

**Date:** March 29, 2016

**To:** THE GOVERNANCE COMMITTEE

**From:** VICE PRESIDENT – ENTERPRISE SHARED SERVICES

**Subject:** Real Estate Reports

### SUMMARY

This memorandum is to advise the Governance Committee of certain 2015 activities of the Real Estate Division regarding the acquisition and disposal of real property.

The Governance Committee is also requested to review and recommend for approval by the full Board of Trustees revised Guidelines and Procedures for the Disposal of Authority Real Property and Guidelines and Procedures for the Acquisition of Real Property by the Authority.

### BACKGROUND

Pursuant to Subsection C.5 of the Authority's Governance Committee Charter relating to Reports, the Vice President - Procurement and the Director - Real Estate are required to report to the Committee at all regularly scheduled meetings, and the Committee has the authority to require Real Estate staff to prepare additional reports and to produce documents for Committee review. Due to recent staff reorganization, the Real Estate Division now reports to the Vice President – Enterprise Shared Services. The position of Director – Real Estate is currently vacant. The 2015 Real Estate reports are being submitted by the Vice President –Enterprise Shared Services.

The reported activities are governed by various State laws and regulations and are set forth in the attached Reports.

### DISCUSSION

The Report of the Acquisition and Disposal of Real Property for the period January through December 2015 is attached hereto as Exhibit 2c-1.

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 and Procedures for the Disposal of Authority Real Property and the Guidelines and Procedures for the Acquisition of Real Property by the Authority annually, and approves any changes to such Guidelines. These Guidelines have been amended as deemed advisable and necessary, and reviewed and approved by the full Board of Trustees annually, most recently on March 25, 2015. The Governance Committee is requested to review the revisions to the respective Guidelines (as set forth in the redlined copies attached hereto as Exhibits 2c-2 – 2c-3 and, if appropriate, to recommend adoption by the full Board at the annual meeting to be held on March 29, 2016.

## **ACQUISITION AND DISPOSAL OF REAL PROPERTY** **January - December 2015**

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, 2015.

### I. ACQUISITIONS

#### 1.) Acquisitions by Deed or Easement:

New York State Electric & Gas Corporation- Acquisition of a temporary easement for the purposes of constructing certain electric transmission facilities and improvements at Authority's Fraser Substation in the Town of Delhi, County of Delaware from New York State Electric & Gas Corporation on January 19, 2015. There was no consideration for this transaction.

David and Karen Killian- Acquisition of a permanent easement for cutting, trimming, and removing trees and brush in the Town of New Haven, County of Oswego (Map No. OSN-453, Parcel No. 453) from David and Karen Killian on August 3, 2015. The consideration was \$985.00. The easement was recorded on August 24, 2015.

Thomas Woznica- Acquisition of a permanent easement for cutting, trimming, and removing trees and brush in the Town of Cicero, County of Onondaga (Map No. OCI-1449, Parcel No. 1449) from Thomas Woznica on October 19, 2015. The consideration was \$16,200. The easement was recorded on December 4, 2015.

#### 2.) Danger Tree Permits:

During this reporting period, the Authority acquired 133 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, Moses-Willis, and Gilboa-New Scotland.

### II. DISPOSITIONS

#### 1.) Dispositions by Deed or Easement:

Niagara University - Conveyance of 13.1 acres in the City of Niagara Falls, Niagara County to Niagara University (Map No. 337-C, Parcel No. 3265). The consideration was \$1.00. The deed was recorded on February 12, 2015. The transfer satisfies a Niagara Power Project relicensing commitment and was authorized by the Authority's Board of Trustees on May 22, 2007.

Paul and Lucille Izzo - Conveyance of 7.4 acres of surplus land (Map No. 18-C, Parcels 522-A and 522-B) in the Town of Gilboa, Schoharie County to Paul and Lucille Izzo on April 23, 2015. The consideration was \$12,000, which was the appraised value. This transaction was authorized by the Authority's Board of Trustees in their meeting of March 26, 2015. The deed was recorded on May 7, 2015.

City of Niagara Falls - Conveyance of 48.65 acres to the City of Niagara Falls (Map No. 1305, Parcel No. 1305) on February 20, 2015. The deed was recorded on May 14, 2015. The consideration for this transaction was \$1.00. This transfer satisfies a Niagara Power Project relicensing commitment and was authorized by the Authority's Board of Trustees in their meeting of May 22, 2007.

Rochester Gas & Electric Corporation - Conveyance of 16.78 acres of surplus land (Parcel No. 2001) in the Town of Henrietta, Monroe County to Rochester Gas & Electric Corporation on June 12, 2015. The consideration for this transaction was \$60,000, and the appraised value was \$45,000. The conveyance was authorized by the Authority's Board of Trustees on December 16, 2014.

2.) Land Use Permits:

During this reporting period, the real estate group issued 32 land use permits for use of the Authority's real property, both fee-owned and held by easement:

<b>LAND USE PERMITS</b>			
<b>Permit No.</b>	<b>Town/ Issue Date</b>	<b>Permittee</b>	<b>Purpose</b>
CEC-15-95P	Russia 2/23/15	Adirondack Foothills Rotary, Inc.	Utilize NYPA's boat launch on the Hinckley Reservoir from February 21- February 28th, for a fishing tournament on the 28th.
ICP-15-179P	Queens 9/10/15	Terra Cotta LLC	Perform gauging of groundwater monitoring wells and carry out geotechnical borings via barge drilling.
MS-15-129P	New Windsor 4/29/15	Central Hudson Gas & Electric Corporation	Construct and install a permanent access road across the Authority ROW.
MS-15-141P	Franklin 8/11/15	Constitution Pipeline Company, LLC	Install and operate a 30" diameter natural gas pipeline on or across portions of Authority ROW.
MS-15-146P	Oneonta 6/1/15	Jeffery Barnes	Haul stone and related materials across the Authority ROW.
MS-15-177P	Hamptonburgh 9/4/15	Central Hudson Gas & Electric Corporation	Replace a 40' utility pole with a 45' utility pole.

NATL-14-4P	Marcy 2/13/15	Joseph Proulx	Construct and install a 12' x 600' driveway for a residential home and a 2" underground water line, sewer line, and electrical services.
NATL-14-23P	Camden 2/23/15	Orlando Gerena	Construct and install a 1,350' wire weld fence.
NATL-15-166P	Genesee 6/25/15	Alabama Ledge Wind Farm, LLC	Operate and maintain existing wind measuring equipment on the Authority's Batavia Communications Tower.
NATL-15-167P	Henrietta 7/16/15	Rochester Gas & Electric Corporation	Access to perform soil boring investigations and other environmental tests.
NATL-15-183P	Clay 11/3/15	COR Verplank Road Company	Construct, install, and maintain access drives for residential apartments.
NATL-15-196P	Marcy 12/3/15	Wendy Gregory	Install a stone base drive for a future residence located off the right of way.
NATL-15-202P	Henrietta 12/4/15	Henrietta Hill and Gully Riders Snowmobile Club	Operate and maintain a seasonal snowmobile trail.
NPP-00-2P-A1	Niagara Falls 11/5/15	City of Niagara Falls	Construct, install, operate, maintain, repair a hiking and biking trail.
NPP-14-17P	Niagara Falls 9/4/15	Niagara Active Volunteer Fire Company	Access to carry out occasional training exercises and/or practice drills on an ongoing basis.
NPP-15-39P	Lewiston 4/13/15	Ernest Hasely	Access for growing and harvesting agricultural crops.
NPP-15-114P	Niagara Falls 6/18/15	New York State Office of Parks, Recreation and Historic Preservation	Construct and maintain a Park Police Station on Power Authority property.
NPP-15-142P	Buffalo 5/20/15	Erie Canal Harbor Development Corporation	Establish and operate a bike ferry at the First Buffalo Marina.
NPP-15-163P	Niagara Falls 6/29/15	Gabriel the Archangel, LLC	Expand a parking lot and relocate a fiberglass sign.
NPP-15-180P	Lewiston 11/13/15	National Fuel Gas Distribution Corporation	Construct, maintain, and inspect an existing 8" gas pipeline.
NPP-15-201P	Niagara Falls 11/24/15	Niagara Falls Bridge Commission	Temporary positioning of a crane on Authority land in support of Permittee's investigation of erosion under Permittee's Bridge.
SLPP-15-79P	Ogdensburg 2/18/15	Adirondack Raptors	Banding snowy owls through a US Fish and Wildlife Service-sponsored research project called Project Snowstorm.
SLPP-15-154P	Massena 7/13/15	Alcoa, Inc.	Perform environmental sampling to comply with the Environmental Protection Agency's record of decision.
SLPP-15-169P	Waddington 7/7/15	Majestic Fireworks Inc.	Access to Ogden Island to set up and display fireworks for Homecoming weekend.
SLPP-15-172P	Louisville 10/15/15	Patrick and Carolyn Dowdle	Install, maintain, operate underground electric lines.
SLPP-15-174P	Waddington 7/17/15	Village of Waddington	Access to Whittaker Park for the Village's "Party in the Park" event.

SLPP-15-190P	Massena 11/5/15	Special Olympics New York, Inc.	Access Authority's Frank S. McCullough, Jr. Hawkins Point Visitor Center for the Special Olympics Polar Plunge.
SLPP-15-197P	Saranac 12/18/15	New York State Electric & Gas Corporation	Install a spill prevention and oil containment control system at the Saranac Substation.
WPO-14-3P	White Plains 1/14/15	Cablevision Lightpath, Inc.	Place and maintain communications equipment at the Authority's premises located at 123 Main Street, White Plains.
WPO-15-58P	White Plains 4/30/15	Office of the Westchester County District Attorney	Use of 1,506 square feet of rentable office space of Authority's premises located at 123 Main Street, White Plains.
WPO-15-59P	White Plains 4/30/15	Office of the Westchester County District Attorney	Use of 3,052 square feet of rentable office space of Authority's premises located at 123 Main Street, White Plains.

### III. MISCELLANEOUS TRANSACTIONS

#### Great Lakes Towing Company

During this reporting period, NYPA entered into a three-year license agreement with the Great Lakes Towing Company re-authorizing said firm to utilize dock space on Authority property in the City of Buffalo for mooring 2 tugboats. The License commenced August 1, 2015 and expires July 31, 2018 and includes an additional three-year option term. The monthly payment for the fixed term is \$787.50.

#### Niagara University

During this reporting period, NYPA entered into an Entry Site Work Permit Agreement with Niagara University to allow NYPA to conduct maintenance of the Montegale Trail and for the storage of equipment and materials. This Permit expired on August 31, 2015.

#### The City of Utica and the Utica Zoological Society

During this reporting period, NYPA entered into an agreement with the City of Utica and the Utica Zoological Society to conduct environmental testing and related work to assess the feasibility of constructing a visitor's center on the Zoo premises. This agreement was executed on September 24, 2015 and will expire on September 24, 2017.

#### Niagara University

During this reporting period, NYPA entered into a 5-year agreement with Niagara University authorizing said organization to perform certain additional grounds maintenance and landscaping work on property owned by NYPA in Niagara Falls, New York. This agreement was executed on August 18, 2015 and will expire on August 18, 2020.

#### Buffalo River Fest Park, LLC

During this reporting period, NYPA entered into a 3-year agreement with Buffalo River Fest Park, LLC re-authorizing said organization to operate and maintain the "Mutual Riverfront Park" in Buffalo, New York. This agreement was executed on June 24, 2015 and will expire December 31, 2017.

#### IV. LEASING

##### 1.) Landlord Leases:

###### Community Mutual Savings Bank

During this reporting period NYPA Real Estate extended an existing lease for 7,334 rentable square feet for the purpose of office space located on the 7<sup>th</sup> floor of the Authority's 123 Main Street Building in White Plains, New York. The term of this lease extension was from May 1, 2015- July 31, 2015. The tenant has now vacated the building.

###### Westchester Philharmonic

During this reporting period NYPA Real Estate extended an existing lease for 1,650 square feet of office space on the 9<sup>th</sup> floor of the Authority's 123 Main Street Building in White Plains, New York. The term of this lease extension is from January 1, 2015- December 31, 2021.

###### Camille's Sidewalk Café

Entered into a 5-year operating agreement with a 5-year renewal option to provide cafeteria services on the main floor of the Authority's 123 Main Street Building in White Plains, New York.

##### 2.) Tenant Leases:

###### Fuller Road Management Corporation

During this reporting period, Real Estate staff successfully negotiated and finalized the terms of a ten-year lease for approximately 5,600 square feet of space in the ZEN Building on the campus of the SUNY Polytechnic in Albany, New York. This space is for the offices of the NYS Energy Manager. The initial annual rent is \$112,000, with annual increases of 3%. This lease commences on August 24, 2015.

###### Wheatfield Business Park, LLC

During this reporting period, NYPA Real Estate terminated a lease for warehouse space located at the Wheatfield Business Park in Wheatfield, New York. This lease ended on April 30, 2015.

###### Fuller Road Management Corporation

During this reporting period, NYPA Real Estate executed a lease amendment with Fuller Road Management Corporation to revise parking terms with respect to the existing offices for the New York Energy Manager, located on the campus of SUNY Polytechnic in Albany, New York.

###### Empire State Development Corporation

During this reporting period NYPA Real Estate terminated a lease for office space located at 95 Perry Street in Buffalo, New York. This lease ended on January 31, 2015.

#### V. ST. LAWRENCE RELICENSING

1.) 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/FDR 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. Approximately 599 acres of the removed lands are intended to be conveyed either to adjoining landowners or to the affected local municipality, if interested. For all conveyed lands, the Authority retains flowage and access easements, to provide necessary rights to traverse conveyed lands for Project-related activities.

<b>DEEDS FILED</b>						
<b>NYPA Surplus Map No.</b>	<b>NYPA Surplus Parcel No.</b>	<b>Current Owner Name</b>	<b>Acreage</b>	<b>Appraisal Value</b>	<b>Filing Date</b>	<b>Town</b>
1205C	8726,8727	Timothy T. Brady	1.44	\$3,540.00	1/21/2015	Waddington
1178C	8520	John R. Boyce	.21	\$3,150.00	6/3/2015	Louisville
1132C	8578	Donald F. Smith	.02	\$100.00	6/3/2015	Louisville
1174C	8464	Jordi Parisian and Virginia Gettmann	.24	\$3,600.00	8/18/2015	Louisville
1175C	8465	Douglas and Nancy Ackley	.29	\$4,350.00	8/18/2015	Louisville
1177C	8506	Karen Singleton	.15	\$2,250.00	9/17/2015	Louisville
1149C	8227	David McBath and Cheryl Thisse	.03	\$300.00	9/17/2015	Waddington
1177C	8499	The Norman and Lisa Austin Family Trust	.23	\$3,300.00	9/24/2015	Louisville
1179C	8539	Kathy Green and Shawna Cecot	.11	\$1,300.00	9/24/2015	Louisville
1167C	8184	Richard K. and Mary A. Magnusson	.16	\$2,700.00	10/21/2015	Waddington
1179C	8532	Charles E. Durant	.10	\$1,500.00	10/21/2015	Louisville
1173C	8434	James F. and Brenda R. Kozsan	.20	\$3,000.00	10/21/2015	Louisville
1174C	8449	Thomas W. Post	.23	\$3,450.00	10/21/2015	Louisville
1174C	8458	Thomas A. Portolese and Linda M. Rochefort	.13	\$1,950.00	10/7/2015	Louisville

During this period 14 deeds were finalized and recorded in the County Clerk's office. To date, 523 of the 599 acres have been conveyed. Of the approximately 520 private parcels to be conveyed, approximately 451 transactions have been completed. The remaining properties have been offered to the landowners or municipalities as agreed. In the majority of these cases the

landowners or municipalities have indicated that they do not wish to acquire the properties in question.

**GUIDELINES**

**AND**

**PROCEDURES**

**FOR THE**

**DISPOSAL OF NEW YORK POWER AUTHORITY**

**REAL PROPERTY**

**INDEX**

<b><u>Article</u></b>	<b><u>Description</u></b>	<b><u>Page</u></b>
I.	PURPOSE.....	1
II.	DEFINITIONS.....	1
III.	COMPLIANCE OVERVIEW.....	2
IV.	DUTIES OF THE DIRECTOR OF REAL ESTATE.....	3
V.	PROCEDURES FOR THE DISPOSITION OF AUTHORITY REAL PROPERTY.....	4
VI.	AUTHORITY REAL PROPERTY REPORTS.....	8
VII.	APPROVAL OF GUIDELINES BY THE AUTHORITY'S BOARD.....	9

**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 Vice President – Enterprise Shared Services, or equivalent(s) or designee.
- 2.2 “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, Permit or Transfer of Jurisdiction.
- 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 “Permits” shall mean permits issued by the Authority that grant revocable privileges to use or access real property under the jurisdiction of the Authority. Permits may be issued where the real property is not presently required for Authority purposes, but held for future use in carrying out its corporate purposes. Permits do not transfer a beneficial interest in real property. Permits are revocable, in part to assure availability upon demand of the real property for Authority purposes.
- 2.5 “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.
- 2.6 “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.
- 2.7 “Transfers of Jurisdiction” shall mean transactions pursuant to Public Lands Law §3(4) and which are between the Authority and other State governmental entities where jurisdiction over Real Property is transferred and reassigned on such terms and conditions as the Authority and the New York State Office of General Services deem proper, but the title to the Real Property remains in the name of the People of the State of New York.

### **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 periodically 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 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.
- 5.8 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.

5.9 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 5.8 above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.

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

5.11 Public Authorities Law Section 2879-a establishes a framework for the Office of the State Comptroller ("OSC") to review and approve certain Public Authority contracts.

5.11.1. Any contract in excess of \$1,000,000 that is to be awarded by a state authority 1) to a "single source" or "sole source", or pursuant to any other means of procurement that is not competitive, or 2) where the monies to be paid in whole or in part have been appropriated by the state to the state authority for such

contractual expenditure (“eligible contract”), must be reported in advance of execution to the OSC. Upon execution, all such eligible contracts must be filed with the OSC within 60 days.

5.11.2. If the OSC has previously identified a contract or category of contract as “reviewable” (“reviewable contract”), such contract must include language stating that it is subject to OSC approval and the executed contract submitted to the OSC for review. If the OSC does not act to disapprove the contract within 90 days, the contract is valid.

## **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 listing all real property of the Authority, which report shall include a list and description of all 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 HR and Enterprise Shared Services 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**

**FOR THE**

**DISPOSAL OF NEW YORK POWER AUTHORITY**

**REAL PROPERTY**

**INDEX**

<b><u>Article</u></b>	<b><u>Description</u></b>	<b><u>Page</u></b>
I.	PURPOSE.....	1
II.	DEFINITIONS.....	1
III.	COMPLIANCE OVERVIEW.....	2
IV.	DUTIES OF THE DIRECTOR OF REAL ESTATE.....	3
V.	PROCEDURES FOR THE DISPOSITION OF AUTHORITY REAL PROPERTY.....	4
VI.	AUTHORITY REAL PROPERTY REPORTS.....	8
VII.	APPROVAL OF GUIDELINES BY THE AUTHORITY'S BOARD.....	9

## **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 Vice President – ~~Procurement~~Enterprise Shared Services, or equivalent(s) or designee.
- 2.2 "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, Permit or Transfer of Jurisdiction.
- 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 "Permits" shall mean permits issued by the Authority that grant revocable privileges to use or access real property under the jurisdiction of the Authority. Permits may be issued where the real property is not presently required for Authority purposes, but held for future use in carrying out its corporate purposes. Permits do not transfer a beneficial interest in real property. Permits are revocable, in part to assure availability upon demand of the real property for Authority purposes.
- 2.5 "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.
- 2.6 "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.
- 2.7 "Transfers of Jurisdiction" shall mean transactions pursuant to Public Lands Law §3(4) and which are between the Authority and other State governmental entities where jurisdiction over Real Property is transferred and reassigned on such terms and conditions as the Authority and the New York State Office of General Services deem proper, but the title to the Real Property remains in the name of the People of the State of New York.

### **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 periodically 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 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.
- 5.8 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.

5.9 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 5.8 above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.

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

5.11 Public Authorities Law Section 2879-a establishes a framework for the Office of the State Comptroller ("OSC") to review and approve certain Public Authority contracts.

5.11.1. Any contract in excess of \$1,000,000 that is to be awarded by a state authority 1) to a "single source" or "sole source", or pursuant to any other means of procurement that is not competitive, or 2) where the monies to be paid in whole or in part have been appropriated by the state to the state authority for such

contractual expenditure ("eligible contract"), must be reported in advance of execution to the OSC. Upon execution, all such eligible contracts must be filed with the OSC within 60 days.

5.11.2. If the OSC has previously identified a contract or category of contract as "reviewable" ("reviewable contract"), such contract must include language stating that it is subject to OSC approval and the executed contract submitted to the OSC for review. If the OSC does not act to disapprove the contract within 90 days, the contract is valid.

## **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 listing all real property of the Authority, which report shall include a list and description of all 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 ~~Business Services—Real Estate~~HR and Enterprise Shared Services 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**

**FOR THE**

**ACQUISITION OF REAL PROPERTY**

**BY THE NEW YORK POWER AUTHORITY**

**INDEX**

<b><u>Article</u></b>	<b><u>Description</u></b>	<b><u>Page</u></b>
I.	PURPOSE.....	1
II.	DEFINITIONS.....	1-2
III.	COMPLIANCE OVERVIEW.....	2
IV.	DUTIES OF THE DIRECTOR OF REAL ESTATE .....	2-3
V.	ETHICAL CONSIDERATIONS.....	3-4
VI.	ACQUISITION REPORTS BY AUTHORITY.....	4-5

**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 Vice President - Enterprise Shared Services, or the equivalent(s), or designee.

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

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

the appropriate marketplace and under similar circumstances.

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

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

### **III. COMPLIANCE OVERVIEW**

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

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

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

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

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

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

4.6 Public Authorities Law Section 2879-a establishes a framework for the Office of the State Comptroller ("OSC") to review and approve certain Public Authority contracts.

4.6.1. Any contract in excess of \$1,000,000 that is to be awarded by a state authority 1) to a "single source" or "sole source", or pursuant to any other means of procurement that is not competitive, or 2) where the monies to be paid in whole or in part have been appropriated by the state to the state authority for such contractual expenditure ("eligible contract"), must be reported in advance of execution to the OSC. Upon execution, all such eligible contracts must be filed with the OSC within 60 days.

4.6.2. If the OSC has previously identified a contract or category of contract as "reviewable" ("reviewable contract"), such contract must include language stating that it is subject to OSC approval and the executed contract submitted to the OSC for review. If the OSC does not act to disapprove the contract within 90 days, the contract is valid.

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 HR and Enterprise Shared Services or the equivalent may, upon request, prepare and present ongoing reports regarding the Acquisition of Real Property.

**GUIDELINES**

**AND**

**PROCEDURES**

**FOR THE**

**ACQUISITION OF REAL PROPERTY**

**BY THE NEW YORK POWER AUTHORITY**

**INDEX**

<b><u>Article</u></b>	<b><u>Description</u></b>	<b><u>Page</u></b>
I.	PURPOSE.....	1
II.	DEFINITIONS.....	1-2
III.	COMPLIANCE OVERVIEW.....	2
IV.	DUTIES OF THE DIRECTOR OF REAL ESTATE .....	2-3
V.	ETHICAL CONSIDERATIONS.....	3-4
VI.	ACQUISITION REPORTS BY AUTHORITY.....	4-5

**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 Vice President - Enterprise Shared Services, or the equivalent(s), or designee.

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

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

the appropriate marketplace and under similar circumstances.

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

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

### **III. COMPLIANCE OVERVIEW**

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

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

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

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

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

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

4.6 Public Authorities Law Section 2879-a establishes a framework for the Office of the State Comptroller ("OSC") to review and approve certain Public Authority contracts.

4.6.1. Any contract in excess of \$1,000,000 that is to be awarded by a state authority 1) to a "single source" or "sole source", or pursuant to any other means of procurement that is not competitive, or 2) where the monies to be paid in whole or in part have been appropriated by the state to the state authority for such contractual expenditure ("eligible contract"), must be reported in advance of execution to the OSC. Upon execution, all such eligible contracts must be filed with the OSC within 60 days.

4.6.2. If the OSC has previously identified a contract or category of contract as "reviewable" ("reviewable contract"), such contract must include language stating that it is subject to OSC approval and the executed contract submitted to the OSC for review. If the OSC does not act to disapprove the contract within 90 days, the contract is valid.

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 HR and Enterprise Shared Services or the equivalent may, upon request, prepare and present ongoing reports regarding the Acquisition of Real Property.