

## Guidelines for the Disposal of Canal Corporation Real Property

Note: Revision # should be listed in descending order starting with most recent version at the top

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# Guidelines for the Disposal of Canal Corporation Real Property

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## 1 PURPOSE AND SCOPE

The purpose of these Guidelines for the Disposal of Real Property (“Guidelines”), which comply with Title 5-A, Article 9 of the Public Authorities Law, is to establish the procedures that detail the Canal Corporation’s (“Corporation”) policy and instructions regarding the disposal of real property. In addition, the Guidelines designate a Contracting Officer who is responsible for the Corporation’s compliance with, and enforcement of, the Guidelines.

The powers and duties relating to the New York State canal system, which were transferred to and merged with the Power Authority (“Power Authority”) pursuant to Canal Law Section 5, may be exercised by the Power Authority directly or through the Corporation on behalf of the people of the State of New York.

## 2 APPLICABILITY

This Policy applies to all the Corporation employees who intend to Dispose of Real Property owned by or under the jurisdiction of the Corporation.

## 3 INITIALISMS (ACRONYMS) AND DEFINITIONS

**Contracting Officer** - shall mean the officer or employee appointed by resolution of the Corporation’s Trustees to be responsible for compliance with, and enforcement of, the Guidelines for the Disposal of Real Property. The “Contracting Officer” is hereby designated to be the Power Authority Assistant General Counsel – Real Estate, or equivalent(s) or designee.

**Corporation** – Canal Corporation

**Dispose or Disposal** - shall mean transfer of title or any other beneficial interest in real property in accordance with these Guidelines. Disposal does not include a release of an easement, Permit (defined hereinafter) or Transfer of Jurisdiction (defined hereinafter).

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

**OGS** – NYS Office of General Services

**PAL** – Public Authorities Law

**Permits** - shall mean permits issued by the Corporation that grant revocable privileges to use or access real property or structures under the jurisdiction of the Corporation and for the diversion of Canal waters for sanitary, farm or industrial purposes. Permits are revocable in part to assure availability of the real property for Corporation or public purposes. Permits do not transfer a beneficial interest in real property and may be issued when deemed to be advantageous to the Corporation for the purpose of cutting, gathering and hauling away ice from the canals or when the permitted use does not result in a detriment to canal navigation or damage to the banks or other structures thereof. Permits include Occupancy and Work Permits.

- a) **Occupancy Permit** - a revocable instrument that authorizes the temporary, restricted use of real property under the jurisdiction of the Corporation, including, temporary use of Canal lands or structures, and for the diversion of Canal waters for sanitary, farm or industrial purposes.
- b) **Work Permit** - a revocable instrument that authorizes construction, maintenance, inspection, survey, or other type of work or short term activity on real property under the jurisdiction of the Corporation.

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

**Relative** - shall mean any person living in the same household as the Corporation employee or any person who is a direct descendant of the Corporation employee's grandparents or the spouse of such descendant.

**Transfers of Jurisdiction** - shall mean transactions pursuant to Public Lands Law §3(4) and which are between the Corporation and other State governmental entities where jurisdiction over Real Property is transferred and reassigned on such terms and conditions as the Corporation and the New York State Office of General Services deem proper, but the title to the Real Property remains in the name of the People of the State of New York.

## **4 RESPONSIBILITY**

The Board shall adopt by resolution Guidelines for the Disposal of Corporation Real Property regarding the use, awarding, monitoring and reporting of contracts for the disposal of Real Property and which designate a Contracting Officer who is responsible for compliance with and enforcement of, these Guidelines.

## **5 PROCEDURE IMPLEMENTATION**

### **5.1 COMPLIANCE OVERVIEW**

The Public Authorities Law (“PAL”) requires the Corporation to establish policy guidelines to accomplish the following:

- 5.1.1 Ensure that the Corporation’s contracting activities comply with Title 5-A, Article 9 of the Public Authorities Law, the Corporation’s enabling statute, and any other applicable law pertaining to the Disposal of Real Property.
- 5.1.2 Maintain inventory controls and accountability systems for all Real Property under the Corporation’s control.
- 5.1.3 Periodically inventory Corporation Real Property to determine which Real Property shall be disposed of.
- 5.1.4 Dispose of Corporation Real Property interests as promptly as possible in accordance with the PAL.
- 5.1.5 Prepare annual reports of Real Property Disposal transactions.

### **5.2 DISPOSITION OF CORPORATION REAL PROPERTY**

- 5.2.1 The Corporation may Dispose of Real Property for not less than the Fair Market Value of such Real Property by sale, exchange, or transfer, for cash, credit or other property, without warranty, and upon such other terms and conditions as the Contracting Officer deems proper under the provisions of the PAL and as implemented by these Guidelines. Fair Market Value of the Corporation Real Property subject to Disposal shall be established by independent appraisal as appropriate and consistent with the intent of the PAL. Such appraisal documents shall be included in the record of the Real Property Disposal transaction.
- 5.2.2 Except as set forth in Sections 5.2.3 and 5.2.4 herein of the Guidelines, any Disposal of Real Property shall only be made after publicly advertising for bids in accordance with the following:
  - a) the advertisement for bids shall be made at such time prior to the Disposal or contract, through such methods, and on such terms and conditions as shall permit

- full and free competition consistent with the value and nature of the Real Property;  
and
- b) all bids shall be publicly disclosed at the time and place stated in the advertisement;  
and
  - c) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Corporation, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

### 5.2.3 The Disposal of Corporation Real Property by Negotiation or Public Auction

- a) The Disposal of Corporation Real Property may be negotiated or made by public auction without regard to Section 5.2.2 but subject to obtaining such competition as is feasible under the circumstances, if:
  - 1. the Fair Market Value of the Real Property does not exceed fifteen thousand dollars (\$15,000.00); or
  - 2. bid prices after advertising therefore are not reasonable, either as to all or some part of the Real Property, or have not been independently arrived at in open competition; or
  - 3. the Disposal will be to the state or any political subdivision, and the estimated Fair Market Value of the Real Property and other satisfactory terms of Disposal are obtained by negotiation; or
  - 4. under those circumstances permitted by Section 5.2.4; or
  - 5. such action is otherwise authorized by law.
- b) The Disposal of Corporation Real Property may also be made by negotiated sale without regard to Section 5.2.2 but subject to obtaining such competition as is feasible under the circumstances, if ALL the following conditions have been satisfied:
  - 1. the Corporation has determined that: such real property is no longer necessary or useful to the purposes of the Corporation; disposal of such real property complies with all applicable provisions of the canal law; and disposal of such real property is in the best interest of the Corporation; and
  - 2. an appraisal of the fair market value of such property has been made by an independent appraiser and included in the record of the transaction; and
  - 3. the fair market value of such real property is greater than fifteen thousand dollars (\$15,000.00) but not greater than seventy-five thousand dollars (\$75,000.00);  
and

4. such real property was improved prior to April 1, 1992, under a municipal permit or a permit issued pursuant to Section 100 of the Canal Law, thereby creating an encroachment on Corporation Real Property; and
5. the purchaser of such Real Property is, or will be, the owner of the improvement that either fully or partially encroaches on Corporation real property; and
6. the consideration paid for such real property will not be less than the fair market value of the real property exclusive of the value, fair market or otherwise, of the encroaching improvements.

#### 5.2.4 Below Fair Market Value

- a) No Real Property owned, leased or otherwise in the control of the Corporation may be sold, leased, or otherwise alienated for less than its Fair Market Value except if:
  1. the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the Real Property will remain with the government or any other public entity; or
  2. the purpose of the transfer is within the purpose, mission or governing statute of the Corporation; or
  3. in the event the Corporation seeks to transfer Real Property for less than its Fair Market Value to other than a governmental entity, which Disposal would not be consistent with the Corporation's mission, purpose or governing statutes, the Corporation shall provide written notification thereof to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate, and such proposed transfer shall be subject to denial by the Governor, the Senate, or the Assembly. Denial by the Governor shall take the form of a signed certification by the Governor. Denial by either House of the Legislature shall take the form of a resolution by such House. The Governor and each House of the Legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the Legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the Governor, Senate, and Assembly, the Corporation may effectuate such transfer.
- b) In the event a below Fair Market Value Real Property transfer is proposed, the following information must be provided to the Corporation's Board of Trustees and the public:
  1. a full description of the Real Property; and
  2. an appraisal of the Fair Market Value of the Real Property and any other information establishing the Fair Market Value sought by the Corporation's Board of Trustees; and

3. a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the Real Property is situated as are required by the transfer; and
  4. a statement of the value to be received compared to the Fair Market Value; and
  5. the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (iv) of this paragraph, a statement of the value to the private party; and
  6. the names of other private parties who have made an offer for such Real Property, the value offered, and the purpose for which the Real Property was sought to be used.
- d) Before approving the Disposal of any Real Property for less than Fair Market Value, the Corporation's Board of Trustees shall consider the information described in Paragraph 5.2.4.b and make a written determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.
- 5.2.5 An explanatory statement detailing the Disposal by negotiation of Corporation Real Property subject to the PAL as set forth in Section 5.2.3.a shall be made for any Disposal of:
- a) Real Property with a Fair Market Value in excess of one hundred thousand dollars (\$100,000.00) except that Real Property Disposed of by lease or exchange shall only be subject to Paragraph 5.2.5.b of this Section 5.2.5; or
  - b) Real Property Disposed of by lease if the fair annual rent over the term of the lease is in excess of fifteen thousand dollars (\$15,000.00); or
  - c) Any Real Property or real and related personal property Disposed of by exchange, regardless of value, or any property any part of the consideration is for Real Property.
- 5.2.6 Each explanatory statement prepared in accordance with Section 5.2.5 above shall be transmitted to the State Comptroller, the Director of the Division of the Budget, the Commissioner of General Services, the State Legislature and the State Authorities Budget Office not less than 90 days in advance of such Disposal, and a copy shall be kept by the Corporation.

- 5.2.7 Each explanatory statement prepared in accordance with Section 5.4 must include the following:
- a) Description of the parties involved in the property transaction;
  - b) Justification for disposing of property by negotiation;
  - c) Identification of property, including its location;
  - d) Estimated fair market value of the property;
  - e) Proposed sale price of the property;
  - f) Size of the property; and
  - g) Expected date of sale of property.
- 5.2.8 In the Corporation's discretion, when it shall be deemed advantageous to the Corporation and the State, the Corporation may enter into an agreement with the Office of the Commissioner of the Office of General Services ("OGS") under which OGS may Dispose of the Corporation's Real Property under terms and conditions agreed to by the Corporation and the OGS. In Disposing of any such Real Property of the Corporation, the OGS shall be bound by the relevant provisions of the PAL.
- 5.2.9 No Corporation employee who is involved in the award of Corporation grants or contracts, may ask any purchaser(s), grantor(s), lessor(s) or officer(s), director(s) or employee(s) of such current or prospective purchaser(s), contractor(s) or grantee(s) to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- 5.2.10 No Corporation employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section 5.2.8 above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.
- 5.2.11 No Corporation employee may take part in any contracting decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If such situation arises, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.
- 5.2.12 Public Authority Contracts

- a) Public Authorities Law Section 2879-a establishes a framework for the Office of the State Comptroller (“OSC”) to review and approve certain Public Authority contracts.
- b) Any contract in excess of \$1,000,000 that is to be awarded by a state authority 1) to a “single source” or “sole source”, or pursuant to any other means of procurement that is not competitive, or 2) where the monies to be paid in whole or in part have been appropriated by the state to the state authority for such contractual expenditure (“Eligible Contract”), must be reported in advance of execution to the OSC. Upon execution, all such Eligible Contracts must be filed with the OSC within 60 days.
- c) If the OSC has previously identified a contract or category of contract as “reviewable” (“Reviewable Contract”), such contract must include language stating that it is subject to OSC approval and the executed Reviewable Contract must be submitted to the OSC for review. If the OSC does not act to disapprove the Reviewable Contract within 90 days, the contract is valid.
- d) Where the OSC has notified the Corporation that any contract or category of contracts shall be subject to OSC approval, NYPA shall include or cause to be included in each such contract a provision informing the other party that such contract is subject to OSC approval pursuant to the OSC’s authority to supervise the accounts of public corporations.
- e) If the OSC has not approved or disapproved any contract subject to its approval within ninety days of submission to its office, such contract shall become valid and enforceable without such approval.

### **5.3 CORPORATION REAL PROPERTY REPORTS**

5.3.1 The Corporation shall publish the following reports in accordance with these Guidelines:

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

Chief Financial Officer that they have reviewed the terms of such sale and determined that it complies with applicable law.

- b) Pursuant to Public Authorities Law § 2896(3), the Corporation shall prepare for distribution to the State Comptroller, the Director of the Division of the Budget, the Commissioner of General Services, the State Legislature and the State Authorities Budget Office, an annual report listing all real property of the Corporation, which report shall include a list and full description of all Real Property Disposed of during the fiscal reporting period. Regarding Disposals, this annual report shall include the price received by the Corporation and the name of the purchaser of the Real Property.

5.3.2 The Corporation may be called upon periodically to submit information regarding the Disposal of Real Property to organizations implementing the PAL or other statutes regulating the Disposal of Real Property.

5.3.3 The Corporation's Governance Committee meets at least three times per year and Corporation staff may be required to prepare and present ongoing reports regarding the Disposal of Real Property.

#### **5.4 APPROVAL OF GUIDELINES BY THE AUTHORITY'S BOARD**

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

## **6 VIOLATIONS**

Violations of these Guidelines and related policies and procedures by employees may result in disciplinary action up to and including termination. In addition, where the conduct engaged in is illegal, violators may be subject to prosecution under applicable federal, state or local laws.

## **7 REFERENCES**

Canal Law  
Public Authorities Law



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## **8 PROCEDURE REVIEW AND EXPIRATION**

This document will be reviewed and updated as business needs require. However, a mandatory review will be required on the anniversary date of the approved document.

**Revision cycle:**

## **9 ATTACHMENTS**

N/A