, an Executive Session was held.

9. **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.

10. Amendments of NYPA By-laws

Ms. Judith McCarthy stated that the By-laws were amended to establish a set of procedures for the Authority that would be longstanding; this will avoid ongoing amendments to the By-laws. The amendments also address the Trustees concerns with regard to the reporting structures of the Chief Financial Officer and the General Counsel. Ms. McCarthy said the amendments reflect staff's findings after review of the reporting structures of other utilities and authorities. The By-laws also reflect the establishment of the Strategic Planning and Energy Policy Committee.

President Quiniones added that the Authority's goal is to conform to best practices with comparable agencies and large utilities of the state. He said the Strategic Planning and Energy Policy Committee is crucial in the Authority's mission to play an active role in advancing the state's energy and economic development goals.

In response to a question from Chairman Nicandri, Ms. McCarthy said that the change as it relates to the reporting structure of the Chief Financial Officer was based on staff's findings. She then suggested that the Committee could discuss this further during the Executive Session before formal adoption of the amendments.

Following the Executive Session, Ms. McCarthy said that the proposed amendments to the By-laws were further amended as follows:

Section (h) Executive Vice President and Chief Financial Officer, page 5:  
**amendment bolded.**

The Executive Vice President and Chief Financial Officer shall report and give advice to the President and Chief Executive Officer, **shall give advice to the Chair and Trustees as they may request** and shall supervise and direct the activities of the Business Services Division regarding financial investment policies of the Authority, oversee the Authority's investment program, recommend and implement financial policies of the Authority and participate in the preparation of the financial reports of the Authority required by the applicable law.

By motion made and seconded the proposed amendments to the Authority's By-laws were unanimously approved.

**11. Next Meeting**

The next regular meeting of the Governance Committee will be held on Tuesday, July 31, 2012, at 8:30 a.m., at the Clarence D. Rappleyea Building in White Plains, New York.

On motion made and seconded the meeting adjourned at approximately 10:35 a.m.

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**EXHIBITS**

**TO**

**March 27, 2012**

**Meeting Minutes**

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PLEASE REFER TO THE PORTION OF THE HUMAN RESOURCES POLICIES ENTITLED DISCLAIMERS WHERE YOU WILL FIND A STATEMENT WHICH PERTAINS TO ALL EMPLOYEE POLICIES, INCLUDING THIS ONE.

**SALARY ADMINISTRATION POLICY**

- 1.1 This policy governs the administration of salary for all full-time, part-time and provisional exempt and non-exempt Authority employees, as defined in the Salaried Employees' Eligibility for Benefits policy. (EP: 3.1)
- 1.2 This policy describes the New York Power Authority's competitive pay program and provides guidelines in which to recognize and reward different degrees of performance through salary changes within budget limits.
- 1.3 All types of actions described in this policy, including the effective date of the salary action, require the approval of the Business Unit Head, the Vice President, Human Resources, the SVP Corporate Support Services, and the President and CEO or his/her designee. All requests require a summary of the reason for selection, change in role and responsibilities, succession planning actions and/or relevant information justifying the action. Any action affecting annual base salaries of Vice Presidents or higher, must also have approval of the Governance Committee.
- 1.4 In addition to section 1.3, any salary action varying from the guidelines of this policy is considered an exception and requires documentation, justification and majority approval from the Compensation Committee and the President and CEO. The justification must be a detailed explanation for the exception request (e.g., to bring the employee to the minimum of the range). Requests that are insufficient, will be returned for further justification.
  - a) ~~a)~~ The Compensation Committee is made up of the Business Unit Heads that report directly to the President and CEO, excluding the Business Unit Head directly involved in the request, and requires a minimum of three participants.
- 1.5 The Trustees and the Governance Committee will receive a monthly report of all salary actions implemented in the prior month.
- 1.6 Under the Fair Labor Standards Act, the Authority pays exempt employees on a salary basis and does not intend to make any deductions from these salaries which are prohibited. Any employee who believes an improper deduction may have occurred should raise the issue and bring supporting documentation, if any, to the attention of the Payroll department as soon as practicable after the deduction occurs. Payroll will then work with the Human Resources Compensation group and should it be determined that an improper deduction in fact occurred, the employee will be reimbursed for that amount. Complaints may also be communicated via the Employee Concerns Line [1-877-TEL-NYPA]

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### Annual Salary Adjustment

- 2.1 Annual Salary Adjustments are intended to provide recognition and reward for performance within the parameters of the Authority's annual salary budget. However, neither an annual salary budget nor an annual Performance Plus assessment is a guarantee that a salary adjustment will occur.
- 2.2 An employee's Performance Plus rating summarizing his/her annual performance will be taken into consideration for Annual Salary Adjustment purposes and ensures that an employee is considered for a salary adjustment.
- 2.3 Eligibility:
- a) Only employees who receive a Performance Plus rating of Partially Achieved Expectations or better (see Performance Plus Instructions on the Powernet for ratings definitions), are eligible for an Annual Salary Adjustment.
  - b) No Annual Salary Adjustment will be given to employees who earn a Performance Plus rating of Did Not Meet Expectations.
  - c) New employees hired between September 1 and December 31 of the prior calendar year will not be eligible to be considered for an Annual Salary Adjustment until on or about September 1 in the year following their hire date.
- 2.4 Timing:
- a) Annual performance assessments will normally be completed during November. This is referred to as the Annual Performance Plus Assessment Period. Annual Salary Adjustments are generally effective on or about January 1. In the case of employees on leaves of absence, the effective date of increases may be adjusted (see section 2.6).
  - b) The Annual Salary Adjustment is calculated on the employee's base salary as of December 31 of the prior calendar year.
- 2.5 General Guidelines:
- a) Base salaries of employees who earn a Performance Plus rating of Achieved Expectations or Partially Achieved Expectations can reach the maximum of the grade range for their job grade but cannot exceed it. Should an employee's base salary reach the maximum of the range or beyond, recommendations for an exception must have appropriate approvals as specified in section 1.4. If the maximum of the grade range is exceeded by the recommended salary increase, then the portion in excess of the maximum will be granted in the form of a lump sum payment which does not become part of base pay and must be

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re-earned each year.

- b) Base salaries of employees who earn a Performance Plus rating of Exceeds Expectations may exceed the maximum of the grade range by 4%. If the recommended salary increase exceeds 4% above maximum, then the portion in excess of the maximum will be granted in the form of a lump sum payment which does not become part of base pay and must be re-earned each year.
- c) If an employee is still under the minimum of the grade range after receiving an Annual Salary Adjustment, the manager should contact the Human Resources Compensation group for guidance in moving the employee to the minimum of the grade range. This applies only to the employees who earn a Performance Plus Rating of Achieved Expectations or better.

2.6 Approved Leaves of Absence:

- a) Performance Assessments – Annual performance assessments should be based on performance in the previous calendar year, regardless of the length of time the employee was on approved leave.
- b) Annual Salary Increase, if
  - 1) leave is less than 3 months – If the annual salary adjustment falls during an approved leave of less than three months, the annual salary adjustment for employees on such **paid leave** will be effective as of the common annual salary adjustment date. If on approved **leave with no pay** as of the common annual salary adjustment date, the annual salary adjustment will become effective on the day the employee returns to work or returns to paid status. The amount of the increase will not be affected by the leave.
  - 2) leave is 3 months or longer - If the annual salary adjustment falls during an approved leave of three months or more, the annual salary adjustment will be effective on the date the employee returns to work, unless proscribed by any other policy, state or federal law. The amount of the increase will not be affected by the leave.

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Promotional Increases

3.1 A promotion is defined as the assignment of an employee to a ~~jobposition~~ of one or more grades higher than the employee's current ~~jobposition~~ and may be accompanied by an increase in salary.

3.2 Types of Promotions:

- a) Competency Based: Competencies are essential knowledge, skills, and abilities required

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by the Authority and which equip an individual to perform a certain level of work. Competency-based promotions are permitted for employees in limited and specific job families for which specific competency definitions have been developed and achieved.

- b) Re-evaluated position: when there is a change in work or reorganization resulting in a job having expanded responsibilities and increased level of competency, a market analysis should be requested by the Business Unit Head and forwarded to the Human Resources Compensation Group in order to assess supporting a higher grade range. (see section 5, Re-evaluation of Job Content).
- c) Organizational Promotion: acknowledges that an employee has been assigned a different job, in order to fill an open position with expanded responsibilities at a grade range higher than the employee's current position.

3.3 A promotion may include an increase in salary of up to 10%. This increase should place the employee's salary in the grade range of the new position. The new salary, however, is limited to a compa-ratio of 112% of the new range. For an Executive/Management Band (grade 27 and above) position the new salary is limited to the midpoint (100% compa-ratio).

3.4 When a 10% maximum promotional increase does not bring the employee's salary to the minimum of the new grade range, the employee may receive an additional salary increase with approval of the compensation committee (see section 1.4)

Market / Equity Adjustments

- 4.1 Upon the recommendation of the Human Resources Compensation group, an adjustment to base salary may be permitted to achieve internal and/or market equity.
- 4.2 Only employees who earn a Performance Plus rating of Achieved Expectations or better are eligible for a market adjustment.

Re-evaluation of Job Content

5.1 Each Business Unit head, or their designee, is responsible for ensuring that salaried jobs in their organization have accurate and up to date descriptions. Substantive changes in the primary responsibilities, scope and/or minimum qualifications must be communicated to the Human Resources Compensation group. Based on the revised description, the Compensation group, with the input of management, reviews and evaluates the job against both the marketplace and internal comparable positions.

5.2 Recommendation for changes to any job based on the evaluation are coordinated with and approved by the Business Unit Head.

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5.3 ~~An evaluation may result in a~~ change in grade ~~after~~ ~~may occur as a result of the~~ reorganization of the work unit or ~~review of the job, re-~~ ~~evaluation of the position.~~ If a ~~job position~~ is re-evaluated upward ~~due to as the result of~~ a significant change in job content, consideration may be given to granting a promotional increase as previously defined and outlined in Section 3.2 (b).

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5.4 ~~2~~ Employees whose positions are re-evaluated and downgraded and whose salaries are more than 4% above the maximum of the new grade range ~~may will~~ have their salaries reduced to 4% above the maximum of the new grade range.

Lateral Transfer

- 6.1 A lateral transfer occurs when an employee moves from one job to another which has the same grade range.
- 6.2 Generally, additional compensation will not be granted in the case of lateral transfers.
- 6.3 Moves that are temporary or part of a development plan or program, or job changes that are part of a specific work project may be considered for additional compensation.

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Demotions

- 7.1 A demotion may occur as the result of inadequate employee performance, which leads to the employee being assigned to a new ~~job position~~ that is one or more grades below the current grade.
- 7.2 Employees demoted as a result of inadequate performance and whose salaries are above the maximum of the new grade range ~~may will~~ have their salaries reduced to no more than the maximum of the new grade range.

First Line Supervisor Differential

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8.1 To prevent inequities between bargaining unit employees or equivalent ~~job positions~~, and their supervisors, First Line Supervisors (FLS) shall generally be paid a minimum five percent (5%) above the annualized **base rate** of pay of the highest paid supervised bargaining unit employee (or equivalent ~~job positions~~). This differential applies only to those FLS who achieve an annual Performance Plus rating of Achieved Expectations or better, for their prior year's performance.

Note: **Base Rate** of pay is defined as the negotiated hourly rate for the job, excluding any

other payments granted to an employee such as premiums and overtime.

Timing of Salary Actions and Annual Cap

- 9.1 The Human Resources Compensation group will accept requests to review competency based promotion, market or equity adjustments, and grade re-evaluations during the 8-month period of February 1 through September 30, *only*.
- 9.2 Organizational promotion requests will be acted upon at any time during the year.
- 9.3 At least six months must elapse between any salary actions, inclusive of date of hire.

~~9.4 An annual maximum increase of 17.5% (based on the total of all increase percentages) will apply to all salary actions including, but not limited to, the Annual Salary Adjustment, promotional increases and any other base salary adjustments.~~

Sign-On & Retention

- 10.1 Special incentives for the purpose of attracting or retaining staff may be recommended as an exception with appropriate approvals as specified in 1.4.

Incentive Pay

- 11.1 An incentive is a lump sum award paid in recognition of the extraordinary achievement of an individual or a group, on special projects or in unique situations that are critical to the Authority.
- 11.2 An incentive plan may be developed upon the recommendation of the Business Group Head accountable for the results, the Vice President, Human Resources and the President and CEO his/her designee.
- 11.3 An incentive plan may be developed:
  - a) Before the start of a project, based on a pre-determined set of measures associated with the project goals and announced to those employees who are eligible, or
  - b) After exemplary completion of an extraordinary project that evolved during a given year.

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11.4 Criteria for such an award must include extraordinary tangible benefits to the Authority such as reduced costs or increased revenue.

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11.5 Incentive proposals in excess of \$15,000 per individual must have the concurrence of the Governance Committee.

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**SALARIED NON-EXEMPT AND FACILITY-BASED EXEMPT OVERTIME**

- 1.1 This policy provides for the payment of overtime to eligible Authority employees (see *Eligible Employees* below). It permits the Authority to:
  - a) comply with the Fair Labor Standards Act;
  - b) provide additional compensation to certain exempt positions for ensuring the safe and efficient generation and transmission of electricity during specified overtime events;
  - c) provide some relief for pay compression between bargaining unit employees and first line supervisors; and
  - d) manage overtime costs.
- 1.2 Eligible overtime is scheduled, authorized and approved time worked in excess of the normal workweek, under predetermined conditions related to specific Authority or facility requirements, priorities, special projects, or to maintain safe operating conditions.
- 1.3 Responsibilities:
  - a) A Business Unit Head, Regional or General Manager, or their designee will establish the event (Section 1.2) for which overtime will be paid, and will be accountable for the direction, authorization and administration of overtime as covered by this policy.
  - b) The Controller or designee will provide periodic reports of overtime paid including year-to-date totals. The Business Unit Head, Regional or General Manager, or their designee will reconcile these reports against authorizations required by this policy and promptly notify the Controller or designee in writing of any discrepancies that require correction.
  - c) The Business Unit Head is responsible for the prudent use of overtime within the parameters established by the approved O&M Budget.
- 1.4 Eligible Employees:
  - a) All salaried non-exempt employees are eligible for non-exempt overtime as required by the wage and hour laws of the Fair Labor Standards Act, as enforced by the U.S. Department of Labor.

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- b) Facility-based salaried exempt employees are those employees whose work location of record in SAP is not White Plains, Albany or New York City. Headquarters salaried exempt employees are those whose work location of record in SAP is White Plains, Albany or New York City.
- c) First Line Supervisors – salaried exempt employees at the facilities whose job is to supervise union employees or the equivalent at non-union facilities.
- d) Salaried exempt employees at the facilities who are in grades E, 1, 2, 3, 4 and 5 and grades A, B, C, D and X may be eligible for exempt overtime compensation. Salaried exempt individual contributor employees working in the Trading room on a 24/7 shift and salaried exempt individual contributor Fuel Buyer positions supporting the Traders may be eligible for exempt overtime compensation despite location or grade.
- e) Headquarters salaried exempt employees, physically working at a facility as part of a specified temporary work project, and who are in grades E, 1, 2, 3, 4 and 5 may be eligible for exempt overtime compensation.
- f) Salaried exempt employees in grade 6 and in the Executive Management structure (EB, SMB, MB, SPB, SPL) are not eligible for overtime compensation under any circumstances other than the Buyers noted in 1.4 (d).

Non-Exempt Overtime

- 2.1 A non-exempt employee is one whose job duties do not meet the established tests for exemption under certain wage and hour laws of the Fair Labor Standards Act, as enforced by the U.S. Department of Labor.
- 2.2 On those occasions when it is necessary for non-exempt employees to work in excess of their basic workweek [see Attendance and Flexible Hours policy (EP: 4.6)], all additional time worked must be directed and authorized in advance in accordance with Sections 1.2 and 1.3(a).
- 2.3 Notwithstanding the requirements of Section 2.2 above, under the Fair Labor Standards Act, all non-exempt employees who work in excess of their basic workweek must record and be paid for all time worked.
- 2.4 The rate of pay for non-exempt employees is as follows:
  - a) Straight time for up to 40 hours in a workweek.
  - b) 1½ times the straight time equivalent hourly rate of the annualized salary for those hours worked beyond 40 hours in a workweek.

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c) Payment for time worked on a scheduled holiday will be paid at 1½ times the equivalent hourly rate.

2.5 Generally, time spent traveling on company business will not be counted as hours worked for overtime computation purposes.

2.6 For non-exempt employees, work time spent as a required or assigned participant in any training program, lecture, meeting or workshop, will be paid at the applicable rate of pay (Section 2.4) for that time period.

Exempt Overtime

3.1 An exempt employee is one whose job duties meet the established tests for exemption under certain wage and hour laws of the Fair Labor Standards Act, as enforced by the U.S. Department of Labor.

3.2 Time worked in excess of the normal workweek at an employee's discretion will not be compensated. For eligible salaried exempt employees, all paid overtime must be approved in advance in accordance with Sections 1.2 and 1.3(a).

3.3 For salaried exempt employees in, or temporarily acting in, First Line Supervisor positions, approved overtime will be paid at 1½ times the hourly equivalent of the exempt employee's salary for hours of *actual supervision* of NYPA bargaining unit employees. Other overtime hours, if approved, will be paid at a straight time rate.

3.4 Eligible non-supervisory employees may be paid for all hours worked, in accordance with Section 1.2. Approved overtime will be paid at the straight time hourly equivalent of the exempt employee's salary.

3.5 Exempt employees who are preapproved to work during a scheduled holiday will be paid at 1½ times the hourly rate for First Line Supervisors, and 1 times the hourly rate for non-supervisory employees for actual hours worked in addition to their normal straight time pay for the holiday.

3.6 Eligible employees temporarily assigned to work at a facility will assume the basic workweek of the facility and their rate of pay for overtime purposes will be determined on that basis.

Approval and Time Records

4.1 For eligible salaried exempt employees, an Overtime Approval form must be completed stating the employee's name, period of time for which the overtime has been requested and approved, a brief description of the task, and the employee's basic workweek hours (40). These must be reviewed and approved (signed) by a Business Unit Head and/or

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Regional or General Manager, or designee, as appropriate. These records are retained by the applicable department or facility.

- 4.2 When a salaried exempt employee is temporarily assigned to an operating facility the time record should be approved by either the Business Unit Head or Regional or General Manager, or designee, as appropriate.
- 4.3 Payment for authorized overtime under the guidelines of this policy where practicable will be charged to the operating budget where the work is performed. The approved time report must clearly indicate the appropriate facility program code number to charge.
- 4.4 Payment to a salaried exempt employee for overtime that has not been specifically directed or authorized by those delegated the responsibility by this policy, will not be permitted under any circumstances. Issues with unauthorized non-exempt overtime will be addressed through the performance management process. [See Section 2 regarding treatment of non-exempt employees.]
- 4.5 This policy supersedes all prior policies and procedures regarding overtime for exempt and non-exempt personnel.

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Vice President, Human Resources

Exhibit 3.3

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## SALARIED EMPLOYEE CATEGORIES AND ELIGIBILITY FOR BENEFITS

- 1.1 This policy defines the various categories of salaried Authority employees, and the benefits available to each category. The category of an employee will determine the applicable benefits.

### Definitions

- 2.1 A salaried Authority employee, whose status is full-time or part-time, transitional, provisional, temporary, or intern, is classified as either an exempt or non-exempt salaried employee depending on the job he/she performs or the position he/she fills. A cooperative employee is classified as non-exempt.
- a) Full-time Authority Employee – An employee who works at least 37½ or 40 hours per week (as determined by Business Unit or Department), if assigned to the Albany or White Plains Office, or 40 hours per week, if assigned to an operating facility.
  - b) Transitional Employee – A full-time Authority employee with a written development plan designed to prepare that employee to fill an anticipated vacancy in another Authority position within a designated time-frame.
  - c) Part-time Authority Employee – An employee who has worked full-time for a minimum of one year, and whose status has changed from full-time to part-time without a break in service (employment with the Authority has not been terminated); and who works a minimum of 20 hours per week but less than 37½ or 40 hours (whatever is applicable) if assigned to the Albany or White Plains Office, or at least 20 but less than 40 hours if assigned to an operating facility.
  - d) Provisional Employee – Employed on a *full-time basis for a specific project or assignment* for a period that is expected to last at least one year but not more than three years, and who is paid directly by the Authority.
  - e) Temporary Employees – Employed for a period of not more than one year (from date of hire) **unless approval to extend employment for an additional period is received from headquarters Human Resources Department Head and the Budget Department.**
    - 1) Full-time Temporary Employee – employed on a full-time basis for a specific position or assignment, and who is paid directly by the Authority.

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- 2) Part-time Temporary Employee – employed on a part-time basis for a specific position or assignment, and who is paid directly by the Authority.
- 3) Temporary Intern – employed on a full-time or part-time basis for a specific position or assignment, not to exceed six months in a given calendar year, and who is paid by the Authority.
- 4) Cooperative – (“Co-op”) – employed on a full-time basis while enrolled full-time at an accredited college or university in a work/study or cooperative education curriculum and who receives credits towards his/her course of study. Cooperative employees may be paid or unpaid by the Authority.
- 5) Developmental Intern – employed on a full-time or part-time basis while enrolled in an accredited college or university in a curriculum related to the temporary assignment at the Authority. Additional guidelines apply to Developmental Interns under the Human Resources Developmental Intern Program.

#### Benefits

- 3.1 Full-time Authority Employees or Transitional Employees (as defined in 2.1 a and b) are eligible to receive the Authority benefits as listed in the FlexAbility Guidebook and Benefits Handbook [\(see NYPA intranet page for this information\)](#).
- 3.2 Part-time Authority Employees (as defined in 2.1 c) are eligible to receive Authority benefits with the following qualifications:
  - a) Retirement System - New York State and Local Retirement System service credit for part-time Authority employees is pro-rated based on the number of hours worked per week.
  - b) Educational Assistance Program - The Educational Assistance Program benefit is pro-rated based on the number of hours worked per week.
  - c) Vacation and Sick Leave - Vacation and sick leave credits are based on the number of hours worked per week.
  - d) Holidays - Part-time Authority employees who work less than a full day (as applicable to their respective job location) are eligible for compensation for holidays based on the number of hours worked per day. However, if an employee works less than a full week, and a holiday falls on a day an employee is not scheduled to work, he/she will not be paid for that holiday.
  - e) Flex Credits – Flex Credits are based on a reduced flat amount.

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f) Insurance - Life insurance and long-term disability are adjusted based on the employee's pro-rated pay.

3.3 Provisional Employees (as defined in 2.1 (d)) are eligible for some Authority benefits, as follows:

- a) Flex Credits based on a reduced flat amount
- b) Mandatory participation in the New York State and Local Retirement System
- c) Vacation time will be credited as stated in the Vacation Policy (EP 3.2)
- d) sick leave will be accrued as stated in the Sick Leave Policy (EP 3.9)

A provisional employee does not receive the following Authority benefits:

- a) Life Insurance
- b) Long-Term Disability
- c) Educational Assistance
- d) Payment for holidays that fall on a day the employee is not scheduled to work (refer to 3.2 (d) for more details about holiday pay)

3.4 Temporary Employees (this includes Full-time and Part-time Temporary Employees, Co-ops and all Interns) are not eligible to receive Authority benefits with the following exceptions:

- a) Participation in the New York State and Local Retirement System is optional for a temporary part-time employee or for a full-time temporary employee whose period of employment is less than one year. Membership in the New York State and Local Retirement System is mandatory for a full-time temporary employee whose employment exceeds one year (prior approval must be obtained from headquarters HR and the Budget Department).
- b) Temporary Employees are not paid for holidays unless they work on a holiday.
- c) Any requests to hire a NYPA retiree (including NYPA retirees who have suspended their pensions) into temporary or provisional positions must be approved by the President & Chief Executive Officer. The request for approval must contain documentation of the need to continue services ~~for~~ from that individual.
- d) New York Power Authority retired employees who return to Authority employment and have suspended their New York State Retirement System pension because they have exceeded the annual earnings limitation as specified under Section 212 of the New York Retirement and Social Security Law shall retain their Authority-provided retiree benefits for a period of up to six months.

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- 3.5 For more detailed information about the applicable employee benefits as listed above, please refer to the FlexAbility Guidebook and Benefits Handbook.

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Vice President, Human Resources

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## **1.0**    Objectives

**1.1**    This policy provides for the reimbursement of reasonable and prudent meal expenses employees incur in the performance of their ~~job~~ duties. Each employee is responsible for ensuring that submitted expenses are accurate and in compliance with the provisions of the policy. The approving supervisor is responsible for ensuring cost effectiveness and reasonableness of expenses incurred as well as compliance with policy.

**1.2**    This policy is established to ensure:

- a. that employees are reimbursed for the necessary and reasonable cost of meals incurred while performing their duties
- b. meal reimbursement guidelines are clearly communicated to staff and consistently applied, and
- c. meal expenses are reimbursed within Authority policy limits

**1.3**    The policy applies to reimbursement of all meals except for those covered by union agreements.

## **2.0**    General

**2.1**    Meals eligible for reimbursement are incurred by an employee:

- a. while traveling overnight on Authority business.
- b. while taking a day trip on Authority business.
- c. in connection with working overtime.
- d. as a "working meal" during a business meeting.

Specific guidelines governing reimbursement are provided in the following sections of this policy.

**2.2**    Requests for reimbursement are required to include identification of the meal (breakfast, lunch or dinner) with an explanation of its business purpose. Receipts are required for individual meals with a cost in excess of \$10. All reimbursement requests require the approval of the employee's supervisor / manager or business unit head before processing for payment.

**2.3**    Employees who hold the company-sponsored corporate travel American Express card should use the card to pay for business meals. If an employee does not have a corporate travel card, the use of a personal card is encouraged. (Authority policy requires the use of the corporate American Express travel card to pay for all business transportation\*, lodging, and car rentals in order to ensure proper receipt documentation and eligibility for special negotiated fares) (Refer to CAP 1.7 American Express Corporate Travel Card Program for further details).

\* Except for air/rail travel which should be charged to the Authority's direct billed Citicard.

Employees may use the company procurement credit card ~~/check~~ (procard) with direct billing to the Authority to pay for meals incurred for internal training courses and working meetings including board and management committee meetings. The procurement card should not be used for any other meal expenses. Refer to Corporate Accounting Policy CAP 4.1 Petty Cash for further details.

### **3.0 Policy Details**

#### **3.1 Overnight Travel**

Employees traveling on business that requires an overnight stay will be reimbursed for **actual costs, but shall not exceed** and reasonable meal costs up to the following maximum daily amounts:

\$55	travel to upstate facilities (BG, CEC, Niagara, St. Law-FDR, Albany)
\$70	travel to downstate facilities (White Plains, New York swing office, <b>Poletti</b> <b>500MW</b> and Flynn)
\$70	other travel

When on overnight travel status, employees will be reimbursed for breakfast when travel begins before 7:00 AM, for lunch when travel begins before noon, and for dinner when returning home after 7:00 PM.

Employees who spend more than the maximum daily amount should reduce their reimbursement requests for the applicable days to the appropriate amounts (i.e. \$55 or \$70 depending on the destination). The Authority reimburses employees for the cost of breakfast, lunch, and dinner within these meal guidelines. The cost of food and beverages between breakfast, lunch, and dinner is not reimbursable.

#### **3.2 Day Trips**

Employees taking day trips to conduct Authority business will be reimbursed for meals based on travel times. Reimbursements will be provided (1) for breakfast, if the employee leaves home at least one hour before their normal departure time, and (2) for lunch, if the employee is on travel status during their normal lunch hour, and (3) for dinner, if the employee returns home at least two hours after their normal returning time. The Authority reimburses employees for the cost of breakfast, lunch, and dinner within these meal guidelines. The cost of food and beverages between breakfast, lunch, and dinner is not reimbursable.

### **3.3 Overtime Meals**

Employees are eligible for reimbursement of actual expenses for dinner when they work two hours of overtime during a weekday. On Saturdays, Sundays or holidays, employees are entitled to reimbursement of actual expenses for

- a lunch if they work 4 hours or more.
- b Dinner if they work 7 hours or more.

Reimbursements cannot exceed the actual cost of the meal. There is no "reimbursement allowance" if a meal is not purchased.

### **3.4 Limits**

Reimbursements for business meals incurred on day trips and for overtime meals will be based on actual ~~and reasonable~~ meal costs ~~up to~~ but shall not exceed the following maximum amounts:

- Breakfast \$10 (day trips only)
- Lunch \$20
- Dinner \$40

### **3.5 Authority- Provided Meals**

Whenever the Authority pays directly for a meal, the employee is not entitled to a meal payment. This provision also pertains to arrangements made by certain operating plants, with local restaurants, that provide a meal to an employee through the issuance of a "meal ticket". The cost of a meal obtained by a meal ticket should be within reasonable limits as determined by the Site Regional Manager. Meal tickets can only be used by the employee to whom it was issued and only on the day overtime is worked.

### **3.6 Business Meals**

Business meals will be reimbursed when the meal is provided as a "working meal" during a meeting (on or off the premises) for the convenience of the Authority and for the efficient conduct of business. In all cases of business meals, the senior employee in attendance should pay the bill and file the expense report. All reimbursement requests require the approval of the employee's supervisor/manager or business unit head before processing for payment.

#### **3.6.1 Meals with business guests**

Employees will be reimbursed for the actual ~~and reasonable~~ cost of meals, up to \$70 per person, with business guests (i.e. non-Authority employees) on or off the Authority's premises when the meal is approved by a vice president or equivalent or higher position. The nature of business discussed, as well as the name, title, and affiliation of each business guest, must be documented on the employee's expense statement.

The senior NYPA employee in attendance should pay the bill and file an expense report for reimbursement.

If the business meal is with an outside vendor and/or 3<sup>rd</sup> party contractor, the outside vendor and/or 3<sup>rd</sup> party contractor should **not** be permitted to pay the bill.

### **3.6.2 Authority Employees Only**

In situations where it is necessary for the efficient conduct of business, employees will be reimbursed for the cost of an on-premises meal (breakfast or lunch only) with other Authority employees up to \$30 per person, in connection with a working meeting or conference. Reimbursement of off-premises meals where only Authority employees are present will be permitted only when deemed appropriate for business purposes and authorized in writing by a vice president or equivalent or higher position. The cost of such meals should not exceed \$70 per person. The senior NYPA employee in attendance should pay the bill and file an expense report for reimbursement.

### **3.7 Extended Assignments**

Employees who work on an extended assignment (i.e. assignments for more than three months but less than one year) at a location other than their assigned work location may elect to receive: (1) reimbursement of actual and reasonable meal and lodging expenses or (2) a daily per diem, based on IRS guidelines, covering meals, lodging and incidental expenses (e.g., laundry, tips, etc.) Per diem arrangements must be approved by the appropriate business unit head and the Vice President and Controller. Amounts will be set by the Director ~~of~~ General Accounting & Financial Reporting (or his designee) based on Federal guidelines.

### **3.8 Non-Reimbursable Meal Expenses**

#### **3.8.1 Excessive Meal Expenses**

While the Authority expects its employees to have good meals at reasonably priced restaurants when traveling, and to conduct business in comfort, it also expects its employees to exercise good judgment. Accordingly, charges exceeding limits established by this policy will be considered personal expenses and will not be reimbursed.

#### **3.8.2 Personal Meals**

Meals in connection with retirement, farewells, birthdays, holidays and similar events are considered personal and will not be reimbursed.

### **4.0 Taxability**

Meal reimbursements that are not associated with overnight travel are generally considered taxable income under IRS regulations, and are therefore subject to withholding of social security and income taxes unless such payments are classified as de minimus by the Vice President – Controller’s office. Taxable meal reimbursements include those associated with day trips and

overtime. Reimbursements for working meals during meetings (Section 3.6) are not subject to taxes.

## **5.0 Responsibilities**

### **5.1 Employee**

Employees have primary responsibility for ensuring that meal expenses are necessary and reasonable, fully - documented as to business purpose, supported by receipts, properly submitted on the appropriate form, accurately coded in the proper account, and otherwise in compliance with the provisions of this policy. Employees should also exercise sound business judgment and common sense whenever they incur expenses to be paid by the Authority.

### **5.2 Approving Supervisors and Managers**

Approving supervisors and managers are responsible for ensuring that their employees understand the content and intent of this policy before expenses are incurred and that the provisions of this policy are met. Supervisors must ensure that Authority funds are spent wisely and carefully, that their employees have submitted appropriate, reasonable and prudent expenses and that all expenses, except as noted otherwise, are submitted on expense reports. In addition they are responsible for ensuring that their employees seek cost-effective solutions to situations/needs, carefully reviewing their employees' expense reports and confirming that coding for expenses to be reimbursed is accurate.

### **5.3 Facility Site Managers of Finance & Administration Business Services Headquarters Accounts Payable Manager**

The ~~Site Facility~~ Managers of ~~Finance & Administration, Business Services~~, at the operating plants, and the Accounts Payable Manager, at the Headquarters Office, are responsible for implementing and administering this policy at their respective locations. This responsibility includes ensuring their staff properly reviews, processes, and retains all reimbursement requests received.

### **5.4 Headquarters Accounts Payable Manager and Headquarters Payroll Manager**

The Headquarters Accounts Payable Manager and Headquarters Payroll Manager are jointly responsible for ensuring that meal reimbursements are properly included in the employee's paycheck (i.e. by separate check or direct deposit), taxable reimbursements are reported on the employees W-2 Wage and Tax Statement and social security and income taxes are withheld.

### **5.5 Director - of General Accounting & Financial Reporting**

The Director of Accounting or his authorized designee is responsible for overall implementation, administration, and maintenance of this policy on a company-wide basis.

**5.6 Vice President - Controller**

The Vice President - Controller must approve any deviations from this policy.

**6.0 References**

**6.1.1** Agreement between the Power Authority of the State of New York and Local Unions 2032 and 2104 of the International Brotherhood of Electrical Workers IBEW, AFL-CIO, 2006-2011, as amended or superseded from time to time.

**6.1.2** Agreement between the Power Authority of the State of New York and Local Union 1-2 of the Utility Workers Union of America (UWUA), AFL-CIO, 2004 - 2009, as amended or superseded from time to time.

**6.2** CAP 1.7 ~~American Express~~ Corporate Travel Card Program.

**6.3** CAP 7.4 Processing Overtime Meal Payments

**6.4** CAP 4.1 Petty Cash

**6.5** Credit Card Procurement System Policy & Procedures (Rev. 11/08)

**6.6** Travel Hand Book, NYPA Powernet website, Travel Desk section.

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Vice President-Controller

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### ATTENDANCE AND FLEXIBLE HOURS

- 1.1 To ensure an efficient and productive work environment, this policy establishes basic hours of daily work, basic workweek, flexible hours, punctuality guidelines, and guidelines for reporting to work in the event of inclement weather, transportation or other emergency situations for salaried employees. The workhours, workweek and lunch schedules may vary at different NYPA work locations.
- 1.2 NYPA expects all employees, regardless of location, to assume responsibility for their attendance and promptness, and to begin work no later than their designated start time. Employees should anticipate that NYPA work locations will be open every workday.

#### Basic Workhours and Workweek

- 2.1 If an employee works in the White Plains or Albany Office:
  - a) The basic daily hours of work may vary based on department needs. This is defined as "flexible hours." The typical workday may begin anytime between 7:00 am and 9:30 am.
  - b) The basic workweek shall consist of five workdays (in a seven-day period) of seven and a half hours each, exclusive of mealtime.
  - c) A lunch period is normally provided between the hours of 12:00 pm and 2:00 pm unless adjusted by an employee's supervisor. ~~Phone and staff coverage must be provided during lunch hours.~~
- 2.2 If an employee works at a location where NYPA generation or transmission facilities are operated or maintained and the normal workweek is 40 hours, the following shall apply:
  - a) For salaried employees the basic daily hours of work shall be determined by the Regional Manager or the person otherwise responsible for the work location. The typical workday may begin anytime between 7:00 am and 9:00 am.
  - b) The basic workweek shall consist of five workdays, (in a seven-day period) of eight hours each, exclusive of mealtime, and shall be determined by the Regional Manager or the person otherwise responsible for the work location.

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- c) Salaried employees' mealtime shall be determined by the Regional Manager or the person otherwise responsible for the work location.

2.3 The payroll period for a basic workweek at some locations may be Thursday through the following Wednesday, or Sunday through the following Saturday.

Punctuality Guidelines

- 3.1 Employees are expected to report for and remain at work during the basic daily hours as established by the applicable employing department or location, except for meal periods.
- 3.2 The basic daily workhours and basic workweek will vary at the Albany and White Plains Offices and at the facilities; however, the punctuality guidelines require that all employees report to work in a timely manner. Once hours have been established, employees will be expected to work the designated hours and days.
- 3.3 Employees who leave NYPA's employment, must physically be at work on their last day in order for it to be considered their last day of work.
- 3.4 Adherence to the flexible hours schedule will be enforced by the manager or supervisor. An employee may not switch his/her flexible hours schedule without approval by his/her manager or supervisor.
- 3.5 When an employee is late, he/she should meet with his/her supervisor to discuss the reason for the tardiness. Lateness is not charged against sick or vacation leave unless a half day or more is taken.
- 3.6 If the tardiness is not excusable, the employee's supervisor should document the occurrence. Specific guidelines for dealing with performance problems are established in EP 4.2, Performance Improvement. [Documented cases of excessive absenteeism, tardiness or requests to leave early which are documented may result in the application of vacation time for such events and/or](#) disciplinary action in accordance with EP 4.2.

Flex Time Schedules

- 4.1 In an effort to offer employees work-life balance solutions and minimize workplace commutes, flex time schedules to allow one day or a half day off within a two week pay period, will be permitted as follows:
  - a) Employees wishing to participate in the program must submit a matrix indicating his/her flex time period to his/her manager for approval, reference and planning. Once the flex schedule is approved, every attempt must be made to adhere to that schedule (any deviations must be pre-approved by the employee's supervisor).

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- b) Flex time schedules are not guaranteed and may be altered as necessary to accommodate the business needs of each Business Group/Unit and/or department.
- c) Employees cannot be required to work a flex time schedule.
- d) Non-exempt employee work schedules cannot exceed 40 hours in any given week as a result of an employee's working an approved flex time schedule.
- e) All employees working a flex time schedule must take at least a half hour lunch period.
- f) Total hours worked within a given pay period must be no less than 75 hours or 80 hours (whichever is applicable) and must correspond to a two week pay period (Monday – Friday).
- g) Holidays (including floating holidays) sick and vacation time must be recorded as your base hours (i.e.: 7.5 hours at WPO and Albany). In the event of a holiday or if an employee takes a sick day or vacation day and he/she was scheduled to work 8.5 hours, he/she will only get credit for 7.5 hours and will need to make up the extra hour another day during that pay period.
- h) Employees who take more than 2 days off (sick, vacation or holiday) in a two week pay period are not eligible to work a flex time schedule in that pay period.
- i) An employee's participation in this program may be discontinued at any time at the discretion of the employee's supervisor, manager or Business Unit head.

Office Closing Due to Inclement Weather or Emergencies

- 5.1 Unless notified otherwise, employees should anticipate that NYPA offices will be open. Only under extreme weather conditions or other emergency situations would the Albany Office and/or White Plains Office be closed. Office closings will be announced via the NYPA voice mail message system and First Call systems.
- 5.2 During the workday, if conditions warrant the closing of either the White Plains or Albany Office, the Human Resources Department Head, after consultation with the SVP Corporate Support Services and the President and Chief Executive Officer, will contact the Business Group Heads to advise them of the decision to close. Business Group Heads should then notify their respective staffs. During non-work hours, employees may call the NYPA voice mail system for office closing announcements.
- 5.3 If an employee expects to be late due to inclement weather, difficult transportation conditions or any other reason, he/she should notify his/her supervisor of the expected arrival time as soon as possible.

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5.4 If an employee decides not to come to work, his/her immediate supervisor should be notified as soon as possible. In that instance, the absence must be charged to an employee's accumulated vacation time (accumulated sick time cannot be charged).

Records of Attendance

- 6.1 Records of attendance shall be maintained for all employees at all NYPA locations through completion of a time report, which is maintained using the NYPA's time and attendance tracking system (CATS). Supervisors or their designees must approve all CATS entries before the time entries are transmitted to Payroll. Part-time NYPA employees must submit their time report on a weekly basis.
- 6.2 Falsification of any supervisory-approved records of attendance will result in disciplinary action up to and including termination.

\_\_\_\_\_  
Vice President, Human Resources

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EXHIBIT 3.6

PLEASE REFER TO THE PORTION OF THE EMPLOYEE POLICIES ENTITLED DISCLAIMERS WHERE YOU WILL FIND A STATEMENT WHICH PERTAINS TO ALL EMPLOYEE POLICIES, INCLUDING THIS ONE.

**VACATION**

1.1 Because NYPA recognizes the importance of vacation time in providing the opportunity for rest, recreation, and personal activities, the Authority grants annual paid vacations to its full-time, part-time, and provisional salaried employees (see EP 3.1, Salaried Employee Categories and Eligibility for Benefits Policy, for employee category definitions).

Eligibility for Vacation

- 2.1 Full-time salaried employees are credited with vacation days as follows:
  - a) Employees are credited with 20 vacation days on January 1 of each year.
  - b) In an employee’s first year of Authority employment, vacation days are credited on a pro-rated basis (rounded up to the nearest half day), based on the employee’s date of employment (1/12<sup>th</sup> of 20 vacation days, or 1 2/3 days for each month of service). For example, if employment began in April, the employee receives 15 vacation days for the year. If employment began in December, the employee receives two vacation days.
  - c) Employees who have 11 or more years of eligible NYPA service will be credited with an additional ½ vacation day on January 1 immediately after they attain 11 years of eligible service. (See EP 1.9, Transfer or Re-Employment in Public Service, for transferred time eligibility criteria.) For each succeeding year of service, another ½ day will be credited on the following January 1<sup>st</sup> of each year until a maximum of 25 days per year is credited upon the January 1<sup>st</sup> after reaching 20 years of service.
  - d) Employees who are on a medical leave and receiving full pay will receive full vacation credits on January 1. Employees on sick leave at half-pay or a leave of absence without pay or long term disability on January 1, will not receive vacation days until they return to work, at which point the days will be credited on a pro-rated basis for the full months worked during the year. Employees who go out on a medical leave or a leave of absence without pay after receiving their vacation days on January 1, and remain employees, will keep the vacation days that were granted on January 1.
- 3.2 Vacation days for part-time salaried Authority employees are credited on a pro-rated basis based on the assigned number of hours worked per week. If part-time employees become full-time during the year, their vacation days for the year will be adjusted on a pro-rated basis.

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3.3 Provisional salaried employees, employed on January 1, are credited with 10 vacation days per year for their first two full years of employment, and 15 vacation days in their third year. In the first calendar year of provisional employment, vacation will be pro-rated for each month of service.

Vacation Usage

- 4.1 New employees may use vacation time immediately with the approval of their supervisor (see Section 6.1 (d).\*)
- 4.2 Employees may use vacation days in full or half-day increments. However, supervisors may allow employees to offset partial vacation days with flexible scheduling, allowing them to make up time by working extra hours on other days. Supervisors may also grant very limited time off without using vacation time if the absence is so brief that it does not affect getting assigned work completed.
- 4.3 Excessive requests for time off, or taking vacation time without prior approval, should be handled by supervisors as performance problems in accordance with EP 4.2, Performance Improvement Policy.
- 4.4 Once employees have submitted their resignation, vacation usage is subject to their supervisor's approval. However, employees must physically be at work on their last day of employment.

\*(Some Business Units, Sites or Departments may require the vacation request in writing.)

Vacation Carryover

5.1 Regardless of how many vacation days employees are credited with at the beginning of the year, no more than 40 vacation days may be carried over from year to year. For example, on December 31 an employee has the maximum vacation accumulation (40 days) and is credited with an additional 20 days on January 1, the employee's total balance would be 60 days on January 1. If by December 31 of that year the employee still has more than 40 days of accumulated vacation time, the vacation balance will be reduced to 40 days. However, due to extenuating circumstances, individual exceptions to this limitation on carryover of vacation days may be approved by the respective Business Group and Business Unit/Department Heads with concurrence from the Human Resources Department Head or their designee. Any such request must be forwarded to the Human Resources Department Head no later than January 10<sup>th</sup> of the year in which the vacation accumulation exceeds the 40-day maximum.

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Pay in Lieu of Vacation

- 6.1 Payment in lieu of accumulated vacation, not exceeding a maximum of 40 days, may be made for employees who have completed at least six months of service under the following conditions:
- a) When employees resign, provided they give the Authority at least two weeks' written notice.
  - b) When employees' services are terminated by the Authority.
  - c) ~~When employees retire, payment for unused vacation at retirement may be included in the employee's New York State Retirement System benefit calculation, depending on the employee's tier and certain conditions. Please contact a Human Resources representative or the New York State Retirement System for specific details.~~
  - cd) When employees resign, are terminated or retire, they will receive payment for the current year's accumulated vacation on a pro-rated basis (1/12<sup>th</sup> of yearly vacation days for each month of service). This will be added to any days that were carried over from the prior year, up to a maximum vacation payment of 40 days. If employees have already used more than the equivalent of 1/12<sup>th</sup> of their yearly vacation days for each month of service, payments for those days must be repaid to the Authority (to the extent possible, payment will be withheld from the employee's final paycheck).
  - de) When employees resign or are terminated prior to six months of service, they are not eligible for payment of vacation days, and payment for any vacation time taken within the first six months of employment must be repaid to the Authority (to the extent possible, payment will be withheld from the employee's final paycheck).
  - ef) In the event of death, payment for unused vacation will be made to the beneficiary as named in the employee's group life insurance policy.

Vacation Buy-Back Program

- ~~7.1 — 7.1 Salaried employees who have accumulated five weeks of vacation time may "buy-back" one week (5 days) of vacation time, once per year. If a vacation buy-back is offered and announced by Human Resources, employees will be advised of the amount of vacation they are allowed to "buy-back" at that time.~~
- ~~7.2 Each year, when the vacation buy back period is announced by Human Resources, request forms must be sent to Payroll within the specified deadlines date. Requests received after the announced deadline date will not be honored or processed. When the announcement is made by Human Resources,~~

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request forms must be sent to Payroll with the specified deadline dates. Requests received after the announcement deadline date will not be honored or processed.

7.3 The vacation "buy-back" check will be issued separately from the regular bi-weekly paychecks. In addition to taxes, Employees' Savings Plan (401(k) plan) and Deferred Compensation Plan (457 plan) deductions, if applicable, will be withheld from the check. Employees' Savings Plan or Retirement System loan repayments will not be deducted from the check.

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The vacation "buy-back" payment does not constitute salary as defined by the Retirement and Social Security Law. Therefore, Tier 3 or Tier 4 contributions, if applicable, will not be deducted from the vacation buy-back check, nor will the buy-back be reported to the Retirement System as wages. Therefore, the value of the "buy-back" will not be included in the calculation of an employee's Final Average Salary.

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Vice President, Human Resources

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7.1

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Vice President, Human Resources

**NEW YORK POWER AUTHORITY  
PAYROLL DEPARTMENT  
VACATION CASH OUT REQUEST  
SALARIED**

EMPLOYEES WITH ONE (1) OR MORE YEARS OF CONTINUOUS SERVICE AND A VACATION ACCRUAL OF TWENTY-FIVE (25) DAYS OR MORE ON THE DATE SPECIFIED BY HUMAN RESOURCES MAY CHOOSE TO CASH IN ONE (1) WEEK, i.e. FIVE(5) DAYS. REQUEST FOR SUCH, MUST BE RECEIVED IN THE HQ PAYROLL DEPARTMENT BY THE DATE SPECIFIED BY HUMAN RESOURCES.

**PLEASE NOTE: NO REQUEST WILL BE HONORED BEYOND THE DATE SPECIFIED BY HUMAN RESOURCES.**

**EMPLOYEE NAME:** \_\_\_\_\_ **FILE #:** \_\_\_\_\_

**LOCATION:** \_\_\_\_\_ **HIRE DATE:** \_\_\_\_\_

**I REQUEST TO CASH OUT FIVE (5) VACATION DAYS FROM MY VACATION BALANCE BASED ON THE GUIDELINES STATED ABOVE.**

\_\_\_\_\_  
**EMPLOYEE SIGNATURE** \_\_\_\_\_ **DATE** \_\_\_\_\_

\_\_\_\_\_  
**RECEIVED BY (Site Personnel)** \_\_\_\_\_ **DATE** \_\_\_\_\_

**FOR HQ PAYROLL USE:**

Hire Date: \_\_\_\_\_ Yrs of Service: \_\_\_\_\_

Vacation Balance: \_\_\_\_\_ Master Used: \_\_\_\_\_

**EARNCODE 30:** \_\_\_\_\_

**PAY DATE:** \_\_\_\_\_

\*Subject to supplemental tax rate

\*Subject to 457 deductions

<b>NEW YORK POWER AUTHORITY</b>	<b>CP:</b>	<b>2.1</b>
	<b>Revision:</b>	<b>6</b>
	<b>Date:</b>	<b>2/24/2012</b>
<b>CORPORATE POLICY: TRAVEL</b>		

**SUBJECT: TRAVEL****1.0 SCOPE**

This policy establishes guidelines for business travel arrangements and travel expense reimbursements.

**2.0 IMPLEMENTATION**

This policy shall be adhered to by the staff of all Authority Business Units and Departments. Recommendations for changes to this policy or a new corporate policy shall be processed in accordance with CP 1-1 "Corporate Policy Program Administration".

**3.0 MANAGEMENT CONTROLS****3.1 General**

- 3.1.1 Employees must use Power Business Travel, (the Corporate Travel Desk), for air, hotel and car rental arrangements in order to be reimbursed for business travel expenses.
- 3.1.2 The Travel Desk will make the most cost effective arrangements that meet the traveler's needs. Exceptions or changes to Travel Desk recommended arrangements must be approved by the traveler's Business Unit/Business Head.
- 3.1.3 Travel associated invoices must be submitted with expense statements for reimbursement.
- 3.1.4 In the event that emergency travel arrangements are made by the traveler, written explanation of the circumstances must be provided to the Travel Desk, which will produce an invoice to be submitted with the expense statement.
- 3.1.5 Every effort will be made to meet employee **employee** travel needs while taking advantage of New York State contracted or "economy/advance purchase" airfares, "government" or "corporate/seminar" lodging rates and "negotiated" or "discount" rates for vehicle rental.
- 3.1.6 Tax exempt forms should always be used to prevent state and local taxes from being added to hotel or car rental bills whenever employees are traveling **for NYPA business** in New York State, since

**CORPORATE POLICY: TRAVEL**

New York taxes will not be reimbursed. ~~on employee expense statements.~~

- 3.1.7 The Travel Desk will make the most cost effective arrangements for out-of-office meetings, seminars and training sessions, and must be used to book the rooms and facilities required for these types of events.
- 3.1.8 The Travel Desk will optimize cost savings and minimize trip times by scheduling/assigning the company plane and arranging charter flights as appropriate. (See sections 3.8 and 3.9)
- 3.1.9 Whenever possible, employees should use fleet vehicles, which will be maintained at all sites, to secure ground transportation for business purposes; however, employees are expected to use alternate means, including personal vehicles, if fleet vehicles are not available. To request a fleet car, the traveler should go to NYPA's intranet page and follow the instructions.
- 3.1.10 Expenses incurred for meals while traveling will be reimbursed according to the Corporate Accounting Policy (CAP) 1.5, Reimbursement of Employee Meal Costs.
- 3.1.11 Any exceptions to this travel policy must be approved by the Director of Corporate Support Services and Senior Vice President of Corporate Support Enterprise Shared Services.

**3.2 Responsibilities**

- 3.2.1 The manager authorized to approve an employee's Expense Statement must ensure that the ~~employee~~ **employee** has complied with the provisions of this policy.
- 3.2.2 Employee are responsible for compliance with this Corporate Policy and also for verification that all travel arrangements are correct.
- 3.2.3 The Director of Corporate Support Services and SVP Corporate Support Services implement this policy and determine appropriate revisions.

**3.3 Travel Arrangements**

- 3.3.1 Employees must book all business travel through the Travel Desk. Travel Coordinator will book the most cost effective and time efficient travel for the employee's trip.

- 3.3.2 If an employee requests a different itinerary than provided by the Travel Desk, the traveler must obtain approval from the appropriate manager or Departmental designee. The email with the approval should be forwarded to the Travel Desk before tickets can be issued. All approved exceptions will be maintained in the Travel Desk files.
- 3.3.3 Employees should make travel requests as far in advance as possible, so that the Travel Coordinator may obtain the lowest airfares and hotel rates. The travel request should include preferred time and departure airport, location and dates of meetings/accommodations, etc.
- 3.3.4 Every effort will be made to secure alternatives that meet both the employee's preferences and this policy. The Travel Coordinator will notify the employee if preferred routings, departure times, or hotel accommodations are not available or if preferred airlines or airports or hotel accommodations are not the most reasonable and lowest-cost alternatives. New York State Office of General Services (OGS) negotiated or NYPA negotiated discount fares will always take precedence over whatever airline or routing that the passenger prefers.
- 3.3.5 NYPA allows employee to participate in and keep the benefits of "frequent flyer" and other mileage/usage related programs. However, required business travel will not be arranged to meet any particular program requirements, unless program pricing is equal to or less than competing alternatives.
- 3.3.6 If the employee is traveling on NYPA business outside the U.S., the employee may need a valid passport. If the employee needs to acquire or renew his U.S. Passport to conduct NYPA business, then NYPA will reimburse the employee for that expense.

### 3.4 Reimbursement

**CORPORATE POLICY: TRAVEL**

- 3.4.1 Business air or train travel will be charged by the Travel Desk to a centralized Citibank VISA account that will be reconciled by Accounting staff. ~~-. Air and/or train travel for NYPA business will not be expensed by the individual traveler.~~
- 3.4.2 ~~Employee t~~Travel expenses, other than air or train tickets, are reimbursed through the Employee Expense Statement (hard copy or electronic, whichever applies). The employee submitting an expense statement is responsible for its accuracy and completeness. Additionally, the signature or electronic approval of the employee's supervisor, manager, director (or higher) indicates that the expense statement is complete, meets documentation and receipt requirements, includes only reasonable business expenses and is in compliance with this policy.
- 3.4.3 Travel invoices issued by the Travel Desk in response to a traveler's requested trip arrangements must be attached to the expense statement to ensure reimbursement of approved business expenses.
- 3.4.4 Travelers will not be reimbursed for any travel expenses not in compliance with this policy.

**3.5 Air Transportation**

- 3.5.1 The Travel Coordinator will seek to provide economical airfares which could include a one-stop flight or a connecting flight with a layover of two hours or less. Employees should be ready to accept alternative reservations established within a two hour "window" of their requested departure times in order to achieve fare savings.
- 3.5.2 A commercial aircraft must be multi-engine turbine powered with 2 pilots flying the trip.
- 3.5.3 All business travel of less than 2500 one-way air miles will be booked in "coach". If a business traveler has one way flight time exceeding 7 hours to their destination, the traveler can depart a day earlier so that he/she can be rested for the next day's activity. If a business traveler has one way flights that exceed 2500 air miles, business class may be booked instead of coach upon the approval

of the Senior Vice President, Enterprise Shared Corporate Support Services.

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- 3.5.4 If a New York State Office of General Services (OGS) negotiated fare is available for a traveler's proposed trip, then that fare will be used as long as it fits the requirements of provision 3.5.1. If an "incentive" or "special" fare is also available for the same city-pair, then that roundtrip fare may be used if the savings is more than \$200 over the OGS roundtrip fare. Any other exception must be approved by the employees supervisor.
- 3.5.5 Special fares" frequently provide substantial fare savings, but may carry up to a 100% charge for changes or cancellations. These fares can be very economical, but they have scheduling drawbacks, and should be used with caution. If these fares are booked and a change or cancellation is required due to legitimate business circumstances, the Authority will absorb the expense and charge the employee's cost center.
- 3.5.6 Employees may use a transportation differential of up to \$200.00 (roundtrip) to choose between trips originating from the New York City airports, i.e., LaGuardia, JFK and Newark, and from Westchester County Airport or Newburgh/Stewart Airport. For example, if a roundtrip originating from Newburgh/Stewart costs over \$200.00 more than the same trip from Newark, then the employee's trip will be booked from Newark unless an approval of the exception is sent by the individual who signs off on the employee's expense statement or the employee agrees to pay the amount in excess of \$200.00.
- 3.5.7 Ground transportation to/from airports should be as reasonable as possible, given employee's individual travel situations. The Travel Desk will assist employees in choosing among the airport transit options most suitable for them. Car service is expensive and should be last resort to get to the airport. Preferred car service providers who provide cost-effective rates for NYPA travelers, are listed on the Travel Desk's website. The use of the employee's personal car will be reimbursable in accordance with NYPA's "Business Mileage Rate for Transportation" which conforms to the IRS guidelines.

**3.6 Hotel Reservations**

- 3.6.1 The Travel Coordinator at the Travel Desk will always attempt to secure the lowest available rates for hotel accommodations, whether at "government", "corporate/seminar", "negotiated discount" or other special rates. The federal reimbursement rate for that location, as referenced in the U.S. General Services Administration's Domestic

**CORPORATE POLICY: TRAVEL**

Per Diem Rates, will be used as a guideline.

3.6.2 It is the policy of the Travel Desk to book overnight stays in hotels that provide a "government rate", unless no such suitable accommodation is available. The Travel Coordinator will indicate a choice of median-rated hotel accommodations within reasonable proximity to the employee's meeting/business location, in order to provide the most economical rates available for the employee. For conferences, reservations will be made in the hotel where the conference is being held, provided that those accommodations are in accordance with this policy. If an employee prefers to stay at a hotel with no government rate, when, in fact, a government rate is available at a nearby hotel, the reimbursement will cover only the amount of the declined government rate. All exceptions will be reported to Accounts Payable by the Travel Desk staff.

3.6.3 Unless otherwise requested, hotel accommodations for late arrivals will be automatically guaranteed to the traveler's corporate credit card.

3.6.4 When canceling a hotel reservation, the Travel Coordinator will give the ~~employee~~ employee a cancellation code which should be retained in the employee's files. If cancellations are called in directly to the hotel, then the caller should notify the Travel Desk of the cancellation number, the name of the individual who accepted the cancellation, and the date and time of the cancellation. Please note that this information is necessary if the hotel mistakenly charges the traveler employee a "no-show" expense (usually the cost of one night's lodging).

**3.7 Car Rentals**

3.7.1 The Travel Coordinator will secure car reservations using NYPA's contract vendors.

3.7.2 The Travel Coordinators will always request the lowest (most fuel-efficient) car class size suitable for the business purposes. When fewer than three employees are traveling together, an intermediate-sized car or smaller will be booked unless there are compelling business related reasons that call for a larger vehicle.

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- 3.7.3 ~~Employees traveling for business~~~~Business travelers~~ should use their Corporate Credit Cards for car rental transactions since the credit card is providing Collision Damage coverage through a separate agreement with NYPA. A traveler will NOT be reimbursed for collision damage insurance on a car rental.
- 3.7.4 Liability Insurance Supplement (LIS) and Personal Accident Insurance (PAI)/Personal Effects Coverage (PEC) will be offered by most car rental agencies. PAI allows renters to elect accidental death and blanket medical coverage for themselves and their passengers, while PEC provides insurance for loss of or damage to a customer's personal effects during the rental period. These extra insurances, e.g., LIS, PAI, and PEC will NOT be reimbursed by NYPA.
- 3.7.5 The completed car rental agreement with the receipt for payment must be attached to the ~~employee's~~ ~~employee's~~ expense statement submitted for reimbursement.
- 3.7.6 All rental vehicle accidents must be immediately reported to NYPA's Insurance Department using appropriate forms.
- 3.7.7 ~~Employees~~ ~~Employees~~ should attempt to minimize rental costs. Cars picked up at one location should be returned to the same location whenever possible to avoid incurring mileage and drop-off charges. To avoid contract vendor fill-up charges, employees should return cars with a full tank of gas.
- 3.7.8 Transportation to/from airports to the office/hotel by van or bus service is encouraged. Many hotels/conferences offer a complimentary transport service. The Travel Desk can often provide advance information on such services, and assist in arranging for their use.

**3.8 Corporate Airplane**

- 3.8.1 NYPA Flight Operations will reserve the corporate airplane on a first-come, first-serve basis for personnel on Authority related business.
- 3.8.2 Each flight on the corporate airplane must be to and from destinations within New York State. Use of the corporate airplane should be the

**CORPORATE POLICY: TRAVEL**

most cost-effective choice when compared to commercial flights plus hotel lodging, car rentals, and employee lost productivity. This cost comparison is done through the use of Travel\$ense, a software program designed to compare the cost of travel via business aircraft versus airlines or other alternate means. If the Travel\$ense analysis indicates a trip is not a cost-effective use of the corporate airplane, Flight operations, in conjunction with the Travel Desk, will recommend other travel alternatives. Approvals are subject to the terms of section 3.1.11. Travel\$ense reports are kept by Flight Operations for all NYPA flights conducted on the corporate airplane detailing the cost savings associated each trip.

3.8.3 The corporate airplane cannot be used solely to transport board members to and from board meetings. Trustees performing Authority related work, may travel on the corporate airplane only on trips which have already been scheduled for other Authority employees and which result in no additional cost to the Authority.

3.8.4 Requests for use of the corporate airplane are made through the internet based NYPA Aircraft Reservation System hosted by Professional Flight Management. Select individuals are granted access to this site, and act on behalf of their business unit head, and

the business unit travelers, to submit all appropriate requests to Flight Operations. These requests are then processed and scheduled by the company pilots, and a notice of trip status is then sent to all passengers via email. All changes to trip requests are made through the same process.

To gain access to the intranet-version of the company airplane reservation system, a written request should be made to the Director, Aviation and Travel Operations. The basis for the request should be indicated, e.g. that he/she is replacing someone who has current access or showing that the group he/she represents is a frequent user of the corporate airplane, and has been approved by the business unit head to act on their behalf as a designated scheduler. The Director, Aviation & Travel Operations will then ensure that these individuals are granted access to the reservation system which includes the corporate airplane's 90 day extended schedule.

3.8.5 Consultants or contractors, performing NYPA related work, may utilize the corporate airplane provided that this trip results in no additional cost to NYPA. Non-NYPA travelers will be required to sign a written waiver of any claim or liability against NYPA arising

out of such use. Federal, State or Local Government officials may, under special circumstances, utilize the corporate airplane for government purposes.

- 3.8.6 The cost of the corporate airplane is not charged back to the employees' budgets but is budgeted as a corporate resource for all business units of NYPA.
- 3.8.7 If the corporate airplane is unexpectedly unable to fly a scheduled trip, then other means of travel will be arranged for those booked. If the other means of travel, due to special conditions, is a charter plane, then the cost of the charter will in most cases be charged back to the appropriate departmental budget(s).

### 3.9 Charters

- 3.9.1 The Travel Desk is responsible for arranging aircraft charters. If NYPA's corporate airplane is unable to do a trip for the business group and commercial flights are not available or cost justified, then charter prices may be sought from those vendors with contracts with NYPA to provide charter aircraft. The aircraft most closely meeting the needs of the business group and with the most cost effective pricing will be booked to satisfy extreme travel circumstances.

A charter aircraft must be multi-engine turbine powered with 2 pilots flying the trip. The pilots must meet NYPA's minimum standards for its own pilots.

- 3.9.2 The request for a charter aircraft must be approved by the President before committing to the charter provider. In the case of the President's request for a charter aircraft, the Senior Vice President of ~~Enterprise Shared Corporate Support~~ Services, the General Counsel and the Chairman must approve the trip.
- 3.9.3 To finalize the transaction, the business group must provide the appropriate NYPA cost center code and the cost element to the Travel Desk, so that the cost can be charged back to the departmental budget.
- 3.9.4 The charter trip will be scheduled as an additional trip on the corporate plane schedule, viewable on NYPA's intranet, so that NYPA's pilots and other users are aware of it. In this way, available seats might be filled with other travelers.

3.9.5 If there is a concern over the possibility of an emergency need for the corporate airplane, the charter plane may be kept reserved until 24 hours before the trip and then released. If the corporate airplane becomes available by the close of business on the day before the scheduled trip, it should be the preferred aircraft, replacing the charter.

3.9.6 Charters usually have cancellation penalty clauses that are substantial. Any arrangements must include the business group representative's agreement to pay the cancellation fees which may be imposed.

### **3.10 Meetings/Seminars/Training Sessions**

3.10.1 NYPA events such as meetings, seminars, and training sessions that are held out of the office must be reviewed by the Travel Desk.

All hotel accommodations must be booked for these events through the Travel Desk to ensure rate policy compliance. Employees should send written proposals to Travel Desk in a timely fashion for review and scheduling. Only hotel rooms and meeting facilities will be reviewed and booked by Travel Desk personnel. Food requirements, meeting set-up, etc are the responsibility of the respective Business Unit.

Plans for group business luncheons or dinners for 50 people or less, may be made by the appointed person from within the Business Unit or department sponsoring the event. The cost of all such luncheons or dinners must be kept within the limits of the reimbursement policy covering Off Premises Meals.

3.10.2 Events estimated to exceed \$15,000 will be submitted to Procurement for advertising in the Contract Reporter. Procurement will issue a bidding document to interested parties. Travel staff and the requesting group's representative(s) will review the bids and select the most appropriate and cost-effective provider.

Events in the \$5,000 to \$14,999 range will be researched by the Travel Desk staff who will recommend a vendor to Procurement for contract execution.

- 3.10.3 When the cost and details of the conference room(s), refreshments, and other amenities from the hotel, restaurant or conference center have been agreed upon, the designated business group representative should sign the contract from the vendor. After the event, the requestor is responsible for reviewing, entering budget codes and sending the subsequent bill for services in a timely manner to Accounts Payable for issuance of the payment.
- 3.10.4 Outside meeting arrangements generally include cancellation clauses. Please note that any arrangement must include the requesting business group representative's agreement to pay any cancellation fees involved.

### **3.11 Cancellation/Revisions**

- 3.11.1 The Travel Coordinator should be immediately advised of any cancellations – air, hotel, car, etc. Failure to do so could result in penalties on airfares and no-show charges for hotels and cars. Please note that any NYPA incurred avoidable charges will be billed to the business group's appropriate responsibility code/cost element if not properly cancelled.
- 3.11.2. Except in emergency situations, any revisions to an employee's itinerary must be made by the Travel Desk. Charges for emergency measures must be supported by appropriate documentation from vendors.

### **~~3.12 Contractor Travel~~**

- ~~3.12.1 Contractors must make all travel arrangements through the NYPA Travel Desk. Travel arrangements made through outside travel agencies are only reimbursable in accordance with current NYPA negotiated or government rates.~~
- ~~3.12.3 A complete Contractor Travel Profile form must be on file for each contractor prior to requesting travel services from the NYPA Travel Desk. The Contractor's NYPA manager will request Accounts Payable staff to assign a NYPA Contractor Number for each contractor who will be traveling. The number is then added to the Contractor Travel Profile before it is forwarded to the NYPA Travel Desk.~~

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- ~~3.12.4 All Contractor Travel requests must have the contractor's NYPA manager's approval prior to submission to the Travel Desk.~~
- ~~3.12.5 The maximum amount of reimbursable airfare should not exceed the cost of round trip government airfare between the appropriate NYPA facility and the location of the contractor's preapproved point of origin, unless otherwise authorized by the appropriate NYPA business unit head or designee.~~
- ~~3.12.6 The NYPA Travel Desk will issue itineraries for all travel arrangements made for Contractors. A copy of these itineraries will be sent via email to the contractor and the appropriate NYPA manager. A copy of a contractor's NYPA travel itinerary and associated receipts, excluding meals, must be attached to vendor's invoice.~~
- ~~3.12.7 The NYPA Meal Policy must be adhered to by contractors at all times. Meal expenses which do not conform to this policy are not reimbursable. Meals shall be paid on a per diem based on the schedule listed below. Meal receipts are not required.~~
- ~~3.12.8 NYPA's N.Y. State Sales Tax Exemption forms must always be used for hotel and car expenses incurred within New York State. Sales tax charged for these services within New York State are not reimbursable.~~
- ~~3.12.9 Contractors/consultants will use their personal credit cards for car rental transactions.~~
- ~~3.12.10 Additional fees, such as auto insurance, road side assistance on car rentals, will not be reimbursed. Upgrades to larger size or luxury vehicles are also not reimbursable. Miscellaneous expenses, such as tips, fees for use of hotel gym/ fitness rooms, medications, toiletries, snacks, magazines, newspapers, etc. are personal and will not be reimbursed.~~
- ~~3.12.11 The NYPA Travel Desk must be advised immediately of any cancellations. Failure to do so may result in penalties or no show charges which are not reimbursable.~~
- ~~3.12.12 NYPA Managers will review all contractor travel expense invoices to ensure compliance with this policy.~~

**4.0 REFERENCES**

- 4.1 CP 1-1 – Corporate Policy Program Administration
- 4.2 CAP 1.5 – Reimbursement of Employee Meal Costs
- 4.3 Corporate Flight Operations Manual
- 4.4 CP 2-8 – Motor Vehicle Policy

**5.0 ATTACHMENTS**

- 5.1 Power Business Travel Invoice
  - 5.2 NYS Sales Tax Exemption Certificate
  - 5.3 NYS Hotel Tax Exemption Certificate
- President and Chief Executive Officer

## **EXHIBIT 4.0(a)**

### **Review and Recommendation of Guidelines and Procedures**

Pursuant to the Authority's implementation of the Public Authorities Accountability Act of 2005 ("PAAA"), as amended, the Authority's Governance Committee reviews the Guidelines for Procurement Contracts, the Guidelines and Procedures for Disposal of Personal Property, the Guidelines and Procedures for Disposal of Real Property and the Guidelines and Procedures for Acquisition of Real Property annually, and approves any changes to such Guidelines. In addition, Annual Reports of Procurement Contracts with a value of \$5,000 or greater; Disposal of Personal Property over \$5,000 in value; and Disposal of Real Property over \$15,000 in value are required to be reviewed by the Authority's Trustees.

## **Guidelines for Procurement Contracts**

In compliance with the applicable provisions of § 2879 of the Public Authorities Law (“PAL”), as amended, the Authority has established comprehensive guidelines detailing its operative policy and instructions concerning the use, awarding, monitoring and reporting of procurement contracts. The 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/Women-owned Business Enterprise (“M/WBE”) requirements, employment of former officers and reporting requirements. These Guidelines, approved by the Authority’s Trustees, were initially implemented on January 1, 1990, and have been amended as deemed advisable and necessary, and reviewed and approved annually since that date, most recently on March 29, 2011.

Staff has reviewed the Procurement Guidelines and recommends additional changes to make them more consistent with the law, to clarify or improve the Authority’s procurement process, and also to reflect titular or organizational changes in the Authority. The most significant of such changes are highlighted below:

- **NYS COMPTROLLER’S APPROVAL OR FILING OF CERTAIN CHANGE ORDERS (“CONTRACT AMENDMENTS”)**, as set forth below and in 8.C of the Procurement Guidelines, and as further set forth in the referenced law and regulations:

*Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Authority may be required to submit certain Change Orders to the New York State Comptroller for filing or approval where the aggregate value of the contract as amended is in excess of \$1 million and the original contract was awarded on the basis of a competitive procurement, but the modification was neither contemplated nor provided for in the solicitation for such competitive procurement. Accordingly, unless the Change Order is considered an “exempt contract amendment,” no such Change Orders will be processed or approved unless the proposed procurement of goods and/or services was contemplated or provided for in the original Request for Quotation / Proposal.*

- **PROHIBITIONS REGARDING VENDOR PREPARATION OF SPECIFICATIONS** for procurements, as set forth below and in revised 7.C of the Procurement Guidelines, pursuant to New York State Finance Law § 163-a:

***If a vendor (firm, person or other entity) participates in the development or writing of the specifications for a procurement solicitation, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor at any level. Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services. The above restrictions shall not apply where:***

- 1. The vendor is the sole source or single source of the product or service;***
- 2. More than one vendor has been involved in preparing the specifications for a procurement proposal; or***
- 3. The originating Authority Business Unit determines in writing that the restrictions are not in the best interests of the Authority. Such originating Business Unit shall obtain the approval of the applicable Business Unit Head or equivalent(s), Vice President of Procurement or equivalent(s) or designee, Assistant General Counsel or equivalent(s) and President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) to waive this restriction on a case-by-case basis.***

It may also be noted that non-substantive and stylistic changes have been made throughout the document, as set forth in the redlined copy attached hereto as Exhibit "A-2."

These amended Guidelines, as reviewed by the Governance Committee, will be presented to the full Board of Trustees for review and approval at their March 27, 2012 meeting. The approved Guidelines will become effective on March 31, 2012 and will be posted on the Authority's internet website. On or before the 31<sup>st</sup> day of March, such Guidelines will also be filed with the Director of 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.

## **EXHIBIT 4.0(c)**

### **Guidelines and Procedures for the Disposal of New York Power Authority Personal Property**

In compliance with Public Authorities Law (“PAL”) § 2896, enacted as part of the Public Authorities Accountability Act of 2005 (“PAAA”) and amended by the Public Authorities Reform Act of 2009 (“PARA”), the Authority established and is required to annually review and approve Guidelines for the Disposal of Personal Property. Personal Property is defined to include, but is not limited to, materials, tools, equipment and vehicles owned by the Authority, with a value in excess of \$5,000. The Personal Property Guidelines set forth the methodology detailing the Authority’s policy regarding the use, award, monitoring and reporting of the disposal of Personal Property and designate a Contracting Officer responsible for the Authority’s compliance with, and enforcement of, such Guidelines. The Guidelines were initially approved by the Trustees in March 2006 and have been amended as deemed advisable and necessary, and reviewed and approved annually since that date, most recently on March 29, 2011.

Staff has reviewed the Personal Property Guidelines and recommends no substantive changes. Several non-substantive changes were made to the guidelines to reflect titular or organizational changes in the Authority, as set forth in the redlined copy attached hereto as Exhibit “A.”

These revised Guidelines, as reviewed by the Governance Committee, will be presented to the full Board of Trustees for review and approval at their March 27, 2012 meeting. The approved Guidelines will become effective on March 31, 2012 and will be posted on the Authority’s internet website. On or before the 31<sup>st</sup> day of March, such Guidelines will also be filed with the State Comptroller, the Director of the Division of the Budget, the Commissioner of General Services, the State Legislature and the Authorities Budget Office.

**GUIDELINES FOR PROCUREMENT CONTRACTS**

**1. PURPOSE**

These Guidelines for Procurement Contracts (“Guidelines”) set forth the policy of the Authority regarding the solicitation and awarding of procurement contracts. The provisions of Article 4-C of the Economic Development Law, §§ 2879 and 2879-a of the Public Authorities Law, Article 15-A of the Executive Law and §§ 139-j and 139-k of the State Finance Law were considered in developing these Guidelines. Departments and facilities may adopt further procedures to implement these guidelines.

**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 with or without environmental attributes included, 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, print and electronic media, periodicals, subscriptions, reference materials or professional research tools, written materials, 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 Enterprise” (“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, and pursuant to the definition found in Executive Law § 310.
- H. “Small Business” is a business that is resident in New York State, is independently owned and operated, not dominant in its field and employs not more than 300 people.
- I. “Single Source” means a procurement in which although two or more offerers can supply the required goods or services, the Authority, upon written findings setting forth the material and substantial reasons therefore, may award a contract or amendment to a contract to one offerer over the other.
- J. “Sole Source” means a procurement in which only one offerer is capable of supplying the required goods or services.

### 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 and RFQ on the Authority's Procurement website 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 RFPs and RFQs) 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/WBEs"), the Authority will solicit offers from M/WBEs 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/WBEs, a single proposal may be sought, negotiated and accepted for purchases of goods and/or services not exceeding \$200,000, in the aggregate including all amendments, from a NYS-certified M/WBE that offers a reasonable price for such goods and/or services. The award of such proposal requires the written approval of the Vice President of Procurement. Any subsequent alteration to the accepted proposal, including, but not limited to, change orders, amendments, or supplemental terms shall also necessitate the written approval of the Vice President of Procurement.

- 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 Public Authorities Law § 2879, the following definitions and actions 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.
4. “Discriminatory Jurisdiction” is any country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State Business Enterprise in the procurement of goods and/or services by the same or a non-governmental entity influenced by the same.
5. Pursuant to Public Authorities Law § 2879, the Authority shall not enter into a contract with a Foreign Business Enterprise which has its principal place of business in a Discriminatory Jurisdiction contained on the list prepared by the Commissioner of the New York State Department of Economic Development (“DED”). The provisions of this section may be waived by the Authority’s President and CEO if the CEO determines in writing that it is in the best interests of the Authority to do so, as further set forth in the above-referenced law.
6. Pursuant to 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, as

made available by the Commissioner of General Services, for any Procurement Contract for the purchase of goods.

- F. 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.
- G. 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.
- H. 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 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 section 3.H does not apply to (i) Procurement Contracts awarded on an emergency basis as described below in Section 3.L, (ii) 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 (iii) Procurement Contracts awarded to not-for-profit human services providers.

Certain Procurement Contracts may require purchases: (1) on a 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. Such purchases 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, and/or the head of the initiating department that does not complete its procurements through the Procurement 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.

- I. 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.

- J. A Procurement Contract may be awarded on a Sole Source, Single Source, or other non-competitive 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 Small Business or to a NYS-certified M/WBE firm for purchases not exceeding \$200,000, pursuant to Section 3.D.
6. The contract is for the purchase of goods and/or technology that are recycled or remanufactured, in an amount not exceeding \$200,000, subject to the approvals stated in Section 3.D.

7. Purchases made on a Sole Source, Single Source, or other non-competitive basis are subject to Public Authorities Law § 2879-a, 2 NYCRR Part 206, entitled “Comptroller Approval of Contracts Made by State Authorities” (“Comptroller Regulations”) and the State Authority Contract Manual.
- K. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Authority may be required to submit certain contracts to the New York State Comptroller for approval that are awarded on a Sole Source, Single Source, or other non-competitive basis for the purchase of goods and/or services in an amount in excess of \$1 million, and shall notify the successful bidder therefor. Such contracts or contract amendments shall not be valid and enforceable unless approved by the Comptroller or until 90 days have elapsed from such submission without action by the Comptroller, as further set forth in the referenced law and regulations.
- L. Subject to the Authority’s Expenditure Authorization Procedures (“EAPs”), and Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, 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 a Single Source, 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.
- N. Every potential Sole Source or Single Source contract with a value of \$1 million or more must be approved by the President and CEO or the COO prior to processing by the Procurement Department.
- O. In furtherance of Public Authorities Law § 2800, when a procurement is made on a non-competitive 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. 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 internal appraisals, 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.

P. 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 EAPs. 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.C 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.P.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 EAPs, 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.

## **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 EAPs. 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 EAPs and concurrence by the Vice President of Procurement.
- B. For Services Contracts to be performed for a period of more than 12 months that must be awarded prior to the next quarterly 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 EAPs. 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 EAPs.

- 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 EAPs, 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 EAPs, 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 EAPs, 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 EAPs. 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 EAPs.
- 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 simultaneously 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 Enterprise 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 Access And/Or Unescorted Physical Access 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)
  15. Appendix “M” (Use of Ultra Low Sulfur Diesel Fuel and Best Available Retrofit Technology (“BART”) for Heavy Duty Vehicles)
- C. If a vendor (firm, person or other entity) participates in the development or writing of the specifications for a procurement solicitation, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor at any level. Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services. The above restrictions shall not apply where:
1. The vendor is the sole source or single source of the product or service;
  2. More than one vendor has been involved in preparing the specifications for a procurement proposal; or

3. The originating Authority Business Unit determines in writing that the restrictions are not in the best interests of the Authority. Such originating Business Unit shall obtain the approval of the applicable Business Unit Head or equivalent(s), Vice President of Procurement or equivalent(s) or designee, Assistant General Counsel or equivalent(s) and President and Chief Executive Officer or designee or Chief Operating Officer or equivalent(s) 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 EAPs, and should include specific schedules for completion of work at the earliest possible time.
- C. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Authority may be required to submit certain Change Orders to the New York State Comptroller for filing or approval where the aggregate value of the contract as amended is in excess of \$1 million and the original contract was awarded on the basis of a competitive procurement, but the modification was neither contemplated nor provided for in the solicitation for such competitive procurement. Accordingly, unless the Change Order is considered an "exempt contract amendment," no such Change Orders will be processed or approved unless the proposed procurement of goods and/or services was contemplated or provided for in the original Request for Quotation / Proposal.

**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 this 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/WBEs. Article 15-A of the Executive Law established the NYS Office (now Division) of Minority and Women’s Business Development (“DMWBD”) that is responsible for developing rules and regulations for implementation of this statute, certifying M/WBEs 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/WBEs 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/WBEs as required by law. Bidders’ proposals will include Preliminary Subcontracting Plans for M/WBEs, 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. Utilization Plans for Construction contracts valued at more than \$100,000 shall be posted on the Procurement website by the successful vendor within ten business days of contract signing.

Pursuant to § 2879 of the Public Authorities Law and as further set forth in the Authority’s Supplier Diversity Program documents, the following guidelines apply:

1. Identify those areas or types of contracts for which M/WBEs may best bid so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises.
2. Provide notice, in addition to any other notice of procurement opportunities required by law, to professional and other organizations that serve M/WBEs providing the types of services procured by the Authority.
3. Maintain lists of qualified NYS-certified M/WBEs, including professional firms that have expressed an interest in doing business with the Authority and ensuring that such lists are updated regularly. The Authority shall also consult the lists of NYS-certified M/WBEs maintained by the DED pursuant to Executive Law Article 15-A.
4. Establish appropriate goals for participation by M/WBEs in procurement contracts awarded by the Authority and for the utilization of M/WBEs as

subcontractors and suppliers by entities having procurement contracts with the Authority. Statewide numerical participation target goals shall be established by the Authority based on the criteria set forth in Public Authorities Law § 2879.

5. Conduct procurements in a manner that will enable the Authority to achieve the maximum feasible portion of the goals established pursuant to Subdivision 4 of this Section and that eliminates barriers to participation by M/WBEs in the Authority's procurements.
6. Designate one or more senior staff of the Authority to oversee the Authority's programs established to promote and assist participation by and utilization of NYS-certified M/WBEs.

## 11. **PROCUREMENT RECORD AND REPORTING**

### A. **Procurement Record**

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.

### B. **Procurement Report**

After the end of each calendar year, the Vice President of 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 NYS-certified 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, Single Source or competitive search);
  8. The reasons why any procurements with a value greater than \$15,000 were not noticed in the Contract Reporter;
  9. The number of bids received and
  10. All referrals made and all penalties imposed, if any, pursuant to § 316 of the Executive Law.
- C. 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, and copies thereof 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.
- D. 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 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 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 record.
- E. 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") set forth the policy of the Authority regarding the solicitation and awarding of procurement contracts. The provisions of Article 4-C of the Economic Development Law, §§ 2879 and 2879-a of the Public Authorities Law, Article 15-A of the Executive Law and §§ 139-j and 139-k of the State Finance Law were considered in developing these Guidelines. Departments and facilities may adopt further procedures to implement these guidelines.

### 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 with or without environmental attributes included, 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, print and electronic media, periodicals, subscriptions, reference materials or professional research tools, written materials, 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 Enterprise” (“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, and pursuant to the definition found in Executive Law § 310.
- H. “Small Business” is a business that is resident in New York State, is independently owned and operated, not dominant in its field and employs not more than 300 people.
- I. “Single Source” means a procurement in which although two or more offerers can supply the required goods or services, the Authority, upon written findings setting forth the material and substantial reasons therefore, may award a contract or amendment to a contract to one offerer over the other.
- J. “Sole Source” means a procurement in which only one offerer is capable of supplying the required goods or services.

### 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 and RFQ on the Authority's Procurement website 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 RFPs and RFQs) 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/WBEs"), the Authority will solicit offers from M/WBEs 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/WBEs, a single proposal may be sought, negotiated and accepted for purchases of goods and/or services not exceeding \$200,000, in the aggregate including all amendments, from a NYS-certified M/WBE that offers a reasonable price for such goods and/or services. The award of such proposal requires the written approval of the Vice President of Procurement. Any subsequent alteration to the accepted proposal, including, but not limited to, change orders, amendments, or supplemental terms shall also necessitate the written approval of the Vice President of Procurement.

- 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 Public Authorities Law § 2879, the following definitions and actions 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.
4. “Discriminatory Jurisdiction” is any country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of, or otherwise discriminates against, a New York State Business Enterprise in the procurement of goods and/or services by the same or a non-governmental entity influenced by the same.
5. Pursuant to Public Authorities Law § 2879, the Authority shall not enter into a contract with a Foreign Business Enterprise which has its principal place of business in a Discriminatory Jurisdiction contained on the list prepared by the Commissioner of the New York State Department of Economic Development (“DED”). The provisions of this section may be waived by the Authority’s President and CEO if the CEO determines in writing that it is in the best interests of the Authority to do so, as further set forth in the above-referenced law.
6. Pursuant to Public Authorities Law § 2879, the Authority will, where feasible, make use of the stock item specifications ~~list forms~~ of New York State manufacturers, producers and/or assemblers, as

made available by the Commissioner of General Services, for any Procurement Contract for the purchase of goods.

- F. 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.
- G. 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.
- H. 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 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 section 3.H does not apply to (i) Procurement Contracts awarded on an emergency basis as described below in Section 3.L, (ii) 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 (iii) Procurement Contracts awarded to not-for-profit human services providers.

Certain Procurement Contracts may require purchases: (1) on a 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. Such purchases 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, and/or the head of the initiating department that does not complete its procurements through the Procurement 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.

- I. 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.

- J. A Procurement Contract may be awarded on a Sole Source, Single Source, or other non-competitive 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 Small Business or to a NYS-certified M/WBE firm for purchases not exceeding \$200,000, pursuant to Section 3.D.
6. The contract is for the purchase of goods and/or technology that are recycled or remanufactured, in an amount not exceeding \$200,000, subject to the approvals stated in Section 3.D.

7. Purchases made on a Sole Source, Single Source, or other non-competitive basis are subject to Public Authorities Law § 2879-a, 2 NYCRR Part 206, entitled “Comptroller Approval of Contracts Made by State Authorities” (“Comptroller Regulations”) and the State Authority Contract Manual.
- K. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Authority may be required to submit certain contracts to the New York State Comptroller for approval that are awarded on a Sole Source, Single Source, or other non-competitive basis for the purchase of goods and/or services in an amount ~~equal to or greater than~~ in excess of \$1 million, and shall notify the successful bidder therefor. Such contracts or contract amendments shall not be valid and enforceable unless approved by the Comptroller or until 90 days have elapsed from such submission without action by the Comptroller, as further set forth in the referenced law and regulations.
- L. Subject to the Authority’s Expenditure Authorization Procedures (“EAPs”), and Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, 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 a Single Source, 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.
- N. Every potential Sole Source or Single Source contract with a value of \$1 million or more must be approved by the President and CEO or the COO prior to processing by the Procurement Department.
- O. In furtherance of Public Authorities Law § 2800, when a procurement is made on a non-competitive 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. 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 internal appraisals, 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.

P. 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 EAPs. 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.C 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.P.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 EAPs, 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.

## **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 EAPs. 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 EAPs and concurrence by the Vice President of Procurement.
- B. For Services Contracts to be performed for a period of more than 12 months that must be awarded prior to the next quarterly 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 EAPs. 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 EAPs.

- 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 EAPs, 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 EAPs, 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 EAPs, 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 EAPs. 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 EAPs.
- 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 simultaneously 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 Enterprise 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 Access And/Or Unescorted Physical Access 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)
15. Appendix "M" (Use of Ultra Low Sulfur Diesel Fuel and Best Available Retrofit Technology ("BART") for Heavy Duty Vehicles)

C. If a vendor (Any firm, person or other entity) participates in the development or writing of the specifications for a procurement solicitation, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor at any level. Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services. The above restrictions shall not apply where:

1. The vendor is the sole source or single source of the product or service;
2. More than one vendor has been involved in preparing the specifications for a procurement proposal; or

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3. ~~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. The originating Authority Business Unit determines in writing that the restrictions are not in the best interests of the Authority. Such originating Business Unit shall obtain~~ 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), Vice President of Procurement or equivalent(s) or designee, 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 EAPs, and should include specific schedules for completion of work at the earliest possible time.
- C. Pursuant to Public Authorities Law § 2879-a, the Comptroller Regulations and the State Authority Contract Manual, the Authority may be required to submit certain Change Orders to the New York State Comptroller for filing or approval where the aggregate value of the contract as amended is in excess of \$1 million and the original contract was awarded on the basis of a competitive procurement, but the modification was neither contemplated nor provided for in the solicitation for such competitive procurement. Accordingly, unless the Change Order is considered an

“exempt contract amendment,” no such Change Orders will be processed or approved unless the proposed procurement of goods and/or services was contemplated or provided for in the original Request for Quotation / Proposal.

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 this 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/WBEs. Article 15-A of the Executive Law established the NYS Office (now Division) of Minority and Women’s Business Development (“DMWBD”) that is responsible for developing rules and regulations for implementation of this statute, certifying M/WBEs 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/WBEs 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/WBEs as required by law. Bidders’ proposals will include Preliminary Subcontracting Plans for M/WBEs, 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. Utilization Plans for Construction contracts valued at more than \$100,000 shall be posted on the Procurement website by the successful vendor within ten business days of contract signing.

Pursuant to § 2879 of the Public Authorities Law and as further set forth in the Authority’s Supplier Diversity Program [Manual documents](#), the following guidelines apply:

1. Identify those areas or types of contracts for which M/WBEs may best bid so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises.
2. Provide notice, in addition to any other notice of procurement opportunities required by law, to professional and other organizations that serve M/WBEs providing the types of services procured by the Authority.
3. Maintain lists of qualified NYS-certified M/WBEs, including professional firms that have expressed an interest in doing business with the Authority

and ensuring that such lists are updated regularly. The Authority shall also consult the lists of NYS-certified M/WBEs maintained by the DED pursuant to Executive Law Article 15-A.

4. Establish appropriate goals for participation by M/WBEs in procurement contracts awarded by the Authority and for the utilization of M/WBEs as subcontractors and suppliers by entities having procurement contracts with the Authority. Statewide numerical participation target goals shall be established by the Authority based on the criteria set forth in Public Authorities Law § 2879.
5. Conduct procurements in a manner that will enable the Authority to achieve the maximum feasible portion of the goals established pursuant to Subdivision 4 of this Section and that eliminates barriers to participation by M/WBEs in the Authority's procurements.
6. Designate one or more senior staff of the Authority to oversee the Authority's programs established to promote and assist participation by and utilization of NYS-certified M/WBEs.

## **11. PROCUREMENT RECORD AND REPORTING**

### **A. Procurement Record**

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.

### **B. Procurement Report**

After the end of each calendar year, the Vice President of 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 NYS-certified 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, Single Source or competitive search);
  8. The reasons why any procurements with a value greater than \$15,000 were not noticed in the Contract Reporter;
  9. The number of bids received and
  10. All referrals made and all penalties imposed, if any, pursuant to § 316 of the Executive Law.
- C. 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, and copies thereof 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.
- D. 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 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 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 record.

- E. 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**

**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 that 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 the 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 – Corporate Support 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 7/27/11, Revision 3 -- "Accounting for Materials and Supplies Inventory."

**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 Director – Site Purchasing & Materials Management ("DSP&MM"). For purposes of Property disposal, the DSP&MM 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 DSP&MM.
- D. The Contracting Officer or authorized designee 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 authorized designee is responsible for the disposal of vehicles and rolling equipment. The DFO reports directly to the Senior Vice President – Corporate Support Services or authorized designee.
- F. If appropriate, the responsible Facility PDC should confer (by oral or written communication) with the DSP&MM and the WPO PDC(s) should confer (by oral or written communication) with the Contracting Officer or authorized designee 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 qualified 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 disposals as part of a competitive procurement; or disposal through the New York State Office of General Services ("OGS"). 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 or an appropriate substitute 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 or an appropriate substitute 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 or by posting to the Authority's internet website; and
  - d. the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforms to the bid solicitation and is

most advantageous to the Authority, price and other factors considered; however, any bid may be rejected when in the public interest to do so at the Authority's sole discretion.

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 arrived at 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, the Director of the Division of the Budget and the Authorities Budget Office, 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 of Trustees 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 of Trustees;
- (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 of Trustees 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 OR NO ACCEPTABLE BIDS ARE RECEIVED**

The appropriate PDC shall confer with the DSP&MM and the Contracting Officer or authorized designee 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, where:

1. the solicitation pursuant to Section VI.A does not produce any bids to purchase the Property;
2. in the opinion of the Authority, the bids are not arrived at independently;
3. all bids are not reasonable in accordance with Section X.C; or
4. all bids received are less than the Authority's Fair Market Value estimate.

**VII. CENTRALIZED DISPOSAL**

A. Subject to the approval of the Contracting Officer or authorized designee 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 provided the advertisement for bids through such methods permits full and free competition consistent with the value and nature of the property, as may be conducted through an independent auctioneer, online auction service, or another utility.

#### **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 responsible PDC for the location where the Property is located.
- B. If the responsible PDC, in conference with either the DSP&MM or the Contracting Officer or authorized designee, 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 DSP&MM or the Contracting Officer or authorized designee, 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 Board of Trustees, if the Fair Market Value of the Property is greater than \$1,000,000 or if the Disposal is for less than Fair Market Value in accordance with paragraph VI.A.6; 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 – Corporate Support Services 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 DSP&MM, 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 DSP&MM or the Contracting Officer or authorized designee, 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 DSP&MM 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 DSP&MM 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. Disposals as Part of a Competitive Procurement**

These Guidelines are not intended to restrict disposals as part of a competitive procurement, including trade-ins, where the procurement is competitively bid and awarded in accordance with the Authority's Guidelines for Procurement Contracts and Fair Market Value can be obtained for the Property. Any such proposed disposal must be included as part of the solicitation of bids for the procurement. The solicitation must also include an estimated Fair Market Value of the Property or minimum bid amount. The disposal or trade-in value must be stated in the proposals from bidders. When disposing of Property as part of a competitive procurement, the Authority may consider the cost difference between the accepted proposal and the next lowest responsive proposal as part of the consideration for the disposal of the Property.

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

For Property with a Fair Market Value of \$15,000 or less, 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 DSP&MM or the Contracting Officer or authorized designee, 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)**

The Authority may utilize OGS for Disposal of Authority-owned Property including on-line disposal methods offered by OGS. In addition, in accordance with New York State law, surplus computers and related accessories, surplus office furniture, and other equipment may, with the approval of the Contracting Officer or authorized designee, 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 DSP&MM and WPO PDC(s). 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 Board of Trustees, shall be submitted to the State Comptroller, the Director of the Division of the Budget, the Commissioner of General Services, the State 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 State Comptroller a copy of the Guidelines most recently reviewed and approved by the Board of 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 of Property over \$15,000, Property of any value related to the disposal of Real Property by exchange, or Property where part of the consideration received is Real Property, an explanatory statement shall be prepared and submitted to the parties as set forth in Subsection VI.A.5.

- E. The Authority's Governance Committee meets at least three times per year. Staff from the Corporate Support Services Business Unit, or 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 that 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 the 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 – Corporate Support 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 ~~7/27/11~~<sup>6/30/05</sup>, Revision ~~32~~ --

“Accounting for Materials and Supplies Inventory.”

#### 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 Director – Site Purchasing & Materials Management (“DSP&MM”). For purposes of Property disposal, the DSP&MM 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 DSP&MM.
- D. The Contracting Officer or authorized designee 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 authorized designee is responsible for the disposal of vehicles and rolling equipment. The DFO reports directly to the Senior Vice President – Corporate Support Services or authorized designee.
- F. If appropriate, the responsible Facility PDC should confer (by oral or written communication) with the DSP&MM and the WPO PDC(s) should confer (by oral or written communication) with the Contracting Officer or authorized designee 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 qualified 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 disposals as part of a competitive procurement; or disposal through the New York State Office of General Services ("OGS"). 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 or an appropriate substitute 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 or an appropriate substitute 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 or by posting to the Authority's internet website; and
  - d. the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforms to the bid solicitation and is

most advantageous to the Authority, price and other factors considered; however, any bid may be rejected when in the public interest to do so at the Authority's sole discretion.

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 arrived at 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, the Director of the Division of the Budget and the Authorities Budget Office, 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 of Trustees 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 of Trustees;
- (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 of Trustees 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 OR NO ACCEPTABLE BIDS ARE RECEIVED**

The appropriate PDC shall confer with the DSP&MM and the Contracting Officer or authorized designee 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, where:

1. the solicitation pursuant to Section VI.A does not produce any bids to purchase the Property;
2. in the opinion of the Authority, the bids are not arrived at independently;
3. all bids are not reasonable in accordance with Section X.C; or
4. all bids received are less than the Authority's Fair Market Value estimate.

**VII. CENTRALIZED DISPOSAL**

A. Subject to the approval of the Contracting Officer or authorized designee 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 provided the advertisement for bids through such methods permits full and free competition consistent with the value and nature of the property, as may be conducted through an independent auctioneer, online auction service, or another utility.

#### **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 responsible PDC for the location where the Property is located.
- B. If the responsible PDC, in conference with either the DSP&MM or the Contracting Officer or authorized designee, 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 DSP&MM or the Contracting Officer or authorized designee, 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 Board of Trustees, if the Fair Market Value of the Property is greater than \$1,000,000 or if the Disposal is for less than Fair Market Value in accordance with paragraph VI.A.6; 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 ~~Vice President — Enterprise Shared Services or equivalent(s) or, for Fleet Disposals, the~~ Senior Vice President – Corporate Support Services 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 DSP&MM, 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 DSP&MM or the Contracting Officer or authorized designee, 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 DSP&MM 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 DSP&MM 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. Disposals as Part of a Competitive Procurement**

These Guidelines are not intended to restrict disposals as part of a competitive procurement, including trade-ins, where the procurement is competitively bid and awarded in accordance with the Authority's Guidelines for Procurement Contracts and Fair Market Value can be obtained for the Property. Any such proposed disposal must be included as part of the solicitation of bids for the procurement. The solicitation must also include an estimated Fair Market Value of the Property or minimum bid amount. The disposal or trade-in value must be stated in the proposals from bidders. When disposing of Property as part of a competitive procurement, the Authority may consider the cost difference between the accepted proposal and the next lowest responsive proposal as part of the consideration for the disposal of the Property.

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

For Property with a Fair Market Value of \$15,000 or less, 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 DSP&MM or the Contracting Officer or authorized designee, 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)**

The Authority may utilize OGS for Disposal of Authority-owned Property including on-line disposal methods offered by OGS. In addition, in accordance with New York State law, surplus computers and related accessories, surplus office furniture, and other equipment may, with the approval of the Contracting Officer or authorized designee, 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 DSP&MM and WPO PDC(s). 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 Board of Trustees, shall be submitted to the State Comptroller, the Director of the Division of the Budget, the Commissioner of General Services, the State 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 State Comptroller a copy of the Guidelines most recently reviewed and approved by the Board of 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 of Property over \$15,000, Property of any value related to the disposal of Real Property by exchange, or Property where part of the consideration received is Real Property, an explanatory statement shall be prepared and submitted to the parties as set forth in Subsection VI.A.5.

- E. The Authority's Governance Committee meets at least three times per year. Staff from the ~~Enterprise Shared Services and~~ Corporate Support Services Business Units, 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**

**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 that detail the Authority's policy and instructions regarding the disposal of real 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**

- 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 – Corporate Support Services~~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.

### **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.~~5~~b.2 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 (\$15,000.00); 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 Division 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.

## **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 Division 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 Corporate Support Services/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.

**GUIDELINES**

**AND**

**PROCEDURES**

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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 that detail the Authority’s policy and instructions regarding the disposal of real 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**

- 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 – Corporate Support 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.

### **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.b.2 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 (\$15,000.00); 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 Division 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.

## **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 Division 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 Corporate Support Services/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 4.4**  
**March 27, 2012**

**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 that detail the Authority’s policy and instructions regarding the acquisition of real 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**

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 – Corporate Support 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.

## **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 Corporate Support Services/Enterprise Shared Services – Real Estate or the equivalent may, upon request, prepare and present ongoing reports regarding the Acquisition of Real Property.

Exhibit "B"  
March \_\_, ~~2011~~2012

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**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 that detail the Authority’s policy and instructions regarding the acquisition of real property. In addition, the Guidelines designate a contracting officer who is responsible for the Authority’s compliance with, and enforcement of, the Guidelines.

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- 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.

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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.

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- 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 Corporate Support Services/Enterprise Shared Services – Real Estate or the equivalent may, upon request, prepare and present ongoing reports regarding the Acquisition of Real Property.

## **EXHIBIT 5.1**

### **PROCUREMENT CONTRACTS SUMMARY** **DECEMBER 31, 2011**

The following is a summary of all procurement contracts including multi-year contracts awarded prior to December 31, 2011. These contracts have been active during 2011 and are \$5,000 or greater in value. There are 2,030 such contracts with a total estimated value of more than \$2.6 billion not including fossil fuel or corporate finance expenditures covered in Sections 5.6 and 5.7 of this report. The total expenditures in 2011 for these contracts exceeded \$371 million.

- 12% of these contracts are for construction work;
- 47% are for the purchase of equipment and commodities;
- 10% are for personal service contracts such as professional consulting services
- 2% are for architectural and engineering services
- 2% are for legal services
- 27% are for other services, such as maintenance, technicians, contracted personnel, maintenance and repairs.

Based on the total value of the contracts included in this summary, approximately 97% of the total dollars expended were for contracts that were competitively bid. The basis for the sole source awards included the purchase of highly specialized spare parts and services from original equipment manufacturers, procurement of services on an emergency basis and proprietary sources.

On March 30, 2012, the “2011 Annual Report of Procurement Contracts” will be certified by the Authority’s Chief Financial Officer and submitted to the NYS Comptroller’s Public Authorities Reporting Information System (PARIS) in accordance with Section 2879 of the NYS Public Authorities Law.

**DISPOSAL OF PERSONAL PROPERTY**  
**January – December 2011**

**2011 Annual Report of Disposal of Personal Property**

Public Authorities Law (“PAL”) § 2896, enacted as part of the Public Authorities Accountability Act of 2005 (“PAAA”) and amended by the Public Authorities Reform Act of 2009 (“PARA”), requires the preparation of a report, not less frequently than annually, listing all Personal Property disposed of during the reporting year. To that end, the 2011 Annual Report of Disposal of Personal Property over \$5,000 in value is attached. The description of the property, purchaser’s name and price received by the Authority, as required by PAL § 2896, will be presented in the official 2011 Annual Report of Disposal of Personal Property for submittal to the full Board of Trustees for review and approval at their March 27, 2012 meeting and included in the Authority’s § 2800 Annual Report and other filings for submittal to various State entities. The sale price and other additional data (such as fair market value, date of transaction, full address of purchaser, etc.) required by the Authorities Budget Office (“ABO”) will be included in the 2011 Public Authorities Reporting Information System (“PARIS”) Annual Report of Personal Property Disposal for submittal to the ABO by March 31, 2012.

**Facilities – Fourth Quarter Activity Highlights**

As noted in the previous YTD Report to the Governance Committee, several disposal transactions were commenced during the prior reporting period, but had not yet been finalized / completed and therefore were not included in the previous Report. Such transactions included, but were not limited to, the sale of scrap copper cable from the Small Clean Power Plant at Hell Gate (Gershow Recycling), scrap rotor poles and coils at the Niagara Project (Northwest Metals & Salvage Service Inc.), scrap metal at the Blenheim-Gilboa Project (R & R Scrap Metal) and the negotiated sale of wood utility poles (to NYSEG). These transactions were completed during the 4<sup>th</sup> Quarter of 2011, resulting in net proceeds to the Authority of \$341,588.27, and are included in the attached Report.

The Authority also participated in an online auction (October 24 – November 1, 2011) handled by the firm Auctions International for the sale of a barge with crane and hoist at the Niagara Project. Such auction resulted in net proceeds to the Authority of \$100,500.

Also noteworthy, the sale of scrap metals at the Niagara Project resulted in payment to the Authority of \$120,498.71 for one such reportable transaction conducted during this period under a competitively bid contract with Niagara Metals LLC.

In summary, the Total “Price Received by the Authority” for the six (6) Personal Property Disposal transactions over \$5,000 highlighted above, in addition to six (6) other transactions conducted by or on behalf of the Property Disposal Coordinators (“PDCs”) at the Facilities and reported in the Fourth Quarter, was \$669,196.91.

## **Facilities – Annual Summary and Subtotal**

Pages 1 – 3 include fifteen (15) Personal Property Disposal transactions over \$5,000 conducted by or on behalf of the Property Disposal Coordinators (“PDCs”) during the 2011 reporting year, as further set forth in the attached Report. All such disposal transactions were competitively bid (through RFQs for individual transactions, competitively bid contracts or online auctions handled by the firm Auctions International), with the exception of the negotiated sale of wood utility poles. They are summarized below by Facility:

- Blenheim-Gilboa Project: 2 transactions -- for the sale of miscellaneous scrap metal and scaffolding, resulting in payment to the Authority of \$25,151;
- Clark Energy Center for all Facilities: 1 transaction -- for surplus Halon reclamation / recycling, resulting in payment to the Authority of \$22,500;
- Niagara Project: 6 transactions -- for the sale of scrap rotor poles and copper coils, barge with crane and hoist, and scrap metals, resulting in net proceeds to the Authority of \$491,784.51;
- Poletti Project: 4 transactions -- for the sale of scrap copper cable and miscellaneous surplus inventory material, resulting in net proceeds to the Authority of \$248,256.01;
- St. Lawrence/FDR Project: 1 transaction -- for the sale of scrap metals, resulting in payment to the Authority of \$8,861.60.

Additionally, the aforementioned negotiated sale of wood utility poles resulted in payment to the Authority of \$6,775.

**The Total “Price Received by the Authority” in 2011 for these Personal Property Disposal transactions over \$5,000 conducted by or on behalf of the Property Disposal Coordinators (“PDCs”) at the Facilities was \$803,328.12.**

## **Fleet – Fourth Quarter Activity**

The Authority participated in two Fleet-related auctions conducted by the firm JJ Kane Auctioneers on November 19 and December 3, 2011, respectively, which resulted in the sale of 55 additional units comprising light duty vehicles, heavy duty trucks and special equipment. Of this number, there were 42 disposal transactions over \$5,000, which are listed on the attached Report. (It should be noted that the December 3 auction resulted in the sale of two units, each less than \$5,000, which are therefore not included in the attached Report.) The “Sale Price” (Gross) for these 42 units was \$378,750, which resulted in a “Price Received by the Authority” (Net Amount) of \$361,435.35 after commission and transportation costs were deducted.

### **Fleet – Annual Summary and Subtotal**

Pages 4 – 7 include 80 disposal transactions with a Sale Price over \$5,000 conducted on behalf of the Authority's Fleet Operations Division in 2011. The Authority participated in four Fleet-related auctions conducted by the firm JJ Kane Auctioneers on May 7, August 27, November 19 and December 3, 2011, respectively. Such auctions resulted in the sale of 140 units comprising light duty vehicles, heavy duty trucks and special equipment. Of this number, there were 80 disposal transactions with a Sale Price over \$5,000, which are included on the attached Report. The total auction "Sale Price" (Gross) for these 80 units was \$763,700, which resulted in a "Price Received by the Authority" (Net Amount) of \$725,080.85 after commission and transportation costs were deducted.

**The Fleet Total "Price Received by the Authority" in 2011 for the 80 transactions over \$5,000 was \$725,080.85.**

### **Grand Total as of 12/31/11**

As summarized on page 7 of the attached Report, the **2011 Grand Total "Price Received by the Authority" (Net Amount)** for all Personal Property with a value in excess of \$5,000 was **\$1,528,408.97** [Sale Price (Gross) \$1,567,028.12 less \$38,619.15 (commission / transportation fees, where applicable)]. (It should be noted that an additional \$74,980.68 was received in 2011 for the sale of 60 Fleet units with a value less than or equal to \$5,000, which are not included in the attached Report.)

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

**2011 ANNUAL REPORT OF DISPOSAL OF PERSONAL PROPERTY OVER \$5,000**

<b>DESCRIPTION</b>	<b>PURCHASER</b>	<b>SALE PRICE</b>	<b>PRICE RECEIVED by the Authority</b>
<b>SCRAP COPPER CABLE AT POLETTI PROJECT</b>	<b>FIRST CHOICE LIQUIDATORS</b>	<b>\$ 106,467.50</b>	<b>\$ 106,467.50</b>
<b>MISCELLANEOUS SURPLUS INVENTORY MATERIAL AT POLETTI PROJECT</b>	<b>GERSHOW RECYCLING</b>	<b>\$ 22,563.71</b>	<b>\$ 22,563.71</b>
<b>BILL-JAX INC SCAFFOLDING AT BLENHEIM-GILBOA PROJECT</b>	<b>CERTIFIED BUILDINGS INC</b>	<b>\$ 5,100.00</b>	<b>\$ 5,100.00</b>
<b>SCRAP ROTOR POLES &amp; COPPER COILS AT NIAGARA PROJECT</b>	<b>NORTHWEST METALS &amp; SALVAGE SERVICE INC</b>	<b>\$ 247,017.47</b>	<b>\$ 247,017.47</b>
<b>SCRAP COPPER CABLE (FROM SCPP -- HELL GATE) AT POLETTI PROJECT</b>	<b>GERSHOW RECYCLING</b>	<b>\$ 67,744.80</b>	<b>\$ 67,744.80</b>
<b>NEGOTIATED SALE OF WOOD UTILITY POLES (FOR USE IN PLACE)</b>	<b>NEW YORK STATE ELECTRIC &amp; GAS CORPORATION</b>	<b>\$ 6,775.00</b>	<b>\$ 6,775.00</b>

**POWER AUTHORITY OF THE STATE OF NEW YORK**  
**2011 ANNUAL REPORT OF DISPOSAL OF PERSONAL PROPERTY OVER \$5,000**

DESCRIPTION	PURCHASER	SALE PRICE	PRICE RECEIVED by the Authority
MISCELLANEOUS SURPLUS INVENTORY MATERIAL AT POLETTI PROJECT	GERSHOW RECYCLING	\$ 51,480.00	\$ 51,480.00
MISCELLANEOUS SCRAP METAL AT BLENHEIM- GILBOA PROJECT	R & R SCRAP METAL	\$ 20,051.00	\$ 20,051.00
BARGE WITH CRANE & HOIST AT NIAGARA PROJECT	DAVID PFEIFFER	\$ 100,500.00	\$ 100,500.00
SCRAP METALS AT NIAGARA PROJECT	NIAGARA METALS LLC	\$ 5,929.23	\$ 5,929.23
SCRAP METALS AT NIAGARA PROJECT	NIAGARA METALS LLC	\$ 11,614.73	\$ 11,614.73
SCRAP METALS AT NIAGARA PROJECT	NIAGARA METALS LLC	\$ 6,224.37	\$ 6,224.37
SURPLUS HALON RECLAMA- TION / RECYCLING	REMTEC INTERNATIONAL	\$ 22,500.00	\$ 22,500.00

**POWER AUTHORITY OF THE STATE OF NEW YORK**  
**2011 ANNUAL REPORT OF DISPOSAL OF PERSONAL PROPERTY OVER \$5,000**

<b>DESCRIPTION</b>	<b>PURCHASER</b>	<b>SALE PRICE</b>	<b>PRICE RECEIVED by the Authority</b>
<b>SCRAP METALS AT ST. LAWRENCE PROJECT</b>	<b>CASELLA WASTE SERVICES</b>	<b>\$ 8,861.60</b>	<b>\$ 8,861.60</b>
<b>SCRAP METALS AT NIAGARA PROJECT</b>	<b>NIAGARA METALS LLC</b>	<b>\$ 120,498.71</b>	<b>\$ 120,498.71</b>
	<b>SUBTOTAL:</b>	<b>\$ 803,328.12</b>	<b>\$ 803,328.12</b>

**POWER AUTHORITY OF THE STATE OF NEW YORK**  
**2011 ANNUAL REPORT OF DISPOSAL OF PERSONAL PROPERTY OVER \$5,000**  
**FLEET OPERATIONS**

<b>DESCRIPTION</b>	<b>PURCHASER</b>	<b>SALE PRICE</b>	<b>Commission/ Transportation Fees</b>	<b>PRICE RECEIVED * by the Authority</b>
1990 AUTOCAR 42B DUMP TRUCK	WEAKLEY SAND & GRAVEL INC	\$ 7,750.00	\$ 632.50	\$ 7,117.50
1992 FELLER BUNCHER HYDRO AX	TIMOTHY CRAFT	\$ 8,500.00	\$ 755.00	\$ 7,745.00
1994 FREIGHTLINER FLD112066SD	AMAZING MOTORS	\$ 18,500.00	\$ 663.75	\$ 17,836.25
1994 PETERBILT SEMI TRACTOR	RIDGE ROAD LEASING LLC	\$ 19,000.00	\$ 1,070.00	\$ 17,930.00
1997 GROVE AMZ68XT MANLIFT	NORTH AMERICA EQUIPMENT INC	\$ 14,000.00	\$ 920.00	\$ 13,080.00
1998 TRAIL KING TRAILER	POLAND SAND AND GRAVEL LLC	\$ 9,500.00	\$ 285.00	\$ 9,215.00
1999 INTERNATIONAL 4700	RIDGE ROAD LEASING LLC	\$ 5,750.00	\$ 672.50	\$ 5,077.50
1999 JOHN DEERE 550H DOZER	APOLLO NORTHEAST SALES & SVCS INC	\$ 34,000.00	\$ 1,270.00	\$ 32,730.00
1999 VOLVO SEMI TRACTOR	CASSONE TRUCK SALES & LEASING INC	\$ 21,500.00	\$ 1,045.00	\$ 20,455.00
2000 FORD EXCURSION	UPSTATE AUTO SALES INC	\$ 5,500.00	\$ 335.00	\$ 5,165.00
2000 FORD EXCURSION	UPSTATE AUTO SALES INC	\$ 5,500.00	\$ 246.56	\$ 5,253.44
2000 FORD F550 DUMP TRUCK	YANKS AUTOMOTIVE	\$ 7,000.00	\$ 291.56	\$ 6,708.44
2000 INTERNATIONAL 4800	CASSONE TRUCK SALES & LEASING INC	\$ 8,000.00	\$ 640.00	\$ 7,360.00
2001 CHEVY K2500 PICKUP	RATHBUN'S PLUMBING HEATING AND ELECTRICAL INC	\$ 7,750.00	\$ 314.06	\$ 7,435.94
2001 FORD F150 PICKUP	IRON HORSE SOLUTIONS	\$ 7,850.00	\$ 317.06	\$ 7,532.94
2002 CHEVY K1500 PICKUP	DONALD AUBERT	\$ 5,800.00	\$ 374.00	\$ 5,426.00
2002 GMC DUMP TRUCK	ROBERT LAFERRARA	\$ 5,250.00	\$ 657.50	\$ 4,592.50
2003 CHEVY C1500 SUBURBAN	BRAVO AUTO SALES INC	\$ 7,000.00	\$ 375.00	\$ 6,625.00
2003 CHEVY C2500 PICKUP	JOSEPH OTT	\$ 10,000.00	\$ 550.00	\$ 9,450.00
2003 CHEVY K1500 PICKUP	UPSTATE AUTO SALES INC	\$ 6,300.00	\$ 439.00	\$ 5,861.00
2003 CHEVY K1500 SUBURBAN	KEL'S AUTO SALES INC	\$ 8,900.00	\$ 434.00	\$ 8,466.00

\* Sale Price less commission / transportation costs

**POWER AUTHORITY OF THE STATE OF NEW YORK**  
**2011 ANNUAL REPORT OF DISPOSAL OF PERSONAL PROPERTY OVER \$5,000**  
**FLEET OPERATIONS**

DESCRIPTION	PURCHASER	SALE PRICE	Commission/ Transportation Fees	PRICE RECEIVED * by the Authority
2003 CHEVY K2500 PICKUP	RIOLO'S BODY SHOP INC	\$ 10,300.00	\$ 559.00	\$ 9,741.00
2003 CHEVY K2500 PICKUP	W2 OPERATOR TRAINING GROUP LLC	\$ 10,600.00	\$ 568.00	\$ 10,032.00
2003 CHEVY K2500 PICKUP	SWARTHOUT RECYCLING LLC	\$ 9,000.00	\$ 351.56	\$ 8,648.44
2003 CHEVY TAHOE	BRAVO AUTO SALES INC	\$ 7,700.00	\$ 312.56	\$ 7,387.44
2003 CHEVY TAHOE	BRAVO AUTO SALES INC	\$ 7,700.00	\$ 312.56	\$ 7,387.44
2003 CHEVY TAHOE	KEL'S AUTO SALES INC	\$ 7,700.00	\$ 396.00	\$ 7,304.00
2003 CHEVY TAHOE	UPSTATE AUTO SALES INC	\$ 7,100.00	\$ 380.00	\$ 6,720.00
2003 JLG 600SC 60' MANLIFT	WILLIAM BIERS INC	\$ 23,000.00	\$ 1,190.00	\$ 21,810.00
2004 CHEVY K1500 SUBURBAN	BRAVO AUTO SALES INC	\$ 8,500.00	\$ 422.00	\$ 8,078.00
2004 CHEVY K2500 PICKUP	WALTER CHMIELEWSKI TRUCKING	\$ 12,500.00	\$ 375.00	\$ 12,125.00
2004 CHEVY TAHOE	PROMOTIONAL PATHWAYS	\$ 8,000.00	\$ 440.00	\$ 7,560.00
2004 CHEVY TAHOE	BRAVO AUTO SALES INC	\$ 7,800.00	\$ 399.00	\$ 7,401.00
2004 CHEVY TAHOE	BRAVO AUTO SALES INC	\$ 7,800.00	\$ 404.00	\$ 7,396.00
2004 CHEVY TAHOE	BRAVO AUTO SALES INC	\$ 7,800.00	\$ 401.00	\$ 7,399.00
2004 CHEVY TAHOE	BRAVO AUTO SALES INC	\$ 8,500.00	\$ 420.00	\$ 8,080.00
2004 CHEVY TAHOE	BRAVO AUTO SALES INC	\$ 7,800.00	\$ 315.56	\$ 7,484.44
2004 FORD F350 PICKUP	NORTHLINE UTILITIES LLC	\$ 12,000.00	\$ 610.00	\$ 11,390.00
2004 FORD TAURUS	JAMES DICASTRO EXCAVATING	\$ 5,750.00	\$ 422.50	\$ 5,327.50
2004 FORD TAURUS	MARILYN MACKIN	\$ 5,500.00	\$ 165.00	\$ 5,335.00
2004 TOYOTA PRIUS	CARSVILLE INC	\$ 10,000.00	\$ 506.00	\$ 9,494.00
2004 TOYOTA PRIUS	CARSVILLE INC	\$ 10,000.00	\$ 500.00	\$ 9,500.00
2004 TOYOTA PRIUS	CARSVILLE INC	\$ 10,000.00	\$ 550.00	\$ 9,450.00

\* Sale Price less commission / transportation costs

**POWER AUTHORITY OF THE STATE OF NEW YORK**  
**2011 ANNUAL REPORT OF DISPOSAL OF PERSONAL PROPERTY OVER \$5,000**  
**FLEET OPERATIONS**

<b>DESCRIPTION</b>	<b>PURCHASER</b>	<b>SALE PRICE</b>	<b>Commission/ Transportation Fees</b>	<b>PRICE RECEIVED * by the Authority</b>
2004 TOYOTA PRIUS	CARSVILLE INC	\$ 7,600.00	\$ 478.00	\$ 7,122.00
2004 TOYOTA PRIUS	CARSVILLE INC	\$ 10,000.00	\$ 465.00	\$ 9,535.00
2005 CHEVY K2500 SUBURBAN	APOLLO NORTHEAST SALES & SVCS INC	\$ 7,500.00	\$ 475.00	\$ 7,025.00
2005 CHEVY K2500 PICKUP	ABAR AUTO SALES	\$ 6,700.00	\$ 451.00	\$ 6,249.00
2005 CHEVY K2500 PICKUP	CONOVER ELECTRIC	\$ 7,400.00	\$ 472.00	\$ 6,928.00
2005 CHEVY TAHOE	BRAVO AUTO SALES INC	\$ 8,500.00	\$ 421.00	\$ 8,079.00
2005 CHEVY TAHOE	J&S COMMERCIAL CONSTRUCTION INC	\$ 7,500.00	\$ 391.00	\$ 7,109.00
2005 FORD ESCAPE	MICHAEL LAPORTA	\$ 5,700.00	\$ 341.00	\$ 5,359.00
2005 FORD F350 PICKUP	O'CONNELL ELECTRIC COMPANY INC	\$ 13,250.00	\$ 647.50	\$ 12,602.50
2005 FORD F350 PICKUP	O'CONNELL ELECTRIC COMPANY INC	\$ 13,250.00	\$ 647.50	\$ 12,602.50
2006 FORD ESCAPE	JAMES GENDRON	\$ 10,000.00	\$ 465.00	\$ 9,535.00
2006 FORD ESCAPE	JAMES ROOD	\$ 9,350.00	\$ 450.50	\$ 8,899.50
2006 FORD F250 PICKUP	CENTRAL AUTO SALES	\$ 12,750.00	\$ 547.50	\$ 12,202.50
2006 HONDA ACCORD	DANIEL REED	\$ 8,250.00	\$ 422.50	\$ 7,827.50
2006 HONDA ACCORD	MELLACE AUTO	\$ 8,000.00	\$ 415.00	\$ 7,585.00
2007 CHEVY IMPALA	CYNTHIA CULLINGS	\$ 7,000.00	\$ 375.00	\$ 6,625.00
2007 CHEVY IMPALA	NIETO CONTRACTORS INC	\$ 7,500.00	\$ 395.00	\$ 7,105.00
2007 CHEVY IMPALA	OFF FAIRWAY LLC	\$ 6,500.00	\$ 360.00	\$ 6,140.00
2007 CHEVY IMPALA	OFF FAIRWAY LLC	\$ 6,500.00	\$ 360.00	\$ 6,140.00
2007 CHEVY IMPALA	OFF FAIRWAY LLC	\$ 6,500.00	\$ 360.00	\$ 6,140.00
2007 CHEVY IMPALA	TODD CRONISER	\$ 7,200.00	\$ 466.00	\$ 6,734.00
2007 CHEVY IMPALA	VIRKLER & SONS INC	\$ 8,500.00	\$ 425.00	\$ 8,075.00

\* Sale Price less commission / transportation costs

**POWER AUTHORITY OF THE STATE OF NEW YORK**  
**2011 ANNUAL REPORT OF DISPOSAL OF PERSONAL PROPERTY OVER \$5,000**  
**FLEET OPERATIONS**

DESCRIPTION	PURCHASER	SALE PRICE	Commission/ Transportation Fees	PRICE RECEIVED * by the Authority
2007 CHEVY TAHOE	APOLLO NORTHEAST SALES & SVCS INC	\$ 12,000.00	\$ 525.00	\$ 11,475.00
2007 CHEVY TAHOE	ASIA MOTORS INC	\$ 11,000.00	\$ 411.56	\$ 10,588.44
2007 CHEVY TAHOE	EXTREME UTILITY EQUIPMENT INC	\$ 12,250.00	\$ 532.50	\$ 11,717.50
2007 CHEVY TAHOE	M&M BROTHERS CAR SALES INC	\$ 11,000.00	\$ 411.56	\$ 10,588.44
2007 FORD F350 PICKUP	EXTREME UTILITY EQUIPMENT INC	\$ 12,000.00	\$ 441.56	\$ 11,558.44
2007 TOYOTA PRIUS	O'CONNELL ELECTRIC COMPANY INC	\$ 10,000.00	\$ 550.00	\$ 9,450.00
2007 TOYOTA PRIUS	O'CONNELL ELECTRIC COMPANY INC	\$ 10,000.00	\$ 470.00	\$ 9,530.00
2007 TOYOTA PRIUS	JOSEPH WALSEMAN	\$ 11,000.00	\$ 505.00	\$ 10,495.00
2007 TOYOTA PRIUS	O'CONNELL ELECTRIC COMPANY INC	\$ 10,000.00	\$ 475.00	\$ 9,525.00
2008 CHEVY AVALANCHE	ASIA MOTORS INC	\$ 9,100.00	\$ 354.56	\$ 8,745.44
2008 CHEVY AVALANCHE	M&M BROTHERS CAR SALES INC	\$ 9,000.00	\$ 351.56	\$ 8,648.44
2008 CHEVY AVALANCHE	M&M BROTHERS CAR SALES INC	\$ 9,000.00	\$ 435.00	\$ 8,565.00
2008 CHEVY AVALANCHE	M&M BROTHERS CAR SALES INC	\$ 9,000.00	\$ 351.56	\$ 8,648.44
2008 CHEVY IMPALA	NIETO CONTRACTORS INC	\$ 7,500.00	\$ 395.00	\$ 7,105.00
2008 FORD ESCAPE	UPSTATE AUTO SALES INC	\$ 7,000.00	\$ 291.56	\$ 6,708.44
<b>FLEET SUBTOTAL:</b>		<b>\$ 763,700.00</b>	<b>\$ 38,619.15</b>	<b>\$ 725,080.85</b>
<b>+ SUBTOTAL Page 3:</b>		<b><u>\$ 803,328.12</u></b>	<b>---</b>	<b><u>\$ 803,328.12</u></b>
<b>GRAND TOTAL:</b>		<b><u>\$1,567,028.12</u></b>	<b>\$ 38,619.15</b>	<b><u>\$1,528,408.97</u></b>

\* Sale Price less commission / transportation costs

## EXHIBIT 5.3

### ACQUISITION AND DISPOSAL OF REAL PROPERTY JANUARY 1 - DECEMBER 31, 2011

Section 2896 of the Public Authorities Law (PAL) requires a report setting out all real property transactions of the Authority over a given reporting period. Such report shall consist of a list and full description of all real property disposed of during such period. The report shall contain the price received by the Authority and the name of the purchaser. There is no monetary threshold so all disposals regardless of value need to be reported. In addition, acquisitions and leasing transactions are also included in this report. All acquisitions and dispositions reported herein were approved by the Authority's Trustees and/or are consistent with current Trustee approved Expenditure Authorization Procedures. The reporting period is January 1 – December, 31, 2011.

#### I. ACQUISITIONS

Noble – NYPA has been actively supporting the wind energy development in the North Country. From a real estate perspective, this has resulted in the acquisition of substations and the expansion of substations including the following: Ryan Road Substation and associated facility, Duley Substation, and the Big Hill Communications Tower along with an access easement to the Big Hill Communications Tower. With respect to the aforementioned acquisitions, to facilitate Noble's use of these substations, we granted them access easements for operation and maintenance of their equipment.

AEII – This project involved the construction of a new generating station located in Astoria, Queens. The developer is Astoria Energy II (AEII). The deal was that AEII would construct the energy station, place overhead lines into a substation that AEII would also build and then construct underground transmission into NYPA's Poletti leads which would then transmit electricity into Con Edison's 13<sup>th</sup> Street (Manhattan) Substation. Real Estate was brought in to coordinate the transfer of the AEII substation and underground facilities to NYPA. Real Estate coordinated this transfer working with outside NYPA counsel, counsel and representatives for AEII, counsel for Consolidated Edison of New York, and resolved several title and mortgage issues.

Fiacco Easement Acquisition - Obtained an access and construction easement in the Town of Waddington. With this easement, we will be able to construct a water pumping station to construct a habitat improvement project. The construction of this project will satisfy is a St. Lawrence Federal Energy Regulatory Commission license commitment.

500 MW – As part of the NYPA construction of the 500 MW, NYPA had to acquire easements across Con Edison property for the placement of a gas line, an oil fuel line, and a transmission line to transmit the output of the plant into a Con Edison substation. This effort was concluded with the recording of the Indenture of Easement in the New York City Department of Finance, Office of the City Register on May 26, 2011.

Conservation Easement Acquisition on Stryker Road - Finalized a conservation easement from the Town of Gilboa, thereby satisfying an outstanding obligation with the U.S. Corp of Engineers to create replacement wetlands for wetlands which were filled at the BG Project. In addition, it

assisted the Town of Gilboa with its obligation to the Federal Emergency Management Agency to prevent development in this flood prone region.

Danger Tree Permits/Land Use Permits – Danger tree permits acquired and land use permits issued along NYPA’s transmission system.

During this reporting period, the Authority acquired 88 danger tree permits. These rights allow the Authority to eliminate dangerous vegetation which is critical to the safe operation of the New York State transmission grid. The transmission facilities covered by these danger tree permits include the Niagara-Adirondack, Fitz-Edic, Plattsburgh-Vermont, and Gilboa-New Scotland. This is an on-going effort.

In addition, the real estate group issued sixteen land use permits for use of the Authority’s easement areas. These permits, with their accompanying insurance requirements, assure the use of the Authority’s easement consistent with the operation of our transmission lines. A listing of these permits and their respective purposes is set out below.

<b>Permit Number</b>	GL-11-1P
<b>Permittee</b>	Watershed Agricultural Council
<b>Type of Permit</b>	Special Use Permit
<b>Purpose</b>	Construct, install, maintain, and replace fencing within the Authority's transmission line easement.
<b>Permit Number</b>	MS-11-1P
<b>Permittee</b>	Otsego Electric Cooperative, Inc.
<b>Type of Permit</b>	Permit Requiring Insurance
<b>Purpose</b>	Construct, install, operate, maintain, repair, replace, and remove a 7200 volt distribution line along the northerly edge of County Route 23 and to remove a distribution line of the same voltage, both of which run perpendicularly under the Authority's transmission line easement.
<b>Permit Number</b>	MS-11-2P
<b>Permittee</b>	NYSE&G
<b>Type of Permit</b>	Permit Requiring Insurance
<b>Purpose</b>	Construct, install, operate, maintain, repair, replace, and remove two forty-five foot (45 foot) poles four hundred twenty feet (420 feet) of 12.5 primary aerial conductor and an anchor, perpendicularly across the Authority's transmission line easement and along the southerly side of New York State Route 30 together with the necessary accessories and appurtenances thereto.
<b>Permit Number</b>	MS-11-3P
<b>Permittee</b>	Bosnian islamic Association of Utica
<b>Type of Permit</b>	Permit Requiring Insurance
<b>Purpose</b>	Construct, install, operate, maintain, repair, replace, and remove a stone driveway within the Authority's off right-of-way access road and under the transmission line easement together with the necessary accessories and appurtenances thereto.
<b>Permit Number</b>	NATL-10-2P
<b>Permittee</b>	Niagara County Water District
<b>Type of Permit</b>	Access and Work Agreement

<b>Purpose</b>	Construct, install, operate, maintain, repair, replace, and remove a below grade 36 inch diameter waterline together with the necessary accessories and appurtenances thereto.
<b>Permit Number</b>	NPP-11-1P
<b>Permittee</b>	Niagara Falls Bridge Commission
<b>Type of Permit</b>	Permit Requiring Insurance
<b>Purpose</b>	Rock scaling project at Lewiston-Queenston and Rainbow bridges.
<b>Permit Number</b>	NPP-11-2P
<b>Permittee</b>	Norampac Industries, Inc.
<b>Type of Permit</b>	Access & Testing Permit
<b>Purpose</b>	Enter upon the premises to conduct and obtain an environmental audit to recognized environmental conditions of the premises.
<b>Permit Number</b>	NPP-11-5P
<b>Permittee</b>	United States Fish & Wildlife Service
<b>Type of Permit</b>	Special Use Permit
<b>Purpose</b>	Access the Authority's secured area for the installation of two antennas with coaxial cables to a self-contained watertight box that will house a telemetry receiver, a 12V-35 amp hour battery on the shore of the Niagara River on Authority fee owned property for the monitoring of tagged lake sturgeon and lake trout.
<b>Permit Number</b>	NPP-11-6P
<b>Permittee</b>	LiRo Engineering, Inc.
<b>Type of Permit</b>	Environmental Testing and Access
<b>Purpose</b>	Right to use the premises for environmental testing as more particularly set out in its Scope of Work attached as Exhibit A and testing shall be in only those areas as specifically set out in Exhibit B.
<b>Permit Number</b>	NPP-11-7P
<b>Permittee</b>	Panamerican Consultants, Inc.
<b>Type of Permit</b>	Permit Requiring Insurance
<b>Purpose</b>	Conduct and complete Phase 1B archeological investigations by shovel testing and excavations of 4 twenty (20) foot trenches together with the necessary accessories and appurtenances thereto.
<b>Permit Number</b>	NPP-11-8P
<b>Permittee</b>	LIRO Engineers, Inc.
<b>Type of Permit</b>	Environmental Testing and Access Agreement
<b>Purpose</b>	Enter upon the premises to perform certain activities (environmental testing) as set out in the Scope of Work.
<b>Permit Number</b>	SLPP-11-1P
<b>Permittee</b>	St-Denis, Claude
<b>Type of Permit</b>	Special Use Permit
<b>Purpose</b>	Remove and dispose of trash both above and underwater at the Massena Intake Boat Launch.
<b>Permit Number</b>	WP-08-3P
<b>Permittee</b>	Marble River, LLC
<b>Type of Permit</b>	Permit Requiring Insurance

**Purpose** Excavate, grade, and install erosion and sedimentation controls within the Authority transmission line to facilitate the New York State storm water requirements for the construction of the Permittee's proposed substation together with the necessary accessories and appurtenances thereto.

**Permit Number** WP-11-1P  
**Permittee** Marble River, LLC  
**Type of Permit** Permit Requiring Insurance  
**Purpose** Construct, operate and maintain a WTG (wind turbine generator) access road 34 feet in width which will be reduced to 16 feet upon completion of WTG 67 and 34.5 kV underground collection lines and fiber optic cable(s) both of which will cross the Authority's transmission line easement perpendicularly and to construct, install, and maintain sediment and erosion control devices and all necessary accessories and appurtenances thereto.

**Permit Number** WP-11-2P  
**Permittee** Marble River, LLC  
**Type of Permit** Permit Requiring Insurance  
**Purpose** Construct, operate and maintain a 34.5 kV underground collection lines and fiber optic cable(s) for Wind Turbine Generator ("WTG") #100-R which will cross the Authority's transmission line perpendicularly and to construct, install and maintain sediment and erosion control devices and all necessary accessories and appurtenances thereto.

**Permit Number** WPO-01-1P-A4  
**Permittee** New York State Retirement Systems  
**Type of Permit** Temporary Use  
**Purpose** Use of the Lobby Premises every Monday of each week from 9 a.m. to 4 p.m. for general office purposes and for no other purposes.

## II. DISPOSITIONS

24 Acre Site to Niagara University – The Real Estate Division concluded the conveyance of a 24 acre parcel of land to Niagara University (NU). This 24 acre site which is adjacent to the NU campus was identified as surplus in the Niagara Power Project Relicensing process. Further, it was committed to be conveyed to NU when NU had developed a use for the property. The current projected use for this property is for the creation of athletic and recreation fields. This conveyance was concluded on June 24, 2011.

Joseph Farrand – During the construction of the St. Lawrence Project, NYPA acquired a certain access road and fee interest to a small location on the St. Lawrence River shoreline to place a water gauging station. This gauging station has long since been abandoned. Mr. Farrand's family, the original owners of the encumbered premises, requested that we reconvey this unused access easement and gauging station back to the Farrand Family Trust. This conveyance was concluded on June 10, 2011 and was done so in compliance with the Public Authorities Accountability Act.

Grants of Easement to Niagara Mohawk and Verizon – Grants of easement were finalized for distribution and communication to support various NAPA facilities at the Niagara Power Project.

Fee and Temporary Easement to City of Niagara Falls - Conveyed a small fee parcel and a temporary easement to the City of Niagara Falls for the road widening project on Buffalo Avenue.

### III. LEASING

#### Headquarters Leasing

The Authority maintains facilities which it leases or subleases out to various tenants. The available space in the building at 123 Main Street is essentially 100% leased through this reporting period. However, J. P. Morgan Chase has now vacated their leasehold of 29,300 square feet on the 4<sup>th</sup> floor at 123 Main Street. We are currently looking at various options for this space. The space is currently listed with our broker, Newmark Knight Frank, who has been actively marketing and showing the space.

Our total inventory of landlord leases, which generates more than \$2.6M in annual revenue, is set out in the table below.

FACILITY	TENANT	PURPOSE	EXPIRATION	ANNUAL RENTAL
WPO	Berman Bavero	Office Space	9/30/2014	\$201,211.00
WPO	Beacon	Office Space	3/31/2012	\$45,000.00
WPO	Danziger & Markhoff	Office Space	3/31/2017	\$431,070.00
WPO	The Parker Group, Inc.	Office Space	3/31/2012	\$66,450.00
WPO	Hodagaya Chemical	Office Space	5/31/2015	\$69,817.00
WPO	Federal Bar	Office Space	7/31/2016	\$63,817.00
WPO	Continental III, Inc.	Restaurant	2/28/2011	\$34,470.00
WPO	Arch Wireless	Beeper System (WPO Garage)	10/31/2011	\$5,400.00
WPO	Thomas M. Bona, PC	Office Space	12/31/2016	\$290,376.00
WPO	SKCG Group , Inc.	Office Space	1/31/2014	\$464,928.00
WPO	Community Mutual	Office Space	4/30/2015	\$173,491.00
WPO	Misys	Office Space	12/31/2016	\$705,600.00
WPO	Westchester Philharmonic	Office Space	12/31/2009	\$10,875.00
WPO	West. Co. Narcotics Initiative	Office Space (Permit for Temporary Use)	12/31/2011	\$45,780.00
WPO	West. Co. District Attorney	Office Space (Permit for Temporary Use)	12/31/2011	\$22,590.00
WPO	NY State Police	Office Space (Permit for Temporary Use)	12/31/2011	\$47,250.00
WPO	Empire State Development Corp.	Office Space (Permit for Temporary Use)	OPEN	\$5,361.00
WPO	NYS Retirement System	Office Space - part time	12/31/2011	\$6,900.00
SL/FDR	Lake St. Lawrence Yacht	Lease of Land	OPEN	\$2,225.00
SL/FDR	Massena Country Club	Lease of Land	11/30/2015	\$2,000.00
SL/FDR	Twin Brooks Golf Club	Lease of Land	N/A	\$220.00
SL/FDR	Town of Waddington	Agricultural Lease	60 days notice	<u>\$300.00</u>

		TOTAL ANNUAL REVENUES		\$2,695,131.00
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501 7<sup>th</sup> Avenue Associates – New York Office

During this reporting period, NYPA real estate successfully negotiated, obtained approval from the NYPA Trustees, and finalized the terms of a one year lease extension. This one year extension is based on the following terms.

<u>Landlord</u>	<u>Space</u>	<u>Expiration</u>	<u>Annual Rental</u>
501 7 <sup>th</sup> Avenue Associates	7,185 rsf on the 9 <sup>th</sup> floor of 501 7 <sup>th</sup> Avenue, New York City	8/31/2012	\$276,622.60

Leasing Support for Operating Projects and Transmission Facilities:

Real Estate concluded five lease extensions during this reporting period.

Hoskings Radio Tower – A renewal lease was executed between the Power Authority and Joseph Hosking was executed September 19, 2011 for the use of a tower and equipment building. This lease now expires April 30, 2014 with three one (1) year options to extend.

Burlington Radio Tower – This lease is in support of a radio tower site located in Burlington, New York. It provides an important radio communications link in support of the Marcy-South Transmission Facilities.

Clifton Park Energy Efficiency Office – The option to renew this lease was exercised and the new lease term expires on December 31, 2012. This lease supports the energy efficiency group.

Griffon Water Gauge – This lease is for water leveling gauging station located on the Niagara River near the foot of the Grand Island Bridge. This lease was renewed for a five year term. The lease will now expire June 30, 2017.

95 Perry Street – This sublease is for office space in Buffalo, New York was extended and now expires June 30, 2015. This leasehold is used primarily by the Energy Services and Technology and Community Relations groups.

Niagara University – A First Amendment of Lease was executed between Niagara University and the Power Authority to extend the lease between the parties for an additional one (1) year term to terminate April 30, 2012. Included in this amendment were additional five one (1) year term renewal options which automatically renew unless terminated. This lease allows Niagara University to occupy Power Authority property for the construction, reconstruction, operation, and maintenance of an earthen berm and decorative wall. Ultimately, Niagara University will convey this property to the Authority.

IV. ST. LAWRENCE RELICENSING

St. Lawrence Lands Program

On October 31, 2001, the Authority filed an application for a new license, pursuant to Sections 4(e) and 15 of the Federal Power Act for the continued operation and maintenance of the 912 megawatt (MW) St. Lawrence F.D.R. Power Project. On February 6, 2003, the Authority filed a "Comprehensive Accord" (Settlement Agreement). On October 23, 2003, the Federal Energy Regulation Commission (hereinafter "FERC") issued an "Order Approving Settlement Agreements, Dismissing Complaint and Issuing New License" in which FERC *inter alia* approved the Settlement Agreement.

As part of the Settlement Agreement, the Authority agreed to several changes to the Project boundary. These proposed changes removed approximately 1,340 acres from the Project. With these changes, the Authority intends to transfer jurisdiction over approximately 741 acres at Galop Island State Park and environmentally sensitive lands in Lisbon and Waddington to other state agencies. The remaining approximately 599 acres of removed lands are in the process of being conveyed either to the affected local municipality or to adjoining landowners, if interested. For all conveyed lands, the Authority would retain a flowage easement and access easements where appropriate to provide necessary rights to traverse conveyed lands for Project-related activities.

NYPA Surplus Map No	NYPA Surplus Parcel No	Surplus Parcel Acres	Current Owners name	Appraisal Value	Deed Filed in County Clerk
1157C	8363	0.04	Thomas J. Mayette and Nancy Lynn Mayette	\$ 200.00	1/12/2011
1157C	8364	0.04	Thomas J. Mayette and Nancy Lynn Mayette	\$ 200.00	1/12/2011
1180C	8543	0.92	PATRICK J. CURRAN and LORI K. CURRAN	\$ 18,400.00	1/12/2011
1147C	8218	0.08	Richard Condlin	\$ 1,400.00	6/10/2011
1177C	8505	0.15	KIP M. OROSZ and LISA M. OROSZ	\$ 2,250.00	6/10/2011
1165C	8149	0.14	THOMAS J. SNIDER	\$ 1,400.00	7/7/2011
1165C	8150	0.18	THOMAS J. SNIDER	\$ 1,800.00	7/7/2011
1165C	8178	0.29	THOMAS J. SNIDER	\$ 2,900.00	7/7/2011
1180C	8545	0.16	LINDA MARIE POWER, SUSAN ANNE PARISIAN and PEGGY ANNE HEWITT	\$ 2,400.00	7/7/2011
1160C	8633	0.46	EDWARD BENDERT and PATRICIA BENDERT	\$ 34,500.00	7/7/2011
1172C	8425	0.17	Paul-Jaymes E. Trudell	\$ 2,550.00	7/20/2011
1179C	8536	0.27	THE NANCY AND IVAN MAILHOT FAMILY TRUST DATED FEBRUARY 9, 2007	\$ 4,050.00	7/20/2011
1166C	8181	0.35	Mark Brouillette	\$ 5,250.00	9/30/2011
1175C	8470	0.14	JOSEPHINE M. CATANZARITE	\$ 2,100.00	9/30/2011
1173C	8435	0.18	RICHARD C. HANN and JANET A. HANN	\$ 2,700.00	11/15/2011
1174C	8453	0.24	Shirley L. Negus	\$ 3,600.00	11/15/2011

During this period, 16 deeds were finalized and recorded in the County Clerk's office. This brings the total to 505 of the 599 acres have been conveyed. Of the approximately 520 private parcels to be conveyed, approximately 418 parcels have been completed.

**NEW YORK POWER AUTHORITY SUPPLIER DIVERSITY  
PROGRAM - - October – December 2011**

Through the fourth quarter ending December 31, 2011, NYPA awarded \$ 61.2 million or 18.6% of our reportable expenditures to New York State Certified Minority and Women-Owned Business Enterprises (M/WBEs). In the last quarter, October – December 2011, the Authority awarded \$26.6 Million or 26.9% of reportable expenditures to New York State Certified M/WBEs. This includes both direct contracts and subcontracts, including construction and energy efficient related work. Reportable expenditures exclude specialty procurements (such as transformers, circuit breakers, turbine runners and other major electrical generating equipment, and commodities such as natural gas, where no M/WBEs are available to provide such goods or services). Increased enforcement and monitoring with respect to our energy efficiency initiatives are continuing to yield notable results. In 2011 alone, over \$23 million was expended with M/WBE's specifically in support of our energy efficiency initiatives.

In accordance with NYS requirements, the Authority submitted its Master Goal Plan for FY 2011-2012 to the Governor's office on September 22, 2011. As a result of the Governor's initiative to achieve 20% M/WBE goal participation on NYS contracts, a revised goal plan was requested, prepared, submitted and subsequently approved. NYPA's goal for 2011-2012, as established with NYS Economic Development Corporation, began at 6%. In support of the Governors M/WBE initiatives, NYPA increased its goal to 20% and through the 3<sup>rd</sup> fiscal quarter NYPA has achieved 19.8 % of its goal on "Reportable Expenditures". An updated Master Goal Plan was prepared and submitted as required on March 1<sup>st</sup>, 2012 for FY 2012-2013. It included the 20% M/WBE goal requirement.

It should also be noted that during this calendar year four different NYS certified M/WBE financial dealers transacted over \$ 421.8 Million in principal sales and purchases for the Authority.

NYPA and our Director of Supplier Diversity were listed in the Sept/Oct 2011 issue of Diversity Plus Magazine as a 2011 Champion of Diversity and NYPA's supplier diversity program will be interviewed and appearing in an upcoming issue of Diversity/Careers in Engineering and Information Technology Magazine.

The Authority continues to actively participate in outreach programs with various M/WBE organizations and trade associations. The Authority's 21<sup>st</sup> exchange was held at its White Plains office in June 2011. Representatives from approximately 250 M/WBEs and approximately 40 New York State, New York City, local and corporate entities participated in the exchange

INVENTORY STATISTICS

As of December 31, 2011

Facility	2011	2010
Niagara	16,706,072	16,684,198
St. Lawrence	11,241,088	11,227,811
Blenheim-Gilboa <sup>1</sup>	8,079,219	7,032,491
Clark Energy Center	5,096,637	4,350,188
Poletti Project <sup>2</sup>	5,826,991	14,346,888
Flynn Project	13,512,769	13,286,358
500 MW Project <sup>3</sup>	23,584,103	20,093,475
Total Stock Value	\$84,046,879	\$87,021,409

Note:

The new Niagara Warehouse began construction in March 2010 is complete and fully operational.

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<sup>1</sup> Increase includes spare part materials for BG LEM

<sup>2</sup> Includes \$8.4 million reduction in Poletti inventory due to divestiture, completed October, 2011

<sup>3</sup> Increase includes \$3.2 million for the purchase of spare gas compressor, compressor blades and OEM valves.

3. POWER AUTHORITY OF THE STATE OF NEW YORK  
 PROCUREMENT CONTRACTS  
 JANUARY THROUGH DECEMBER, 2011  
 PAL 2879-a

EXHIBIT 5.6

FACILITY: WPO FOSSIL FUELS

CONTRACT NUMBER	PROVIDER NAME	CONTRACT DESCRIPTION	T P E	Y O A	M O A	R A	O A	W P A	B E	D S	TOTAL CONTRACT AMOUNT	TOTAL EXPENDED TO DATE	AMOUNT EXPENDED 2011	CONTRACT BALANCE	DATE OF CONTRACT	O / C	PROJ COMPLETE DATE	DATE CONTRACT COMPLETE
FD-2008-10	UNITED ENERGY TRADING, LLC 215 Union Blvd. Suite 425 Lakewood CO 80228	Natural Gas Purchase	E	B				F	N	28	\$38,041,597	\$38,041,597	\$19,938,027	\$0	11/19/2008	O	*	
FD-2008-11	ALLIED ENERGY RESOURCES CORPORATION 1330 Post Oak Blvd Suite 2200 Houston, TX 77056	Natural Gas Purchase	E	B				F	Y	28	\$5,500,999	\$5,500,999	\$0	\$0	12/01/08	O	*	
FD-2007-09	ENJET, INC 5373 West Alabama- Suite 502 Houston, TX 77056	Natural Gas Purchase	E	B				F	N	28	\$144,064,023	\$144,064,023	\$16,271,687	\$0	3/21/2007	O	*	
FD-2001-23	SEMPRA 58 Commerce Road Stamford, CT 06902	Natural Gas Purchase	E	B				F	N	28	\$168,290,671	\$168,290,671	\$0	\$0	12/01/01	O	*	
FD-2009-03	nationalgrid -LI (Flynn) 100 E Old County Rd Hicksville, NY 11801	Balancing Service	E	S				O	N	N	\$3,300,000	\$3,300,000	\$1,100,000	\$0	01/01/09	O	12/31/14	
FD-2009-04	nationalgrid -LI (Flynn) 100 E Old County Rd Hicksville, NY 11801	Transport Service	E	S				O	N	N	\$6,702,790	\$6,702,790	\$2,041,412	\$0	01/01/09	O	12/31/14	
FD-2009-05	nationalgrid-NY(GKP) One Metrotech Center Brooklyn, NY 11201	Transport Service	E	S				O	N	N	\$4,403,794	\$4,403,794	\$1,750,492	\$0	03/01/09	O	03/31/14	
FD-2009-06	nationalgrid -LI(Brentwood) 100 E Old County Rd Hicksville, NY 11801	Transport Service	E	S				O	N	N	\$327,953	\$327,953	\$226,807	\$0	03/01/09	O	03/31/14	
FD-2009-07	CONOCO PHILLIPS COMPANY 600 North Dairy Ashford Houston, TX 77079	Natural Gas Purchase	E	B				F	N	28	\$25,055,061	\$25,055,061	\$17,568,736	\$0	05/01/09	O	*	
FD-2010-01	JLA ENERGY LLC Two Riverway, Suite 730 Houston, Tx 77056	Natural Gas Purchase	E	B				F	N	28	\$368,677	\$368,677	\$215,062	\$0	02/01/10	O	*	
FD-2010-02	IBERDROLA RENEWABLES 1125 N.W. Couch St. Suite 700 Portland, OR 97209	Natural Gas Purchase	E	B				F	N	28	\$13,972,224	\$13,972,224	\$9,573,024	\$0	08/09/10	O	*	
FD-2002-11	PSEG ENERGY RESOURCES 80 Park Plaza Fl T19 Newark, NJ 07102	Natural Gas Purchase	E	B				F	N	28	\$11,017,721	\$11,017,721	\$0	\$0	11/01/02	O	*	
FD-2003-09	J. ARON 85 Broad Street New York, NY 10004	Natural Gas Purchase	E	B				F	N	26	\$83,241,402	\$83,241,402	\$0	\$0	04/22/03	O	*	

3. POWER AUTHORITY OF THE STATE OF NEW YORK  
 PROCUREMENT CONTRACTS  
 JANUARY THROUGH DECEMBER, 2011  
 PAL 2879-a

EXHIBIT 5.6

FACILITY: WPO FOSSIL FUELS

CONTRACT NUMBER	PROVIDER NAME	CONTRACT DESCRIPTION	T P E	Y O A	M O A	R A	O A	W A	B E	I S	TOTAL CONTRACT AMOUNT	TOTAL EXPENDED TO DATE	AMOUNT EXPENDED 2011	CONTRACT BALANCE	DATE OF CONTRACT	O / C	PROJ COMPLETE DATE	DATE CONTRACT COMPLETE
FD-2003-10	BP ENERGY COMPANY 501 WestLake Park Houston, TX 77253	Natural Gas Purchase	E	B			F	N	28		\$196,947,487	\$196,947,487	\$25,522,965	\$0	10/01/04	O	*	
FD-2003-12	CONSTELLATION POWER SOURCE 111 MARKET Place BALTIMORE, MD 21202	Natural Gas Purchase	E	B			F	N	28		\$55,860,651	\$55,860,651	\$0	\$0	06/09/03	O	*	
FD-2003-15	VIRGINIA POWER ENERGY MARKETING P. O. Box 25773 Richmond, VA 23360	Natural Gas Purchase	E	B			F	N	28		\$543,730,265	\$543,730,265	\$49,663,467	\$0	07/11/03	O	*	
FD-2004-08	SHELL ENERGY NA (formerly) CORAL ENERGY 909 Fannin Plaza Houston, TX 77010	Natural Gas Purchase	E	B			F	N	28		\$59,359,753	\$59,359,753	\$5,076,220	\$0	04/01/04	O	*	
FD-2004-09	SOUTHWEST ENERGY LP Two Greenway Plaza Houston, TX 77046	Natural Gas Purchase	E	B			F	N	28		\$179,461,649	\$179,461,649	\$0	\$0	06/01/04	O	*	
FD-2004-14	ONEOK ENERGY SERVICES CO. 100 West Fifth Street Tulsa, OK 74103	Natural Gas Purchase	E	B			F	N	28		\$94,754,910	\$94,754,910	\$0	\$0	11/01/04	O	*	
FD-2005-02	BOSS ENERGY LTD 20445 State Hwy 249 Houston, TX 77070	Natural Gas Purchase	E	B			F	N	28		\$73,839,766	\$73,839,766	\$367,320	\$0	01/25/05	O	*	
FD-2005-12	NJR ENERGY SERVICES CO. 1415 Wyckoff Road Wall, NJ 07719	Natural Gas Purchase	E	B			F	N	28		\$163,788,555	\$163,788,555	\$32,217,361	\$0	09/01/05	O	*	
FD-2006-03	UBS AG / UBS ENERGY LLC 677 Washington Blvd Stamford, CT 06901	Natural Gas Purchase	E	B			F	N	28		\$126,500,213	\$126,500,213	\$0	\$0	07/28/06	O	*	
FD-2006-05	PETROCOM VENTURES LTD 1616 S Voss Suite 945 Houston, TX 77057	Natural Gas Purchase	E	B			F	N	28		\$44,715,916	\$44,715,916	\$0	\$0	07/21/06	O	*	
FD-2006-07	TEXAS GAS TRANSMISSION 3800 Frederica Street Owensboro, KY 42301	Firm Gas Transport/Demand Agreement	S	S			F	N			\$19,814,274	\$19,814,274	\$3,367,712	\$0	07/01/06	O	10/31/17	
FD-2006-08	DOMINION TRANSMISSION 120 Tredegar Street Richmond, VA 23219	Firm Gas Transport/Demand Agreement	S	S			F	N			\$14,553,435	\$14,553,435	\$2,664,008	\$0	07/01/06	O	10/31/17	
FD-2006-09	TRANSCONTINENTAL GAS PIPELINE (TGPL. 5316) 2800 Post Oak Blvd Houston, TX 77056	Firm Gas Transport/Demand Agreement	S	S			F	N			\$8,389,704	\$8,389,704	\$1,853,847	\$0	08/04/06	O	03/31/17	

3. POWER AUTHORITY OF THE STATE OF NEW YORK  
 PROCUREMENT CONTRACTS  
 JANUARY THROUGH DECEMBER, 2011  
 PAL 2879-a

EXHIBIT 5.6

FACILITY: WPO FOSSIL FUELS

CONTRACT NUMBER	PROVIDER NAME	CONTRACT DESCRIPTION	T P E	M O A	R A	O A	W A	M B E	B S	TOTAL CONTRACT AMOUNT	TOTAL EXPENDED TO DATE	AMOUNT EXPENDED 2011	CONTRACT BALANCE	DATE OF CONTRACT	O / C	PROJ COMPLETE DATE	DATE CONTRACT COMPLETE
FD-2006-12	TENASKA MARKETING VENTURES 11718 Nicholas Street Omaha, NE 68154	Natural Gas Purchase	E	B		F	N	28		\$11,601,101	\$11,601,101	\$3,046,934	\$0	10/01/06	O	*	
FD-2007-08	ASSOCIATED ENERGY SERVICES (Formerly Spark Energy Gas) 3010 Briorpark Dr. Suite 550 Houston, TX 77042	Natural Gas Purchase	E	B		F	N	28		\$90,511,416	\$90,511,416	\$6,510,893	\$0	02/14/07	O	*	
FD-2007-10	ASTORIA GENERATING COMPANY, LP 18-01 20th Avenue Astoria, New York 11105	Oil Delivery Labor Fees	S	S		N	N			\$34,302	\$34,302	\$0	\$0	7/17/2006	O	*	
FD-2008-01	eCORP ENERGY MARKETING TEN THOUSAND MEMORIAL Houston, TX 77024-3410	Natural Gas Purchase	E	B		F	N	28		\$72,450	\$72,450	\$0	\$0	02/01/08	O	*	
FD-2008-02	CIMA-ENERGY LTD. 1221 McKinney Houston, Tx 77010	Natural Gas Purchase	E	B		F	N	28		\$14,597,304	\$14,597,304	\$2,120,332	\$0	03/01/08	O	*	
FD-2008-05	SEQUENT ENERGY MGT 1200 Smith Street Houston, TX 77010	Natural Gas Purchase	E	B		F	N	28		\$36,029,220	\$36,029,220	\$0	\$0	03/01/08	O	*	
FD-1990-33	NORTHVILLE INDUSTRIES CORP (Formerly TOSCO PIPELINE COMPANY) 25 Melville Park Rd Melville, NY 11747	Oil Storage Agmt (SETAUKET)	E	S		N	N			\$11,943,900	\$11,943,900	\$510,027	\$0	04/01/94	O	09/30/13	
FD-1990-34	NORTHVILLE INDUSTRIES CORP (Formerly TOSCO PIPELINE COMPANY) 25 Melville Park Rd Melville, NY 11747	Oil Storage Agmt. (HOLTSVILLE)	E	S		N	N			\$3,808,383	\$3,808,383	\$127,507	\$0	10/01/93	O	09/30/13	
FS-1994-17	MERRILL LYNCH (Formerly ENTERGY-KOCH TRADING (FORMERLY KOCH)) 20 E Greenway Plaza Houston, TX 77046	Natural Gas Purchase	E	B		F	N	28		\$266,771,081	\$266,771,081	\$3,807,712	\$0	07/01/94	O	*	
FS-1997-22	COLONIAL ENERGY 2 Riverway Suite 2000 Houston, TX 77056	Natural Gas Purchase	E	B		F	N	28		\$418,646,872	\$418,646,872	\$12,781,927	\$0	05/01/97	O	*	

3. POWER AUTHORITY OF THE STATE OF NEW YORK  
 PROCUREMENT CONTRACTS  
 JANUARY THROUGH DECEMBER, 2011  
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EXHIBIT 5.6

FACILITY: WPO FOSSIL FUELS

CONTRACT NUMBER	PROVIDER NAME	CONTRACT DESCRIPTION	T P E	Y O A	M O A	R A	O A	W A	M E	B S	D	TOTAL CONTRACT AMOUNT	TOTAL EXPENDED TO DATE	AMOUNT EXPENDED 2011	CONTRACT BALANCE	DATE OF CONTRACT	O / C	PROJ COMPLETE DATE	DATE CONTRACT COMPLETE
FD-2008-09	CON EDISON, INC. (Balancing & Demand) 4 Irving Place New York, NY 10003	Transport & Balancing Service	E	S					N	N		\$14,585,477	\$14,585,477	\$2,976,123	\$0	08/01/08	O	04/30/16	
FD-2008-06	MACQUARIE COOK ENERGY 10100 Santa Monica Blvd los Angeles, CA 90067	Natural Gas Purchase	E	B					F	N	28	\$43,316,045	\$43,316,045	\$16,499,022	\$0	07/01/08	O	*	
FD-2008-12	eSERVICES, LLC 4461 Cox Road, Suite 113, Glenn Allen, Virginia 23060	Natural Gas Purchase	E	B					F	N	28	\$520,725	\$520,725	\$0	\$0	12/01/08	O	*	
FD-2011-01	BG ENERGY MERCHANTS, LLC 5444 Westheimer Suite 1200 Houston, Tx 77056	Natural Gas Purchase	E	B					F	N	28	\$5,000,778	\$5,000,778	\$5,000,778	\$0	03/01/11	O	*	
FD-2011-02	YAKA ENERGY, LLC 46411 Timine Way Pendleton, OR 97801	Natural Gas Purchase	E	B					F	Y	28	\$5,473,598	\$5,473,598	\$5,473,598	\$0	03/01/11	O	*	
FD-2011-06	EDF Trading N. America, LLC 4700 West Sam Houston Pky North Suite 25 Houston, Tx 77041	Natural Gas Purchase	E	B					F	N		\$3,287,216	\$3,287,216	\$3,287,216	\$0	06/01/11	O	*	
FD-2011-04	SAYBOLT LP Core Laboratories 6316 Windfern Rd, Houston Texas 77040	Oil Inspectors	S	B					F	N		\$9,700	\$9,700	\$9,700	\$0	01/01/11	O	12/31/13	
FD-2011-07	Astoria Energy II LLC 17-10 Steinway Street Astoria, NY 11105	OIL PURCHASE	E	B					N	N	19	\$2,906,041	\$2,906,041	\$2,906,041	\$0	07/01/11	C		07/01/11
FD-2011-08	GEORGE E WARREN CO 3001 Ocean Drive Vero Beach, FL 32963	OIL PURCHASE	E	B					F	N	19	\$5,456,494	\$5,456,494	\$5,456,494	\$0	07/18/11	C		07/25/11

<b>FUELS TOTALS</b>	<b>\$3,020,575,593</b>	<b>\$3,020,575,593</b>	<b>\$259,932,451</b>
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NOTE:

\* Contract continues until terminated by NYPA or Counterparty upon specified notice.

(1) Natural gas purchase transactions are effected, as needed, based on current prices and requirements, using the previously agreed upon general terms and conditions.

POWER AUTHORITY OF THE STATE OF NEW YORK  
2011 ANNUAL REPORT OF PROCUREMENT CONTRACTS  
REQUIRED BY N.Y. PUBLIC AUTHORITIES LAW, SECTION 2879

## CORPORATE FINANCE ADDENDUM

PROVIDER NAME	CONTRACT DESCRIPTION	T Y P E	M O A	R N A	O P A	M W B E	S	TOTAL CONTRACT AMOUNT	TOTAL EXPENDED TO DATE	AMOUNT EXPENDED 2011	CONTRACT BALANCE	DATE OF CONTRACT	O C	PROJ COMPLETE DATE	DATE CONTRACT COMPLETE
Bank of New York (formely JPMorgan) 101 Barclay Street New York, NY 10286	Trustee/Paying Agent Services on Bonds	S	C	9	N			395,883	395,883	18,194	0	2/24/1998	O	*	
Bank of New York (formely JPMorgan) 101 Barclay Street New York, NY 10286	Trustee- ARTN	S	C	9	N			190,351	190,351	21,247	0	9/2/2003	O	3/1/2020	
Bank of New York (formely JPMorgan) 101 Barclay Street New York, NY 10286	Trustee- Commercial Paper	S	S	9	N		1	97,743	97,743	25,624	0	10/2/2006	O	*	
Bank of Nova Scotia One Liberty Plaze, 26th Fl. New York, NY 10006	Revolving Line of Credit for ARTN	S	C	9	N		6	1,300,901	798,886	163,647	502,015	9/4/2007	O	9/1/2015	
Barclays Capital (assigned from Lehman Bros.) ** 745 Seventh Avenue New York, NY 10019	Re-marketing Agent CP-1	S	C	9	N			1,134,526	1,134,526	146,737	0	7/14/1994	O	*	
Barclays Capital (assigned from Lehman Bros.) 745 Seventh Avenue New York, NY 10019	Re-marketing Agent CP-3	S	S	9	N		1	10,775	10,775	0	0	6/26/2008	O	*	
Citigroup 390 Greenwich Street New York, NY 10013	Re-marketing Agent CP-2	S	C	9	N			437,350	437,350	16,870	0	12/4/1997	O	*	
Goldman, Sachs & Co. 85 Broad Street New York, NY 10004-2456	Re-marketing Agent CP-2 and 3	S	C	9	N			904,124	904,124	10,352	0	12/4/1997	O	*	

POWER AUTHORITY OF THE STATE OF NEW YORK  
2011 ANNUAL REPORT OF PROCUREMENT CONTRACTS  
REQUIRED BY N.Y. PUBLIC AUTHORITIES LAW, SECTION 2879

## CORPORATE FINANCE ADDENDUM

PROVIDER NAME	CONTRACT DESCRIPTION	T Y P E	M O A	R N A	O P A	M B D S	TOTAL CONTRACT AMOUNT	TOTAL EXPENDED TO DATE	AMOUNT EXPENDED 2011	CONTRACT BALANCE	DATE OF CONTRACT	O C	PROJ COMPLETE DATE	DATE CONTRACT COMPLETE
Goldman, Sachs & Co. 85 Broad Street New York, NY 10004-2456	Re-marketing EMCP	S	C	9	N		638,220	638,220	138,429	0	3/4/2003	O	*	
Goldman, Sachs & Co. ** 85 Broad Street New York, NY 10004-2456	ART Notes Remarketing	S	C	9	N		1,856,530	1,856,530	157,870	0	5/15/1985	O	3/1/2020	
JPMorgan Chase 270 Park Avenue New York, NY 10017-2070	Re-marketing Agent CP-2	S	C	9	N		195,524	195,524	28,572	0	6/28/2001	O	*	
JPMorgan Chase 270 Park Avenue New York, NY 10017-2070	Re-marketing Agent CP-3	S	C	9	N		570,781	570,781	22,851	0	12/4/1997	O	*	
JPMorgan Chase 270 Park Avenue New York, NY 10017-2070	Escrow Agent POCR/CASP & LMEI Funds	S	C	9	N		480,999	480,999	20,290	0	5/30/1996	O	*	
JPMorgan Chase 270 Park Avenue New York, NY 10017-2070	Revolving Line of Credit 2008	S	C	9	N	2	4,365,000	4,345,433	66,683	19,567	1/7/2008	C		1/31/2011
JPMorgan Chase 270 Park Avenue New York, NY 10017-2070	Revolving Line of Credit 2011	S	C	9	N	2	10,928,889	3,450,972	3,450,972	7,477,917	1/20/2011	O	1/20/2014	
King & Spalding 1185 Avenue of the Americas New York, NY 10036	Attorney - Legal Services 2011 RCA	L	S	9	N	1	30,000	30,000	30,000	0	1/7/2011	C		1/31/2011

POWER AUTHORITY OF THE STATE OF NEW YORK  
2011 ANNUAL REPORT OF PROCUREMENT CONTRACTS  
REQUIRED BY N.Y. PUBLIC AUTHORITIES LAW, SECTION 2879

## CORPORATE FINANCE ADDENDUM

PROVIDER NAME	CONTRACT DESCRIPTION	T Y P E	M O A	R O A	N P A	P B E	M B D S	TOTAL CONTRACT AMOUNT	TOTAL EXPENDED TO DATE	AMOUNT EXPENDED 2011	CONTRACT BALANCE	DATE OF CONTRACT	O C	PROJ COMPLETE DATE	DATE CONTRACT COMPLETE
Morgan Stanley 1221 Avenue of the Americas New York, NY 10020	Re-marketing Agent CP-1	S	C	9	N		7	116,774	116,774	55,713	0	3/31/2009	O	*	
RBC Capital Markets ** 1211 Avenue of the Americas New York, NY 10036	Re-marketing Agent CP-1	S	C	9	N			172,024	172,024	89,244	0	7/14/1994	O	*	
CORPORATE FINANCE TOTALS								23,826,393	15,826,894	4,463,294	7,999,499				

## NOTES:

\* Contract continues until terminated by NYPA or Counterparty upon specified notice

\*\* Expense History only available from 1997

POWER AUTHORITY OF THE STATE OF NEW YORK  
2011 ANNUAL REPORT OF PROCUREMENT CONTRACTS  
REQUIRED BY N.Y. PUBLIC AUTHORITIES LAW, SECTION 2879

## CORPORATE FINANCE ADDENDUM

PROVIDER NAME	CONTRACT DESCRIPTION	T Y P E	M O A	R N A	O P A	M W B E	S	TOTAL CONTRACT AMOUNT	TOTAL EXPENDED TO DATE	AMOUNT EXPENDED 2011	CONTRACT BALANCE	DATE OF CONTRACT	O C	PROJ COMPLETE DATE	DATE CONTRACT COMPLETE
Bank of New York (formely JPMorgan) 101 Barclay Street New York, NY 10286	Trustee/Paying Agent Services on Bonds	S	C	9	N			395,883	395,883	18,194	0	2/24/1998	O	*	
Bank of New York (formely JPMorgan) 101 Barclay Street New York, NY 10286	Trustee- ARTN	S	C	9	N			190,351	190,351	21,247	0	9/2/2003	O	3/1/2020	
Bank of New York (formely JPMorgan) 101 Barclay Street New York, NY 10286	Trustee- Commercial Paper	S	S	9	N		1	97,743	97,743	25,624	0	10/2/2006	O	*	
Bank of Nova Scotia One Liberty Plaze, 26th Fl. New York, NY 10006	Revolving Line of Credit for ARTN	S	C	9	N		6	1,300,901	798,886	163,647	502,015	9/4/2007	O	9/1/2015	
Barclays Capital (assigned from Lehman Bros.) ** 745 Seventh Avenue New York, NY 10019	Re-marketing Agent CP-1	S	C	9	N			1,134,526	1,134,526	146,737	0	7/14/1994	O	*	
Barclays Capital (assigned from Lehman Bros.) 745 Seventh Avenue New York, NY 10019	Re-marketing Agent CP-3	S	S	9	N		1	10,775	10,775	0	0	6/26/2008	O	*	
Citigroup 390 Greenwich Street New York, NY 10013	Re-marketing Agent CP-2	S	C	9	N			437,350	437,350	16,870	0	12/4/1997	O	*	
Goldman, Sachs & Co. 85 Broad Street New York, NY 10004-2456	Re-marketing Agent CP-2 and 3	S	C	9	N			904,124	904,124	10,352	0	12/4/1997	O	*	

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## CORPORATE FINANCE ADDENDUM

PROVIDER NAME	CONTRACT DESCRIPTION	T Y P E	M O A	R N A	O P A	M B D S	TOTAL CONTRACT AMOUNT	TOTAL EXPENDED TO DATE	AMOUNT EXPENDED 2011	CONTRACT BALANCE	DATE OF CONTRACT	O C	PROJ COMPLETE DATE	DATE CONTRACT COMPLETE
Goldman, Sachs & Co. 85 Broad Street New York, NY 10004-2456	Re-marketing EMCP	S	C	9	N		638,220	638,220	138,429	0	3/4/2003	O	*	
Goldman, Sachs & Co. ** 85 Broad Street New York, NY 10004-2456	ART Notes Remarketing	S	C	9	N		1,856,530	1,856,530	157,870	0	5/15/1985	O	3/1/2020	
JPMorgan Chase 270 Park Avenue New York, NY 10017-2070	Re-marketing Agent CP-2	S	C	9	N		195,524	195,524	28,572	0	6/28/2001	O	*	
JPMorgan Chase 270 Park Avenue New York, NY 10017-2070	Re-marketing Agent CP-3	S	C	9	N		570,781	570,781	22,851	0	12/4/1997	O	*	
JPMorgan Chase 270 Park Avenue New York, NY 10017-2070	Escrow Agent POCR/CASP & LMEI Funds	S	C	9	N		480,999	480,999	20,290	0	5/30/1996	O	*	
JPMorgan Chase 270 Park Avenue New York, NY 10017-2070	Revolving Line of Credit 2008	S	C	9	N	2	4,365,000	4,345,433	66,683	19,567	1/7/2008	C		1/31/2011
JPMorgan Chase 270 Park Avenue New York, NY 10017-2070	Revolving Line of Credit 2011	S	C	9	N	2	10,928,889	3,450,972	3,450,972	7,477,917	1/20/2011	O	1/20/2014	
King & Spalding 1185 Avenue of the Americas New York, NY 10036	Attorney - Legal Services 2011 RCA	L	S	9	N	1	30,000	30,000	30,000	0	1/7/2011	C		1/31/2011

POWER AUTHORITY OF THE STATE OF NEW YORK  
2011 ANNUAL REPORT OF PROCUREMENT CONTRACTS  
REQUIRED BY N.Y. PUBLIC AUTHORITIES LAW, SECTION 2879

## CORPORATE FINANCE ADDENDUM

PROVIDER NAME	CONTRACT DESCRIPTION	T Y P E	M O A	R O A	N P A	P B E	M B D S	TOTAL CONTRACT AMOUNT	TOTAL EXPENDED TO DATE	AMOUNT EXPENDED 2011	CONTRACT BALANCE	DATE OF CONTRACT	O C	PROJ COMPLETE DATE	DATE CONTRACT COMPLETE
Morgan Stanley 1221 Avenue of the Americas New York, NY 10020	Re-marketing Agent CP-1	S	C	9	N		7	116,774	116,774	55,713	0	3/31/2009	O	*	
RBC Capital Markets ** 1211 Avenue of the Americas New York, NY 10036	Re-marketing Agent CP-1	S	C	9	N			172,024	172,024	89,244	0	7/14/1994	O	*	
CORPORATE FINANCE TOTALS								23,826,393	15,826,894	4,463,294	7,999,499				

## NOTES:

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\*\* Expense History only available from 1997



Joseph W. Gryzlo  
Vice President and Chief Ethics  
& Compliance Officer

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To: Members of the Governance Committee  
From: Joseph W. Gryzlo, Vice President and Chief Ethics & Compliance Officer *Joseph W. Gryzlo*  
Date: March 27, 2012  
Re: Recent Developments and Status of NYPA's Ethics & Compliance Program

**I. ETHICS UPDATE**

**A. Case Management**

**1. Current Reporting Period—October 25, 2011 through March 1, 2012**

The principal substantive issues arising under the Ethics laws and/or the NYPA Code of Conduct investigated or researched since the most recent Governance Committee report on November 15, 2011 include various requests to engage in outside employment and activities, appearances of impropriety or conflicts of interest, post employment restrictions, gifts inquiries and questions related to unwarranted privilege.

Allegations	5
Appearance of Impropriety	7
Conflict of Interest	1
General Inquiries/Interpretations	5
Gifts	10
Outside Activities	7
Outside Employment	18
Post Employment	2
Securities	2
Unwarranted Privilege	5

**a. Case Load Summary--Current Reporting Period**

The recently completed 2011 Ethics training related to Outside Employment and Activities resulted in requests to review 25 instances of external activities. These requests included reviews for employees serving on external boards at NYPA's

request or as private citizens volunteering in different areas of interest. The Ethics and Compliance Office reviews included: a NYPA executive who was asked to become a member of the Northeast Power Coordinating Council, Inc. (NPCC) Board of Directors; a NYPA executive participating on the board of the National Association of Energy Services Companies; a request to become an unpaid NYS Fire Inspector and a local Fire Commissioner in a community hosting a NYPA generating facility and to which NYPA donates funds annually.

Requests to review compensated outside employment activities included two reviews of prospective employees who disclosed their personal businesses prior to accepting NYPA's offers of employment. In both cases the prospective employees were granted conditional approvals for maintaining their outside interests provided they disclose and NYPA assesses their current and future clients to ensure that those clients have no nexus to NYPA. In all instances, the Ethics and Compliance Office evaluates employees' reported outside activities and employment to ensure there are no conflicts of interests with the employees' NYPA job duties or NYPA's business interests. Where appropriate, approval of the New York State Joint Commission on Public Ethics (JCOPE) is also requested in accordance with NYS Regulations relating to employees who hold designated "policy-making" positions.

Niagara staff contacted the Ethics & Compliance Office for an opinion related to NYPA employees' use of the electric vehicle re-charging stations installed at its new warehouse/administration building. At least one employee inquired whether he would be allowed to use the charging station for his personal vehicle during his assigned work hours. The charging stations were installed to support NYPA's LEEDS green building certification and are available to members of the public. A strict interpretation of the Public Officers Law could view this activity as an unwarranted privilege similar in nature to allowing employees to fuel their personal vehicles at NYPA's on site gas pumps or having access to other NYPA assets for personal use. This interpretation is not consistent with NYPA's promotion of hybrid and all electric vehicles. The Ethics & Compliance Office convened a meeting with Facilities Management, Energy Services and Risk Management to identify the issues and appropriate stakeholders. It is anticipated that NYPA will seek guidance from various NYS entities to ensure consistency with managing this asset in accordance with applicable laws, regulation and standards.

The Ethics & Compliance Office was asked to opine on whether materials NYPA purchased and its contractor used to create a temporary road over private property during shoreline restoration work in Massena could be given to the property owner who had granted NYPA right of way access to the shoreline property. Traditionally, the contractor hired to perform the work would remove the materials after a project's completion. NYPA promotes positive relationships in the communities in which we do business. Access over this private property made the shoreline

work far less costly than it would have been to access the land via water. However, the Ethics and Compliance Office advised against this activity since it would set a precedent that NYPA may not be able or willing to follow in the future should a similar situation occur where the materials were more costly. Additionally, NYPA would have no control over the placement of these materials and had concerns about potential liability issues that could arise in the transfer, placement and subsequent use of the materials.

## **2. Referrals from the New York State Inspector General's Office**

The Ethics and Compliance Office received two referrals from the NYS Inspector General's Office since the last reporting period. Details will be provided during executive session of the Governance Committee Meeting.

### **B. Matters Before the Joint Commission on Public Ethics (JCOPE)**

#### **Financial Disclosure**

The Ethics & Compliance Office submitted its mandatory annual Financial Disclosure Program report to JCOPE which identifies NYPA's required filers and those employees who are exempt from the requirement prior to the February 29, 2012 due date. All employees whose salaries exceed the \$88,256 statutory threshold and those who hold designated "policy-making" positions are required to file a Financial Disclosure Statement with JCOPE on or before May 15, 2012. Included in the filing were 450 required filers and 211 employees holding current valid exemptions. Employee filers will be notified directly by JCOPE at their NYPA email addresses of their obligation to file and will be provided the instructions to complete and submit the filing. NYPA's Trustees will be notified by JCOPE via the contact information presently on file with JCOPE.

Those employees who are exempt from filing will also receive email instructions to contact NYPA's Ethics & Compliance Office if they receive a request to file from JCOPE so that any discrepancies can be resolved in a timely manner.

### **C. Training and Outreach**

The Ethics & Compliance Office conducted its 2011 Ethics training pertaining to Outside Employment & Activities in December 2011. The training was delivered electronically to all employees with dedicated computer access and provided to employee members of the bargaining units in hardcopy or in person at NYPA's facilities. The training included a link to complete the 2011 Code of Conduct review and certification.

## II. COMPLIANCE UPDATE

### A. NERC Reliability Standards Compliance Enforcement Actions

Between November 15, 2011 and March 27, 2012, NYPA staff managed compliance enforcement actions related to several of the NERC Reliability Standards that are applicable to NYPA's NERC registrations. The actions and their status are briefly stated below:

1. **PRC-005-1 R2 - Transmission and Generation Protection System Maintenance and Testing:** (NERC Violation ID: NPCC201100236) NYPA self-reported to NPCC a potential violation of the requirement R2 of PRC-005-1 on February 11, 2011. NYPA submitted the mitigation plan to NPCC on June 15. On July 29, NYPA received notification that the mitigation plan was approved by NPCC and NERC staff and submitted to FERC. The associated mitigation plan was successfully completed by December 15, 2011 and is currently being reviewed by NPCC. NYPA will soon enter into settlement discussions with NPCC and a penalty is expected.
2. **PRC-018-1 R6 - Disturbance Monitoring Equipment Installation and Data Reporting:** (NERC Violation ID: NPCC201100237) NYPA self-reported to NPCC a potential violation of requirement R2.1 and R2.2 of PRC-0018-1 on February 11, 2011. NYPA submitted the mitigation plan to NPCC on June 15. On August 12, NYPA received notification that the mitigation plan was approved by NPCC and NERC staff and submitted to FERC. The associated mitigation plan was successfully completed by December 15, 2011. The violation was processed via NERC's Find, Fix, and Track process and filed with FERC on February 29, 2012. There was no penalty assessed.
3. **CIP-004-3 R2 - Cyber Security — Personnel and Training:** (NERC Violation ID: NPCC2012200446) NYPA self-reported to NPCC a potential violation of requirement R2 of CIP-004-3 on February 16, 2012. NYPA staff is currently preparing the mitigation plan and expects to submit it to NPCC in early March 2012.
4. **CIP-004-3 R4.2 - Cyber Security — Personnel and Training:** (NERC Violation ID: not yet assigned) NYPA self-reported to NPCC a potential violation of requirement R4.2 of CIP-004-3 on March 12, 2012. NYPA staff is currently preparing the mitigation plan and expects to submit it to NPCC in March 2012.

### B. Bulk Electric System Definition

In 2010, FERC issued its final rule on the Electric Reliability Organization Definition of the Bulk Electric System (BES) to include assets greater than 100 KV. Pursuant to

FERC Order 743, NERC established a Standard Drafting Team (BES SDT) to develop a new BES definition and RSC staff is monitoring the work of the BES SDT.

The definition and an exception process were developed and approved by the industry in 2011. The NERC Board of Trustees approved the new BES Definition and the Exception Process in January 2012. NERC filed both with FERC on January 25, 2012. FERC is expected to adopt the new definition and exception process in late 2012. Subsequently, there will be an 18 to 24-month implementation period for which at the end of it all NERC registered entities will be expected to demonstrate compliance for the additional generation and transmission assets captured under the new definition.

The new BES definition will have substantive impacts on New York State's electric utilities, including NYPA, because it will require the application of the NERC Reliability Standards to a larger population of generation and transmission assets. In this regard, the Northeast Power Coordinating Council (NPCC) has established a BES Transition Plan that contains actions for assessing the impact of the new BES Definition. The first action is for NERC registered and non-registered entities that own assets in the NPCC region to prepare a list of newly identified BES assets by March 26, 2012. Under the current definition NYPA has about 70 assets that are subject to the NERC Reliability Standards. Under the new definition, 25 more assets will be subject to the standards; a 35% increase. NYPA will be submitting this information to NPCC before the deadline.

More importantly for NYPA, the adoption of the new BES definition may require NYPA to register as a Transmission Operator (TOP) and/or a Transmission Planner (TP), which will lead to additional compliance responsibilities and accountabilities.

Currently, the New York Independent System Operator (NYISO) is the TOP and TP for NYPA's bulk power system elements. Under the new definition, the NYISO is not expected to take these responsibilities for any of the newly identified transmission elements in New York State. The responsibilities are expected to be distributed among the NY Transmission Owners (NYTOs). In response to these projected impacts, the NYISO and the NYTOs established a team in February 2011 to discuss and develop an action plan to address the state-wide impacts of the implementation of the new BES definition. This group has been meeting regularly to clarify the impacts with respect to functional responsibility and compliance accountability for the TOP and TP Standards. The objective is to reach agreement on a registration model that will work for New York State and meet the requirements of NPCC and NERC. The team expects to accomplish its objective before the end of 2012.

### **C. Load Serving Entity (LSE) De-Registration**

NYPA registered as a Load Serving Entity under NERC's functional registration model in June 2007 when the NERC Reliability Standards became mandatory. NYPA registered as an LSE for its municipal customers and ALCOA, a NYPA industrial customer. In 2009, NPCC determined that NYPA's municipal customers should be registered as LSEs, not NYPA as acting on their behalf. These municipal customers have since registered as LSEs.

On December 10, 2010, NPCC notified ALCOA that it was reviewing the LSE registration applicability for ALCOA. NPCC has engaged NYPA and ALCOA in discussions and information requests, including applicable assets/ownership, metering points and load flow data. In March 2011, NPCC requested NYPA to provide a position paper on the LSE registration for the ALCOA load. NPCC stated it would discuss this registration situation involving large industrial end user customers with its NERC regional counterparts to determine if either entity needs to be registered as a LSE. NPCC did not audit NYPA's compliance with the applicable reliability standards for LSEs during its June 2011 FERC Order 693 audit. NYPA submitted its position paper and additional requested information to NPCC on July 18, 2011.

NPCC reviewed NYPA's position paper and NYPA staff met with NPCC on November 30, 2011 to discuss the status of NYPA's request. As a result of those discussions, NPCC agreed that resolution of NYPA's request should be postponed until the new BES definition is adopted by FERC; sometime in late 2012 or early 2013. Based on the new BES Definition, the 115kv lines providing service to ALCOA may not be considered BES assets, either as a definition exclusion or based on an exception request. If these 115kv lines are determined not to be BES assets, then NPCC does not believe that the ALCOA load requires the designation of an LSE entity and will deregister NYPA as an LSE. Given this position, NPCC stated that it will defer all LSE Audits or Spot Checks of NYPA for its LSE function until such time that this issue is resolved. In addition, NPCC agreed that it would suspend NYPA's requirement to self-certify compliance to the applicable LSE standards under NPCC's 2011-2012 Reporting Schedule.

#### **D. NERC Recommendation to Industry – Facility Ratings for Transmission Lines**

On October 7, 2010, NERC issued a "NERC Alert – Recommendation to Industry" requiring NYPA to review its current Facility Ratings Methodology for its solely and jointly owned transmission lines to verify that the methodology is based on actual field conditions (in particular, line clearances). This Alert was issued as a result of vegetation contact by a transmission owner and NERC's subsequent discovery that the actual field condition of the transmission line differed from its design condition causing some facility ratings to be inaccurate or in question (e.g. violations of the codes for line-to-ground clearances). Pursuant to the NERC Rules of Procedure, all Registered Entities are required to report to NERC on the status of activities relating to this Recommendation. At the end of the assessment and remediation period, it is possible that some entities will be subject to enforcement actions. This is a significant undertaking by the Transmission Owners in North America.

NYPA was required to submit a plan to conduct an assessment and any necessary remediation of the issues identified in the recommendation. NYPA submitted its plan to NERC on January 18, 2011 with commitments to complete the required evaluations, reports and remediation. NYPA met with the New York Independent System Operator (NYISO), NYPA's Reliability Coordinator, on July 8, 2011 to discuss its assessment plan and the management of outages that might be required to mitigate any line clearance issues that are discovered. The assessment for all of

NYPA's transmission lines, based on remote sensing obtained for all of its transmission lines was completed in December 2011. In January 2012, NYPA began a review of the remote sensing findings and undertook further analysis of the data and results. The final reports are expected to be completed in the first half of 2012.

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A status update was provided to NERC via NPCC in January 2012. The update contained a list of NYPA's transmission lines and the preliminary findings of possible line clearance concerns. As required by NERC, NYPA met with the NYISO on February 7, 2012 to discuss progress and the preliminary findings NYPA had submitted to NPCC. NYPA staff stressed that the number of clearance concerns is expected to decrease upon completion of the analysis of the remote sensing data and physical field verifications. The NYISO described the process that they are using with other New York Transmission Owners in mitigating line clearance discrepancies. NYPA will use a similar process to mitigate any line clearance discrepancies for its transmission lines.

The NYISO agreed to review the priorities NYPA assigned to its transmission lines (based on NERC's criteria) and provide NYPA with recommended adjustments in the priorities. NYISO did recommend that some lines NYPA rated as High priority could be moved to Medium priority. NERC expects discrepancies for High priority lines to be mitigated before those for Medium or Low priority lines. The changes recommended by the NYISO gave NYPA some additional time to resolve any discrepancies for those lines moved from High to Medium priority. NYPA agreed to prepare a field verification schedule and review it with the NYISO. The field verification work is needed to confirm the results from the analysis of the remote sensing data before undertaking any required mitigation work. NYPA staff expects to meet again in May 2012 with the NYISO to review the field verification schedule. NYPA included funds in its 2012 budget to mitigate line clearance concerns for its High priority lines, if such actions are necessary. The next status update must be submitted to NERC via NPCC in July 2012.

Cc: G. Quiniones  
E. Welz  
J. McCarthy  
J. Tursi  
R. Crissman  
L. Pardo

**STRATEGIC PLANNING AND ENERGY POLICY COMMITTEE CHARTER**

A. PURPOSE

The purpose of the of the Strategic Planning and Energy Policy Committee is to review the Authority’s mission and develop, at least annually, a strategic vision for the Authority, with emphasis on its energy policy, its future goals, projects and overall direction; 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 not less than three nor more than five members of the Board of Trustees. All members 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 five year terms 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 for the unexpired term.

(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 meet as often as it determines necessary to carry out its duties and 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 the total Committee composition established pursuant to section B(1) of this Charter 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 specific responsibilities of the Strategic Planning and Energy Policy Committee shall include:

- Providing guidance and serving as a resource to the Board of Trustees and management in the development of the Authority's energy policy and its long-term objectives, direction and strategic plans.
- Assisting management in identifying potential concerns and critical strategic issues facing the Authority and analyzing alternative strategic options.
- Reviewing, at least annually, the Authority's mission statement, five-year strategic plan and overall direction.
- Making recommendations, at least annually, to the full board related to the Authority's mission, vision, strategic initiatives, major programs and services.
- Understanding the industry and keeping up-to-date on market trends and advances in technology.

The Committee may call upon the resources of the Authority to assist the Committee in the discharge of its responsibilities.

**March 27, 2012**

**BY-LAWS  
of the  
POWER AUTHORITY  
OF THE STATE OF NEW YORK**  
Statutory Authority  
Public Authorities Law §1004

Originally Adopted.....April 9, 1954,  
and amended.....July 28, 1954;  
September 28, 1956;  
May 1, 1961;  
December 19, 1966;  
July 1, 1968;  
April 27, 1978;  
November 28, 1978;  
October 31, 1979;  
December 18, 1984;  
January 22, 1985;  
October 29, 1985;  
April 29, 1986;  
February 28, 1989;  
February 22, 1994;  
April 26, 1994;  
August 29, 1995;  
December 17, 1996;  
September 11, 1997;  
December 15, 1998;  
October 26, 1999;  
November 28, 2000;  
April 30, 2002;  
February 28, 2006;  
April 28, 2006;  
April 24, 2007;  
October 30, 2007;  
October 28, 2008;  
February 24, 2009;  
December 15, 2009;  
January 26, 2010;  
October 26, 2010  
July 26, 2011  
March 27, 2012

Power Authority of the State of New York  
30 South Pearl Street  
Albany, New York 12207

# BY-LAWS Of the POWER AUTHORITY OF THE STATE OF NEW YORK

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**ARTICLE I – Offices**

***Section 1. Principal Office***

The principal office of the Power Authority of the State of New York (hereinafter referred to as the "Authority") shall be its Albany, New York office.

***Section 2. Other Offices***

The Authority may also have offices at such other places as the Trustees may from time to time determine or the business of the Authority may require.

***Section 3. Books And Records***

Except as otherwise determined by the Trustees or as the business of the Authority may require, all books and records of the Authority shall be kept at its White Plains, New York office.

**ARTICLE II – Trustees**

***Section 1. Number, Term, Appointment And Vacancies***

The number and term of Trustees and the appointment and process of filling vacancies shall be governed by Title 1 of Article 5 of the Public Authorities Law (hereinafter referred to as the "Power Authority Act").

***Section 2. Powers And Duties***

The powers and duties of the Trustees shall be governed by the Power Authority Act. To implement these powers and duties, the Trustees shall, oversee the Authority's chief executive and executive management in the effective and ethical management of the Authority; understand, review and monitor financial, management and operational decisions of the Authority; annually approve the salary of the President and Chief Executive Officer and the Executive Management Committee; and annually review and approve employee policies governing: salary, compensation, benefits, and attendance.

**ARTICLE III - Trustees' Meetings**

***Section 1. Place Of Meetings***

Meetings of the Trustees shall be held at the principal office of the Authority or at such other place as the Trustees may from time to time designate. Trustees may conduct meetings by videoconference.

**Section 2. Annual Meeting**

The annual meeting of the Trustees shall be held in March of each year, unless otherwise determined by them and at such time and place as the Trustees may from time to time designate.

**Section 3. Regular Meetings**

Regular meetings of the Trustees shall be held in accordance with a schedule adopted annually by the Trustees for that purpose and may be changed from time to time within that year by the Chair in consultation with the Trustees.

**Section 4. Special Meetings**

Special meetings of the Trustees may be called by the Chair or Vice Chair or upon the request of any three Trustees. The Corporate Secretary shall give notice of the time, place and purpose or purposes of each special meeting by mail at least three days before the meeting or in person or by telephone or facsimile or by other electronic communication at least two days before the meeting to each Trustee. The notice required to be given under this section may be waived by the Trustee to whom such notice is required to be given.

**Section 5. Quorum**

At all Trustees' meetings, the presence of four Trustees shall be necessary to constitute a quorum and shall be sufficient for the transaction of business. Any act shall be sufficient for the transaction of business if such four Trustees are in agreement and any act of such four Trustees present at a meeting and which constitutes a quorum shall be an act of the Trustees. Participation by videoconference shall count for quorum and voting purposes but participation by telephone shall not.

**ARTICLE IV – Officers**

**Section 1. Officers**

The statutory officers of the Authority shall be a Chair and a Vice Chair, whose offices are created by and named in Section 1004 of the Public Authorities Law and who shall be chosen from among the Trustees; the non-statutory officers of the Authority shall be a President and Chief Executive Officer, a Chief Operating Officer, one or more Executive Vice Presidents, an Executive Vice President and General Counsel, a Corporate Secretary, a Treasurer, a Controller and such other officers as may be deemed necessary by the Trustees upon recommendation of the Governance Committee to transact the business and exercise the general and special powers of the Authority, all of whom shall be employees of the Authority.

**Section 2. Election Of Non-Statutory Officers**

The President and Chief Executive Officer, the Chief Operating Officer, the Executive Vice President and General Counsel, the Executive Vice President and Chief Engineer – Power Supply, the Executive Vice President – Chief Administrative Officer, the Executive Vice President and Chief Financial Officer, the Executive Vice President – Economic Development and Energy Efficiency , the Corporate Secretary and all other non-statutory officers shall be elected by the Trustees upon the recommendation of the Governance Committee at any annual, regular or special meeting of the Trustees, except that the Vice President-Internal Audits, who shall be appointed by and serve at the pleasure of the Audit Committee.

**Section 3. Term Of Office**

The President and Chief Executive Officer, the Chief Operating Officer, the Executive Vice President and General Counsel, the Corporate Secretary, the Executive Vice President and Chief Engineer - Power Supply, the Executive Vice President and Chief Financial Officer, the Executive Vice President – Economic Development and Energy Efficiency and the Executive Vice President – Chief Administrative Officer and all other non-statutory officers shall each hold office until his or her successor is chosen and qualified or until his or her earlier removal, resignation or death.

**Section 4. Vacancies**

The Trustees may leave unfilled any office except those of Chair, Vice Chair, President and Chief Executive Officer, Chief Operating Officer, Executive Vice President and General Counsel or Corporate Secretary. In addition, the Trustees may fill these positions with an acting or interim appointment until such time as a permanent replacement is elected.

**Section 5. Removal**

Any officer elected by the Trustees herein shall be subject to removal at any time by the Trustees with or without cause.

**Section 6. Powers And Duties**

**A. CHAIR**

The Chair shall preside at all meetings of the Trustees, shall be responsible for developing the strategic vision and mission of the Authority and shall on behalf of the Trustees oversee the Authority’s chief executive and management in the effective and ethical management of the Authority. The Chair may appoint such assistants and employees as he or she may deem necessary in order to perform such function and may fix their power, duties and compensations. The Chair may delegate to the Vice Chair, President and Chief Executive Officer or other officer or officers such of the

Chair's powers and functions in the general supervision of the business of the Authority to the extent such delegation is consistent with the Power Authority Act and other applicable provisions of law.

***B. VICE CHAIR***

The Vice Chair shall possess such powers and shall perform such duties as may be assigned to him or her from time to time by the Trustees. The Vice Chair shall be Acting Chair in the absence or incapacity of the Chair and shall assume the powers and perform all duties of the Chair if the Chair is unable to perform such duties for any reason. The Vice Chair, when acting in the capacity of Acting Chair under this section, may delegate the powers or duties of Chair to another Trustee or the President and Chief Executive Officer during the period of disability or incapacity of the Chair.

***C. PRESIDENT AND CHIEF EXECUTIVE OFFICER***

The President, when elected by the Trustees and confirmed by the Senate, shall be the Chief Executive Officer of the Authority and, subject to such supervision as the Chair or the Trustees may from time to time exercise, shall have such duties and powers as hereinafter described. The President and Chief Executive Officer shall be responsible for the supervision of all of the Authority's operations. Except for activities or business units under the supervision of officers reporting to the Chair or the Trustees, he or she shall have primary responsibility for the activities of all Authority business units. Subject to the Authority's expenditure authorization procedures, the President and Chief Executive Officer may sign, execute and deliver in the name of the Authority powers of attorney, contracts, agreements, leases, notes, checks, drafts, bonds, obligations and such documents other than those required by these By-laws, law or resolution to be executed by the Chair and/or the Corporate Secretary. The President and Chief Executive Officer may, as deemed appropriate, delegate his or her powers and responsibilities to any non-statutory officers of the Authority.

***D. CHIEF OPERATING OFFICER***

The Chief Operating Officer, when elected by the Trustees, shall have such duties and powers as hereinafter described. The Chief Operating Officer shall manage and monitor the day-to-day operations of the Authority and shall report on same to the President and Chief Executive Officer. The Chief Operating Officer shall supervise the operation and maintenance of all of the Authority's generation and transmission facilities; energy resource management; generation and transmission planning and development; licensing and construction; technical and operational compliance; and environment, health and safety. Subject to the Authority's expenditure authorization procedures, the Chief Operating Officer may sign, execute and deliver in the name of the Authority powers of attorney, contracts, agreements, leases, notes, checks, drafts, bonds, obligations and such documents other than those required by these By-laws, law or resolution to be executed by the Chair and/or the Corporate Secretary. The Chief

Operating Officer may, as deemed appropriate, delegate his or her powers and responsibilities to any non-statutory officers of the Authority.

***E. EXECUTIVE VICE PRESIDENT AND CHIEF ENGINEER – POWER SUPPLY***

The Executive Vice President and Chief Engineer – Power Supply shall be responsible for the safe, reliable and cost-effective operation and maintenance of all Authority generating and transmission facilities; all engineering, construction, maintenance and project management services and staff functions of business development and asset management, environment, health and safety, technical training and project development and licensing and shall report on same to the Chief Operating Officer.

***F. EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL***

There shall be an Executive Vice President and General Counsel of the Authority, who shall report to both the Trustees and the President and Chief Executive Officer and be the chief legal officer of the Authority. In that capacity, he or she shall advise and represent the Authority generally in all legal matters and proceedings, including legislative proceedings; shall designate those employees who shall be eligible to accept service of process on behalf of the Authority and possess such powers; and shall have general supervision over the property, business and affairs of the Office of the General Counsel. In addition, the Executive Vice President and General Counsel, together with the Chair and the Board of Trustees, shall supervise and direct the activities of the Office of the Corporate Secretary and the Vice President and Chief Ethics and Compliance Officer.

***G. EXECUTIVE VICE PRESIDENT – CHIEF ADMINISTRATIVE OFFICER***

The Executive Vice President – Chief Administrative Officer, shall oversee the day-to-day administration of the Authority and report to and advise the President and Chief Executive Officer on all administrative matters. The Executive Vice President -- Chief Administrative Officer shall coordinate the activities of the various business units, except for those under the supervision of officers reporting to the Chair or the Trustees, and the activities and projects of the President and Chief Executive Officer. In addition, the Executive Vice President – Chief Administrative Officer shall ensure that assignments are carried out for and reported to the President and Chief Executive Officer and provide operational and strategic support to the Chair and the Board of Trustees.

***H. EXECUTIVE VICE PRESIDENT AND CHIEF FINANCIAL OFFICER***

The Executive Vice President and Chief Financial Officer shall report and give advice to the President and Chief Executive Officer, shall give advice to the Chair and Trustees as they may request and shall supervise and direct the activities of the Business Services Division regarding financial and investment policies of the Authority, oversee the Authority's investment program, recommend and implement financial policies of the Authority and participate in the preparation of the financial reports of the Authority required by applicable law.

***I. EXECUTIVE VICE PRESIDENT – ECONOMIC DEVELOPMENT AND ENERGY EFFICIENCY***

The Executive Vice President – Economic Development and Energy Efficiency shall manage and direct the Authority’s client-based programs; its economic development, energy services and technology; and the development of new products and programs.

***J. CORPORATE SECRETARY***

The Corporate Secretary shall report to the Chair and the Board of Trustees and to the Executive Vice President and General Counsel and attend all meetings of the Trustees and record all votes and shall keep a record of the proceedings of the Trustees in a Minutes Book to be kept for that purpose. The Corporate Secretary shall cause notice to be given of all meetings of the Trustees and shall be custodian of the records of the actions of the Trustees and shall keep in safe custody the seal of the Authority and shall have the authority to affix such seal to all documents and papers authorized to be executed by the Trustees or officers of the Authority requiring such seal to be affixed. The Corporate Secretary shall attest to the signatures of the Trustees and officers of the Authority and shall have the authority to cause copies to be made of all minutes, resolutions, records and documents of the Authority and to deliver certificates under seal to the effect that such copies are true and accurate and that all persons dealing with the Authority may rely on same.

***K. TREASURER***

The Treasurer shall have general custody of all funds and securities of the Authority and have general supervision of the collection and disbursement of Authority funds and shall endorse on behalf of the Authority for collection checks, notes and other obligations, and shall deposit the same to the credit of the Authority in such bank or banks or depositories as the Trustees may designate. The Treasurer may sign with the Chair, or such other person or persons as may be designated for such purpose by the Trustees, all bills of exchange or promissory notes of the Authority.

***L. CONTROLLER***

The Controller shall be in charge of the accounting operations, the preparation of fiscal accounts and the coordination of all external audits of the Authority.

***M. VICE PRESIDENT - INTERNAL AUDITS***

There shall be a separate Office of Internal Audits which shall report to the Audit Committee and shall have such other powers and perform such other duties as customarily pertain to such office and as may be assigned to it by the Chair, the Board of Trustees, or the President and Chief Executive Officer. The Vice President – Internal Audits shall meet at least three times per year with the Audit Committee.

**N. SUCCESSION – ABSENCE OR VACANCY OF OFFICE OF PRESIDENT AND CHIEF EXECUTIVE OFFICER**

In the event of the incapacity or absence of the President and Chief Executive Officer, the Chief Operating Officer shall perform the duties of the President and Chief Executive Officer. If the office of Chief Operating Officer is vacant or the incumbent is absent, then the Executive Vice President and Chief Engineer – Power Supply shall perform the duties of the President and Chief Executive Officer. If the offices of Chief Operating Officer and Executive Vice President and Chief Engineer – Power Supply are vacant or the respective incumbents are absent, then the Executive Vice President and General Counsel shall perform the duties of the President and Chief Executive Officer. If the offices of Chief Operating Officer, Executive Vice President and Chief Engineer – Power Supply and Executive Vice President and General Counsel are vacant or the respective incumbents are absent, then the Executive Vice President and Chief Financial Officer shall perform the duties of the President and Chief Executive Officer.

**ARTICLE V – Committees**

**Section 1. Executive Management Committee**

The President and Chief Executive Officer, the Chief Operating Officer, the Executive Vice President and General Counsel, the Executive Vice President and Chief Engineer - Power Supply, the Executive Vice President and Chief Financial Officer, and such other officers as the President and Chief Executive Officer may from time to time designate shall be members of an Executive Management Committee which shall periodically review and propose Authority corporate strategies, policies and programs and shall report on and make recommendations, to the Trustees. Any officer so designated shall serve on the Executive Management Committee at the pleasure of the President and Chief Executive Officer. The President and Chief Executive Officer, or in whose absence or disability his or her designee, shall preside at Executive Management Committee meetings, which shall be held quarterly or more often as the President and Chief Executive Officer may designate.

**Section 2. Audit Committee**

The Audit Committee shall consist of not less than three nor more than five members of the Board of Trustees. At least three members of the Committee shall be independent members of the Board of Trustees. All the members of the Audit Committee shall possess the necessary skills to understand the duties and functions of the Audit Committee and shall be familiar with corporate financial and accounting practices. It shall be the responsibility of the Audit Committee to recommend to the 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 performed by the accounting firm hired for such

purpose; and perform such other responsibilities as the Trustees shall from time to time assign to it.

### ***Section 3. Governance Committee***

The Governance Committee shall consist of not less than three nor more than five members of the Board of Trustees. At least three members of the Committee shall be independent members of the Board of Trustees. All the members of the Governance Committee shall possess the necessary skills to understand the duties and functions of the Governance Committee. It shall be the responsibility of the Governance Committee to keep the 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 experience required of potential Trustees; examine ethical and conflict of interest issues; perform Trustee self-evaluations; recommend By-laws which include rules and procedures for conduct of Trustee business; make recommendations to the Board of Trustees on the election of statutory and non-statutory officers and their compensation; and perform such other responsibilities as the Trustees shall from time to time assign to it.

### ***Section 4. Finance Committee***

The Finance Committee shall consist of not less than three nor more than five members of the Board of Trustees. At least three members of the Committee shall be independent members of the Board of Trustees. All the members of the Finance Committee shall possess the necessary skills to understand the duties and functions of the Finance Committee. It shall be the responsibility of the Finance Committee to review proposals for the issuance of debt by the Authority and make appropriate recommendations to the Board of Trustees and perform such other responsibilities as the Trustees shall from time to time assign to it.

### ***Section 5. Strategic Planning and Energy Policy Committee***

The Strategic Planning and Energy Policy Committee shall consist of not less than three nor more than five members of the Board of Trustees. At least three members of the Committee shall be independent members of the Board of Trustees. It shall be the responsibility of the Strategic Planning and Energy Policy Committee to review the Authority's mission and develop, at least annually, a strategic vision for the Authority, with emphasis on its future goals, projects and overall direction.

### ***Section 6. Other Committees***

The Trustees or the Chair may appoint other committees which shall have and may exercise such powers as shall be authorized by the Trustees, Chair or President and Chief Executive Officer.

## **ARTICLE VI - Corporate Seal**

### ***Section 1. Seal***

The seal of the Authority shall be a design symbolizing its activities and shall be surrounded by the words "Power Authority of the State of New York" as shown by the following impression of such seal:



## **ARTICLE VII - Fiscal Management**

### ***Section 1. Fiscal Year***

The Trustees shall have the power to fix, and may, from time to time, change by resolution, the fiscal year of the Authority. Unless otherwise fixed by the Trustees, the calendar year shall be the fiscal year.

### ***Section 2. Strategic Plan***

The Trustees shall annually review a strategic plan developed by the Executive Management Committee under the supervision of the Strategic Planning and Energy Policy Committee, which shall become the basis for the development of departmental plans, the annual budget and the capital expenditure plan.

### ***Section 3. Annual Budgets***

The Trustees shall annually adopt an operation and maintenance budget and a capital budget for the Authority's operating facilities and support departments.

### ***Section 4. Capital Expenditure Plan***

The Trustees shall review an annual capital expenditure plan which shall summarize all present and proposed capital projects.

**Section 5. Expenditure Authorization Procedures**

The Trustees shall adopt expenditure authorization procedures which shall govern the annual budget, capital expenditure plan, contract executions and all approval authorizations.

**Section 6. Disbursement Of Funds**

The Trustees, except as otherwise provided in these By-laws, may authorize any officer or other employee to execute any requisition, voucher, draft or check for the disbursement or transfer of funds of the Authority.

**ARTICLE VIII - Execution of Instruments**

**Section 1. Execution Of Instruments**

The Trustees, except as otherwise provided in these By-laws, may authorize any officer, employee or agent, pursuant to the expenditure authorization procedures or otherwise, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Authority, and such power to execute and deliver may be general or specific; unless so authorized, no officer, employee or agent shall have any power or authority to bind the Authority by any contract or engagement or pledge of its credit or to render it liable pecuniarily for any purpose or in any amount.

**ARTICLE IX – Amendment**

**Section 1. Amendment**

The Trustees shall have the power to amend, alter or repeal any provision or provisions of these By-laws at any annual, regular or special meeting.

**ARTICLE X – Miscellaneous**

**Section 1. Additional Appointments**

The Chief Operating Officer shall appoint all regional managers and site executive officers.

**Section 2. Annual Reports**

The Trustees shall submit and publish an annual report, as prescribed by the Public Authorities Law, within ninety days after the close of the Authority’s fiscal year. The annual report shall be certified by the Chair, the President and Chief Executive Officer

and the Chief Financial Officer to the extent required by the Public Authorities Law. The annual report shall be accompanied by such other documents and information as the Public Authorities Law requires.

### ***Section 3. Defense And Indemnification Of Trustees And Employees***

The provisions of the Defense and Indemnification Policy ("Policy") of the Authority as amended and adopted on April 26, 1994, and the provisions of the resolution as amended and adopted by the Authority on April 26, 1994, conferring the benefits of Section 18 of the New York Public Officers Law ("POL § 18") on the Authority's Trustees and employees and agreeing to be held liable for the costs thereof, shall constitute a contract between the Authority and each of its Trustees and employees, as such persons are defined in the Policy, and the Authority agrees that the benefits thereof shall be made available to each Trustee or employee with respect to any act or omission which has occurred or may in the future occur during the period such Policy and the resolution conferring the benefits of POL § 18 are in effect, and no amendment to such Policy or such resolution which modifies the provisions thereof shall take effect with respect to any act or omission of a Trustee or employee which occurred prior to the effective date of such amendment unless the effect of such amendment is to increase the defense and indemnification protection afforded to such Trustee or employee prior to such effective date.

### ***Section 4. Authority Policies And Procedures***

Unless otherwise provided by law, regulation or these By-laws, every officer or employee of the Authority shall be subject to all Authority policies and procedures.

~~July 26, 2011~~ **March 27, 2012**

**BY-LAWS**  
of the  
**POWER AUTHORITY**  
**OF THE STATE OF NEW YORK**  
Statutory Authority  
Public Authorities Law §1004

Originally Adopted..... April 9, 1954,  
and amended..... July 28, 1954;  
September 28, 1956;  
May 1, 1961;  
December 19, 1966;  
July 1, 1968;  
April 27, 1978;  
November 28, 1978;  
October 31, 1979;  
December 18, 1984;  
January 22, 1985;  
October 29, 1985;  
April 29, 1986;  
February 28, 1989;  
February 22, 1994;  
April 26, 1994;  
August 29, 1995;  
December 17, 1996;  
September 11, 1997;  
December 15, 1998;  
October 26, 1999;  
November 28, 2000;  
April 30, 2002;  
February 28, 2006;  
April 28, 2006;  
April 24, 2007;  
October 30, 2007;  
October 28, 2008;  
February 24, 2009;  
December 15, 2009;  
January 26, 2010;  
October 26, 2010  
July 26, 2011

**March 27, 2012**

Power Authority of the State of New York  
30 South Pearl Street  
Albany, New York 12207

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**BY-LAWS  
Of the  
POWER AUTHORITY  
OF THE STATE OF NEW YORK**

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**ARTICLE I – Offices**

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**Section 1. Principal Office**

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The principal office of the Power Authority of the State of New York (hereinafter referred to as the "Authority") shall be its Albany, New York office.

**Section 2. Other Offices**

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The Authority may also have offices at such other places as the Trustees may from time to time determine or the business of the Authority may require.

**Section 3. Books And Records**

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Except as otherwise determined by the Trustees or as the business of the Authority may require, all books and records of the Authority shall be kept at its White Plains, New York office.

**ARTICLE II – Trustees**

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**Section 1. Number, Term, Appointment And Vacancies**

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The number and term of Trustees and the appointment and process of filling vacancies shall be governed by Title 1 of Article 5 of the Public Authorities Law (hereinafter referred to as the "Power Authority Act").

**Section 2. Powers And Duties**

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The powers and duties of the Trustees shall be governed by the Power Authority Act ~~and other applicable provisions of the Public Authorities Law.~~ To implement these powers and duties, the Trustees shall, ~~among other things,~~ oversee the Authority's chief executive and ~~other executive~~ management in the effective and ethical management of the Authority; understand, review and monitor financial, management and operational decisions of the Authority; ~~annually approve the salary of the President and Chief Executive Officer and the Executive Management Committee; and annually~~ review and approve ~~annually the employee~~ policies ~~and procedures~~ governing: ~~(i) the salary, (ii) compensation, (iii) benefits and (iv) time,~~ and attendance ~~of the chief executive and management.~~

**ARTICLE III - Trustees' Meetings**

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**Section 1. Place Of Meetings**

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Meetings of the Trustees shall be held at the principal office of the Authority or at such other place as the Trustees may from time to time designate. Trustees may conduct meetings by videoconference.

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**Section 2. Annual Meeting**

The annual meeting of the Trustees shall be held in March of each year, unless otherwise determined by them and at such time and place as the Trustees may from time to time designate.

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**Section 3. Regular Meetings**

Regular meetings of the Trustees shall be held in accordance with a schedule adopted annually by the Trustees for that purpose and may be changed from time to time within that year by the Chair in consultation with the Trustees.

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**Section 4. Special Meetings**

Special meetings of the Trustees may be called by the Chair or Vice Chair or upon the request of any three Trustees. The Corporate Secretary shall give notice of the time, place and purpose or purposes of each special meeting by mail at least three days before the meeting or in person or by telephone or facsimile or by other electronic communication at least two days before the meeting to each Trustee. The notice required to be given under this section may be waived by the Trustee to whom such notice is required to be given.

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**Section 5. Quorum**

At all Trustees' meetings, the presence of four Trustees shall be necessary to constitute a quorum and shall be sufficient for the transaction of business. Any act shall be sufficient for the transaction of business if such four Trustees are in agreement and any act of such four Trustees present at a meeting and which constitutes a quorum shall be an act of the Trustees. Participation by videoconference shall count for quorum and voting purposes but participation by telephone shall not.

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**ARTICLE IV – Officers**

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**Section 1. Officers**

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The statutory officers of the Authority shall be a Chair and a Vice Chair, whose offices are created by and named in Section 1004 of the Public Authorities Law and who shall be chosen from among the Trustees; the non-statutory officers of the Authority shall be a President and Chief Executive Officer, a Chief Operating Officer, one or more Executive Vice Presidents, an Executive Vice President and General Counsel, a Corporate Secretary, a Treasurer, a Controller and such other officers as may be deemed necessary by the Trustees upon recommendation of the Governance Committee to transact the business and exercise the general and special powers of the Authority, all of whom shall be employees of the Authority.

**Section 2. Election Of Non-Statutory Officers**

The President and Chief Executive Officer, the Chief Operating Officer, the Executive Vice President and General Counsel, the Executive Vice President and Chief Engineer – Power Supply, the Executive Vice President – Chief Administrative Officer ~~and Chief of Staff~~, the Executive Vice President and Chief Financial Officer, the Executive Vice President – ~~Energy Marketing and Business~~Economic Development and Energy Efficiency, the Corporate Secretary and all other non-statutory officers shall be elected by the Trustees upon the recommendation of the Governance Committee at ~~the~~any annual, regular or special meeting of the Trustees, except that the Vice President-Internal Audits, who shall be appointed by and serve at the pleasure of the Audit Committee.

**Section 3. Term Of Office**

The President and Chief Executive Officer, the Chief Operating Officer, the Executive Vice President and General Counsel, the Corporate Secretary, the Executive Vice President and Chief Engineer - Power Supply, the Executive Vice President and Chief Financial Officer, the Executive Vice President – ~~Energy Marketing and Business~~Economic Development and Energy Efficiency and the Executive Vice President – Chief Administrative Officer ~~and Chief of Staff~~ and all other non-statutory officers shall each hold office until his or her successor is chosen and qualified or until his or her earlier removal, resignation or death.

**Section 4. Vacancies**

The Trustees may leave unfilled any office except those of Chair, Vice Chair, President and Chief Executive Officer, Chief Operating Officer, Executive Vice President and General Counsel or Corporate Secretary. In addition, the Trustees may fill these positions with an acting or interim appointment until such time as a permanent replacement is elected.

**Section 5. Removal**

Any officer elected by the Trustees herein shall be subject to removal at any time by the Trustees with or without cause.

**Section 6. Powers And Duties**

**A. CHAIR**

The Chair shall preside at all meetings of the Trustees, shall be responsible for developing ~~and supervising the communication and implementation of~~ the strategic vision and mission of the Authority and shall on behalf of the Trustees oversee the Authority’s chief executive and management in the effective and ethical management of the Authority. The Chair may appoint such assistants and employees as he or she may

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deem necessary in order to perform such function and may fix their power, duties and compensations. The Chair may delegate to the Vice Chair, President and Chief Executive Officer or other officer or officers such of the Chair's powers and functions in the general supervision of the business of the Authority to the extent such delegation is consistent with the Power Authority Act and other applicable provisions of law.

**B. VICE CHAIR**

The Vice Chair shall possess such powers and shall perform such duties as may be assigned to him or her from time to time by the Trustees. The Vice Chair shall be Acting Chair in the absence or incapacity of the Chair and shall assume the powers and perform all duties of the Chair if the Chair is unable to perform such duties for any reason. The Vice Chair, when acting in the capacity of Acting Chair under this section, may delegate the powers or duties of Chair to another Trustee or the President and Chief Executive Officer during the period of disability or incapacity of the Chair.

**C. PRESIDENT AND CHIEF EXECUTIVE OFFICER**

The President, when elected by the Trustees and confirmed by the Senate, shall be the Chief Executive Officer of the Authority and, subject to such supervision as the Chair or the Trustees may from time to time exercise, shall have such duties and powers as hereinafter described. The President and Chief Executive Officer shall be responsible for the supervision of all of the Authority's operations. Except for activities or business units under the supervision of officers reporting to the Chair or the Trustees, he or she shall have primary responsibility for the activities of all Authority business units. Subject to the Authority's expenditure authorization procedures, the President and Chief Executive Officer may sign, execute and deliver in the name of the Authority powers of attorney, contracts, agreements, leases, notes, checks, drafts, bonds, obligations and such documents other than those required by these By-laws, law or resolution to be executed by the Chair and/or the Corporate Secretary. The President and Chief Executive Officer may, as deemed appropriate, delegate his or her powers and responsibilities to any non-statutory officers of the Authority.

**D. CHIEF OPERATING OFFICER**

The Chief Operating Officer, when elected by the Trustees, shall have such duties and powers as hereinafter described. The Chief Operating Officer shall manage and monitor the day-to-day operations of the Authority and shall report on same to the President and Chief Executive Officer. ~~Except as may be prescribed by the Chair or the Trustees, the~~The Chief Operating Officer shall ~~have primary responsibility for~~supervise the operation and maintenance of all of the Authority's generation and transmission facilities; energy resource management; generation and transmission planning and development; licensing and construction; technical and operational compliance; and environment, health and safety. Subject to the Authority's expenditure authorization procedures, the Chief Operating Officer may sign, execute and deliver in the name of the Authority powers of attorney, contracts, agreements, leases, notes, checks, drafts,

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bonds, obligations and such documents other than those required by these By-laws, law or resolution to be executed by the Chair and/or the Corporate Secretary. The Chief Operating Officer may, as deemed appropriate, delegate his or her powers and responsibilities to any non-statutory officers of the Authority.

**E. EXECUTIVE VICE PRESIDENT AND CHIEF ENGINEER – POWER SUPPLY**

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The Executive Vice President and Chief Engineer – Power Supply shall be responsible for the safe, reliable and cost-effective operation and maintenance of all Authority generating and transmission facilities; all engineering, construction, maintenance and project management services and staff functions of business development and asset management, environment, health and safety, technical training and project development and licensing and shall report on same to the Chief Operating Officer.

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**F. EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL**

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There shall be an Executive Vice President and General Counsel of the Authority, who shall report to both the Trustees and the ~~Chair~~ President and Chief Executive Officer, and be the chief legal officer of the Authority. In that capacity, he or she shall advise and represent the Authority generally in all legal matters and proceedings, including legislative proceedings; shall designate those employees who shall be eligible to accept service of process on behalf of the Authority and possess such powers; and shall have general supervision over the property, business and affairs of the Office of the General Counsel. In addition, the Executive Vice President and General Counsel, together with the Chair, and the Board of Trustees, shall supervise and direct the activities of the Office of the Corporate Secretary and the Vice President ~~– Labor Relations~~ and Chief Ethics and Compliance Officer.

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**G. EXECUTIVE VICE PRESIDENT – CHIEF ADMINISTRATIVE OFFICER ~~AND CHIEF OF STAFF~~**

The Executive Vice President – Chief Administrative Officer ~~and Chief of Staff~~, shall oversee the day-to-day administration of the Authority and report to and advise the President and Chief Executive Officer on all administrative matters. The Executive Vice President -- Chief Administrative Officer ~~and Chief of Staff~~ shall coordinate the activities of the various business units, except for those under the supervision of officers reporting to the Chair or the Trustees, and the activities and projects of the President and Chief Executive Officer. In addition, the Executive Vice President – Chief Administrative Officer ~~and Chief of Staff~~ shall ensure that assignments are carried out for and reported to the President and Chief Executive Officer and provide operational and strategic support to the Chair and the Board of Trustees.

**H. EXECUTIVE VICE PRESIDENT AND CHIEF FINANCIAL OFFICER**

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The Executive Vice President and Chief Financial Officer shall report and give advice to the President and Chief Executive Officer, shall give advice to the Chair and ~~the~~ Trustees as they may request and shall supervise and direct the activities of the Business Services Division, ~~give advice to the Chair and the Trustees~~ regarding financial and investment policies of the Authority, supervise/oversee the Authority's investment program, recommend and implement financial policies of the Authority and participate in the preparation of the financial reports of the Authority required by applicable law.

**I. EXECUTIVE VICE PRESIDENT – ~~ENERGY MARKETING AND BUSINESS~~ ECONOMIC DEVELOPMENT AND ENERGY EFFICIENCY**

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The Executive Vice President – ~~Energy Marketing and Business~~ Economic Development and Energy Efficiency shall manage and direct the Authority's client-based programs; its economic development, energy services and technology, ~~and power resource planning and acquisition activities~~; and the development of new products and programs.

**J. CORPORATE SECRETARY**

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The Corporate Secretary shall report to the Chair, ~~and the Board of Trustees and to the~~ Executive Vice President and General Counsel and attend all meetings of the Trustees and record all votes and shall keep a record of the proceedings of the Trustees in a Minutes Book to be kept for that purpose. The Corporate Secretary shall cause notice to be given of all meetings of the Trustees and shall be custodian of the records of the actions of the Trustees and shall keep in safe custody the seal of the Authority and shall have the authority to affix such seal to all documents and papers authorized to be executed by the Trustees or officers of the Authority requiring such seal to be affixed. The Corporate Secretary shall attest to the signatures of the Trustees and officers of the Authority and shall have the authority to cause copies to be made of all minutes, resolutions, records and documents of the Authority and to deliver certificates under seal to the effect that such copies are true and accurate and that all persons dealing with the Authority may rely on same.

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**K. TREASURER**

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The Treasurer shall have general custody of all funds and securities of the Authority and have general supervision of the collection and disbursement of Authority funds and shall endorse on behalf of the Authority for collection checks, notes and other obligations, and shall deposit the same to the credit of the Authority in such bank or banks or depositories as the Trustees may designate. The Treasurer may sign with the Chair, or such other person or persons as may be designated for such purpose by the Trustees, all bills of exchange or promissory notes of the Authority.

***L. CONTROLLER***

The Controller shall be in charge of the accounting operations, the preparation of fiscal accounts and the coordination of all external audits of the Authority.

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**M. VICE PRESIDENT - INTERNAL AUDITS**

There shall be a separate Office of Internal Audits which shall report to the Audit Committee and shall have such other powers and perform such other duties as customarily pertain to such office and as may be assigned to it by the Chair ~~or~~ the Board of ~~Trustee~~Trustees, or the President and Chief Executive Officer. The Vice President – Internal Audits shall meet at least three times per year with the Audit Committee.

**N. SUCCESSION – ABSENCE OR VACANCY OF OFFICE OF PRESIDENT AND CHIEF EXECUTIVE OFFICER**

In the event of the incapacity or absence of the President and Chief Executive Officer, the Chief Operating Officer shall perform the duties of the President and Chief Executive Officer. If the office of Chief Operating Officer is vacant or the incumbent is absent, then the Executive Vice President and Chief Engineer – Power Supply shall perform the duties of the President and Chief Executive Officer. If the offices of Chief Operating Officer and Executive Vice President and Chief Engineer – Power Supply are vacant or the respective incumbents are absent, then the Executive Vice President and General Counsel shall perform the duties of the President and Chief Executive Officer. If the offices of Chief Operating Officer, Executive Vice President and Chief Engineer – Power Supply and Executive Vice President and General Counsel are vacant or the respective incumbents are absent, then the Executive Vice President and Chief Financial Officer shall perform the duties of the President and Chief Executive Officer.

**ARTICLE V – Committees**

**Section 1. Executive Management Committee**

The ~~Chair, the~~ President and Chief Executive Officer, the Chief Operating Officer, the Executive Vice President and General Counsel, the Executive Vice President and Chief Engineer - Power Supply, the Executive Vice President ~~– Chief Administrative Officer and Chief of Staff~~, ~~the Executive Vice President and Chief~~ and Chief Financial Officer, ~~the Executive Vice President – Energy Marketing and Business Development~~ and such other officers as the ~~Trustees~~President and Chief Executive Officer may from time to time designate shall be members of an Executive Management Committee which shall periodically review and propose Authority corporate strategies, policies and programs and shall report on and make recommendations, ~~with the Chair's concurrence~~, to the Trustees. Any officer so designated shall serve on the Executive Management Committee at the pleasure of the ~~Trustees~~President and Chief Executive Officer. The President and Chief Executive Officer, or in whose absence or disability his or her designee, shall preside at Executive Management Committee meetings, which shall be held quarterly or more often as the ~~Trustees~~ President and Chief Executive Officer may designate.

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**Section 2. Audit Committee**

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The Audit Committee shall consist of not less than three nor more than five members of the Board of Trustees. At least three members of the Committee shall be independent members of the Board of Trustees. All the members of the Audit Committee shall possess the necessary skills to understand the duties and functions of the Audit Committee and shall be familiar with corporate financial and accounting practices. It shall be the responsibility of the Audit Committee to recommend to the 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 performed by the accounting firm hired for such purpose; and perform such other responsibilities as the Trustees shall from time to time assign to it.

**Section 3. Governance Committee**

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The Governance Committee shall consist of not less than three nor more than five members of the Board of Trustees. At least three members of the Committee shall be independent members of the Board of Trustees. All the members of the Governance Committee shall possess the necessary skills to understand the duties and functions of the Governance Committee. It shall be the responsibility of the Governance Committee to keep the 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 experience required of potential Trustees; examine ethical and conflict of interest issues; perform Trustee self-evaluations; recommend By-laws which include rules and procedures for conduct of Trustee business; make recommendations to the Board of Trustees on the election of statutory and non-statutory officers and their compensation; and perform such other responsibilities as the Trustees shall from time to time assign to it.

**Section 4. Finance Committee**

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The Finance Committee shall consist of not less than three nor more than five members of the Board of Trustees. At least three members of the Committee shall be independent members of the Board of Trustees. All the members of the Finance Committee shall possess the necessary skills to understand the duties and functions of the Finance Committee. It shall be the responsibility of the Finance Committee to review proposals for the issuance of debt by the Authority and make appropriate recommendations to the Board of Trustees and perform such other responsibilities as the Trustees shall from time to time assign to it.

**Section 5. Strategic Planning and Energy Policy Committee**

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The Strategic Planning and Energy Policy Committee shall consist of not less than three nor more than five members of the Board of Trustees. At least three members of the Committee shall be independent members of the Board of Trustees. It shall be the

responsibility of the Strategic Planning and Energy Policy Committee to review the Authority's mission and develop, at least annually, a strategic vision for the Authority, with emphasis on its future goals, projects and overall direction.

**Section 6. Other Committees**

The Trustees or the Chair may appoint other committees which shall have and may exercise such powers as shall be authorized by the Trustees ~~or by actions of the~~ Chair or President and Chief Executive Officer.

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**ARTICLE VI - Corporate Seal**

**Section 1. Seal**

The seal of the Authority shall be a design symbolizing its activities and shall be surrounded by the words "Power Authority of the State of New York" as shown by the



following impression of such seal:



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**ARTICLE VII - Fiscal Management**

**Section 1. Fiscal Year**

The Trustees shall have the power to fix, and may, from time to time, change by resolution, the fiscal year of the Authority. Unless otherwise fixed by the Trustees, the calendar year shall be the fiscal year.

**Section 2. Strategic Plan**

The Trustees shall annually review a strategic plan developed by the Executive Management Committee under the supervision of the ~~Chair~~Strategic Planning and Energy Policy Committee, which shall become the basis for the development of departmental plans, the annual budget and the capital expenditure plan.

**Section 3. Annual Budgets**

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The Trustees shall annually adopt an operation and maintenance budget and a capital budget for the Authority's operating facilities and support departments.

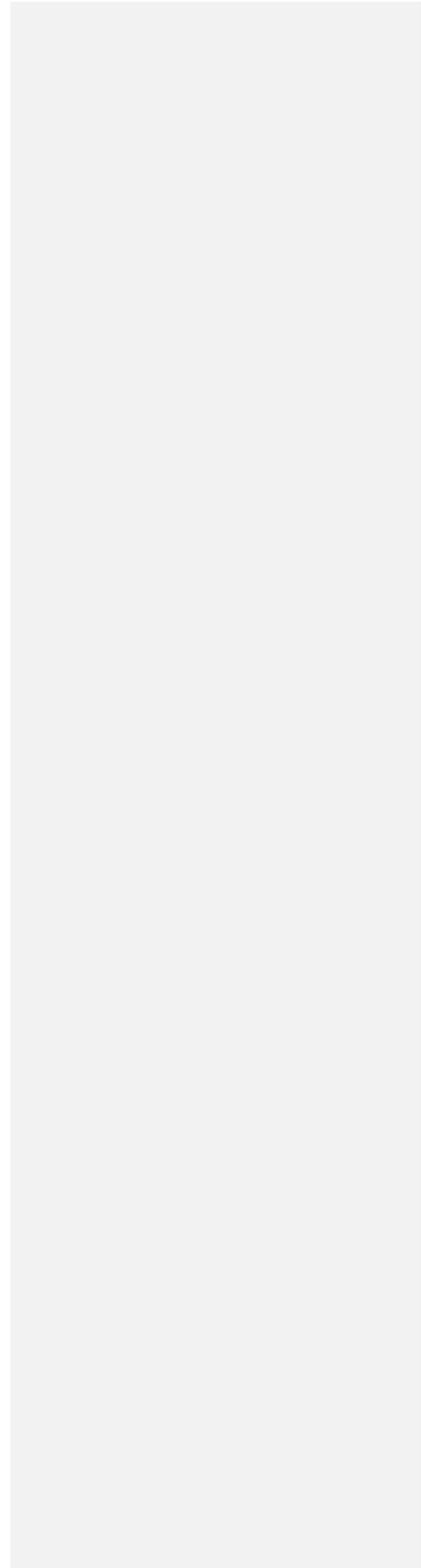
**Section 4. Capital Expenditure Plan**

The Trustees shall review an annual capital expenditure plan which shall summarize all present and proposed capital projects.

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**Section 5. Expenditure Authorization Procedures**

The Trustees shall adopt expenditure authorization procedures which shall govern the annual budget, capital expenditure plan, contract executions and all approval authorizations.

**Section 6. Disbursement Of Funds**

The Trustees, except as otherwise provided in these By-laws, may authorize any officer or other employee to execute any requisition, voucher, draft or check for the disbursement or transfer of funds of the Authority.

**ARTICLE VIII - Execution of Instruments**

**Section 1. Execution Of Instruments**

The Trustees, except as otherwise provided in these By-laws, may authorize any officer, employee or agent, pursuant to the expenditure authorization procedures or otherwise, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Authority, and such power to execute and deliver may be general or specific; unless so authorized, no officer, employee or agent shall have any power or authority to bind the Authority by any contract or engagement or pledge of its credit or to render it liable pecuniarily for any purpose or in any amount.

**ARTICLE IX – Amendment**

**Section 1. Amendment**

The Trustees shall have the power to amend, alter or repeal any provision or provisions of these By-laws at any annual, regular or special meeting.

**ARTICLE X – Miscellaneous**

**Section 1. Additional Appointments**

The Chief Operating Officer shall appoint all regional managers and site executive officers. ~~The Trustees may extend employment contracts to one or more officers of the Authority in order to insure continuity of senior management.~~

**Section 2. Annual Reports**

The Trustees shall submit and publish an annual report, as prescribed by the Public Authorities Law, within ninety days after the close of the Authority’s fiscal year. The

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annual report shall be certified by the Chair, the President and Chief Executive Officer and the Chief Financial Officer to the extent required by the Public Authorities Law. The annual report shall be accompanied by such other documents and information as the Public Authorities Law requires.

**Section 3. Defense And Indemnification Of Trustees And Employees**

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The provisions of the Defense and Indemnification Policy ("Policy") of the Authority as amended and adopted on April 26, 1994, and the provisions of the resolution as amended and adopted by the Authority on April 26, 1994, conferring the benefits of Section 18 of the New York Public Officers Law ("POL § 18") on the Authority's Trustees and employees and agreeing to be held liable for the costs thereof, shall constitute a contract between the Authority and each of its Trustees and employees, as such persons are defined in the Policy, and the Authority agrees that the benefits thereof shall be made available to each Trustee or employee with respect to any act or omission which has occurred or may in the future occur during the period such Policy and the resolution conferring the benefits of POL § 18 are in effect, and no amendment to such Policy or such resolution which modifies the provisions thereof shall take effect with respect to any act or omission of a Trustee or employee which occurred prior to the effective date of such amendment unless the effect of such amendment is to increase the defense and indemnification protection afforded to such Trustee or employee prior to such effective date.

**Section 4. ~~Corporate~~ Authority Policies And Procedures**

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Unless otherwise provided by law, regulation or these By-laws, every officer or employee of the Authority shall be subject to ~~the Authority's corporate~~ Authority policies and procedures ~~as embodied in its corporate policies program.~~

**~~Section 5. Disposal Of Authority Property For Below Fair Market Value~~**

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~~The Trustees shall approve disposals of Authority property for less than fair market value and make such determinations regarding such disposals as the Public Authorities Law requires. Any request to the Trustees for such approval shall be accompanied by the information prescribed by the Public Authorities Law and such other information as the Trustees may require.~~

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