

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

Meeting of the Members  
200 Liberty Street, 24<sup>th</sup> Floor  
New York, NY 10281  
January 27, 2020

Members Present

George Tsunis, Chairman  
Louis Bevilacqua, via video-conference  
Donald Capoccia, Member  
Martha Gallo, Member  
Catherine McVay Hughes, Member  
Anthony Kendall, Member  
Lester Petracca, Member

Authority Staff in Attendance: Benjamin Jones, President and Chief Executive Officer  
Sharmila Baichu, Vice President of Human Resources  
Marie Baptiste, Deputy Treasurer  
Anthony Buquicchio, Senior Project Manager  
Gwen Dawson, Vice President, Real Property  
Pamela Frederick, Chief Financial Officer/Treasurer  
James Gallagher, Associate General Counsel  
Craig Hudon, Vice President of Parks Programming  
Susie Kim, Deputy General Counsel  
Karl Koenig, Controller  
Eric Munson, Chief Operating Officer  
Lauren Murtha, Paralegal/Assistant Corporate Secretary  
Jahmeliah Nathan, Vice President of Administration  
Robert Nesmith, Chief Contracting Officer  
Bruno Pomponio, Vice President of Parks Operations  
Jason Rachnowitz, Director of Financial Reporting  
Nicholas Sbordone, Vice President of Communications and Public Affairs  
Markus Szejnberg, Special Counsel for Ethics, Risk and Compliance  
Alexis Torres, Chief of Staff  
Ryan Torres, Assistant Vice President of Parks Operations

Others in Attendance: Steve Faber, PFM Asset Management  
Warren Ruppel, Marks Paneth  
James Haddon, Ramirez Asset Management  
Various Members of the Public

The meeting, called on public notice in accordance with the New York State Open Meetings Law, convened at 10:13 a.m.

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The first item on the agenda was the approval of the minutes of the December 17, 2019 meeting. Upon a motion made by Ms. McVay Hughes and seconded by Ms. Gallo, the following resolution was unanimously adopted:

## **APPROVAL OF MINUTES OF THE DECEMBER 17, 2019 MEETING**

BE IT RESOLVED, that the minutes of the meeting of the Members of the Hugh L. Carey Battery Park City Authority held on December 17, 2019 are hereby approved.

\* \* \*

No one presented during the period of public comment.

\* \* \*

The next item on the agenda was the Investment Committee Report presented by Ms. Frederick. She stated that the Investment Committee had met with all members present to review the Investment Report and Guidelines for the fiscal year that ended October 31, 2019. There were no changes to the Guidelines from the 2018 Guidelines. Investment Advisors Steve Faber and Lou Sarno provided comments on BPCA's investments.

The Committee voted to recommend the Board approve the Investment Report and Guidelines for the fiscal year that ended October 31, 2019 and voted to recommend filing the Investment Report and Guidelines with the required government entities and to post them to PARIS and the Authority's website.

\* \* \*

The next item on the agenda was the Audit and Finance Committee Report presented by Ms. Frederick. She mentioned the Audit Committee met with all members present to review the annual audit presentation, which included financial statements. The Authority's independent auditor, Marks Paneth, led by Managing Partner Warren Ruppel, presented a review of the financial statements.

She noted the most material changes in the financials this year were the issuance of \$672.8 million in bonds, a refunding of certain 2013 bonds, and swap amendments. The key results included \$324.6 million in operating revenues, \$54.2 million in operating expenses, and the provision of a transfer of \$155.4 million to New York City for PILOT and \$41.3 million to New York City under the 2010 agreement. The committee voted to recommend acceptance of the audited financial statements for the fiscal year that ended October 31, 2019 and voted to recommend the filing of the statements with the required government entities and to post them on PARIS and the Authority's website.

\* \* \*

The next item on the agenda was the M/WBE Utilization Report presented by Ms. Nathan.

Ms. Nathan reported that for December 2019, 35.19% of approximately \$330,000 of the Authority's total qualifying expenditures of approximately \$939,000 was paid to MWBEs. Of this total, 12.25% was paid to MBEs, 4.66% directly to MBEs, and 7.59% to MBE subcontractors. Of that same qualifying expenditure, 22.95% was paid to WBEs, 5.34% to MBE prime contractors, and 17.61% to WBE subcontractors.

\* \* \*

The next item on the agenda was the Resiliency Update presented by Mr. Jones.

Mr. Jones provided a status update on the resiliency projects: the construction manager for the ballfields project, Hudson Meridian, is on board, and the competitive procurement process is being conducted for the general contractor; work on the South Battery Park City project has reached 50% completion of design and engineering on the resiliency effort, and the procurement is underway for the underwater work that will be connected with the pile remediation; on the North side, the detailed investigative work is underway; and for the Western initiative, the RFP for the fourth phase is being prepared.

He concluded by mentioning we are still on target to have the Authority's Sustainability Plan ready for Earth Day.

\* \* \*

The next item on the agenda, presented by Ms. Frederick, was the approval of the Investment Report and Guidelines for Fiscal Year Ended October 31, 2019.

Ms. Frederick summarized the request for approval and acceptance of the Investment Report and Guidelines and to provide the authorization to post the documents on PARIS and the Authority's website and send to appropriate government authorities and the Authority's trustee.

Mr. Jones acknowledged all of the staff involved in preparing the reports from various parts of the Authority, including Finance and Procurement.

Upon a motion made by Ms. Gallo and seconded by Mr. Capoccia, the following resolution was unanimously adopted:

**APPROVAL OF THE INVESTMENT REPORT & GUIDELINES THE FISCAL YEAR ENDED OCTOBER 31, 2019**

BE IT RESOLVED, that the Investment Report & Guidelines of the Hugh L. Carey Battery Park City Authority (the "Authority") for the fiscal year ended October 31, 2019 in the form presented to this meeting, be, and hereby is approved; and be it further

RESOLVED, that the Treasurer of the Authority be, and hereby is, directed to file said Investment Report (including the Guidelines) with the: (1) NYS Division of the Budget; (2) NYS Department of Audit and Control; the Chairman and ranking Minority Members of the (3) New York State Senate Finance Committee; and (4) New York State Assembly Ways and Means Committee, as required by Section 2925 of the Public Authorities Law, Public Authorities Accountability Act of 2005 and the New York State Comptroller's Regulation 2 NYCRR (Part 203); and be it further

RESOLVED, that the Assistant Corporate Secretary of the Authority be, and hereby is, directed to file said Investment Report (including the Guidelines) with the minutes of this meeting; and be it further

RESOLVED, that Investment Report & Guidelines be posted on the Authority's website and the NY State Public Authorities Reporting System (PARIS); and be it further

RESOLVED, that any and all actions taken by any officer of the Authority in connection with the negotiation or preparation of such policies and procedures are hereby ratified, confirmed and approved.

\* \* \*

The next item on the agenda, presented by Mr. Munson, was the approval of the proposed 2020 Procurement Guidelines.

Mr. Munson stated that the New York State Public Authority's law requires annual approval of the guidelines that govern the Authority's procurement activities. The fair and responsible purchase of commodities and services is one of the staff's most important responsibilities, and ensuring that those activities are guided by clear policies and procedures that protect the public interest is critical to the Authority's daily and long-term success. He then recognized the Procurement department under Robert's and Jahmeliah's leadership, and also the Legal department and the rest of the senior staff for their contributions to this year's amendments.

Mr. Munson summarized proposed changes from last year's guidelines: first, reflecting recent amendments to the state MWBE and SDVOB laws, including an increase in the limit for discretionary purchases from these vendors from \$200,000 to \$500,000; second, clarifying the method and process used to procure certain types of goods and services such as unique artist performers, commodities that come with free warranties and low value commodities purchased on a recurring basis; and third, the addition of a section on green purchasing which encourages the Authority to purchase goods that are more environmentally friendly and request in RFPs that proposers describe their environmentally sustainable business practices. He noted that the guidelines have been updated to reflect the implementation of the Authority's internet based procurement system, which has modernized the approval processes, reduced the shuttling of paper across departments, improved record keeping, and provided an additional tool to guide purchasers in conducting procurements according to policies and procedures.

Upon a motion made by Mr. Kendall and seconded by Mr. Capoccia, the following resolution was unanimously adopted:

#### **APPROVAL OF THE PROCUREMENT GUIDELINES**

BE IT RESOLVED, that the Procurement Guidelines in the form presented at this meeting, be, and hereby are approved; and be it further

RESOLVED, that the Chief Financial Officer of the Authority be, and hereby is, directed to file said Procurement Guidelines, subject to such changes as the officer or officers filing the Procurement Guidelines shall, with the advice of counsel, approve as necessary and appropriate and in the best interest of the Authority, with the New York State Division of the Budget and copies thereof with the New York State Department of Audit and Control, the Chairman and ranking Minority Member of the New York State Senate Finance Committee and the Chairman and ranking Minority Member of the New York State Assembly Ways and Means Committee, as required by Section 2879 of the Public Authorities Law; and be it further

RESOLVED, that any and all actions taken by any officer of the Authority in connection with the preparation of such policies and procedures is hereby ratified, confirmed and approved; and be it further

RESOLVED, that the Assistant Corporate Secretary of the Authority be, and hereby is, directed to file the Authority's Procurement Guidelines with the Minutes of this meeting.

\* \* \*

The next item on the agenda, presented by Ms. Frederick, was the acceptance of the audited Financial Statements for FY19 and authorization to file on PARIS.

Ms. Frederick summarized: the request is for the Members to accept the audited financial statements for the fiscal year that ended October 31, 2019, to authorize the filing of those financial statements with required government entities and the Authority's designated trustee, and to post the audited financial statements on PARIS and the Authority's website.

Upon a motion made by Ms. Gallo and seconded by Ms. McVay Hughes, the following resolution was unanimously adopted:

**RESOLUTION OF THE MEMBERS REGARDING THE AUTHORITY'S AUDITED FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED OCTOBER 31, 2019**

BE IT RESOLVED, that the Members hereby accept the Audited Financial Statements for the Fiscal Year ended October 31, 2019 and be it further

RESOLVED, that the Members authorize the filing of the Audited Financial Statements substantially, in the form presented at this meeting, with the required governmental entities and with the trustees under the Authority's bond resolutions, and the posting of a copy of the Audited Financial Statements on the Public Authorities Report Information Systems and on the Authority's website.

\* \* \*

The next item on the agenda, presented by Ms. Frederick, was the approval of Prompt Payment Report and Prompt Payment Policy for Fiscal Year Ended October 31, 2019.

Ms. Frederick said this is an approval of the Prompt Payment Report and Policy for fiscal year end October 31, 2019. She explained that the Policy requires the Authority pay its vendors within 30 days of receiving a proper invoice. She said this year, the Authority paid \$404 in interest as a result of a quarterly-issued, State-mandated interest rate for any payment delays greater than 30 days. This was due to 16 invoices that were delayed either operationally or as a result of getting proper validation from the departments. She then recommended to the members approval of the Prompt Payment Report and Prompt Payment Policy as well as the authority to file these documents with to the required government entities and post them on PARIS and the Authority's website.

Upon a motion made by Ms. Gallo and seconded by Mr. Petracca, the following resolution was unanimously adopted:

**APPROVAL OF THE PROMPT PAYMENT REPORT AND PROMPT PAYMENT POLICY FOR THE FISCAL YEAR ENDED OCTOBER 31, 2019**

BE IT RESOLVED, that the Prompt Payment Report of the Authority for the fiscal year ended October 31, 2019 and the Prompt Payment Policy in the form presented to this meeting, be, and hereby are approved; and be it further

RESOLVED, that the Treasurer of the Authority be, and hereby is, directed to file said Prompt Payment Report and Prompt Payment Policy with the (1) New York State Division of the Budget; (2) New York State Department of Audit and Control; the Chairman and ranking Minority Members of the (3) New York State Senate Finance Committee; and (4) New York State Assembly Ways and Means Committee, as required by Section 2880 of the Public Authorities Law; and be it further

RESOLVED, that the Assistant Corporate Secretary of the Authority be, and hereby is, directed to file the Prompt Payment Report and Prompt Payment Policy with the minutes of this meeting; and be it further

RESOLVED, that Prompt Payment Report and Prompt Payment Policy be posted to the Authority's website and the NY State Public Authorities Reporting System; and be it further

RESOLVED, that any and all actions taken by any officer of the Authority in connection with the preparation of such policies and procedures is hereby ratified, confirmed and approved.

\* \* \*

The next item on the agenda, presented by Ms. Dawson, was the authorization to extend the term of the 212/Harakawa contract for wayfinding signage design.

Ms. Dawson began by stating this is an extension on a contract that was previously approved by the Board for the design of an updated wayfinding signage system that had not been updated for 25 years. A contract with 212/Harakawa, Inc. was entered into for the design, construction and administration associated with the project, and it was anticipated that the project would be completed in 2019. However, a decision was made in 2019 to defer the project to 2020 due to other ongoing projects. It is now anticipated that the work will be completed in two phases since there are several construction projects in progress that will delay the installation of some signage.

Upon a motion made by Ms. Gallo and seconded by Mr. Petracca, the following resolution was unanimously adopted:

**AUTHORIZATION TO EXECUTE A TIME AMENDMENT (THE "AMENDMENT") WITH 212/HARAKAWA ("TWO TWELVE") FOR THE WAYFINDING SIGNAGE PROGRAM**

BE IT RESOLVED, that in accordance with the materials submitted at this Board meeting, the President and Chief Executive Officer (the "President") of the Battery Park City Authority (the "Authority") or his/her designee(s) be, and each of them hereby is, authorized and empowered to execute an amendment to extend the term of the Contract with Two Twelve through March 31, 2021; and, be it further

RESOLVED, that the President or his/her designee(s), and each of them hereby is, authorized and empowered to execute and deliver the Amendment on behalf of the Authority, subject to such changes as the officer or officers executing the Amendment shall, with the advice of counsel, approve as

necessary and appropriate and in the best interest of the Authority, such approval to be conclusive evidence by the execution and delivery of the Amendment; and be it further,

RESOLVED, that the President or his/her designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents, and to take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing resolutions, and any such execution of documents and any other and further actions heretofore taken are hereby ratified, and any actions hereafter taken are confirmed and approved.

\* \* \*

The next item on the agenda, presented by Ms. Dawson, was an approval of the Fiscal Year 2020 Spending Authority for on-call general contractors and on-call construction managers.

Ms. Dawson stated that in 2019 some of the on-call contracts were approved under a new pre-qualified vendor policy and that the the spending approval package was inadvertently omitted from the budget presentation in October. Consequently, she stated, approval is being sought from the Board of the fiscal year 2020 maximum spending authority for on-call GC contracts at \$1,500,000, which is essentially the same as the expenditures for fiscal year 2019, and on-call construction management contracts of \$850,000 which represents an increase but is valid for the projects that are projected during this fiscal year.

Upon a motion made by Mr. Bevilacqua and seconded by Mr. Capoccia, the following resolution was unanimously adopted:

**APPROVAL OF FISCAL YEAR 2020 ON-CALL GENERAL CONTRACTOR AND ON-CALL CONSTRUCTION MANAGEMENT SPENDING AUTHORITY**

RESOLVED, the following Fiscal Year 2020 annual spending maximums for the On-Call General Contractor and the On-Call Construction Management Contracts, respectively, are hereby established:

- On-Call GC Contracts: \$1,500,000; and
- On-Call CM Contracts: \$ 850,000

RESOLVED, that the President of the Authority or her/his designee(s) be, and each of them hereby is, authorized and empowered to execute any documents, file said budgeted and related information with all parties as required pursuant to all outstanding bond resolutions, agreements and requirements of law and to take all such other and further actions as may be necessary, desirable or appropriate in connection with the transactions contemplated in the foregoing resolution, and any such execution of documents and any other and further actions heretofore taken are hereby ratified and any actions hereafter taken are confirmed and approved.

\* \* \*

Mr. Tsunis made a motion to enter Executive Session, which was seconded by Mr. Petracca, to discuss the negotiations related to the lease of real property, the publicity of which could substantially affect the value of the relevant properties. The Members entered Executive Session at 10:42 a.m.

\* \* \*

The Members exited Executive Session at 11:33 a.m.

\* \* \*

There being no further business, upon a motion made by Mr. Petracca and seconded by Mr. Kendall, the Members unanimously voted to adjourn the meeting. The meeting thereupon adjourned at 11:33 a.m.

Respectfully submitted,

Lauren Murtha  
Assistant Corporate Secretary





**BATTERY PARK CITY AUTHORITY**

**INVESTMENT REPORT & GUIDELINES**

**FISCAL YEAR ENDED**

**OCTOBER 31, 2019**

**January 2020**

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## **1. OVERVIEW OF INVESTMENT GUIDELINES**

### **1.1. Definitions**

“Authority” means the Battery Park City Authority, a corporate municipal instrumentality of the State of New York, established pursuant to the Act (“**Act**” shall mean the Battery Park City Authority Act, Title 12 of Article 8 of the Public Authorities Law [constituting Chapter 43-a of the Consolidated Laws of the State of New York] as added by Chapter 343 of the Laws of 1968, as amended).

“Board” means the Members of the Battery Park City Authority Board.

“Investment Funds” means monies and financial resources available for investment by the Authority.

“Investment Securities” means any or all of the investment obligations.

“Rating Agencies” means Standard & Poor’s Corporation, Moody’s Investor Service, and Fitch Ratings.

“State” means the State of New York.

### **1.2. Purpose and Scope**

The purpose of these guidelines (“Guidelines” or “Investment Guidelines”) is to establish the parameters, responsibilities, and controls for the investment and the management of Investment Funds. These Guidelines have been adopted by, and can be changed only by, the Board.

These Guidelines shall govern the investment and reinvestment of Investment Funds and the sale and liquidation of Investment Securities, as well as the monitoring, maintenance, accounting, reporting, and internal controls by and of the Authority with respect to such investment and reinvestment of Investment Funds and sale and liquidation of Investment Securities.

The guidance set forth herein is to be strictly followed by all those responsible for any aspect of the management or administration of these funds.

### **1.3 Compliance**

Section 2925 (6) of the State Public Authorities Law requires the Authority to annually prepare and approve an investment report which describes the Authority’s Investment Guidelines and any amendments to the Guidelines, investment policies and procedures, the results of the annual independent audit, the Authority’s investment income and a list of the fees associated with those investments, as well as commissions or other charges paid to each investment banker, broker, agent, dealer and advisor (**SEE - APPENDIX B – INVESTMENT REPORT FYE OCTOBER 31, 2019**).

### **1.4. Roles and Responsibilities**

It shall be the responsibility of the Chief Financial Officer to ensure that all investments and investment practices meet or exceed all statutes and guidelines governing the investment of public funds in New York and the guidelines established by the State Comptroller’s Office and the Governmental Accounting Standards Board (GASB). The Deputy Treasurer, acting on behalf of the Board as custodian of the Investment Policy, is responsible for ensuring that all aspects of the investment management program are executed in a manner

consistent with the Guidelines. A description of operating controls is attached as Appendix A to these Guidelines.

An investment committee (“Investment Committee”) will be appointed by the Board to develop and execute investment strategy for the Authority’s Investment Funds. In the event that the Board is not fully constituted, the entire Board may meet in lieu of the Investment Committee. The Investment Committee may consult with a qualified investment advisor/manager in the course of fulfilling its responsibilities.

The Authority’s external auditor will conduct an annual audit of the investment management activity to ensure compliance with the Investment Guidelines by Treasury and the external investment manager, if any. The findings of the audit shall be formally documented and submitted annually to the Chief Financial Officer and the Board.

### **1.5. Standard of Prudence**

The standard of prudence to be applied to the investment of the Authority’s Investment Funds shall be the “Prudent Person Rule” that states:

*“Investments shall be made with judgment and care, under circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.”*

Authorized Authority officials and employees involved in the investment process acting in accordance with the laws of the State, these Guidelines and any other written procedures pertaining to the administration and management of the Investment Funds and who exercise the proper due diligence shall be relieved of personal responsibility for an individual security’s credit risk or market price changes, provided that any negative deviations are reported in a timely fashion to the Chief Financial Officer or another authorized official and that reasonable and prudent action is taken to control and prevent any further adverse developments.

### **1.6. Conflict of Interest**

Authority Officers and employees involved in the investment process (“Investment Officials”) shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Investment Officials shall not:

1. accept any money, loan, gift, favor, service, or business or professional opportunity that could influence them in the performance of their official duties;
2. accept any business or professional opportunity when they know there is a reasonable likelihood that the opportunity is being afforded to influence them in the performance of their official duties;
3. enter into any personal investment transactions with the same individual with whom business is conducted on behalf of the Authority; or,
4. disclose or use confidential information that is not generally available to the public for their own or another person’s financial benefit.

### **1.7. Review, Amendments, Updates and Revisions**

The Deputy Treasurer and the Chief Financial Officer will review the Guidelines on an annual basis, or as required, to ensure continued effectiveness of the Investment Guidelines. The Guidelines shall be submitted to the Board annually for review and approval. Modifications to the Investment Guidelines may be required as business needs and requirements change. Any amendments must be reviewed and approved by the Chief

Financial Officer and submitted to the Board for final approval. Subsequent to any modifications to the Investment Guidelines, revised Guidelines must be distributed to Authority personnel on the approved distribution list as well as any external investment advisor/manager and financial institutions.

### **1.8 Diversity –MBE/WBE Participation**

It is the Authority's standard practice to reach out to MBE/WBE brokers/dealers to provide them opportunities to trade for Investment Securities. The Authority required that thirty percentage (30%) of annual costs under the 2015 service agreement for investment advisory services be allocated to a certified MBE/WBE firm.

### **1.9 Oversight – Investment Committee**

An Investment Committee was established to formalize oversight of the Authority's investment portfolio with the charter below. In the event that the Board is not fully constituted, the entire Board may meet in lieu of the Investment Committee.

## **BATTERY PARK CITY AUTHORITY INVESTMENT COMMITTEE CHARTER**

### **PURPOSE & FORMATION**

Pursuant to Article IV, Section 3 of the Authority's bylaws (the "Bylaws"), the purpose of the investment committee ("Investment Committee") is to assist the Board in fulfilling its oversight responsibilities by establishing the Authority's investment policies and overseeing its investments.

### **COMPOSITION**

Pursuant to Article IV, Section 3 of the Bylaws, the Investment Committee shall consist of at least three (3) Members who shall be appointed by the Chair, one of whom the Chair shall appoint as chair of the committee ("Investment Committee Chair"). The Chair shall be an additional non-voting member of the Investment Committee, provided that if there shall be any vacancy or vacancies in the whole number of the Members as prescribed by law, the Chair may serve as a voting member of the Investment Committee. Each member of the Investment Committee shall be an "independent member," as defined in Public Authorities Law § 2825(2). Members of the Investment Committee shall possess the necessary skills to understand the duties and functions of the Investment Committee and shall be familiar with general investment policies and best practices.

### **DUTIES OF THE INVESTMENT COMMITTEE**

The Investment Committee's duties and responsibilities are set forth in the Bylaws. Whenever the Investment Committee takes action, it exercises its independent judgment on an informed basis that the action is in the best interests of BPCA. In doing so, the Investment Committee may rely to a significant extent on information and advice provided by management and independent advisors.

The Investment Committee has the authority, including, but not limited, to:

- Approve the investment and risk limits for the investment portfolio.
- Review the investment policies for the Authority, including, where applicable, asset classes, liquidity, the use of debt, and risk management.
- Approve the annual investment program.

- Authorize investments and ratify investments made pursuant to delegated authorities.
- Review the investment performance of BPCA's accounts and funds, including benchmarks and attribution.
- Review the organization and staffing of the investment management advisory function.
- Review the quality of the investment services provided to the Authority, such as: a) oversee the business and investment strategy, b) evaluate investment performance benchmarks and attribution, and c) review costs, pricing and profitability.

## **MEETINGS**

The Investment Committee shall meet four (4) times a year or more frequently, as may be necessary and appropriate to carry out its responsibilities. The Investment Committee may ask members of management or others to attend the meetings and provide pertinent information as appropriate. Meetings may be in person or by video conference, if necessary.

In addition, the Investment Committee:

- Shall act only on the affirmative vote of a majority of the members present at a meeting.
- Is expected to maintain free and open communication with management and the Board.
- Shall have authority to retain independent legal, accounting or other advisors if determined appropriate, in its sole judgment, provided such consultants are approved by the full Board.
- Submit the minutes of all Investment Committee meetings to the Board and regularly report to the Board on Investment Committee matters, actions taken and issues discussed at its meetings.
- Review and reassess the adequacy of this Charter annually and propose to the Board any changes.
- The Investment Committee shall evaluate its performance annually and report its conclusions to the Board.

## **2. INVESTMENT MANAGEMENT OBJECTIVES**

### **2.1. Investment Objectives**

The Authority's Investment Funds shall be managed to accomplish the following hierarchy of objectives:

1. **Legality** - The Authority shall comply with all investment guidelines required for public authorities in the State with regards to general investment practices and the management of public funds.
2. **Safety** - Next to legality, safety of principal is the foremost objective of the investment program. Investments of the Authority shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio.
3. **Liquidity** - The portfolio shall be managed in such a manner that assures that funds are available as needed to meet those immediate and/or future operating requirements of the Authority, including but not limited to payroll, accounts payable, capital projects, debt service and any other payments.
4. **Return** - The Authority's portfolio shall be managed in such a fashion as to maximize the return on all investments (up to the "arbitrage allowance" in bond funds) within the context and parameters set forth by the investment objectives stated above.

## **2.2. Authorized Investment Securities**

The investment of Authority funds is limited by the law creating the Authority to “obligations of the State or of the United States of America or obligations the principal of and interest on which are guaranteed by the State or the United States of America” or any other obligations in which the Comptroller of the State of New York (the “Comptroller”) is authorized to invest pursuant to Section 98 (Investment of state funds) of the State Finance Law. As effective on November 20, 2015, the Act allows any monies of the Authority, including the proceeds of bonds or notes, not required for immediate use, at the discretion of the Authority to be invested in obligations of the State, U.S. Government and its agencies, or in any other obligations in which the Comptroller is authorized to invest pursuant to Section 98 of the State Finance Law. The 2003 General Bond Resolution and the 2009 and 2013 Revenue Bond Resolutions allow all investments alternatives included in the Act, as follows:

1. Bonds and notes of the United States.
2. Bonds and notes of this State.
  - 2-a. General obligation bonds and notes of any state other than this State, provided that such bonds and notes receive the highest rating of at least one independent rating agency designated by the Comptroller.
3. Obligations for the payment of which the faith and credit of the United States or of this State are pledged.
  - 3-a. Notes, bonds, debentures, mortgages and other evidences of indebtedness of the United States Postal Service; the federal national mortgage association; federal home loan mortgage corporation; student loan marketing association; federal farm credit system or any other United States government sponsored agency, provided that at the time of the investment such agency or its obligations are rated and the agency receives, or its obligations receive, the highest rating of all independent rating agencies that rate such agency or its obligations, provided, however, that no more than five hundred million dollars may be invested in the obligations of any one agency.
4. Judgments or awards of the court of claims of this state.
5. Stocks, bonds, or notes of any county, town, city, village, fire district or school district of this State issued pursuant to law.
6. Mortgage bonds or any obligations for the payment of money, no matter how designated, secured by another instrument representing a lien on specific real property or a leasehold thereof, heretofore or hereafter and at the time of the assignment thereof to the Comptroller insured by the federal housing administrator or any of his successors in office and guaranteed by the United States under the provisions of the national housing act, as amended or supplemented. Any such mortgage bonds or obligations as aforesaid in which the Comptroller has invested or shall have invested pursuant to this subdivision shall be serviced by the Comptroller or in his discretion, by mortgagees, as such are defined by the national housing act, as amended or supplemented, duly appointed by him and subject to the inspection and supervision of some governmental agency. The Comptroller may receive and hold such debentures and certificates or other obligations as are issued in payment of such insurance or guarantee.
7. Bonds and notes of the Savings and Loan Bank of the State of New York.
8. Bonds or notes of any housing authority of this State duly issued pursuant to law.
9. Bonds or notes of any regulating district of this State duly issued pursuant to law.
10. Bonds or notes of any drainage improvement district of this State duly issued pursuant to law.

11. Bonds or notes of the authorities or commissions set forth below when issued pursuant to law:
  - a. Port of New York Authority.
  - b. Niagara Frontier Authority.
  - c. Triborough bridge and tunnel authority.
  - d. Thousand Islands Bridge Authority.
  - e. New York State Bridge Authority.
  - f. New York City Tunnel Authority.
  - g. Lake Champlain Bridge Commission.
  - h. Lower Hudson Regional Market Authority.
  - i. Albany Regional Market Authority.
  - j. *Repealed*.
  - k. American Museum of Natural History Planetarium Authority.
  - l. Industrial Exhibit Authority.
  - m. Buffalo Sewer Authority.
  - n. Whiteface Mountain Authority. (see footnote 2, Repealed)
  - o. Pelham-Portchester Parkway Authority.
  - p. Jones Beach State Parkway Authority.
  - q. Bethpage Park Authority.
  - r. Dormitory Authority.
  - s. Central New York Regional Market Authority.
  - t. Erie County Water Authority.
  - u. Suffolk County Water Authority.
  - v. New York State Thruway Authority.
  - w. Genesee Valley Regional Market Authority.
  - x. Onondaga county water authority.
  - y. Power Authority of the state of New York.
  - z. Ogdensburg Bridge and Port Authority.
  - aa. [See, also, par. aa below] East Hudson Parkway Authority.
  - aa. [See, also, par. aa above] Niagara Frontier Port Authority.
  - bb. Northwestern New York Water Authority.
  - cc. Metropolitan Commuter Transportation Authority. (see footnote 3, now Metro. Transp. Auth.)
  - dd. [See, also, par. dd below] Niagara Frontier Transportation Authority.
  - dd. [See, also, par. dd above] New York State Pure Waters Authority.
  - ee. Rochester-Genesee Regional Transportation Authority.
  - ff. [See, also, par. ff below] Capital District Transportation Authority.
  - ff. [See, also, par. ff above] Central New York Regional Transportation Authority.
12. Obligations of the International Bank for Reconstruction and Development duly issued pursuant to law.
13. Obligations of the Inter-American Development Bank duly issued pursuant to law.
  - 13-a. Obligations of the Asian Development Bank duly issued pursuant to law.
  - 13-b. Obligations of the African Development Bank duly issued pursuant to law.
  - 13-c. Obligations of the International Finance Corporation duly issued pursuant to law.
14. [See, also, subd. 14 below] Collateral trust notes issued by a trust company, all of the capital stock of which is owned by not less than twenty savings banks of the State of New York.
14. [See, also, subd. 14 above] Bonds and notes issued for any of the corporate purposes of the New York State housing finance agency.



15. Bonds and notes issued for any of the corporate purposes of the New York State medical care facilities finance agency.
16. Bonds and notes issued for any of the corporate purposes of the New York State project finance agency.
17. Bonds and notes issued for any of the corporate purposes of the municipal assistance corporation for New York City.
18. Obligations of any corporation organized under the laws of any state in the United States maturing within two hundred seventy days provided that such obligations receive the highest rating of two independent rating services designated by the Comptroller and that the issuer of such obligations has maintained such ratings on similar obligations during the preceding six months provided, however, that the issuer of such obligations need not have received such rating during the prior six month period if such issuer has received the highest rating of two independent rating services designated by the Comptroller and is the successor or wholly owned subsidiary of an issuer that has maintained such ratings on similar obligations during the preceding six month period or if the issuer is the product of a merger of two or more issuers, one of which has maintained such ratings on similar obligations during the preceding six month period, provided, however, that no more than five hundred million dollars may be invested in such obligations of any one corporation.
19. Bankers' acceptances maturing within ninety days which are eligible for purchase in the open market by federal reserve banks and which have been accepted by a bank or trust company, which is organized under the laws of the United States or of any state thereof and which is a member of the federal reserve system and whose short-term obligations meet the criteria outlined in subdivision eighteen of this section. Provided, however, that no more than five hundred million dollars may be invested in such bankers' acceptance of any one bank or trust company.
20. No-load money market mutual funds registered under the Securities Act of 1933, as amended, and operated in accordance with Rule 2a-7 of the Investment Company Act of 1940, as amended, provided that such funds are limited to investments in obligations issued or guaranteed by the United States of America or in obligations of agencies or instrumentalities of the United States of America where the payment of principal and interest are guaranteed by the United States of America (including contracts for the sale and repurchase of any such obligations), and are rated in the highest rating category by at least one nationally recognized statistical rating organization, provided, however, that no more than two hundred fifty million dollars may be invested in such funds.

The State Comptroller, whenever he deems it for the best interest of any of such funds, may dispose of any of the securities therein or investments therefor, in making other investments authorized by law, and he may exchange any such securities for those held in any other of such funds, and the Comptroller may take such action as may be necessary to obtain the benefits of the insurance provided for in the national housing act, and may draw his warrant upon the treasurer for the amount required for such investments and exchanges.

Notwithstanding the provisions of any other general or special law, the State Comptroller shall not invest the moneys of any fund in any security or securities except as above described, provided, however, that: a) the State Comptroller may, in order to maximize the rate of return on investments, invest the moneys belonging to the New York interest on lawyer account fund in notes, securities and deposits of banking institutions which accept IOLA accounts, and b) the provisions of this section shall not limit the types of investments that may be made with moneys belonging to the volunteer ambulance service award fund established by section two hundred nineteen-h of the general municipal law.

### **2.3. Authorized Investments of Project Operating Funds – Additional Bond Issuers**

The Authority has two classification of Funds; Pledged Funds and Project Operating Funds. Pledged Funds, subject to the 2003 General Bond Resolution, may only be invested in securities specifically listed in Section 98 of the State Finance Law, as listed in Section 2.2 above. Project Operating Funds, those that are not pledged to bond holders, are also limited to Section 98 of the State Finance Law, but may include bond issuers of the State whose authorizing statute specifically provides that bodies of the State are authorized to legally invest in the stated bond issuers' securities. The additional bond issuers ("Additional Bond Issuers"), while not specifically listed in Section 98 of the State Finance Law, and therefore are not eligible for investments of the Pledged Fund, but do qualify for investments of the Project Operating Fund, are as follows:

1. New York City Transitional Finance Authority.
2. New York Municipal Water Finance Authority.
3. New York City Housing Development Corporation.
4. New York State Urban Development Corporation.
5. Nassau County Interim Finance Authority.

### **2.4. Portfolio Diversification**

The Authority's Investment Funds shall be structured to diversify investments to reduce the risk of loss resulting from over-concentration of assets in a specific maturity, a specific issuer or a specific type of security. The maximum percentage of the aggregate portfolio of Investment Funds, based on book value at the time of purchase, permitted in each eligible security is as follows:

US Treasuries	100%
Federal Agencies	100% (\$250 million max per issuer)
Commercial Paper	Lesser of 5% or \$250 million per issuer
Bankers' Acceptances	Lesser of 5% or \$250 million per issuer
Money Market Funds	Lesser of 25% or \$250 million
Municipal Bonds	20%

In addition, the Authority requires:

- a) Minimum "A" credit rating for all municipal securities permitted by the Policy (NY State, other states, and issues of local NY governments).
- b) Maximum allocation of no greater than 10% per issuer, or such lower limit as specified above.

### **2.5. Investment Maturity**

Maintenance of adequate liquidity to meet the cash flow needs of the Authority is essential. Accordingly, the portfolio will be structured in a manner that ensures sufficient cash is available to meet anticipated liquidity needs. Selection of investment maturities must be consistent with the cash requirements of the Authority in order to avoid the forced sale of securities prior to maturity.

Investments shall have a stated maturity or weighted average life of not more than ten (10) years unless specifically approved by the Investment Committee.

## **2.6. Environmental, Social, and Governance Investment Principles**

The Authority's investment philosophy is anchored in the following core principle, which is fundamental and constant. Assets controlled by the Authority must be managed in accordance with this principle, regardless of the ebbs and flows likely to arise due to markets, politics and personalities.

The primary principle guiding the Authority's investments is the consideration of financial impact(s) on current and future requirements of the Authority. This manifests itself through investment practices that generate the greatest possible return, subject to an appropriate amount of risk, to support the Authority's mission of planning and sustaining a balanced community of commercial, residential, retail, and park space on the lower west side of Manhattan.

Within the context of this primary principle, the Authority must consider a holistic view of risk that accounts for various factors which could modify a return/risk objective. These include:

- Maintaining appropriate levels of liquidity for the Authority's operational needs;
- Mitigating downside financial risks;
- Understanding and appropriately managing reputational risk or legal liability; and,
- Protecting Authority assets from external pressures.

The Authority, as well as the Office of the New York State Comptroller, supports the practice of incorporating environmental, social, and governance ("ESG") factors with other conventional financial analytical tools when evaluating investment opportunities as these factors not only support the Authority's mission but they may help identify potential opportunities and risks which conventional tools miss. The Authority encourages its investment managers to include ESG factors in their analytical processes. The Authority prohibits investment in companies that are heavily reliant on fossil fuels. However, ESG considerations are only one factor in analyses and should not be used as exclusionary screens to eliminate specific entities or sectors from consideration. Relevant ESG factors will vary by industry and should be applied appropriately to help assess both risk and return.

## **3. OPERATING PARAMETERS & CONTROLS**

### **3.1. Authorized Officers and Employees**

Investment decisions on behalf of the Authority shall be made by the Chief Financial Officer, or by the Deputy Treasurer or the external investment manager, under the supervision of the Chief Financial Officer. Investment transactions shall be implemented by the Chief Financial Officer, or by the Deputy Treasurer, or the professional investment and advisory management firm on the Investment Committee, under the supervision of the Chief Financial Officer.

### **3.2. Competitive Selection**

For each transaction, a minimum of three quotes shall be obtained and documented from Dealers and/or Banks, except in the purchase of government securities at their initial auction or upon initial offering, and the most favorable quote accepted.

### **3.3. Compliance Audit**

An annual independent audit of all investments will be performed by the external auditors. The Authority's financial statements with respect to investments, which are required to be prepared in conformance with generally accepted accounting principles for governments ("GAAP"), shall contain all of the note disclosures on

deposits with financial institutions and investments required by the Governmental Accounting Standards Board Statements No. 3 “Deposits with Financial Institutions, Investments (including Repurchase Agreements), and Reverse Repurchase Agreements”, dated April 1986. The Annual Investment Audit shall:

- Determine whether: the Authority complies with its own investment policies; investment assets are adequately safeguarded; adequate accounts and records are maintained which accurately reflect all transactions and report on the disposition of the Authority’s assets; and a system of adequate internal controls is maintained.
- Determine whether the Authority has complied with applicable laws, regulations and these Investment Guidelines.
- Be designed to the extent practical to satisfy both the common interest of the Authority and the public officials accountable to others.

The results of the Annual Investment Audit shall be set forth in a report (the “Annual Investment Audit Report”) which shall include, without limitation:

- A description of the scope and objectives of the audit;
- A statement that the audit was made in accordance with generally accepted government auditing standards;
- A statement of negative assurance on items tested;
- A description of any material weakness found in the internal controls;
- A description of any non-compliance with the Authority’s own investment policies as well as applicable laws;
- Regulations and the Comptroller’s Investment Guidelines;
- A statement on any other material deficiency or reportable condition as defined by *Governmental Auditing Standards* identified during the audit not covered above; and
- Recommendations, if any, with respect to amendment of these Guidelines

Investment practices and controls will be subject to review and testing by internal auditors on a surprise basis at the discretion of the VP of Administration (who is also the Internal Controls Officer), President, CEO and/or the Board.

### **3.4. Written Contracts and Confirmations**

A written confirmation shall be required for each investment transaction. However, the Authority shall not be required to enter into a formal written contract provided that the Authority’s oral instructions to its broker, dealer, agent, investment manager/advisor, or custodian with respect to such transactions are confirmed in writing at the earliest practicable moment.

### **3.5. Safekeeping and Custody**

All investment securities purchased by the Authority or held as collateral on deposits or investments shall be held by a third-party custodian who may not otherwise be a counterparty to the investment transaction.

All securities shall be held in the name of the Authority and will be free and clear of any lien.

All investment transactions will be conducted on a delivery-vs.-payment basis. Payment for investments shall be made only upon receipt by the custodian of the physical security, or in the case of securities in book-entry form, when credited for the custodian’s account, which shall be segregated for the Authority’s sole use. The custodian shall issue a safekeeping receipt to the Authority listing the specific instrument, rate, maturity and other pertinent

information. On a monthly basis, the custodian will also provide reports that list all securities held for the Authority, the book value of holdings and the market value as of month-end.

The custodian may act on oral instructions from the CFO, Deputy Treasurer or investment advisor under the direction of the CFO. Such instructions are to be confirmed in writing immediately by an authorized signatory of the Authority.

Representatives of the custodian responsible for, or in any manner involved with, the safekeeping and custody process of the Authority shall be bonded in such a fashion as to protect the Authority from losses from malfeasance and misfeasance. If required by the Chief Financial Officer, appropriate Authority Officials may also be bonded in such a fashion.

### **3.6. Internal Controls**

An operating procedures manual were developed to control all Authority investment activity. The manual is consistent with these Guidelines, shall be approved by the Chief Financial Officer, and shall include the following:

- the establishment and maintenance of a system of internal controls;
- methods for adding, changing or deleting information contained in the investment record, including a description of the document to be created and verification tests to be conducted;
- a data base or record incorporating descriptions and amounts of investments, transaction dates, interest rates, maturities, bond ratings, market prices and related information necessary to manage the portfolio; and,
- requirements for periodic reporting and a satisfactory level of accountability.

### **3.7. Notification Concerning Violations of Investment Guidelines**

In the event that these Investment Guidelines are violated, the Chief Financial Officer shall be informed immediately and advised of any corrective action that should be taken, as well as the implication of such action.

## **4. QUALIFIED FINANCIAL INSTITUTIONS**

### **4.1. Qualifications for Brokers, Dealers and Agents**

The Authority's investment manager's Director of Treasury Operations and/or the Authority's Investment Manager shall maintain a list of broker/dealers that are approved for investment purposes ("Qualified Institutions"). Only firms meeting the following requirements will be eligible to serve as Qualified Institutions:

- "primary" dealers and regional dealers that qualify under Securities and Exchange Commission Rule 15C3-1 (uniform net capital rule);
- registered as a dealer under the Securities Exchange Act of 1934;
- member in good standing of the Financial Industry Regulatory Authority (FINRA);
- registered to sell securities in the State; and,
- the firm and assigned broker have been engaged in the business of effecting transactions in U.S. Government and agency obligations for at least five (5) consecutive years.

When selecting trading partners, the Authority will also consider the firm's quality, size, and reliability, the Authority's prior experience with the firm, the firm's level of expertise and prior experience with respect to the contemplated transactions.

## **4.2. Qualifications for Investment Advisors/Managers**

For the purpose of rendering investment management/advisory services to the Authority, the Authority may qualify any bank or trust company organized under the laws of any state of the United States of America, any national banking association, and any partnership, corporation, or person which is:

- Authorized to do business in the State as an investment manager/advisor; and
- Registered with the Securities & Exchange Commission under the Investment Advisor Act of 1940 or exempt from registration.

The Authority shall also consider the firm's capitalization, quality, size and reliability, the Authority's prior experience with the firm, the firm's level of expertise and prior experience with respect to the contemplated engagement.

## **4.3. Qualifications for Custodial Banks**

To be eligible to hold Investment Securities purchased by the Authority or collateral securing its investments, a custodial bank shall be a member of the Federal Reserve Bank or maintain accounts with member banks to accomplish book-entry transfer of Investment Securities to the credit of the Authority. The custodian should not be the same party that is selling the Investment Securities. To be eligible to perform custodial services, the Chief Financial Officer must affirmatively find that the proposed custodial bank is financially sound. This shall be determined by review of the financial statements and credit ratings of the proposed custodial bank.

## **4.4. Ongoing Disclosure**

All brokers, dealers and other financial institutions described in sections 4.1, 4.2, and 4.3 shall be provided with current copies of the Authority's Investment Guidelines. A current audited financial statement is required to be on file for each financial institution and broker/dealer with which the Authority has investment transactions.

## **4.5. Affirmative Action**

Article 15-A of the Executive Law and 9 NYCRR Part 4.21 regarding affirmative action shall apply with respect to the Authority's investment activities. The Authority shall seek to utilize minority and women-owned financial firms in the conduct of the Authority's investment activities. Management reporting is required by the Authority in order to track compliance with policy guidelines, assess the performance of the portfolio and to inform appropriate management personnel.

# **5. REPORTING**

## **5.1. Management Reporting**

In order to manage the Investment Funds effectively and to provide Authority management with useful information, it is necessary for the Treasury Department to report reliable and timely information regarding the investment transactions that take place.

A Quarterly Management Report on the investment management program shall be prepared and presented to the CFO and the Authority's Board. The Quarterly Management Report shall include:

- An indication of all new investments;
- A portfolio inventory;
- Credit quality of each holding;

- Duration (or average maturity) of each fund;
- Mark-to-market valuations on investments and collateral; and
- A breakdown of the portfolio by counterparty.

An Annual Investment Report shall be submitted to the Authority's Board and filed with the State Division of the Budget, State Comptroller, State Senate Finance Committee, and State Assembly Ways and Means Committee. The Annual Investment Report shall include the following:

- The investment guidelines in compliance with Section 2925(3) of the Public Authorities Law and any amendments since last reported;
- An explanation of the investment guidelines and amendments;
- The results of the Annual Independent Audit (described in Section 3.3.);
- Investment income record of the Authority; and
- A list of the total fees, commissions or other charges paid to each investment banker, broker, agent, dealer and manager/advisor rendering investment associated services to the Authority since the date of the last investment report.

After approval of the report, it will be submitted or posted to:

- State Division of the Budget,
- State Department of Audit and Control,
- State Comptroller,
- State Public Authorities Information Reporting System (PARIS),
- Authority website, and
- The Chairmen and Ranking Minority Members of the Senate Finance Committee and Assembly Ways and Means Committee.

## **5.2. Performance Reporting**

In order to ensure the effectiveness of the Authority's investment strategy, it is important to measure the performance of the portfolio. The performance measurement process can be broken into four categories:

- Investment benchmark – The Authority will continuously measure its performance against a benchmark having an average maturity comparable to the portfolios.
- Performance measurement – Each quarter the Authority must measure the performance of its investment portfolio versus its benchmark. By continuously measuring results against this standard benchmark, the Authority can determine a pattern of over/under performance.
- Identify sources of over/under performance – The Performance Reports distributed to the CFO must include information on the source of over/under performance.
- Disseminate results – Results shall be distributed to the CFO and the Board in a timely manner.

## **APPENDIX A – OPERATING CONTROLS**

### **Distribution of the Investment Guidelines**

The guidelines and all subsequent amendments, revisions and updates shall be distributed to Authority personnel per the approval of the Chief Financial Officer.

During the period in which the Authority retains an investment manager, the investment manager must also receive the investment guidelines and all amendments, updates, or revisions to insure compliance with the most current guidelines.

#### ***Exhibit –Investment Guidelines Distribution Matrix***

<b>Distribution List</b>	<b>Frequency</b>
Board of Directors	As Necessary
Chief Financial Officer (“CFO”)	As Necessary
Controller	As Necessary
Deputy Treasurer	As Necessary

### **Roles and Responsibilities in Executing the Investment Guidelines**

The roles and responsibilities for investment management at the Authority rest primarily with the Finance Department although other departments have important roles. The matrix below defines the roles and responsibilities of all parties involved in the execution of the Investment Guidelines.

#### ***Exhibit –Policy Roles & Responsibility Matrix***

<b>Roles</b>	<b>Responsibility</b>	<b>Frequency</b>
Board of Directors	<ul style="list-style-type: none"><li>• Final Approval of the guidelines</li><li>• Approval of exceptions to the guidelines (e.g. new investment types)</li><li>• Approval of revisions to the guidelines</li></ul>	<ul style="list-style-type: none"><li>• Annual</li><li>• As necessary</li><li>• As necessary</li></ul>
Chief Financial Officer (“CFO”)	<ul style="list-style-type: none"><li>• Approval of the guidelines</li><li>• Approval of investment strategy</li><li>• Approval of performance measurements</li><li>• Approval of minor exceptions to the guidelines (i.e. amounts, maturities)</li></ul>	<ul style="list-style-type: none"><li>• Annual</li><li>• Annual</li><li>• Ongoing</li><li>• As necessary</li></ul>
Deputy Treasurer	<ul style="list-style-type: none"><li>• Serve as custodian of the guidelines</li><li>• Develop investment strategy</li><li>• Review investment strategy</li><li>• Establish performance measurements</li><li>• Distribution of guidelines and amendments</li><li>• Annual review of guidelines</li><li>• Oversight of investment activity</li><li>• Invest funds as provided for in the guidelines</li><li>• Keep abreast of developments in the markets</li><li>• Review performance information</li><li>• Management reporting</li></ul>	<ul style="list-style-type: none"><li>• Ongoing</li><li>• Annual</li><li>• Ongoing</li><li>• Ongoing</li><li>• As necessary</li><li>• Annual</li><li>• Ongoing</li><li>• Ongoing</li><li>• Ongoing</li><li>• Ongoing</li><li>• Monthly</li><li>• Daily, Weekly</li><li>• Monthly</li></ul>



Assistant	<ul style="list-style-type: none"> <li>• Collect performance information</li> <li>• Distribute performance information</li> <li>• Prepare Investment Instruction Letter</li> </ul>	<ul style="list-style-type: none"> <li>• Weekly</li> <li>• Weekly</li> <li>• Ongoing</li> </ul>
Investment Manager	<ul style="list-style-type: none"> <li>• Develop investment strategy</li> <li>• Review investment strategy</li> <li>• Invest funds as provided for in the guidelines</li> <li>• Reporting investment portfolio</li> </ul>	<ul style="list-style-type: none"> <li>• Annual</li> <li>• Ongoing</li> <li>• Ongoing</li> <li>• Daily, Weekly Quarterly</li> </ul>

### Segregation of Duties

The Authority requires adequate segregation of duties to prevent possible fraud, operational errors, misappropriation of funds, unauthorized trades, concealment of trades, and manipulation of accounting records. Personnel involved in risk monitoring activities should be segregated from risk taking (i.e. executing transactions).

#### *Exhibit – Segregation of Duties Matrix*

Activity to be Performed	Segregation Level
Trade Execution	Individuals who are authorized to execute transactions should not confirm and settle the trades or conduct account reconciliation activities.
Trade Confirmation	Individuals who conduct confirmations should not execute transactions.
Settlement – Disbursing and Receiving Funds	Individuals who handle cash settlement on the trades should not execute the trades. Cash settlement shall be transacted by any one of the authorized Authority signatories who did not participate in the trade execution. Only one signature is required due to the nature of the transaction, i.e., transfer of assets (including transfers in excess of \$25,000).
Account Reconciliation	Account reconciliation activities must be segregated from trade execution activities.

### Management Reporting

#### *Exhibit – Summary of Management Reporting*

Report	Contents	Audience	Frequency
Management Report	Investment portfolio, mark-to- market valuations, collateral, counterparty breakdown	CFO, Board	Quarterly

Annual Investment Report	Investment Guidelines, explanation of Investment Guidelines & amendments, annual investment audit, annual investment income, total fees and commissions paid	CFO, Board (File with Division of the Budget, State Comptroller, State Finance Committee, Assembly Ways and Means Committee)	Annually
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***Exhibit – Summary of Treasury Performance Reporting***

<b>Report</b>	<b>Contents</b>	<b>Audience</b>	<b>Frequency</b>
Performance Report	Investment performance vs. benchmark variance analysis	CFO, Board	Quarterly

**Operating Procedures**

Operating procedures for the administration of the Authority's investment program should include the following:

- Each disbursement of funds (and corresponding receipt of Investment Securities) or delivery of Investment Securities (and corresponding receipt of funds) shall be based upon proper written authorization. If the authorization is initially given orally, there shall be written or telegraphic confirmation from an authorized signatory of the Authority to the custodian;
- The process of initiating, reviewing and approving requests to buy and sell Investment Securities shall be documented and retained for audit purposes. Dealer limits should be established and reviewed regularly;
- Custodians must have prior authorization from the Authority to deliver obligations and collateral. All transactions must be confirmed in writing to the Authority. Delivery of obligations sold shall only be made upon receipt of funds;
- Custodial banks shall be required to report whenever activity has occurred in the Authority's custodial account;
- There shall be at least monthly verification of both the principal amount and the market values of all investments and collateral. Appropriate listings shall be obtained from the custodian and compared against the Authority's records;
- A record of investments shall be maintained. The records shall identify the Investment Security, the fund for which held, the place where kept, date of disposition and amount realized, and the market value and custodian of collateral;
- The establishment and maintenance of a system of internal controls;
- Methods for adding, changing or deleting information contained in the investment record, including a description of the documents to be created and verification tests to be conducted;
- A database of records incorporating descriptions and amounts of investments, transaction dates, interest rates, maturities, bond ratings, market prices, and related information necessary to manage the portfolio; and
- Requirements for periodic reporting and a satisfactory level of accountability.

The procedures below describe in more detail the methods employed by the investment officers (Treasurer and Deputy Treasurer) to formulate and initiate investment transactions and include the records and documentation used in processing an investment from the time of its initiation to the recording and reconciliation on the Authority's accounting records.

1. The Treasurer or Deputy Treasurer maintains a schedule of all current investments and updates schedule on a timely (daily) basis as securities mature and/or new investments are initiated. A Calendar of investment maturities is maintained and updated as chronological reminder (tickler file) or maturities.
2. All investments are initiated via:
  - a. specific written investment instruction sent to the Trustee or
  - b. verbal investment instructions followed up by written confirmation
3. The Treasurer or Investment Advisor will initiate the investments by reviewing the investment schedule and calendar on a daily basis to determine investments to be made over the following week based on Investment Committee strategies agreed to by the Investment Committee and weekly phone meetings working group. All investments are available online on a real time (next day) basis.

The Treasurer considers many factors in forming investment decisions, such as:

- a. existing bond resolution requirements and conditions;
  - b. other existing agreements affecting investments/cash flow (i.e. Settlement Agreement; Agreement and Consent dated September 22, 1988, as amended, Agreement for Certain Payments, Lease Agreements etc.);
  - c. BPCA Cash Flow Requirements and Internal Investment Policies;
  - d. current and future market conditions (i.e. interest rates);
  - e. New York State Comptroller's Guidelines; and,
  - f. published market surveys, consultant reports, etc., relating to securities available, interest rates and investment strategies.
4. Copies of the bank trade confirmation letters sent to the Trustee Bank are filed in the Treasurer's chronological file and in a monthly folder for that particular Bank account.
5. All investments are available to the President and others for review and discussed at Investment Committee meetings. A copy of the Investment Instructions Letter is retained in the Treasurer's file and a copy is maintained in the bank reconciliation files.

Documentation for securities purchased including the information as to brokers solicited for quotes shall be retained and filed by the Authority, the Trustee, or Investment Advisor. Corporate funds which are not invested are collateralized or insured by FDIC and balances receive compensating interest at the 90 day T-bill rate to mitigate banking fees. Reconciliation of monthly Trustee statements are performed. This includes reconciliation of investment transactions, investment income, and portfolio holdings. Corresponding journal entries are subsequently posted to the Authority's general ledger. The BPCA Controller or Director of Financial Reporting initials and dates these reconciliations when reviewed to signify timely approval and completion.

6. Quarterly investment schedules are reviewed by the Investment Committee and made available to the Board. Investment schedules are audited by the Authority's public accountants at year end. The auditors request and receive confirmation of our cash and security holdings as of fiscal year end. In addition, the Authority's Internal Audit department periodically audits investments.

The procedures will be subjected to regular audits by internal and external auditors as required. Procedures are to be revised and updated on an annual basis and referenced in the Investment Policy and Procedure Statement, approved by the Members, in accordance with Section 2925(6) of the Public Authorities Law.

## **APPENDIX B**

### **INVESTMENT REPORT FYE OCTOBER 31, 2019**

#### ***Investments***

The Authority carries all investments at fair value. Inherent risks that could affect the Authority's ability to provide services and meet its obligations as they become due are reported in accordance with U.S. GAAP. The Authority's permitted investments include: (i) 100% U.S. government guaranteed securities (U.S. Treasury notes, bonds, strips, T-bills, Ginnie Mae securities); (ii) notes, bonds, debentures, and mortgages of U.S. government-sponsored agencies provided that its obligations receive the highest credit rating at the time of purchase from all rating agencies that rate the obligation; (iii) obligations of any corporation organized under the laws of any state in the United States maturing within 270 days provided that such obligations receive the highest rating of two independent rating services (commercial paper); (iv) municipal bonds issued by the State of New York, its counties, towns and cities and New York authorities; and (v) the general obligations of any state provided that such obligations receive the highest rating by at least one rating agency. The Organization maintains its cash in bank accounts that are fully collateralized or backed by the Federal Deposit Insurance Corporation ("FDIC") or letters of credit. All investments held in funds and accounts established in accordance with bond resolutions are held as trust assets by the trustee banks in the Authority's name. Total investments held by the Authority at October 31, 2019 and 2018, included within the statements of net position (deficit) as investments, corporate designated, escrowed and OPEB funds, bond resolution funds (see note 8) and residential lease required fund accounts, are as follows:

	October 31, 2019			October 31, 2018		
	Cost	Fair value	Weighted average maturity (years) (a)	Cost	Fair value	Weighted average maturity (years) (a)
U.S. Treasury securities:						
Treasury Bills	\$ 343,208,285	344,511,546	0.16	\$ 226,595,757	227,862,341	0.05
Treasury Bonds	75,021,743	74,786,480	3.26	97,341,850	93,195,332	3.10
Treasury Strips	343,043	363,566	5.26	343,043	326,245	6.20
Total U.S. Treasury securities	418,573,071	419,661,592		324,280,650	321,383,918	
Commercial paper	18,042,099	18,227,872	0.01	63,024,475	63,476,945	0.05
Federal agency securities	—	—	—	2,002,830	1,859,912	0.40
Federal agency mortgage backed securities	5,865,363	5,936,683	2.79	5,075,643	4,974,729	2.49
Municipal bonds	10,812,947	10,808,574	1.52	15,020,253	14,509,198	1.61
Small Business Administration	—	—	—	2,115,086	2,032,288	4.92
Supra National Agency	10,275,437	10,306,075	1.09	27,390,282	27,006,522	1.64
Total investments	463,568,917	464,940,796	0.74	438,909,219	435,243,512	0.91
Cash and cash equivalents	56,878,028	56,878,028		35,638,035	35,638,035	
Total investments	\$ 520,446,945	521,818,824		\$ 474,547,254	470,881,547	

(a) Portfolio weighted average effective duration

As of October 31, 2019 and 2018, restricted assets included cash and cash equivalents and investments with less than 91-day maturities amounting to \$109,326,096 and \$135,527,007 respectively.

The Authority's investment objectives for the portfolio are legal compliance, safety of principal, to meet liquidity requirements and to maximize legally allowable return.

Interest rate risk is the probability of loss on investments from future changes in interest rates, which can adversely affect their fair value. Duration is a measure of a debt investment's exposure to fair value changes arising from changes in interest rates. It uses the present value of cash flows, weighted for those cash flows as a percentage of the investment's full price. Effective duration takes into account the change in cash flow expectations of securities with embedded options such as callable bonds and mortgage-backed securities. The interest rate risk of the Authority's portfolio is measured according to effective duration.

Investments of amounts in funds and accounts established under the various 2003 General Bond Resolution, and the 2009, 2013 and 2019 Revenue Bond Resolutions are presently restricted to obligations of the State, U.S. government and its agencies, or in any other obligations in which the Comptroller of the State of New York is authorized to invest pursuant to Section 98 of the State Finance Law.

Corporate-designated and escrowed funds represent funds designated by the Authority's board of directors for specific purposes such as budget reserves, the Special Fund (see note 12), project contingency reserves, restoration reserves, insurance reserves, and arbitrage reserves and funds designated for the payment of medical benefits to the Authority's retirees (OPEB funds).

Residential lease required funds represent funds held by the Authority in accordance with its residential leases. These funds are largely comprised of security and escrow deposits held by the Authority for the residential buildings.

## **Fees**

There were no fees, commissions or other charges paid to investment bankers, brokers, agents, or dealers for rendering investment related services to the Authority during the fiscal year and all investments are competitively bid. Consultant fees in the amount of approximately \$350,000 were paid to PFM Asset Management LLC during the current fiscal year for professional money management advice to the Authority's Investment Committee.

## **APPENDIX C**

### **BPCA FYE October 31, 2019 - A YEAR IN REVIEW**

*(Prepared by PFM Asset Management LLC)*

#### **Summary of Bond Market and Authority Portfolio Strategy**

##### **Annual Summary**

The Authority's 2019 fiscal year began with surging market volatility, yield curve inversion, ongoing trade tensions, and a partial U.S. government shutdown. Throughout the fiscal year, Gross Domestic Product ("GDP") growth slowed, political uncertainty and risk continued to grow both internationally and domestically, and the U.S. Treasury yield curve eventually un-inverted. Considering these dynamics, the U.S. economy managed to maintain its positive momentum throughout the year, with low unemployment, a strong labor market, and strong government and consumer spending. Importantly, the Federal Open Market Committee ("FOMC") cut the federal funds rate three times during the fiscal year, each time by 0.25%. As of October 31, 2019, the target range is set at 1.50% to 1.75%.

#### **Summary of Bond Market and Authority Portfolio Strategy**

##### ***First Quarter: November 1, 2018 – January 31, 2019***

##### **Market Summary**

During the quarter, U.S. economic conditions were characterized by: (1) moderating GDP growth as the impact of 2018 tax cuts and increased federal government spending waned; (2) solid job growth; (3) strong corporate profits; (4) decelerating business activity; and (5) potential imbalances, including a growing budget deficit, and challenges over trade and border security funding. These factors, added to ongoing trade tensions and a partial government shutdown, led to the investment markets experiencing surging volatility, a worldwide equity sell-off, and a bond yield curve inversion.

U.S. economic data appeared to confirm a modest slowdown as readings of both consumer and business activity decelerated. GDP grew at an annualized rate of 3.4% in the third calendar year quarter, making the second and third quarters the best back-to-back quarters since 2014. The fourth calendar year quarter, however, experienced GDP growth at an annualized rate of 2.2%. The U.S. labor market marched ahead unabated, creating 312,000 jobs in December and 304,000 new jobs in January. Despite a government shutdown, the labor force participation rate actually rose, causing the unemployment rate to tick up to 4%. Inflation in the U.S. remained well-contained, hovering around the FOMC's 2% target. At the start of the New Year, however, a modicum of calm returned as stocks regained their footing amid the backdrop of stable U.S. economic prospects. In response to the stock market sell-off and global turmoil, U.S. Treasury yields fell sharply and the yield curve partially inverted. In December, the FOMC raised the federal funds target rate to a new range of 2.25% to 2.50%, which was the fourth rate increase in the 2018 calendar year.

Although bond market volatility subsided by the end of the quarter, the U.S. Treasury yield curve remained slightly inverted between 2- and 5- year maturities. Yields under 1-year moved slightly higher during the quarter, while yields longer than 1-year plunged by up to 50 bps (0.50%). The 2-year U.S. Treasury yield fell 42 bps (0.42%) to 2.48% and the yield on the 10-year U.S. Treasury fell 51 bps (0.51%) finishing the quarter at 2.64%. The "risk-on" recovery by the end of the quarter led to a sharp contraction in credit spreads across the ratings spectrum. Returns on corporate indices outpaced returns on comparable-maturity Treasury indices for the quarter.

### Portfolio Strategy Recap

- The Authority's portfolios slightly underperformed their respective benchmarks for the quarter, largely as a result of a short-duration position relative to benchmark duration.
- At its January 2019 meeting, the FOMC left rates unchanged, but pivoted monetary policy to a wait-and-see approach. It also focused on a broader range of "global economic and financial developments," which signifies the Fed is on hold for the indefinite future. With this, BPCA shifted to duration-neutral portfolio positions relative to benchmarks. Efforts were focused on generating income as the primary source of total return.
- The 2003 Project Operating fund outperformed the benchmark for the quarter, while the 2003 Pledged Revenue fund slightly underperformed the benchmark. Portfolio positioning was influenced by expected cash flows, which in turn impacted performance. The 2003 Pledged Revenue account experienced significant cash outflows during the quarter.

### *Second Quarter: February 1, 2019 – April 30, 2019*

#### Market Summary

Domestically, the quarter was characterized by: moderating GDP growth, continued strength in the labor market, improving conditions in the housing market, and potential imbalances, including a growing budget deficit, trade deficit, trade tensions, and challenges over border security funding. Market signals were contradictory: the strong stock market recovery and solid labor force indicators suggested an economy that will sustain and even expand recent growth, while falling bond yields and the FOMC's caution suggest the opposite. The strength and resiliency of the U.S. economy and capital markets were seemingly overshadowed by international affairs. Dominating the front page were lingering U.S.-China trade disputes and an increasingly awkward Brexit. The FOMC left the federal funds target range unchanged at 2.25% to 2.50%.

In the first calendar quarter of 2019, real GDP expanded at 3.2%. This was a full percent higher than the fourth quarter of 2018. The U.S. labor market remained robust, highlighted by the April jobs report which indicated nonfarm payrolls increased 263,000, exceeding April expectations of 190,000 and outpacing March's increase of 189,000. Additionally, the unemployment rate decreased to a 50-year low of 3.6% and U.S. inflation remained in the Fed's comfort zone for the quarter.

Bond yields continued their descent over the quarter, as maturities beyond one year declined 0.10% to 0.20%. At quarter-end, the yield on a 3-Month Treasury bill stood at 2.46%, the 5-Year note was 2.29%, and the 10-Year note yielded 2.51%. For a brief time, the yield spread between 3-Month and 10-Year Treasuries turned negative.

### Portfolio Strategy Recap

- To accommodate the liquidation strategy for the 2019 bond financing, the following portfolios **temporarily suspended** their investment strategy: 2003 Reserve Fund, Operating Budget Reserve, Insurance Fund, and the Operating Reserve Contingency Funds.
- All other portfolios, short- and long-term, outperformed the respective benchmarks for the quarter.
- Consistent with historical patterns, the 2003 Pledged Revenue account experienced significant cash inflows during the quarter.
- Although yields on short-term commercial paper moderated with the outlook for a patient Fed, yields remained attractive relative to those on short, or even intermediate-term, government securities.



### ***Third Quarter: May 1, 2019 – July 31, 2019***

#### **Market Summary**

The advance release of second quarter U.S. GDP indicated the U.S. economy grew at 2.1%, trailing the 3.1% growth from the prior quarter, but outpacing consensus expectations of 1.8%. U.S. job growth was moderate, adding 224,000 jobs in June and 164,000 in July. The unemployment rate rose slightly to 3.7% in July, which can be attributed to an uptick in the labor participation rate. Average hourly wages for private-sector workers grew 3.2% year-over-year. Inflation was tame, but remained the focus of future Fed policy. Additionally, the trade war rolled on, with on-again, off-again U.S.-China tariff spats and resultant spikes in market volatility. The FOMC cut its benchmark interest rate by 0.25% during its July meeting, lowering its target range to 2.00%-2.25%. This marked the first rate cut since December 2008.

U.S. Treasury yields fell for the third consecutive quarter, with maturities beyond one year falling 40 to 50 bps (0.40% to 0.50%). At quarter-end, the yield on a 3-month Treasury bill stood at 2.19%, the 2-year note was 1.88%, the 5-year was 1.85% and the 10-year yielded 2.02%. The yield curve reached its greatest level of inversion since 2007, as the spread between the 10-year and 3-month Treasuries reached -28 bps (-0.28%), although it finished the quarter narrower as short-term rates trended lower in reaction to rate cuts.

#### **Portfolio Strategy Recap**

- Continued temporary suspension of investment strategy to accommodate the liquidation strategy for the 2019 bond financing: 2003 Reserve Fund, Operating Reserve Contingency Funds, Insurance Fund, and the Operating Budget Reserve.
- All other portfolios, short- and long-term, performed in line with the respective benchmarks for the quarter.
- As expected, the 2003 Pledged Revenue account experienced significant cash inflows during the quarter.
- In the 12-month and under maturity range, high quality credit instruments such as commercial paper offered modest opportunities for incremental income.

### ***Fourth Quarter: August 1, 2019 – October 31, 2019***

#### **Market Summary**

U.S. GDP continued to grow at 2.1%, remaining in line with growth from the prior quarter. The U.S. labor market remained positive, although it may have begun to show signs of losing momentum. For the year, the economy added 167,000 jobs per month, less than the 2018 average of 223,000. Nevertheless, the unemployment rate ticked back down to 3.6% near historic lows. Inflation remained tame, as the core Personal Consumption Expenditure price index rose to 1.8%, just below the Fed's 2% target. In the beginning of the quarter, ISM Manufacturing PMI survey fell to 47.8, which is the lowest it has been since 2009. Trade uncertainty caused businesses to pull back plans for hiring and expansion. If a trade deal emerges, it could set the stage for a recovery in the sector. And a specter of U.S. presidential impeachment proceedings introduced a new political wildcard. While a recession in the U.S. does not appear imminent, the global growth forecast for 2019 was revised down from 3.2% to 2.9%, which would make the slowest pace in over 10 years. Additionally, the FOMC cut its benchmark interest rate twice during the quarter – September and again in October – to the new range of 1.50% to 1.75%.

U.S. Treasury yields across the curve continued their descent, falling for the fourth consecutive quarter. At quarter-end, the yield on a 3-month Treasury bill was 1.62%, the 2-year note was 1.54%, and the 10-year note was 1.69%.

In late August, the yield curve neared the greatest level of inversion over the past 15 years as the spread between the 3-month and 10-year Treasuries reached -50 bps (-0.50%). Nevertheless, it finished the quarter with no inversion, which can be credited to the back-to-back rate cuts in September and October.

Portfolio Strategy Recap

- Continued temporary suspension of investment strategy to accommodate the liquidation strategy (\$44 million liquidated to fund payout of reduction in debt service reserve) for the 2019 bond financing: 2003 Reserve Fund, Operating Reserve Contingency Funds, Insurance Fund, and the Operating Budget Reserve.
- All other portfolios, short- and long-term, performed generally in-line with their respective benchmarks for the quarter.
- As expected, the 2003 Pledged Revenue account experienced significant cash inflows during the quarter. The cash contributions were reinvested in short-term securities to align with future expected withdrawals.
- The value of highly-rated commercial paper diminished, as the spread between U.S. Treasuries and commercial paper narrowed.

*[Intentionally left blank]*

## Portfolio Performance Update

Absolute returns for fiscal year ended October 31, 2019 were modest for the Authority's short-term investment strategies. The 2003 Project Operating Fund outperformed its benchmark by 11 bps (0.11%) while the 2003 Pledged Revenue portfolio matched the benchmark return.

For the fiscal year, absolute returns for the Authority's longer-term portfolios were quite strong, ranging from 4.44% to 7.47%. As a result of the temporary suspension of investment strategy for four of the long-term portfolios – 2003 Reserve Fund, Operating Reserve Contingency Funds, Insurance Fund, and the Operating Budget Reserve – performance relative to benchmark was likewise suspended. The BPCA OPEB and BPCPC OPEB portfolios underperformed their benchmark by 31 bps and 22 bps (0.31% and 0.22%), respectively, for the fiscal year; full-year performance was directly tied to the significant market rally in the 4<sup>th</sup> quarter of 2018 when our duration positioning detracted.

	1 Year Ending October 31, 2019	3 Years Ending October 31, 2019	Since Inception
<b>Long-Term Strategy:</b>			
<b>2003 Reserve Fund</b>	<b>4.44%</b>	<b>1.55%</b>	<b>3.16%</b>
BM: BAML 1-5 Year US Treasury Note Index	5.82%	1.80%	3.07%
<b>BPCPC Operating Reserve Contingency</b>	<b>6.35%</b>	<b>1.91%</b>	<b>3.56%</b>
<b>Insurance Fund</b>	<b>6.39%</b>	<b>1.86%</b>	<b>3.60%</b>
<b>Operating Budget Reserve</b>	<b>6.40%</b>	<b>1.90%</b>	<b>3.66%</b>
BM: BAML 1-10 Year US Treasury Note Index	7.69%	2.06%	3.27%
<b>BPCA Other Post-Employment Benefits</b>	<b>7.38%</b>	<b>2.19%</b>	<b>2.81%</b>
BM: BAML 1-10 Year US Treasury Note Index	7.69%	2.06%	2.58%
<b>BPCPC Other Post-Employment Benefits</b>	<b>7.47%</b>	<b>2.23%</b>	<b>2.25%</b>
BM: BAML 1-10 Year US Treasury Note Index	7.69%	2.06%	2.26%
<b>Short-Term Strategy:</b>			
<b>2003 Pledged Revenue</b>	<b>2.41%</b>	<b>1.59%</b>	<b>1.27%</b>
<b>2003 Project Operating Fund</b>	<b>2.51%</b>	<b>1.70%</b>	<b>1.29%</b>
BM: BAML 3 Month US Treasury Bill Index	2.40%	1.60%	1.21%

### Notes:

1. Performance on trade date basis, gross-of-fees in accordance with the CFA Institute's Global Investment Performance Standards.
2. Merrill Lynch Indices provided by Bloomberg Financial Markets.
3. The total returns shown for periods longer than a year are the annualized returns for the stated period.
4. Since inception performance for all portfolios other than 'BPCA Other Post Employment Benefits' and 'BPCPC Other Post Employment Benefits' is calculated from January 31, 2006 to present.
  - Since inception performance for the BPCA Other Post-Employment Benefits performance is calculated from January 31, 2008 to present.
  - Since inception performance for the BPCPC Other Post-Employment Benefits performance is calculated from February 12, 2010 to present.
  - For the 'Reserve Fund,' the inception of the BAML 1-5 Year Treasury Index as the performance benchmark is July 31, 2013. For prior periods, the BAML 1-10 Year Treasury Index was utilized.

## **APPROVAL OF THE PROCUREMENT GUIDELINES**

BE IT RESOLVED, that the Procurement Guidelines in the form presented at this meeting, be, and hereby are approved; and be it further

RESOLVED, that the Chief Financial Officer of the Authority be, and hereby is, directed to file said Procurement Guidelines, subject to such changes as the officer or officers filing the Procurement Guidelines shall, with the advice of counsel, approve as necessary and appropriate and in the best interest of the Authority, with the New York State Division of the Budget and copies thereof with the New York State Department of Audit and Control, the Chairman and ranking Minority Member of the New York State Senate Finance Committee and the Chairman and ranking Minority Member of the New York State Assembly Ways and Means Committee, as required by Section 2879 of the Public Authorities Law; and be it further

RESOLVED, that any and all actions taken by any officer of the Authority in connection with the preparation of such policies and procedures is hereby ratified, confirmed and approved; and be it further

RESOLVED, that the Assistant Corporate Secretary of the Authority be, and hereby is, directed to file the Authority's Procurement Guidelines with the Minutes of this meeting.



# Procurement Guidelines

## January 27, 2020

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## 1. DEFINITIONS

The following terms, for the purposes of these Guidelines, shall mean:

- “Amendment” shall mean any material change to a contract, including change orders
- “Authority” shall mean the Hugh L. Carey Battery Park City Authority.
- “Bid” shall mean an offer or Proposal submitted by a Bidder to provide a specified Commodity at a stated price or Services at a stated price for an approved term.
- “Bid Log” shall mean a log maintained by the Chief Contracting Officer (“CCO”) documenting when bids are received, secured, and distributed.
- “Bid Opening” shall mean the opening of sealed Bids, in the presence of one or more witnesses, at the time and place specified in the Solicitation.
- “Bidder” shall mean any individual, business, Vendor or other legal entity, or any employee, agent, consultant or person acting on behalf thereof, that submits a Bid in response to a Solicitation.
- “Board” shall mean the Authority’s Board of Directors.
- “Centralized Contract” shall mean Procurement Contracts let by other public entities pursuant to a competitive process, including those contracts of the State of New York (e.g., New York State Office of General Services (“OGS”)) and the United States General Services Administration (“GSA”).
- “Commodity” shall mean a material good, supply, product, construction item or standard article of commerce that is the subject of any purchase or exchange. For the avoidance of doubt, any Commodity that also includes, at no specifically mentioned additional charge, a warranty and technical support for using the Commodity as is shall be considered a Commodity.
- “Competitive Procurement Method” shall include: (i) Solicitations, including requests for proposals (“RFP”), requests for information (“RFI”), invitations for Bids (“IFB”), requests for quotations and requests for qualifications (“RFQ”); and (ii) Procurements made pursuant to Centralized Contracts.
- “Contacts” shall mean any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication was intended to influence the governmental entity’s conduct or decision regarding the governmental procurement.
- “Contractor” shall mean a person or organization that enters into a Procurement Contract with the Authority.
- “Cost Proposal” shall mean the part of any Bid that sets forth the price for which the Bidder is offering to provide the Authority with the Services/Commodities described in a Solicitation.
- “Department Head” shall mean the President, General Counsel, Chief Financial Officer, Chief Operating Officer, Vice President of Real Property, Vice President of Human



Resources, and Vice President of Parks Operations, Vice President of Administration, Vice President of Communications and Public Affairs, Vice President of Parks Programming, and such other individuals as designated by the President.

- “Designated Contact” shall mean the person or persons designated to receive Bids, and, if necessary, to communicate with Bidders during the Restricted Period.
- “Discretionary Procurement” shall mean a purchase either i) in an amount below \$50,000, or ii) made from New York State Small Business Concerns, SDVOBs, or MWBEs, or for recycled or remanufactured Commodities or technology, in an amount not exceeding \$500,000
- “Diversity Practices” shall mean a potential vendor’s past, present, and prospective practices with respect to 1) utilizing minority or women owned business enterprises certified by State agencies and other public or private entities, 2) entering into joint ventures and other arrangements with certified minority and women owned business enterprises, and 3) any other information requested by the Authority as part of a Procurement, supported by affidavit, that demonstrates the potential vendor’s commitment to a policy of diversity practices related to minority-or women owned business enterprises.
- “Emergency” shall mean an urgent condition that, as determined by a Department Head, and as approved, prior to commencement of any work related to the Emergency, by the President, threatens to significantly disrupt the Authority’s operations, disrupt or delay a project, or create or perpetuate an unsafe condition or environment.
- “Final Award” shall mean a communication to a Vendor from the Authority that he or she has been selected by the Authority to provide a Commodity or Service.
- “Form, Function and Utility” shall mean the minimum essential requirements that will meet the Authority’s needs. Requirements may include quality, quantity, delivery terms, packaging, performance standards, and compatibility, among others.
- “Guidelines” shall mean the Authority’s Procurement guidelines as delineated herein.
- “Invitation for Bid” (“IFB”) shall mean a competitive Solicitation seeking Bids for a specified Commodity, pursuant to which award is made to the responsible Bidder(s) submitting the lowest price.
- “Minority and/or Women Owned Business Enterprise” shall mean any business enterprise, including a sole proprietorship, partnership or corporation that has been certified as a Minority and/or Women Owned Business Enterprise (“MWBE”) by the Minority and Women Owned Business Division of the New York State Department of Economic Development/Empire State Development (the “Division”) pursuant to §314 of New York State Executive Law Article 15-A (“Article 15A”) and related regulations.
- “New York State Business Enterprise” shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, goods that are sought by the Authority and that are substantially manufactured, produced or assembled in New York State, or Services that are sought by the Authority and that are substantially performed within New York State.
- “Original Termination Date” means the date a Procurement Contract, at the time of its execution, will expire and is exclusive of any subsequent Amendment(s).

- “Original Value” means the value of a Procurement Contract at the time of its execution, exclusive of any subsequent Amendment(s).
- “President” means the President and Chief Executive Officer of the Authority.
- “Procurement” shall mean the purchase or acquisition of Commodities or Services that, actually or by estimation, total \$5,000 or more. Any purchase under \$5,000 shall constitute a Procurement, however, where the Authority has purchased or intends to purchase substantially similar Commodities or Services from the same Vendor within the same fiscal year and the aggregate value of such purchases exceeds \$5,000. Further, a blanket approval to purchase commodities – or commodities within a category of substantially similar individual commodities each priced less than \$250 – for a stated term and at designated prices in excess of \$5,000 in aggregate, shall be a “Procurement”. Procurements shall not include: annual operating expenditures such as payments required by law; Revenue Contracts; compliance obligations; payments to utility and insurance providers; payments required by existing Contracts, agreements, and leases (e.g. payment to City or State, rent, insurance premiums, credit rating agencies, etc.); memberships in various industry groups, professional societies and similar cooperative associations; any cooperative projects or Procurement activities conducted or sponsored by such organizations in which the Authority participates; direct purchase advertising through radio, television or print media; tuition, conferences, seminars and other comparable activities; transportation or other travel related expenses.
- “Procurement Contract” shall mean any written agreement to which the Authority is a party for the acquisition of Commodities or Services of any kind in the actual or estimated amount of five thousand dollars (\$5,000) or more.
- “Proposal” shall mean a Bid received by the Authority in response to an RFP.
- “Purchase order” shall mean a document evidencing the procurement of a Commodity where a contract is not required but such procurement is subject to these Guidelines.
- “Restricted Period” shall mean the period from the date of the earliest notice of intent to solicit Bids through the date of the Final Award, and, if applicable, approval of the contract by the Office of the State Comptroller, during which all Bidders or potential Bidders are restricted from making contact with anyone other than the Designated Contact or the Director of Diversity. “Revenue Contract” shall mean a binding agreement between a governmental entity and another party that defines the terms under which revenue will be received by the governmental entity.
- “Services” shall mean duty or labor to be rendered by a person or entity.
- “Service-disabled Veteran Owned Business Enterprise” or “SDVOB” shall mean a business enterprise, including a sole proprietorship, limited liability company or corporation that has been certified as a Service Disabled Veteran Owned Business by the Division of Service-Disabled Veterans’ Business Development at OGS pursuant to §369 of the New York Executive Law (“Article 17-B”) and related regulations
- “Single Source” shall mean that although two or more vendors can supply the required Commodities or Services, upon written findings setting forth the material and substantial reasons therefor, the Authority concludes that: (i) one particular Vendor has unique knowledge or expertise with respect to the required service, good or material rendering

the use of competitive procedures impractical; or (ii) there is a continuing need for existing Services to provide continuity to the orderly development and fiscal management of a project; or (ii) other material or substantial reasons exist for awarding the contract on other than a competitive basis. For the avoidance of doubt, unique Vendors procured for live musical or artistic performances through the Authority's Parks Programming Department shall be considered Single Source.

- "Small Business Concern" shall mean a business enterprise which is resident in the state of New York, independently owned and operated, not dominant in its field and employs one hundred or less people. "Sole Source" shall mean only one Vendor is capable of supplying the required Commodities or Services.
- "Solicitation" shall mean an oral or written invitation, issued by the Authority, for vendors to submit Bids to provide the Commodities or Services described in such invitation.
- "Vendor" shall mean a supplier/seller of Commodities or Services.

## **2. INTRODUCTION.**

### **2.1. Introduction and Purpose**

The purpose of these Guidelines are to facilitate the procurement needs of Battery Park City Authority while protecting the interest of the State and City of New York and their taxpayers. The Guidelines are intended to advance the mission of the Authority by using the best business practices and best value when procuring goods and services. The Authority shall use its best efforts to secure Bids from Vendors by using a Competitive Procurement Method, except as otherwise provided in these Guidelines.

The applicable provisions of the Economic Development Law, the Executive Law, the Public Authorities Law, and the State Finance Law were considered in developing these Guidelines.

Any deviation from, or waiver of the requirements of, these Guidelines must be approved in advance and in writing by the President.

### **2.2. Application**

These Guidelines apply to all Procurements.

### **2.3. Administration of the Guidelines**

The Chief Operating Officer, in consultation with the General Counsel, is responsible for ensuring that these Guidelines are followed by the Authority. The Authority must prepare and the Board must approve the Guidelines annually. Any interim modifications to the Guidelines must be approved by the Chief Operating Officer, the General Counsel and the President. The CCO is responsible for developing and maintaining standard templates to be used in the Procurement process, including but not limited to:

- Checklist of required actions and components to ensure each Procurement complies with these Guidelines;
- Bidder responsibility checklist;
- Request for proposals or other form(s) of Solicitation;
- Technical evaluation instrument, including the rating score sheet; and
- Memo in support of the Procurement.

All requirements, including but not limited to insurance and M/WBE and SDVOB compliance, shall be tracked in a database by the CCO, or his or her designee.

### **2.4. Procurement Sources**

When undertaking a Procurement, the Authority must consider, as appropriate, each of the potential sources below:

- Preferred source offerings, as set forth in Section 2.4.1 of these Guidelines;
- Centralized Contracts from OGS or GSA for Services, technology and commodities;
- MWBEs;
- SDVOBs;
- New York State Business Enterprises; and
- Piggybacking (agency established contracts) where beneficial to the Authority, as set forth in Section 2.4.5.

#### **2.4.1. Preferred Source Offerings**

The Authority must purchase Commodities from preferred sources in the following order, if available:

- First: The Department of Correctional Services' Correctional Industries Program; and
- Second: From the approved, charitable, non-profit making agencies for the blind.

With respect to Services, if more than one preferred source meets the Authority's Form, Function and Utility requirements, equal priority shall be accorded to the Services rendered and offered for sale among the approved charitable, non-profit making agencies for the blind, other severely disabled persons, qualified special employment programs for mentally ill persons, and qualified veterans workshops. If more than one preferred source meets the Authority's requirements, cost shall be the determining factor.

Even if using a preferred source, an attempt to obtain competing quotes must be made and documented in writing, and if applicable, the reason for selecting a preferred source that is not the lowest Bidder should be documented.

#### **2.4.2. Minority and Women-Owned Business Enterprises and Service-Disabled Veteran-Owned Business Enterprises**

To promote and assist participation by New York State Certified Minority and Women-Owned Business Enterprises (MWBE) and Service-Disabled Veteran-Owned Businesses (SDVOB) on Procurement Contracts, the Authority shall follow the relevant provisions of the New York State Executive Law. Wherever reasonable and appropriate, the Authority shall maximize participation by such enterprises and facilitate awarding New York State Certified MWBEs and SDVOBs a fair share of awarded contracts.

The Authority shall:

- 1) Conduct Procurements in a manner that will enable it to achieve the maximum feasible portion of the Authority's MWBE and SDVOB annual participation goals as set forth in the Master Goal Plan for both programs on Procurement Contracts;
- 2) Where practical, feasible and appropriate, include the Diversity Practices of Bidders in the evaluation criteria for selecting a successful Vendor for a Procurement;
- 3) Affirmatively promote and assist M/WBE and SDVOB participation in Procurement Contracts;
- 4) Assess all purchases for the possibility of MWBE and SDVOB participation;
- 5) Set goals as appropriate pursuant to Article 15-A and 17-B of the NY State Executive Law;
- 6) Consult federal requirements regarding such opportunities and consult the most recent disparity study available;
- 7) Consider encouraging joint ventures and other teaming arrangements, as well as the severability of bundled contracts, in each solicitation;
- 8) As practicable, provide a current list of certified MWBEs and SDVOBs to prospective Contractors; and
- 9) Ensure that all required provisions are present in relevant contracts pursuant to

Article 15-A, Article 17-B and promulgated regulations, and maintain a policy regarding remedies in the event these terms are violated.

The Authority shall appoint a Director of Diversity, who will promote and assist in participation by such enterprises, utilization of such enterprises as prime contractors, subcontractors and suppliers and the utilization of partnerships, joint ventures or other similar arrangements between such enterprises and other Contractors. Specifically, the Director of Diversity shall be responsible for:

- Providing notice of opportunities to such enterprises and organizations that serve such enterprises;
- Maintaining lists of such enterprises that are properly certified and updating such lists regularly;
- Consulting lists of such enterprises maintained by the State's Department of Economic Development, Office of General Services, and other organizations for potential MWBE and SDVOB firms;
- Establishing goals for such enterprises' participation and utilization as prime contractors, subcontractors and suppliers under Procurement Contracts and monitor the compliance of prime contractors with participation goals and contract terms;
- Monitoring such enterprises' participation and utilization in Procurement Contracts to ensure utilization credit is being taken only for payments to New York Certified firms performing a Commercially Useful Function as that term is defined by the Division;
- Approval authority regarding diversity requirements for Contracts and invoices;
- Developing and maintaining standard templates to be used in the Procurement process including but not limited to:
  - Utilization Plans
  - MWBE and SDVOB Goal Setting Documents
  - Contractor Good Faith Effort Documentation

#### **2.4.3 The Promotion of New York State Business Enterprises and Residents**

In accordance with the State Finance Law Section 139(i), the Authority shall promote the participation by New York State Business Enterprises and New York State Residents in Procurement Contracts as follows:

- a) When applicable, the Authority shall, in consultation with OGS, consider the specifications of New York State Business Enterprises in developing Solicitations for the purchase of Commodities and shall utilize stock item specification forms prepared by OGS.
- b) With the cooperation of the President and CEO of Empire State Development and through cooperative efforts with Contractors, the Authority shall notify New York State Business Enterprises of opportunities to participate as subcontractors and suppliers on Procurement Contracts with a value estimated to be equal or greater than one million dollars (\$1,000,000) and the Authority shall promulgate procedures which will assure compliance by Contractors with such notification as a condition of awarding Procurement Contracts.
- c) Contractors shall, as supplementary materials to their Bids, document their efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on Procurement Contracts equal to or greater than one million dollars (\$1,000,000) and attest to compliance with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended.

d) The Authority, with the cooperation of the President and CEO of Empire State Development and through cooperative efforts with Contractors, shall provide for the notification of New York State Residents of employment opportunities arising out of Procurement Contracts with a value estimated to be equal to or greater than one million dollars (\$1,000,000) and shall require Contractors to submit post-award compliance reports documenting their efforts to provide such notification through listing any such positions with the community services division of the Department of Labor, or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

e) The Authority shall include in all Solicitations a statement that:

- (i) Information concerning the availability of New York State contractors and suppliers is available from Empire State Development, including the directory of certified MWBEs.
- (ii) Information concerning the availability of New York State contractors and suppliers is available from the New York State Office of Governmental Services, including the directory of New York State Certified SDVOBs.
- (iii) Notifies potential Bidders located in foreign countries that the Authority may assign or otherwise transfer offset credits created by a Procurement Contract to third parties located in New York State.
- (iv) Informs potential Bidders that it is the policy of New York State to encourage the use of New York State subcontractors and suppliers, and to promote the participation of MWBEs and SDVOBs, where possible, in the Procurement of Commodities and Services.

f) The Authority shall notify the President and CEO of Empire State Development of the award of a Procurement Contract for the purchase of Commodities or Services from a foreign business enterprise in an amount equal to or greater than one million dollars (\$1,000,000) simultaneously with notifying the successful Bidder therefor.

#### **2.4.4 Piggybacking**

The Authority may use a contract let by any department, agency or instrumentality of the United States government and/or any department, agency, office, political subdivision or instrumentality of any state or states pursuant to New York State Finance Law Section 163(10)(e). This type of procurement option is called "piggybacking". The Authority must evaluate multiple factors in order to determine the appropriateness of piggybacking, including: (1) determination of the need for the product or services; (2) consideration of the procurement method by which the contract to be piggybacked was awarded; (3) an analysis of alternative procurement sources including why a competitive procurement or use of a centralized contract is not in the Authority's best interest; and (4) reasonableness of the cost. The Authority's evaluation of these factors and rationale for using piggybacking should be set forth in the procurement record. The language in the original contract must include the allowance of piggybacking. Additionally, the consent of the originating agency must be obtained where the Authority proposes to piggyback by using an amendment to an existing contract of that originating agency. Alternatively, the Authority may execute an independent contract based upon the equivalency of product or services being procured and pricing contained in the original contract.

## **2.5 “Green” Purchasing**

To the extent practicable, the Authority shall endeavor to purchase Commodities that are designed to minimize any adverse environmental impact on Battery Park City’s parks and the greater public, including the waste generated in packaging and single use plastics. Pursuant to section 4.3 of these Guidelines, Solicitations for Services shall include a request for a description of the Bidder’s environmentally sustainable business practices or activities, to the extent applicable.

## **3. GENERAL REQUIREMENTS**

### **3.1. Advertising Procurement Opportunities**

The Authority must advertise a Procurement opportunity in the New York State Contract Reporter when the actual or estimated amount of the Procurement is \$50,000 or more, except for Procurement Contracts being (i) awarded on an emergency basis or (ii) re-bid or re-solicited for substantially the same Commodities or Services, within forty-five business days after the date Bids were originally due. In addition, as a best practice, the Authority should also advertise its Procurement opportunities in other sources such as trade publications, journals, and newspapers when possible and appropriate, as well as Authority websites and mailing lists.

Advertisements shall provide prospective Bidders with an overview of the proposed Procurement, including a brief description of the Commodities or Services sought, the contract period, the Bid due date, the address where Bids are to be submitted, a description of any eligibility or qualification requirement or preference and contact information.

### **3.2. Reserved Rights**

Any published Solicitation should state the Authority’s reserved rights in the conduct of such Bid process, including, where applicable, the right to:

- Reject any or all Bids received in response to the Solicitation;
- Withdraw the Solicitation at any time, at the Authority’s sole discretion;
- Make an award under the Solicitation in whole or in part;
- Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- Seek clarifications and/or revisions of the Bid or any part of the Bid;
- Use information obtained by the Authority through site visits; interviews; investigation of a Bidder’s qualifications, experience, ability or financial standing; and any other material or information provided by or received from the Bidder during the Bid process;
- Prior to the Bid Opening, direct Bidders to submit Bid modifications addressing subsequent amendments to the Solicitation;
- Request that Bidders submit best and final offers subsequent to the Bid Opening;
- Change any of the scheduled dates;
- Waive any non-material requirements;
- Negotiate with the selected Bidder within the scope of the Solicitation and in the best interests of the Authority;
- Conduct contract negotiations with the next responsible Bidder if the Authority is unable to finalize contractual terms with the first selected Bidder;
- Utilize any and all ideas submitted in the Bids received; and
- Require clarification at any time during the Procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete



understanding of a Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation.

### **3.3. Restrictions on Contact During the Procurement Period**

A Bidder is restricted from making Contact during the restricted period to any person at the Authority other than the Designated Contact or the Director of Diversity. Contact that is permitted during the restricted period is set forth in State Finance Law §139-j (3)(a).

Any Authority member, officer or employee who becomes aware that a Bidder has made a Contact regarding the Procurement during the Restricted Period shall immediately notify the CCO, or other designated official, of such contact.

### **3.4. Determination of Vendor Responsibility**

Pursuant to New York State Law, The Authority must make a determination that a Bidder is responsible prior to awarding that Bidder a contract. The CCO, or his/her designee, are responsible for deciding whether there are sufficient assurances to determine that the Bidder is responsible based on factors enumerated in a Vendor responsibility checklist; the list includes, but is not limited to, the Bidder's:

- Financial and organizational capacity;
- Legal authority to do business in New York state;
- Integrity of the owners/officers/principals/members and contract managers;
- Past performance on prior government contracts; and
- Compliance with the Procurement Lobbying Law and all material terms of the Solicitation.

Before finding a Bidder non-responsible, the CCO shall provide the Bidder with the opportunity to explain its position in writing, or, upon the Vice President of Administration's discretion, in person at a responsibility meeting. Any determination of non-responsibility shall be provided to the Bidder in writing.

### **3.5. Monitoring of Procurement Contracts**

Performance of Procurement contracts must be monitored by an individual designated by the President to ensure that: (i) the scope of work or Services to be provided are being/have been timely performed; (ii) cost escalations are identified at the earliest possible opportunity; (iii) the established starting and completion dates for major components of the contract are being/have been met; and (iv) that Utilization Plans, MWBE, and SDVOB participation is progressing as expected and being reported as required. All invoices presented for payment should be reviewed by the person who is monitoring the contract and approved by the respective Department Head and the Director of Diversity.

### **3.6. Third Party Rights; Effect on Awarded Contracts**

These Guidelines are intended for the guidance of officers and employees of the Authority only, and nothing contained herein is intended or shall be construed to confer on any Contractor, Vendor, person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.

Nothing contained in these Guidelines shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, these Guidelines.

### **3.7. Pre-qualification of Vendors for Services**

The Authority may, in accordance with these Guidelines, pre-qualify multiple Vendors to provide Services to the Authority. The selections and use of Pre-Qualified Vendors shall be governed by the Authority's Policy on the Pre-Qualification of Vendors.

### **3.8. Limitations on Contracts Involving Former Officers and Employees**

The Authority shall not enter into Procurement Contracts with former officers or employees, or any entity employing such officers or employees, or any entity in which such officers or employees have an interest, unless such contract would otherwise be compliant with the Authority's policies regarding conflicts of interest and the applicable provisions of law, including the Public Officers Law.

## **4. SELECTION PROCESS**

### **4.1. Introduction**

A Solicitation issued by the Authority shall describe the Services or Commodities the Authority is seeking to procure. Each Solicitation shall clearly convey all the information needed for potential Bidders to submit a complete and competitive Bid. Solicitations conducted via Request for Proposals must be approved by the General Counsel's Office and the President, or her/his designee, before publication.

A Vendor who participates in the development or writing of the specifications for a Solicitation, or as an advisor during the evaluation process, as set forth in Sections 4.5 and 4.6, is prohibited from being a Bidder for that Procurement.

### **4.2. Procurement Methods**

#### **4.2.1. Discretionary Procurements**

Discretionary Procurements do not require a Competitive Procurement Method. Before making a Discretionary Procurement, however, the staff member initiating the Procurement must:

- Ensure that the Commodities and/or Services to be acquired meet the Authority's Form, Function and Utility needs;
- Consult with the Director of Diversity to identify any potential MWBE or SDVOB Vendors ;
- Make a reasonable attempt to obtain Cost Proposals from at least three different Vendors capable of supplying the required Commodities and/or Services, including MWBE and/or SDVOB Vendors to the extent possible;
- Document the attempt to obtain such quotes and the quotes received, and include such information in the memorandum required by Section 5.1, along with facts sufficient to support the selection of the chosen Vendor, the reasonableness of the price to be paid; the effort of the staff member initiating the Procurement to include MWBE and SDVOB firms in the solicitation; and
- Verify with the CCO that the selected Vendor is responsible.

The Authority may select a Vendor if only one Cost Proposal was submitted, provided that the President provides written approval of the project manager's assertion that, based upon review of the Procurement record, the Solicitation did not restrict competition and the cost is reasonable.

Pursuant to Section 3.1, Discretionary Procurements must be advertised as a Procurement opportunity in the New York State Contract Reporter when the actual or estimated amount of the Discretionary Procurement is \$50,000 or more.

In determining whether a purchase meets the required threshold amounts for a Discretionary Procurement, the staff member initiating the Discretionary Procurement shall consider (and document such consideration) the reasonably expected aggregate amount of all purchases of the same Commodities or Services to be made within the twelve-month period commencing on the date of purchase. Purchases of Services or Commodities shall not be artificially divided for the purpose of satisfying the thresholds required for a Discretionary Procurement. A change to or a renewal of a discretionary purchase shall not be permitted if the change or renewal would bring the reasonably expected aggregate amount of all purchase of the same commodities or services from the same provider within the twelve-month period commencing on the date of the first purchase to an amount greater than the discretionary buying threshold amount.

#### **4.2.2. Non-Discretionary Procurement Methods**

##### **4.2.2.1 Non-Discretionary Procurements that are Exempt from the Requirement that a Competitive Procurement Method be Used:**

The following types of Procurements are exempt from the requirement that a Competitive Procurement Method be used but must satisfy all other applicable requirements set forth in these Guidelines:

- Sole Source - the Authority must document in writing the findings demonstrating that the proposed Vendor is a Sole Source.
- Single Source - the Authority must document in writing the findings demonstrating that the proposed Vendor is a Single Source.
- Emergency - the Department Head initiating the Procurement must document in writing and receive approval by the President that an Emergency exists and shall make a reasonable attempt to obtain quotes from at least three Vendors. Procurement contracts and Amendments entered into in response to an Emergency are exempt from the requirement that they be fully executed and delivered by both parties prior to the commencement of work. However, all procurement contracts and Amendments entered into in response to an Emergency must be approved in advance by two of the following Board-appointed positions: the President and Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer, or the General Counsel. Each Department Head shall submit all such contracts and Amendments exceeding \$500,000 in value or one year in term, to the Board for their approval at the Board meeting next following the authorization of the work necessitated by the Emergency. In the event the work necessitated by the Emergency is completed within one week of the date the Emergency is documented and has a value of \$25,000 or less, the President may approve payment for the Vendor upon presentation of an invoice and documentation from the Department Head that the work has been so completed. Except as specifically provided in this paragraph, all contracts and Amendments involving Emergencies shall be subject to these Guidelines.

### **4.3. Solicitation Content**

All Solicitations for Competitive Procurements must include the criteria to be used in evaluating Bids and how those criteria will be weighted. Solicitations for Services should also include:

- Description of program objectives and background;
- Scope of Services to be provided; and
- Detailed requirements and specifications; and
- Request for description of the Bidder's environmentally sustainable business practices or activities.

Solicitation for Commodities should include product specifications in one of the following manners:

- Make and Model or Equal – If the Procurement is not limited to a specific brand, the Solicitation may use a brand name and model as a reference to describe requirements such as functionality, style or capacity.
- Make and Model Specific - If the Procurement is limited to a specific brand, the Solicitation should state that only Bids for the specified items and brands will be considered, and that no substitutions will be considered where only one product(s) (i.e., specific brand(s)) meets the Authority's needs.
- Technical Specifications - The Solicitation may describe the product, usually detailing the physical components, method of assembly and, in some cases, chemical composition.
- Performance Specifications - The Solicitation may describe the performance standards required for the product and/or service being procured and the Bidder must ensure that the product or service offered will meet the performance specifications.

The CCO shall maintain templates, incorporating all relevant requirements set forth in these Guidelines, to be used by the Authority for all written Solicitations. Solicitation templates may differ for Procurements for Services, which involve several evaluation criteria, and Commodities, which will be awarded to the responsive Bidder offering the lowest cost.

### **4.4. Distribution of Solicitations and Receipt of Bids**

Any Competitive Procurement Method utilized by the Authority must include the following steps:

#### **4.4.1. Advertisement of the Solicitation**

The requirement to advertise Solicitations in the New York State Contract Reporter is discussed in Chapter 3.

#### **4.4.2. Distribution of the Solicitation**

Once the Solicitation is finalized, the Authority shall make reasonable attempts to distribute the Solicitation to all known potential Bidders and any Bidder that requests a copy as a result of the advertisement. Each Solicitation must be posted to the Authority's website but may also be distributed via postal mail, e-mail or other means.

#### **4.4.3. Receipt of Bids**

As noted above, the Solicitation must state the date and time that Bids are due. Late Bids cannot be accepted, except, upon written approval by the President, in extraordinary instances where a public emergency prevented timely submission. The CCO must certify that Bids were received in accordance with the terms of the Solicitation.

#### **4.4.4. Other Requirements:**

- All Bids shall be received at one designated location at the Authority's offices and, immediately upon receipt, the envelope shall be stamped with the time and the date received.
- Sealed Bids shall be immediately locked in a secure location.
- The Bid Log shall be maintained at the Authority's reception desk. Comments on the condition of the envelopes shall also be recorded in the Bid Log.
- A Bid Opening shall occur after the due date and time for receipt of Bids set forth in the Solicitation. All Bids shall be opened at the same Bid Opening.
- During the Bid Opening, Bids shall be signed out in the Bid Log by the person removing them. The persons attending the Bid Opening shall sign a pre-prepared list of their names, which shall become part of the Procurement record for each Procurement Contract.
- The Designated Contact, the project manager assigned to the project, and the CCO—or two of these three—shall be present at each Bid Opening, at which time each Proposal shall be reviewed for compliance with the minimum mandatory qualifications set forth in the RFP and for inclusion of all required information and documentation.
- All Bids, including the time stamp and envelope, or shipping label from the shipping materials, shall be retained for 6 years.
- All bids must be submitted in the manner specified in the RFP or Solicitation. Note, where a Solicitation requires submission of the Cost Proposal in a sealed envelope separate from the rest of the Bid documents, the Cost Proposals received in response to that Solicitation will remain sealed at the Bid Opening and, pursuant to Section 4.6.4, will not be provided to the Evaluation Committee for review until after an initial scoring for the technical evaluation.

#### **4.5. Evaluation Team**

For each RFP<sup>1</sup>, there shall be an evaluation committee consisting of staff members designated by the CCO or his/her designee (the "Evaluation Committee") who are responsible for evaluating each Proposal; however, for any RFP, the President or his/her designee, may designate the Director of Diversity as solely responsible for evaluating the portions of proposals that relate to Diversity Practices. The CCO shall provide the Evaluation Committee with all relevant Proposal materials, in accordance with these Guidelines, including, but not limited to, the Proposals (including the Cost Proposal, when appropriate), the RFP, and any addenda to the RFP. The evaluation process, including any numerical scores, shall be documented by the Designated Contact in reasonable detail and furnished to the CCO.

#### **4.6. Conducting the Evaluation**

The evaluation measures the extent by which a Bid will meet the Authority's needs and assesses the strengths and weaknesses of each Bid. The main steps for performing the evaluation are discussed below.

##### **4.6.1. Development of the Evaluation Criteria**

The criteria selected for evaluation must reflect the Authority's objectives, scope of work, and requirements as set forth in the RFP. Examples of typical technical evaluation criteria include, but are not limited to:

- Work plan and methodology to achieve desired end results;
- Degree to which the Proposal satisfies mandatory, optional, desirable and/or alternative green performance standards;

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<sup>1</sup> For convenience, Sections 4.5 through 4.8 discuss the evaluation process of an RFP but are applicable to any solicitation for competitive Bids requiring an evaluation.

- Experience of the Bidder in providing the required Services and/or deliverables;
- Management capability of the Bidder;
- Bidder's overall past performance;
- Diversity Practices;
- Qualifications and experience of the Bidder's proposed staff;
- Conformance with the schedule of work set forth in the RFP; and
- Bidder references.

#### **4.6.2. Assignment of Values to Evaluation Criteria**

The methodology for evaluating Proposals must be established before the initial receipt of Proposals. Once the evaluation criteria have been determined, values must be assigned to the criteria and any sub-criteria. The evaluation criteria and the assigned values must be provided in the RFP.

Alternative concepts for assigning value to the technical criteria may be permissible to account for the nature of the Procurement. In such instances, the CCO shall verify with the General Counsel before issuance of the RFP.

#### **4.6.3. The Evaluation Instrument**

The Evaluation Committee must use the evaluation instrument to apply the evaluation criteria to the Proposals, including the assigned value for each criterion. The evaluation instrument consists of a series of documents used during the evaluation process, including but not limited to:

- Rating sheet which defines allocation of points for each criterion;
- Completed rating sheets recording each evaluation committee members' scores;
- Cost Proposal evaluation, when evaluating cost pursuant to Section 4.6;
- Summary rating sheet tallying the scores of all committee members; and
- Reference checks.

A subject matter expert who is not a member of the Authority's staff may be used to assist with evaluations, provided that the General Counsel's Office determines there is no conflict of interest and approves a confidentiality and conflict of interest statement signed by such subject matter expert.

#### **4.6.4. Scoring Methodology**

Scores for the pre-determined criteria must be recorded by the Evaluation Committee on the evaluation instrument in accordance with the pre-determined criteria and sub-criteria, if applicable. Provided that prospective Bidders are so advised, information beyond that provided in the written Proposals may be considered in order to determine a score, such as:

- Product or service demonstrations and presentations;
- Reference checks (staff and/or company performance);
- Site visits;
- Interviews of key representatives and proposed staff of the Bidder;
- Consultation with relevant technical advisors;
- Written Proposal clarifications; and
- Rating services (such as Moody's or Dun & Bradstreet).

Upon written approval of the General Counsel or the Vice President of Administration, the Authority may waive mandatory requirements in the RFP that are not material, provided that the waiver neither:

- disadvantages the Authority;
- uniquely benefits the selected Bidder;
- prejudices any non-winning Bidder; nor
- if known at the time of bidding, could reasonably be assumed to have caused additional potential Bidders to submit Bids.

After performing an initial evaluation, the Evaluation Committee may determine certain Bidder(s) should be eliminated from consideration based solely on the content of the Proposal(s). The determination to eliminate a Bidder(s) from consideration must be justified and documented, including but not limited to recording of the initial rating sheets. After determining which Bidders will be eliminated from further consideration, if any, and documenting the reasons justifying such elimination, the Evaluation Committee may open and review the Cost Proposals of the remaining Bidders before conducting interviews. Absent advance approval from the President or his/her designee, only Evaluation Committee members and the Designated Contact may be present at such interviews. Upon completion of the evaluation as set forth in the evaluation instrument and the RFP, the initial evaluation scores shall be adjusted and finalized, as necessary.

#### **4.7. Determining the Best Value Bidder**

For Solicitations in which cost is not the only evaluation criteria, the Authority should award the contract to the highest rated Bidder whose Bid is determined to be responsive and in the best interests of the Authority, subject to a determination that the Cost Proposal is fair, reasonable and provides the best value to the Authority given the requirements of the project. Even if using a Centralized Contract, the reason for selecting a specific Vendor that is not the lowest priced Vendor should be documented.

#### **4.8. Request for Best and Final Offer**

In circumstances where it would be beneficial to the Authority, the Authority is authorized to request from one or more Bidders an amendment to its Bid that would represent its best and final offer if: (1) the project manager or Department Head provides a written memorandum justifying the request for a best and final offer; (2) such request is approved by the President, and (3) such request does not materially change the scope of work or evaluation criteria for the Procurement.

#### **4.9. Award Based on Single Bid**

The Authority may award a contract to a Bidder if only one Bid was submitted, provided that the President provides written approval of the project manager's assertion that, based upon review of the Procurement record, the Solicitation did not restrict competition and the cost is reasonable.

#### **4.10. Selection**

At the conclusion of the evaluation process, the project manager shall inform his or her Department Head of the proposed award. At the Department Head's request, the Evaluation Committee shall consider such additional facts and/or information as the Department Head deems necessary prior to the Authority's approval of the proposed award and notification of any Bidder of a Final Award.

#### **4.11. Letters of Intent**

Where the Department Head initiating the Procurement provides a written memorandum

explaining the need for a letter of intent (“LOI”) in order to ensure timely completion of a project by a selected Contractor, and that memorandum is approved by the President, the **Chief Operating Officer**, and the General Counsel, a LOI may be issued to a Contractor. Such LOIs may be issued prior to the execution of Procurement Contracts for a value of up to 10% of the total anticipated Procurement Contract amount, subject to approval limitations. Such LOIs shall authorize Contractors to proceed with work pending the execution of the Procurement Contract, and shall expressly provide that the Contractor is granted no rights against the Authority in the event a Contract is not executed except for the reasonable value of the preliminary work to be performed, not to exceed an amount set forth in the LOI.

#### **4.12. Notification of Award**

Upon receipt of all approvals required in Section 5.1, the Designated Contact may notify all non-selected Bidders of the Final Award. Where practicable, all MWBEs and SDVOBs designated on the Utilization Plans of the selected Bidder will be notified of the award at this time by the Designated Contact.

#### **4.13. Post-Award Advertisement**

For any Procurement Contract with a value exceeding \$50,000, initially or through Amendment, that was not awarded pursuant to a Competitive Procurement Method, the Authority shall publish in the New York State Contract Reporter a notice of the award of such contract and the reasons for any exemption from the Competitive Procurement Method.

### **5. APPROVALS**

#### **5.1. Contract Award Approvals**

##### **5.1.1. Requesting Approvals**

The department initiating the Procurement shall request approval of the award of a Procurement Contract by: i) entering the procurement details into the Authority’s Procurement Site; ii) uploading all supporting documentation for electronic approval by the initiating Department Head within the Procurement Site, including, but not limited to:

- a written memorandum detailing the Competitive Procurement Method or justifying an exemption, and describing the evaluation process and the basis for determining the selected Bidder as best value;
- copies of all Cost Proposals received;
- the Selected Bidder’s Vendor Responsibility Report and W-9 IRS Tax Form; and
- the Selected Bidder’s Financial Statements.

##### **5.1.2 Award Package Reviews**

The award of Procurement Contracts, and any subsequent Amendments, must be approved by the CCO, Director of Diversity and the General Counsel’s office as follows:

- The CCO may approve a Procurement Contract once the CCO has i) verified that the Bidder is responsible (and, in the case of a Centralized Contract from OGS, that the Bidder’s OGS certification is valid) and has submitted certificates of insurance in accordance with the Solicitation requirements, and, ii) as applicable, that the selection was made pursuant to New York State Law, these Guidelines, and the terms of the Solicitation.



- The Director of Diversity may approve a Procurement Contract once he/she has verified that MWBE and SDVOB requirements have been met pursuant to Article 15-A and Article 17B respectively, including the approval of initial Bidder's Workforce Participation, SDVOB, and MWBE Utilization Plans or updates to those plans which may be required for Amendments.
- The General Counsel shall review and approve documentation supporting the Procurement, including the supporting memorandum.

### **5.1.3 Approval Thresholds**

In addition to the approvals required above, any award of a Procurement Contract with a value:

- Up to \$150,000 must be approved by the Chief Financial Officer, except if the Chief Financial Officer is the initiating Department Head of the Procurement, then the Vice President of Administration;
- Exceeding \$150,000 must also be approved by the President; and
- Exceeding \$500,000 must also be approved by the Board.

### **5.1.4 Additional Approvals**

In addition to the approvals required above, Board approval is required for all contracts with a term exceeding one year. However, the following types of contracts with terms exceeding one year do not require approval by the Board unless otherwise required pursuant to Sections 5.1.3, 5.3.1 or 5.3.2 herein: (1) equipment and vehicle leases; (2) warranties and maintenance contracts relating to leased or owned equipment and vehicles; (3) renewals of software licenses; and (4) software support contracts

## **5.2 Contract Amendment Approvals**

In addition to all applicable requirements set forth in Section 5.1, each request for an Amendment to a Procurement Contract shall require the following approvals:

### **5.2.1 Board Approvals**

The Board must approve any Amendment that:

- Causes the aggregate amount of any Procurement Contract to exceed \$500,000; or that
- Increases the aggregate amount of a Procurement Contract by \$500,000 or more above the amount the Board previously approved.

### **5.2.2 Amendment Presidential Approval**

The President must approve any Amendment that would cause the value of a Procurement Contract, either originally or as amended, to exceed its Original (or amended) Value by twenty percent (20%) or more.

### **5.2.3 Extension Board Approval**

Except for those types of contracts listed in Section 5.2 above, Board approval is required for any extension of an existing Services Contract that a) for the first time, extends the contract term beyond one year; or b) is extended by one year or more from the termination date last approved by the Board.

### **5.2.4 Diversity Amendment Review**

Contract Amendments must be reassessed for MWBE and SDVOB participation goals, current MWBE and SDVOB Utilization Compliance of the project, and may

require vendors to provide updated MWBE and SDVOB Utilization plans prior to approval by the Director of Diversity.

### **5.3 Contracts Requiring OSC Approval**

Any Procurement Contract exceeding \$1,000,000, originally or as amended, which was awarded non-competitively or will be paid in whole or in part from monies appropriated by the State, and any Amendment to a Procurement Contract previously approved by the New York State Office of the State Comptroller ("OSC") where the value of the Amendment is ten percent (10%) or more of the Procurement Contract value as originally approved by the OSC, shall be submitted to OSC for filing within 60 days after execution and if the contract/Amendment is the subject of an active written notice by OSC, such Amendment shall be submitted to OSC for prior approval.

### **5.4 Designation of Approval Authority**

Any officer or Department Head who seeks to designate another employee to exercise approval authority as provided for under these Guidelines must first be trained on how to conduct sufficient reviews and approvals and be so designated in writing.

### **5.5 Additional Approvals and Reports**

#### **5.5.1 Independent Auditors**

Independent auditors for the Authority shall be retained only with the prior approval of the Board of the Authority.

#### **5.5.2 Contract Approval Subsequent to Commencement of Work**

Upon consultation with the President, the General Counsel is authorized to approve and execute Procurement Contracts and amendments related to the provision of legal services after the work contemplated in the proposed contract or amendment begins.

#### **5.5.3 Contracts with a Value between \$250,000 and \$500,000**

Any Procurement Contract the Authority enters into with an Original Value between \$250,000 and \$500,000 must be documented by the CCO and reported to the Board at the first meeting subsequent to such contracts' execution. In addition, on a quarterly basis, management must provide a report to the Board listing all projects for which a Procurement may potentially be performed in that quarter.

### **5.6 Final Contract Approvals**

Upon completion of all other approvals required by these Guidelines, subsequent to execution by the selected Vendor and before execution by the Authority, each Procurement Contract shall be approved by the initiating Department Head, Director of Diversity, Chief Financial Officer, General Counsel and the President. Presidential approval authority can be delegated, at the discretion of the President, to the Chief Financial Officer and/or the Chief Operating Officer

**RESOLUTION OF THE MEMBERS REGARDING THE AUTHORITY'S AUDITED  
FINANCIAL STATEMENTS FOR THE FISCAL YEAR ENDED OCTOBER 31, 2019**

BE IT RESOLVED, that the Members hereby accept the Audited Financial Statements for the Fiscal Year ended October 31, 2019 and be it further

RESOLVED, that the Members authorize the filing of the Audited Financial Statements substantially, in the form presented at this meeting, with the required governmental entities and with the trustees under the Authority's bond resolutions, and the posting of a copy of the Audited Financial Statements on the Public Authorities Report Information Systems and on the Authority's website.

**Hugh L. Carey Battery Park City Authority**

**Annual Post-Audit Report to the Audit and  
Finance Committee  
(Under AICPA AU-C Section 260)**

**For the Audit Year Ended October 31, 2019**

**M A R K S P A N E T H**

ACCOUNTANTS & ADVISORS

January 20, 2020

To the Audit and Finance Committee and the Members of the  
Hugh L. Carey Battery Park City Authority

In accordance with auditing standards generally accepted in the United States of America ("U.S. GAAS"), Marks Paneth LLP ("Marks Paneth" or "us" or "we" or "our") is pleased to provide this communication in compliance with the American Institute of Certified Public Accountants ("AICPA") Auditing Standards AU-C Section 260 "*The Auditor's Communication with Those Charged with Governance*." In your case, the Audit and Finance Committee (or "you"), on behalf of the Members, the party charged with governance, has the responsibility to oversee the external audit of the Hugh L. Carey Battery Park City Authority (the "Authority") and the Battery Park City Parks Conservancy (the "Conservancy"), collectively referred to as the "Organization." Marks Paneth has a responsibility to bring to the attention of the Members, through the Audit and Finance Committee, any accounting, auditing, internal control, or other related matters that we believe warrant their consideration or action. Matters in this communication are concerning the completion of the October 31, 2019 financial statement audit.

This report is intended solely for the information and use of the Audit and Finance Committee, Members and management of the Organization, and is not intended to be and should not be used by anyone other than those specified parties, unless permission is granted.

Very truly yours,



MARKS PANETH LLP

Attachment:

- Draft management representation letter

**Hugh L. Carey Battery Park City Authority**  
**Annual Post-Audit Report to the Audit and Finance Committee**  
**For the Audit Year Ended October 31, 2019**

**1. Auditors' Responsibility**

Our responsibility as the independent auditors is to express an opinion on the Organization's financial statements as of and for the year ended October 31, 2019 based on our audit. Also, it must be emphasized that our audit does not relieve management, and those charged with governance, of their responsibilities.

Our audit was conducted in accordance with auditing standards generally accepted in the United States of America ("U.S. GAAS") and was designed to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement. Our audit included tests of the accounting records of the Organization and other procedures we considered necessary to enable us to express an unmodified opinion that the financial statements are fairly presented, in all material respects, in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP"). In addition, we conducted our audit of the Organization under standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States ("GAS").

Based on our audit, we are prepared to issue an **unmodified** opinion on the financial statements, subject to the following open items being cleared:

- A) Receipt of legal representation letters from various attorneys and the Authority's General Counsel.
- B) Receipt of signed management representation letter
- C) Acceptance of the draft financial statements by the Members
- D) Review by Marks Paneth's Professional Standards Group
- E) Additional post balance sheet review by Marks Paneth to bring our audit report date to that of the management representation letter date

**2. Timing and Meetings Relative to the Engagement**

**I. Interim Review – April 30**

	<b><u>2019</u></b>	<b><u>2018</u></b>
a. Review fieldwork start	June 24, 2019	June 25, 2018
b. Exit meeting and draft deliverables discussion with management	October 2019	November 2018
c. Presentation of draft review report to the Audit and Finance Committee	October 29, 2019	December 11, 2018
d. Issuance of review report	December 20, 2020	December 19, 2018

**II. Audit – October 31**

a. Engagement letter issued	June 3, 2019	May 4, 2018
b. Presentation of preliminary audit plan to the Audit and Finance Committee	October 29, 2019	December 11, 2018
c. Audit fieldwork start	December 11, 2019	December 11, 2018
d. Exit meeting and draft deliverables discussion with management	January 2020	January 2019
e. Presentation of draft financials to the Audit and Finance Committee and Members	January 27, 2020	January 29, 2019
f. Issuance of signed financials	By January 31, 2020	January 31, 2019

**Hugh L. Carey Battery Park City Authority**  
**Annual Post-Audit Report to the Audit and Finance Committee**  
**For the Audit Year Ended October 31, 2019**

**3. Management's Responsibility**

The Organization's management is responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. We have advised you about appropriate accounting principles and their application and assisted in the preparation of your financial statements, but the responsibility for the financial statements remains with you.

The management of the Organization is responsible for establishing and maintaining internal controls. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of the controls. The objectives of internal controls are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, that transactions are executed in accordance with management's authorizations and recorded properly to permit the preparation of financial statements in accordance with U.S. GAAP.

In addition, management is responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the Organization involving (a) management, (b) employees who have significant roles in internal control, and (c) others where the fraud could have a material effect on the financial statements. Management is also responsible for informing us of their knowledge of any allegations of fraud or suspected fraud affecting the Organization received in communications from employees, former employees, regulators, or others. In addition, management is responsible for identifying and ensuring that the Organization complies with applicable laws and regulations.

**4. Selection, Application or Changes in Significant Accounting Principles**

The Authority follows specific accounting policies for reporting on its net position, valuation of investments, postemployment benefits, long-term debt and the recognition of revenue. The principles are discussed in detail in Note 2 to the prior year's financial statements.

**GASB Statement No. 88, *Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements*, ("GASB 88")** is effective for reporting periods beginning after June 15, 2018. The objective of GASB 88 is to improve the information that is disclosed in notes to government financial statements related to debt, including direct borrowings and direct placements. It also clarifies which liabilities governments should include when disclosing information related to debt. GASB 88 requires that additional essential information related to debt be disclosed in notes to financial statements, including unused lines of credit; assets pledged as collateral for the debt; and terms specified in debt agreements related to significant events of default with finance-related consequences, significant termination events with finance-related consequences, and significant subjective acceleration clauses.

For notes to financial statements related to debt, GASB 88 also requires that existing and additional information be provided for direct borrowings and direct placements of debt separately from other debt. The adoption of GASB 88 required additional disclosures which are include in Note 3 (m) to its financial statements.

There were no other changes in accounting principles or new standards adopted in the current year that had an effect on the Authority's financial statements.

Based upon our audit, the financial statement disclosures are neutral, consistent and clear.

**Hugh L. Carey Battery Park City Authority**  
**Annual Post-Audit Report to the Audit and Finance Committee**  
**For the Audit Year Ended October 31, 2019**

**5. Significant Management Judgments and Accounting Estimates**

The preparation of financial statements requires the use of accounting estimates, by which management uses its best judgment in the determination of certain amounts to be recorded in those statements. These amounts are calculated using all information available at the time and applying the knowledge and expertise of management. These amounts are subject to revision as time passes and more information becomes available.

Matters to note are as follows:

**A) Fair Value of Interest Rate Swap Agreements**

On August 6, 2019, the Authority refunded its 2013 Series C, 2013 Series D, and 2013 Series E variable-rate Junior Revenue Bonds and issued 2019 Series D and 2019 Series E variable-rate bonds.

The interest rates on these bonds were hedged by interest rate swaps, which were bifurcated as of the date of the refunding. As defined by GASB Statement No. 53, *Accounting and Financial Reporting for Derivative Instruments* ("GASB 53"), debt-type instruments (swaps) with market exposure are accounted for by bifurcating the transaction between a borrowing and an embedded derivative. The fair values of each element of the bifurcation can be made by estimating the fair value of the instrument (swaps) less the fair value of the borrowing. GASB 53 requires that associated interest swaps be tested for hedge effectiveness to qualify for the application of hedge accounting. On October 31, 2019, the associated interest swaps were tested and qualified for hedge accounting. Accordingly, the fair value of the interest rate swaps on August 6, 2019 of negative \$80 million was recorded as an imputed borrowing and a deferred outflow of resources by the Authority. These amounts are being amortized on a straight-line basis over the remaining life of the swaps and were \$78.5 million at October 31, 2019. Apart from the imputed borrowing, the interest rate swap agreements, which continue in effect and continue as a hedge, had a negative fair value (from August 6, 2019) of \$747 thousand at October 31, 2019. This negative fair value is recorded as a deferred outflow of resources and a liability in the Authority's statement of net position (deficit).

The fair value was provided by the Organization's financial advisor and was derived from financial models based upon reasonable estimates about relevant market conditions. Based on the procedures performed, the fair value of the Swaps recorded by the Organization appears reasonable.

**B) OPEB Liability and Expense**

The Organization provides other postemployment benefits ("OPEB") to its employees and retirees through the New York State Health Insurance Program (the "Program"). In accordance with GASB Statement No. 75, *Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions* ("GASB 75"), the Organization recognizes a net OPEB liability measured as the portion of the present value of projected benefit payments to be provided to current active and inactive employees that is attributed to those employees' past periods of service (total OPEB liability), less the amount of the OPEB plan's fiduciary net position. The total OPEB liability is determined through an actuarial valuation. As no assets are accumulated in a trust for such OPEB benefits, the total OPEB liability is equal to the Organization's net OPEB liability. As of October 31, 2019, the Organization recognized a net OPEB liability of approximately \$34.8 million.



**Hugh L. Carey Battery Park City Authority**  
**Annual Post-Audit Report to the Audit and Finance Committee**  
**For the Audit Year Ended October 31, 2019**

Based on our audit procedures and evaluation of such assumptions and estimates used by the actuary to calculate the OPEB costs and liabilities, management's estimates of the liability appear reasonable and in accordance with the provisions of GASB 75.

**C) Recoverability Period of Project Assets**

Depreciation of project assets is being provided for by the straight-line method over the estimated useful lives of the related assets, which are the remaining lease years (to 2069) for site improvements, 50 years for residential building and through the first appraisal date of each lease for condominium units. The recoverability periods used by management appears to be reasonable.

**6. Significant Recorded and Proposed Unrecorded Audit Adjustments**

We are required to inform the Audit and Finance Committee about adjustments or misstatements arising from the audit that could, in our judgment, either individually, or in the aggregate, have a significant effect on the Organization's financial reporting process.

**Adjusting journal entries recorded:**

There were three entries recorded subsequent to the receipt of the Organization's initial trial balance that decreased the change in net position by approximately \$1,312,000. In the prior year, there were two entries recorded subsequent to the receipt of our initial trial balance that decreased the change in net position by approximately \$1,034,000.

The entry that had an impact on net position for the current year was as follows:

- To decrease net position by approximately \$1,312,000 to record bond interest expense on defeased 2009 bonds.

**Uncorrected misstatements due to non-materiality:**

There were none.

**7. Significant Issues Discussed, or Subject to Correspondence, with Management**

Throughout the year, routine discussions regarding the application of accounting principles or auditing standards were held with management in connection with transactions that have occurred, transactions that are contemplated, or reassessment of current circumstances. In our judgment, such discussions were not held in connection with our retention as auditors.

**8. Disagreements with Management and Audit Difficulties**

For purposes of this report, professional standards define a disagreement with management as a financial accounting, reporting or auditing matter, whether or not resolved to our satisfaction that could be significant to the financial statements or the auditors' report. We are pleased to report that no such disagreements arose during the course of our audit. We received the full cooperation of management and staff throughout the process of performing our audit procedures.

**9. Fraud or Likely Illegal Acts/Conflict of Interest Matters/Other Governance Issues**

Our audit procedures did not detect any such items. We advise all our clients that there is always a risk that fraud or illegal acts may exist and not be detected by any audit firm in performing an audit.

**Hugh L. Carey Battery Park City Authority**  
**Annual Post-Audit Report to the Audit and Finance Committee**  
**For the Audit Year Ended October 31, 2019**

We understand that the Organization has adopted a Code of Ethics for its employees and its Members, and there is an Ethics Officer whose responsibility is to ensure compliance with the Code of Ethics.

### **Data Analytics**

We extracted data from the Organization's accounts payable and payroll systems and used data analytics software to perform certain procedures including the following:

- We searched for any cash disbursements processed during non-business hours
- We searched for duplicate checks.
- We searched for multiple vendors with similar names or addresses.
- We searched for duplicate employees with the same or similar employee identification numbers.
- We searched for employees with similar names or addresses.
- We compared the vendor database with the payroll database to determine if there were employees and vendors with similar names and addresses.
- We performed journal entry testing to identify unusual items (such as entries made during non-business hours from a remote location, etc.)

Based on these procedures there were no items to report except that we noted that the Authority's vendor listing included duplicate vendors and addressees (see Tab 4).

### **10. Internal Controls: Control and Significant Deficiencies and Material Weaknesses**

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis.

A deficiency in *design* exists when a control necessary to meet the control objective is missing; or an existing control is not properly designed so that, even if the control operates as designed, the control objective would not be met.

A deficiency in *operation* exists when a properly designed control does not operate as designed; or the person performing the control does not possess the necessary authority or competence to perform the control effectively.

A *significant deficiency* is a deficiency, or combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

A *material weakness* is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

**Hugh L. Carey Battery Park City Authority**  
**Annual Post-Audit Report to the Audit and Finance Committee**  
**For the Audit Year Ended October 31, 2019**

We did not observe any material weaknesses as a result of our audit (see Tab 3). However, we made certain recommendations and suggestions, which, if implemented, could further strengthen the internal controls and business practices. We communicated these matters in the separately issued letters disclosing the observations and recommendations relating to the Organization (see Tabs 4 and 5).

**11. Consultation with Other Accountants**

We are not aware of any other consultations with other accountants about auditing and accounting matters during the year ended October 31, 2019.

**12. Auditor Independence**

We affirm that Marks Paneth is independent with respect to the Organization in accordance with the AICPA's *Code of Professional Conduct*.

**13. Future Deliverables to be Issued and Other Matters**

**A) Future Deliverables to be Issued**

**Form 990:** The original due date for the Conservancy's Federal Form 990 is March 15, 2020 and we anticipate the Form 990 will be filed with the Internal Revenue Service prior to the initial due date. We expect to issue a draft Form 990 to the Conservancy for its review in February 2020 provided that the necessary tax return information is received from the Conservancy's management.

**B) Other Matters**

**I. Contingencies**

The Organization's management, general counsel and outside legal counsel have advised us that the Organization is a party to litigation and claims in the ordinary course of its operations. The Organization's financial statements do not reflect any provision for these matters as it is the Organization's opinion that such matters will not have an adverse effect on the financial position of the Organization, and that any potential losses would be covered by the Organization's various insurance policies.

**II. Other**

We have read certain tax and other government filing items to ensure that they have been filed timely, including the payroll tax filings (IRS Forms 941, W-2 and 1099). However, we caution you that it is not our practice to look at all potential filings the Organization may be required to complete. We are unaware of any tax or other governmental filing exposure items.

**14. New Accounting and Auditing Matters on the Horizon**

See the pre-audit presentation on October 29, 2019 for discussion of new accounting and auditing matters.

**\*\*END\*\***

January XX, 2020

Marks Paneth LLP  
685 Third Avenue  
New York, NY 10017

This representation letter is provided in connection with your audits of the financial statements of the Hugh L. Carey Battery Park City Authority (the "Authority") and the Battery Park City Parks Conservancy (the "Conservancy"), collectively referred to as the "Organization," which comprise the statements of net position (deficit) as of October 31, 2019 and 2018 and the statements of revenues, expenses and changes in net position (deficit) and cash flows for the years then ended, and the related notes to the financial statements, for the purpose of expressing an opinion as to whether the financial statements are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP").

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement. An omission or misstatement that is monetarily small in amount could be considered material as a result of qualitative factors.

We confirm, to the best of our knowledge and belief, as of the date of this letter, the following representations made to you during your audits.

#### **Financial Statements**

- 1) We have fulfilled our responsibilities, as set out in the terms of the audit engagement letter dated June 3, 2019, including our responsibility for the preparation and fair presentation of the financial statements and for preparation of the supplementary information in accordance with the applicable criteria.
- 2) The financial statements referred to above are fairly presented in conformity with U.S. GAAP and include all financial information required by U.S. GAAP to be included in the financial reporting entity.
- 3) We acknowledge our responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
- 4) We acknowledge our responsibility for the design, implementation, and maintenance of internal control to prevent and detect fraud.
- 5) Significant assumptions we used in making accounting estimates are reasonable.
- 6) Related party relationships and transactions, if any, including revenues, expenditures/expenses, loans, transfers, leasing arrangements, and guarantees, and amounts receivable from or payable to related parties have been appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP.
- 7) All events subsequent to the date of the financial statements and for which U.S. GAAP requires adjustment or disclosure have been adjusted or disclosed. No events, including instances of noncompliance, have occurred subsequent to the balance sheet date and through the date of this letter that would require adjustment to or disclosure in the aforementioned financial statements.
- 8) The effects of all known actual litigation, claims, and assessments have been accounted for and disclosed in accordance with U.S. GAAP.

- 9) Written guarantees under which the Organization is contingently liable, if any, have been properly recorded or disclosed.

**Information Provided**

- 10) We have provided you with:

- a) Access to all information, of which we are aware, that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, and other matters.
- b) Additional information that you have requested from us for the purpose of the audit.
- c) Unrestricted access to persons at the Organization from whom you determined it necessary to obtain audit evidence.
- d) Minutes of the meetings of the Organization or summaries of actions of recent meetings for which minutes have not yet been prepared.

- 11) All material transactions have been recorded in the accounting records and are reflected in the financial statements.

- 12) We have disclosed to you the results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud.

- 13) We have no knowledge of any fraud or suspected fraud that affects the Organization and involves:

- a) Management,
- b) Employees who have significant roles in internal control, or
- c) Others where the fraud could have a material effect on the financial statements.

- 14) We have no knowledge of any allegations of fraud or suspected fraud affecting the Organization's financial statements communicated by employees, former employees, regulators, or others.

- 15) We have disclosed to you all known instances of noncompliance with provisions of laws, regulations, contracts, or grant agreements, or abuse, whose effects should be considered when preparing financial statements.

- 16) We have disclosed to you all known actual litigation, claims, and assessments whose effects should be considered when preparing the financial statements.

- 17) We have disclosed to you the identity of any related parties and all the related party relationships and transactions of which we are aware, if any.

**Government—specific**

- 18) We have made available to you all financial records and related data.

- 19) There have been no communications from regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices.

- 20) The Organization has no plans or intentions that may materially affect the carrying value or classification of assets, liabilities, or equity.

- 21) We are responsible for compliance with the laws, regulations, and provisions of contracts and grant agreements applicable to us, including tax or debt limits and debt contracts; and we have identified and disclosed to you all laws, regulations and provisions of contracts and grant agreements that we believe have a direct and material effect on the determination of financial statement amounts or other financial data significant to the audit objectives, including legal and contractual provisions for reporting specific activities in separate funds.
- 22) There are no violations or possible violations of laws and regulations, provisions of contracts and grant agreements, tax or debt limits, and any related debt covenants whose effects should be considered for disclosure in the financial statements, or as a basis for recording a loss contingency, or for reporting on noncompliance.
- 23) The Authority is a public benefit corporation created under the laws of the State of New York and is exempt from taxation and has not conducted any activities that would jeopardize its tax-exempt status. The Conservancy is an exempt organization under Section 501(c)(3) of the Internal Revenue Code. Any activities of which we are aware that would jeopardize the Organization's tax-exempt status, and all activities subject to tax on unrelated business income or excise or other tax, have been disclosed to you. All required filings with tax authorities are up-to-date.
- 24) The Organization has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral, except as made known to you and disclosed in the notes to the financial statements.
- 25) The Organization has complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of noncompliance.
- 26) We have followed all applicable laws and regulations in adopting, approving and amending budgets.
- 27) The financial statements properly classify funds and activities.
- 28) Components of net position (net investment in capital assets, restricted and unrestricted) and equity amounts are properly classified and, if applicable, approved.
- 29) Provisions for uncollectible receivables have been properly identified and recorded.
- 30) Deposits and investment securities and derivative instruments are properly classified as to risk and are properly disclosed.
- 31) Capital assets are properly capitalized, reported, and, if applicable, depreciated.
- 32) We have appropriately disclosed the Organization's policy regarding whether to first apply restricted or unrestricted resources when an expense is incurred for purposes for which both restricted and unrestricted net assets are available and have determined that net assets were properly recognized under the policy.
- 33) We believe the actuarial methods and assumptions used to measure post employment benefits other than pensions ("OPEB") liabilities and costs for financial accounting purposes are appropriate in the circumstances.
- 34) We agree with the findings of specialists in evaluating the actuarial methods and assumptions used to measure OPEB liabilities and costs and the effectiveness of the Swaps and have adequately considered the qualifications of the specialists in determining the amounts and disclosures used in the financial statements and underlying accounting records. We did not give or cause any instructions to be given to specialists with respect to the values or amounts derived in an attempt to bias their work, and we are not otherwise aware of any matters that have had an impact on the independence or objectivity of the specialists.

- 35) We are responsible for making the fair value measurements and disclosures included in the financial statements in accordance with Governmental Accounting Standards Board ("GASB") Statement No. 72, *Fair Value Measurement and Application* ("GASB 72"), including determining the fair value of investments for which a readily determinable fair value does not exist, using the inputs described in Level 2 and Level 3 of the fair value hierarchy. As part of fulfilling this responsibility, we have established an accounting and financial reporting process for determining the fair value measurements and disclosures, in accordance with the fair value techniques included in GASB 72, considered the appropriateness of valuation methods, adequately supported any significant assumptions used and ensured that the presentation and disclosure of the fair value measurements are in accordance with U.S. GAAP, including the disclosure requirements of GASB 72. We believe the assumptions and methods used by us are in accordance with the definition of fair value in GASB 72 and the disclosures adequately describe the level of the inputs used in the fair value measurement, in accordance with the fair value hierarchy in GASB 72.
- 36) We acknowledge our responsibility for the required supplementary information ("RSI"). The RSI is measured and presented within prescribed guidelines and the methods of measurement and presentation have not changed from those used in the prior period. We have disclosed to you any significant assumptions and interpretations underlying the measurement and presentation of the RSI.
- 37) With respect to the supplementary combining statements of net position, combining statements of revenues, expenses and changes in net position (deficit) and the combining statements of cash flows, we acknowledge our responsibility for presenting the supplementary information in accordance with U.S. GAAP, and we believe the supplementary information, including its form and content, is fairly presented in accordance with U.S. GAAP. The methods of measurement and presentation of the supplementary information have not changed from those used in the prior period, and we have disclosed to you any significant assumptions or interpretations underlying the measurement and presentation of the supplementary information.

Very truly yours,

Hugh L. Carey Battery Park City Authority

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Benjamin Jones  
*President and Chief Executive Officer*

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Pamela Frederick  
*Chief Financial Officer*

**HUGH L. CAREY BATTERY PARK CITY AUTHORITY**  
**PROMPT PAYMENT REPORT FOR FISCAL YEAR**  
**ENDED OCTOBER 31, 2019**

**Explanation of Prompt Payment Policy**

The Hugh L. Carey Battery Park City Authority (the “Authority”) Prompt Payment Policy recites the requirements for prompt payment to contractors pursuant to Section 2880 of the Public Authorities Law.

**Types of Contracts**

The following is an outline of categories of contracts the Authority has entered into during the twelve month period covered by this report. All types and categories of contracts are subject to the prompt payment policy.

- a. Legal - all legal related services performed
- b. Construction Contracts - goods and services purchased for the construction of infrastructure or Authority Projects
- c. Other Procurement Contracts - all other contracts (consultants, vendors, etc.) related to the acquisition of goods or services of any kind

**Prompt Payment Report**

For the twelve month period ending October 31, 2019, there were \$404.13 interest charges owed to vendors or contractors on 16 invoices for products and/or services provided to the Authority, as summarized below.

**Summary of Interest Charges under the Prompt Pay Policy**  
Fiscal Year Ended October 31, 2019

<b>Department</b>	<b>Penalty Amount</b>	<b>% of Penalty</b>	<b>Count</b>
<b>Administration</b>	4.16	1.03%	4
<b>MIS</b>	5.01	1.24%	2
<b>Finance</b>	5.29	1.31%	1
<b>Real Property</b>	389.67	96.42%	9
<b>Grand Total</b>	<b>\$ 404.13</b>	<b>100.00%</b>	<b>16.00</b>



**HUGH L. CAREY BATTERY PARK CITY AUTHORITY**  
**PROMPT PAYMENT POLICY**

Section 9002.1

Statement of Policy and Purpose. This Prompt Payment Policy is adopted pursuant to Section 2880 of the Public Authorities Law, requiring each public benefit corporation to promulgate rules and regulations detailing its policy with respect to making prompt payment to contractors.

Section 9002.2

Definitions. For the purpose of this Part, the following terms shall have the following meanings unless the context shall clearly indicate otherwise:

- (a) "Authority" shall mean the Hugh L. Carey Battery Park City Authority.
- (b) "Contract" shall mean an enforceable agreement entered into by the Authority and a Contractor, including purchase orders. Bond resolutions and any leases to which the Authority is a party, including any leases between the Authority and any of its tenants or subtenants, as well as any related agreements which are an integral part of such leases or subleases, are not Contracts within the meaning of this Section.
- (c) "Contractor" shall mean any person, partnership, private corporation or association providing or performing any of the following pursuant to a Contract:
  - (i) Selling materials, equipment or supplies or leasing property or equipment to the Authority;
  - (ii) constructing, reconstructing, rehabilitating or repairing buildings, streets or other improvements for or on behalf of the Authority; or
  - (iii) rendering or providing services to the Authority pursuant to a contract.
- (d) "Designated Payment Office" shall mean that department within the Authority to which a proper invoice is to be submitted by a Contractor; unless otherwise, specified, the Designated Payment Office shall be:

Office of the Chief Financial Officer  
Hugh L. Carey Battery Park City Authority  
200 Liberty St., 24th Floor  
New York, New York 10281-1097

Attention: Accounts Payable

- (e) "Prompt Payment" shall mean payment of a debt due and owing by the Authority pursuant to a Contract before interest accrues thereon pursuant to the provisions of this Part.
- (f) "Proper Invoice" shall mean a written request or invoice for contract payment setting forth the description, price and quantity of goods, property or services provided by a Contractor, such request or invoice being both in accordance with the terms of the Contract and in such form, and supported by such other substantiating documentation, as the Authority may reasonably require.
- (g) "Receipt of a Proper Invoice" shall mean either:
  - (i) The date on which a Proper Invoice is received by the Designated Payment Office or
  - (ii) The date on which the Authority receives the purchased goods, property or services covered by the Proper Invoice, whichever is later.
- (h) "Set-off" shall mean the reduction by the Authority of a payment due to a Contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the Contractor to the Authority.

#### Section 9002.3

Applicability. This Part shall apply to all Contracts entered into on or after April 29, 1988.

#### Section 9002.4

- (a) Payment Request Procedure. Contractors' owed money by the Authority shall deliver a Proper Invoice to the Designated Payment Office. The Designated Payment Office will log the receipt date of each invoice, and send it to the department unit within the Authority that received the goods, property or services from the Contractor for review and verification of the Contractor's performance in accordance with the Contract. Contractors with Contracts which provide for payment at specific dates or intervals shall also be required to provide a Proper Invoice which certifies that the obligations required under such Contract have been performed prior to such date(s) or during such interval(s) and review and verification of the work of these Contractors will take place upon receipt of such Proper Invoice; payment shall be made in accordance with the terms of such Contracts.
- (b) Prompt Payment Schedule. The schedule of the time in which the Authority will make prompt payment under a Contract is as follows:
  - (i) For invoices received on or after July 1, 1989, payment will be made by the Authority within 30 calendar days, excluding legal holidays, after Receipt of a Proper Invoice.
  - (ii) For Contracts which provide for payment at one or more specific dates or intervals, payment will be made in accordance with the terms of such Contracts, but interest shall only be payable if payment is not made within the time provided as in (i) above.

- (iii) This schedule will not apply in those instances where payment is being delayed by reason of any of the exceptions listed in Section 9002.4(e) or where the time in which to make payment is being tolled for any of the reasons listed in Section 9002.4(f) herein, in which cases the time for payment shall be there provided.
- (c) Interest Computation. If the Authority fails to make payment in accordance with the prompt payment schedule set forth in Section 9002.4(b) above, the Authority will pay interest to the affected Contractor at the rate equal to that set by the State Tax Commission for corporate taxes pursuant to Section 1096(e) of the Tax Law.
- (d) Funds Available to Pay Interest Penalties. The Authority will pay interest as provided herein with monies available to the Authority for operating and administrative expenses pursuant to its approved budget.
- (e) Extension of Payment Time. Any of the following facts, conditions or situations are determined by the Authority to be exceptions to the prompt payment schedule set forth in Section 9002.4(b) and to justify extensions of the time by which payment must be made (the amount of time of such extension being as established by the Authority's Treasurer consistent with this Part, with notice provided to the Contractor):
  - (i) Statutory or Contract provisions requiring an inspection period or an audit prior to payment;
  - (ii) The absence of a state appropriation which is necessary to authorize payment;
  - (iii) A requirement for federal government examination of a Proper Invoice prior to payment;
  - (iv) Extraordinary delay between the time of the provision of goods, property or services by a Contractor and the receipt of a Proper Invoice by the Authority;
  - (v) Failure by a Contractor to submit documents required by the Contract or reasonably required by the Authority prior to payment;
  - (vi) Where time is taken in the processing of an invoice by the State Department of Taxation and Finance, the State Division of the Budget, the Office of the State Comptroller, or any other entity external to the Authority that is or may be required by statute, regulation or Contract to approve or process Authority payments.

(f) Defects or Improprieties. The following facts or conditions toll the prompt payment schedule set forth in Section 9002.4(b):

- (i) A reasonable belief by the Authority in the existence of any defects(s), including any incompleteness or failure of compliance with the terms of the Contract, in or with respect to the goods, property or services delivered;
- (ii) A reasonable belief by the Authority in the existence of any defect(s) in the invoice; or
- (iii) A reasonable belief by the Authority in suspected impropriety of any kind.

In order to toll the prompt payment schedule without penalty, the Authority has fifteen calendar days after receipt of an invoice to send a Contractor notification of such defects or improprieties. Authority notification shall be by letter to the Contractor, setting forth any such defect or impropriety in reasonable detail, sent to the address indicated for notices under the Contract or, if no such address is provided, sent to the address set forth in the invoice provided that, in the event that the Authority fails to so notify the Contractor within such fifteen days, the sole effect of such failure to so notify the Contractor shall be that the number of days allowed for payment shall be reduced by the number of days between such fifteenth day and the date of the Authority's transmitting such notifications. In the event that the Authority fails to provide reasonable grounds for its contention that any such defect or impropriety exists, the date by which Contract payment shall be made shall be calculated from the date of receipt of an invoice.

#### Section 9002.5

- (a) Annual Report. The Authority shall prepare an annual report on the scope and implementation of this prompt payment policy. The report shall include, but not be limited to, the following:
  - (i) A listing of the types or categories of contracts which the Authority entered into during the twelve-month fiscal year covered by the report with an indication whether each such type or category of contract was subject to this prompt payment policy, and if it was not, the reason(s) why not;
  - (ii) The number and amount of interest payments made for contracts, arranged according to each such type or category;
  - (iii) The number of interest chargeable days, and the total number of days taken to process each late contract payment; and
  - (iv) A summary of the principal reasons why such late payments occurred.
- (b) Within ninety (90) days after the completion of each such fiscal year, copies of this annual report shall be filed with the State Comptroller, the State Director of the Budget, the

Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.

- (c) Copies of its annual report shall be made available to the public upon reasonable request at the Authority's main office.

#### Section 9002.6

- (a) Amendment. The Authority shall have the power to amend this Part by promulgating amended rules and regulations at any time, and within thirty days of the adoption of any such amendments hereto, the Authority shall file copies with the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.
- (b) Contract Incorporation. The policy statement in effect at the time that a Contract is entered into is hereby incorporated into and made a part of that Contract.
- (c) Public Access. The Authority shall make copies of this policy statement available to the public upon reasonable request at the Authority's main office. The Authority shall also provide a copy of this policy statement to each Contractor at or prior to the time a Contract is entered into.
- (d) Inapplicability. This policy is not applicable to payments due and owing by the Authority to any other governmental entity, agency, public benefit corporation or the employees thereof when acting in or incidental to their public employment capacity, to interest on judgments rendered by a court against the Authority pursuant to any other provision of law, or to situations where the Authority exercises a legally authorized Set-off against all or part of a payment due a Contractor.
- (e) Legal Processes. The Authority is under no liability to pay interest pursuant to this policy for any period after a Contractor has filed a claim, given notice of an intention to file a claim or commenced legal action seeking any payment of interest; interest during such period shall only be paid as directed by the court in accordance with such other provisions of law as may be applicable.
- (f) Interpretation. This Part shall be interpreted consistent with and to fulfill the purposes of Section 2880 of the Public Authority Law.