

FOR CONSIDERATION

March 26, 2021

TO: The Board of Trustees of the Utility Debt Securitization Authority

FROM: Thomas Falcone

REQUEST: Approval of the Annual Review of Certain Board Policies

Requested Action

The Board of Trustees (the “Board”) of the Utility Debt Securitization Authority (the “UDSA”) is requested to adopt a Resolution reviewing and approving certain Board policies.

Discussion

In accordance with the New York State Public Authorities Law (“PAL”) and governance best practices, the Board has adopted various policies relating to UDSA’s mission, governance and operations. Specifically, these include the: (i) Mission Statement; (ii) By-laws; (iii) Board Policy on Procurement¹; (iv) Board Policy on Property Disposition²; (v) Board Policy on Real Property Acquisition; (vi) Board Policy on Lobbying; (vii) Trustee Code of Ethics and Conduct; and (viii) Board Policy on Prompt Payment.

Annual Review and Amendments to Certain Board Policies

LIPA Staff recommends no changes to the Board policies listed above and recommends approval of the review of those policies, as written.

Recommendation

Based upon the foregoing, it is recommended that the Trustees adopt the resolution in the form attached hereto as **Exhibit “A”**.

Attachments

<u>Exhibit “A”</u>	Resolution
<u>Exhibit “B”</u>	Mission Statement
<u>Exhibit “C”</u>	By-laws
<u>Exhibit “D”</u>	Board Policy on Procurement
<u>Exhibit “E”</u>	Board Policy on Property Disposition
<u>Exhibit “F”</u>	Board Policy on Real Property Acquisition
<u>Exhibit “G”</u>	Board Policy on Lobbying

¹ Section 2897(1) of the Public Authorities Law requires that the procurement guidelines be annually reviewed and approved by the UDSA.

² Section 2896(1) of the Public Authorities Law requires that the property disposition guidelines be annually reviewed and approved by the UDSA.

Exhibit “H” Trustee Code of Ethics and Conduct
Exhibit “I” Board Policy on Prompt Payment

RESOLUTION APPROVING THE ANNUAL REVIEW OF CERTAIN MISSION, GOVERNANCE AND COMPLIANCE BOARD POLICIES

WHEREAS, in accordance with the New York State Public Authorities Law (“PAL”) and governance best practices, the Board has adopted various policies relating to the Authority’s mission, governance and compliance, including the: (i) Mission Statement; (ii) By-laws; (iii) Board Policy on Procurement; (iv) Board Policy on Property Disposition; (v) Board Policy on Real Property Acquisition; (vi) Board Policy on Lobbying; (vii) Trustee Code of Ethics and Conduct; and (viii) Board Policy on Prompt Payment.

WHEREAS, LIPA Staff recommends that the Board approve the annual review of the Board policies, listed above, as written.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees hereby approves the annual review of the: (i) Mission Statement; (ii) By-laws; (iii) Board Policy on Procurement; (iv) Board Policy on Property Disposition; (v) Board Policy on Real Property Acquisition; (vi) Board Policy on Lobbying; (vii) Trustee Code of Ethics and Conduct; and (viii) Board Policy on Prompt Payment.

Dated: March 26, 2021

UTILITY DEBT SECURITIZATON AUTHORITY MISSION STATEMENT

The sole mission of the Utility Debt Securitization Authority is to authorize, issue and sell restructuring bonds, and to pay interest and principal on such bonds, in order to finance the purchase of restructuring property created pursuant to restructuring cost financing order adopted by the Long Island Power Authority and to pay upfront and ongoing financing costs in connection therewith and thereby (i) permit Long Island Power Authority to purchase, redeem or defease certain outstanding debt and reduce the debt service on such debt, and (ii) lower the costs of electricity utility service for consumers in the LIPA service area, all as provided in and more particularly set forth in Part B of Chapter 173 of the Laws of New York, 1973 and to otherwise effectuate the purposes declared in section one of such Part B.

Date adopted: November 14, 2013

**BY-LAWS
OF THE
UTILITY DEBT SECURITIZATION AUTHORITY
as of November 2019**

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BY-LAWS
OF THE
UTILITY DEBT SECURITIZATION AUTHORITY

ARTICLE I – THE AUTHORITY

Section 1.1. Name of Authority. The name of the Authority shall be the “Utility Debt Securitization Authority.”

Section 1.2. Seal of the Authority. The seal of the Authority shall be in the form of a circle and shall bear the name of the Authority and the year of its creation.

Section 1.3. Offices of the Authority. The principal office of the Authority shall be located in Uniondale, New York. The Authority may also have offices at such other place or places within the State of New York as it may from time to time designate by resolution.

Section 1.4. Books and Records. Except as otherwise directed by the Authority or as the operations of the Authority may require, all the books and records of the Authority shall be kept at the principal office of the Authority.

ARTICLE II – TRUSTEES

Section 2.1. Number, Term, Appointment and Vacancies. The number and term of Trustees and the appointment and process of filling vacancies shall be governed by Part B of Chapter 173 of the State of New York Laws of 2013, as it may be amended from time to time (hereinafter referred to as the “Act”). The Trustees shall not be trustees, directors, officers or employees of the Long Island Power Authority, the Long Island Lighting Company d/b/a LIPA or any successor owner of the transmission and distribution system assets.

Section 2.2. Powers and Duties. The powers and duties of the Trustees shall be governed by the Act. Such Trustees may engage in private employment, or in a profession or business. The Authority, its Trustees, Officers and employees shall be subject to the provisions of Sections 73 and 74 of the Public Officers Law.

Section 2.3. No Compensation. Trustees of the Authority shall serve without salary or other compensation but each Trustee shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of his or her official duties.

Section 2.4. Removal. In accordance with Section 4(4)(f) of the Act, the Governor may remove any Trustee for inefficiency, neglect of duty or misconduct in office after giving him or her a copy of the charges against him or her and an opportunity to be heard, in person or by counsel, in his or her defense, upon not less than ten (10) days notice.

Section 2.5. Fiduciary Duty. Each Trustee shall have a fiduciary duty to act in the best interests of the Authority, including its creditors and the owners of bonds issued by the Authority, and such other duties as may be specified in the Act and these By-Laws or other agreements of the Authority.

ARTICLE III – TRUSTEES’ MEETINGS

Section 3.1. Place of Meetings. Meetings of the Trustees shall be held at the principal office of the Authority or at such other place as the Chair may from time to time designate

Section 3.2. Meetings. Meetings of the Trustees may be called by the Chair or upon the request of any two Trustees. The Secretary shall give notice of the time, place and purpose or purposes of each meeting by mail at least three (3) days before the meeting or in person or by telephone, email or facsimile at least two (2) days before the meeting to each Trustee. The notice required to be given under this section may be waived by the Trustee to whom such notice is required to be given. Attendance of a Trustee of the Authority at a meeting without objection shall constitute waiver of notice of the meeting.

Section 3.3. Quorum. A majority of the Trustees shall constitute a quorum for the transaction of any business or the exercise of any power or function of the Authority. Any one or more Trustees may participate in a meeting of the Authority by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting. The Authority may delegate to one or more of its Trustees, or Officers, agents and employees, such powers and duties as the Authority may deem proper.

Section 3.4. Adjournment of Meetings. A majority of Trustees may adjourn any meeting to another time and place. Notice of such adjourned time and place shall be given to each Trustee not present at such meeting or, if no announcement of such adjourned time and place was made at such meeting, at least three (3) days’ notice of the newly scheduled meeting must be given to all Trustees. No such adjournment shall be used to defeat a notice provision.

Section 3.5. Order of Business. At every meeting of the Authority, the order of business and all other matters or procedure may be determined by the person presiding at the meeting.

Section 3.6. Open Meetings. All meetings of the Trustees shall be conducted in compliance with the provisions of the Open Meetings Law, set forth in Article 7 of the Public Officers Law, as modified by the Act.

Section 3.7. Notice of Telephone Participation. Any required notice of the place of a meeting at which participation is by means of conference telephone or similar communication equipment shall be sufficient if it designates as the place of the meeting the place at which one or more of the participants in the meeting is located at the time the meeting is held.

Section 3.8. Certification of Resolutions. Each Officer of the Authority is authorized to certify, when required, the records, proceedings, documents and resolutions of the Authority and to affix the seal of the Authority to all contracts, documents and instruments to be executed by the Authority.

ARTICLE IV – OFFICERS AND EMPLOYEES

Section 4.1. Officers. The Trustees shall select a Chair, a Vice-Chair, a Chief Financial Officer and a Secretary any or all of whom may be from their own number. For the purposes of these By-Laws, and of any resolution of the Authority, the Chair, a Vice-Chair, Chief Financial Officer and Secretary may be referred to as “Officers”.

Section 4.2. Chair. The Chair shall preside at all meetings of the Trustees and shall exercise such duties and powers as hereinafter described and as customarily pertain to the office of Chair. In carrying out the policies as determined by the Trustees, the Chair shall be responsible for overseeing the discharge of the executive and administrative functions of the Authority and responsibility for oversight of the Authority’s strategic direction. Except as may be prescribed by the Trustees, the Chair shall have general supervision and control over the property, business and affairs of the Authority and over its several officers, employees and agents other than the Chair and any Vice-Chair who may have been designated by the Chair from among the Trustees. The Chair may sign, execute and deliver in the name of the Authority powers of attorney, contracts, agreements, leases, notes, checks, drafts, bonds, obligations and such documents other than those required by these By-Laws, law or resolution to be executed by some other Trustee, Officer or person. The Chair may also have such other duties and responsibilities as the Trustees may from time to time assign. The Chair may delegate to any other Trustee such of the Chair’s powers and functions in the general supervision of the business of the Authority as he or she may deem appropriate from time to time.

Section 4.3. Vice-Chair. The Vice Chair, who shall be a Trustee and shall be appointed by the Chair, shall in the absence or incapacity of the Chair, preside at meetings of the Trustees of the Authority and perform such other duties as shall have been delegated to the Chair.

Section 4.4. Chief Financial Officer. The Chief Financial Officer shall have general custody of all funds and securities of the Authority and have general supervision of the collection and disbursement of Authority funds and shall endorse on behalf of the Authority for collection checks, notes and other obligations, and shall deposit the same to the credit of the Authority in such bank or banks or depositories as the Trustees may designate, and shall perform such other duties as customarily pertain to such office and as may be assigned from time to time by the Chair, subject, however, at all times to the supervision and control of the Chair and subject further to any limitations which the Chair may from time to time prescribe.

Section 4.5. Secretary. The Secretary shall attend all meetings of the Trustees and act as Secretary thereof and record all votes and shall keep a record of the proceedings of the Trustees in a Minute Book to be kept for that purpose. The Secretary shall cause notice to be given of all meetings of the Trustees and shall be custodian of the records of the actions of the Trustees and shall keep in safe custody the seal of the Authority and shall have the authority to affix such seal to all documents and papers authorized to be executed by the Trustees or officers of the Authority requiring such seal to be affixed. The Secretary shall attest to the signatures of the Trustees and officers of the Authority and shall have the authority to cause copies to be made of all minutes, resolutions, records and documents of the Authority and to deliver certificates under seal to the effect that such copies are true and accurate and that all persons dealing with the

Authority may rely on same. The Secretary shall possess such powers and perform such other duties as customarily pertain to the office or may be from time to time assigned by the Chair, subject, however, at all times to the supervision, control of and any limitations prescribed by the Chair.

Section 4.6. Officers Holding Two or More Offices. Any two or more offices may be held by the same person, except as otherwise provided by law. No officer shall execute or verify any instrument in more than one capacity if such instrument be required by law or otherwise to be executed or verified by any two or more officers.

Section 4.7. Compensation of Officers. No officer of the Authority who is also serving as a trustee, director, member, public officer or employee of any public entity, including the Authority shall receive any additional compensation for services rendered to the Authority, other than reimbursement for actual and necessary expenses incurred in the performance of his or her official duties.

Section 4.8. Additional Personnel. The Chair may from time to time appoint additional persons, employees or officers as he or she may deem necessary to exercise the powers, duties and functions of the Authority as prescribed by law, including officers to serve as Treasurer, General Counsel or Assistant Secretary. For the purposes of these By-Laws and of any resolution of the Authority, unless otherwise provided by the Chair in a letter or certificate of appointment, any such Treasurer, General Counsel or Assistant Secretary may be referred to as "Officers". The selection, qualification, duties and compensation, if any, of such additional officers or employees shall be determined by the Chair, provided that the duties of any Assistant Secretary may include only those duties as may be assigned to the Secretary. The Chair shall report to the Trustees on the employment, qualification, duties and compensation, if any, of any such additional officers and employees.

Section 4.9. Long Island Power Authority. Any officer or employee of the Long Island Power Authority or the Long Island Lighting Company d/b/a LIPA may serve as an Officer or employee of the Authority.

Section 4.10. Outside Experts. Financial advisors, accountants, auditors, engineers, attorneys and other consultants may be retained on a contract basis or otherwise for rendering professional, technical, financial, legal or administrative services or advice by appointment of the Chair subject, except as may otherwise be provided in the Authority's procurement guidelines, to approval by resolution of the Trustees. Such outside experts shall perform their designated duties under the direct supervision of the Authority.

Section 4.11. Execution of Documents and Authorization of Payments. Except where otherwise specifically provided by resolution of the Authority for the purpose of executing any document other than notes or bonds of the Authority, each of the Officers shall be deemed an Authorized Signatory.

Any Officer shall have authority to make final certification and payment of all duly authenticated and authorized items of expenditures for payment from any Authority funds from whatever source derived, and, whenever the Chair is required to sign vouchers, requisitions and

other instruments made by the Authority, either the Chief Financial Officer or the Secretary shall approve the same for submission to the Chair for signature.

Except as otherwise provided by resolution of the Authority, any expenditure involving an estimated amount of one hundred thousand dollars (\$100,000) or more shall be authorized prior to its approval by no less than a majority of the Trustees; except that expenditures in excess of one hundred thousand dollars (\$100,000) related to the sale of the Authority's bonds and notes may be approved by any of the Chair or the Chief Financial Officer when the Trustees have adopted a bond or note resolution; and expenditures involving an estimated amount of less than one hundred thousand dollars (\$100,000) may be approved by any of the Chair or the Chief Financial Officer.

Section 4.12. Attestation of Execution of Notes and Bonds. For the purpose of attesting the execution of notes and bonds issued by the Authority, the Chair may designate any or all of the other Trustees, the Chief Financial Officer or the Secretary, as he or she may deem appropriate.

Section 4.13. Execution of Documents. An officer authorized to execute documents on behalf of the Authority may delegate that authority to any other Officer of the Authority, with the approval of the Chair. No additional approval is necessary if the delegating officer is the Chair.

Section 4.14. Custody of Seal. The Secretary shall keep the seal of the Authority in safe custody. Each officer of the Authority and any attorney in the regular employ of the Authority is empowered to affix the seal to all documents executed by the Authority.

ARTICLE V – COMMITTEES

Section 5.1. Committees. The Authority shall have a standing Finance and Audit Committee and a standing Governance Committee. Members shall be appointed to or removed from the Authority's Committees by the Chair. The Chair of the Authority shall appoint the Chair of each Committee. The Chair of the Authority may appoint himself or herself as Chair of any or all Committees. The Chair shall file with the Secretary a letter evidencing such appointments or removals. A Committee, meeting in the absence of its Chair, may appoint a temporary Chair for such meeting. The Secretary of the Authority shall be the Secretary of the Committee unless a Committee designates otherwise. A majority (i.e. more than one-half) of all the members of such committees shall constitute a quorum for the transaction of business or the exercise of any power or function of such committee. So long as the Act provides that the Authority is to be governed by a Board of Trustees consisting of only three Trustees, all three Trustees shall sit on all standing committees, and each of the Committees created under these By-Laws shall operate as a "committee of the whole," meaning that the Chair shall also act as the Chair of the Committee and all matters will be considered by the Board as a whole.

Section 5.2. Other Committees. The Chair or the Trustees may appoint other committees which shall have and may exercise such powers as shall be authorized by the Chair or Trustees. For those Committees appointed by the Chair, notice of the purpose and scope of such committees will be provided to the Trustees.

Section 5.3. Finance and Audit Committee. The Finance and Audit Committee shall review and make recommendations to the Trustees as to the engagement of and compensation to

be paid to the Authority's independent certified accountants and the Authority's general accounting and internal control systems and policies and practices. The Finance and Audit Committee will have responsibility to directly oversee the performance of the audits performed by the Authority's independent accountants and to review the results of the annual internal control review and changes in accounting policies that may be required. The Finance and Audit Committee will present these results and changes with their recommendation to the Trustees. Any audit of the Authority by the State or any other agency which is conducted and results in the issuance of interim and/or formal reports shall also be reported to the Finance and Audit Committee for conveyance to the Trustees. The Finance and Audit Committee shall also review and make recommendations concerning the Authority's annual budget, the management and investment of all funds of the Authority, the Authority's financial and investment policies, and proposals for the issuance of debt by the Authority and make recommendations.

Section 5.4. Governance Committee. The purpose of the Governance Committee shall be to keep the Trustees informed of current best governance practices; to review corporate governance trends; to recommend updates to the Authority's corporate governance principles; to advise appointing authorities on the skills and experiences required of potential Authority members; to examine ethical and conflict of interest issues; to perform Trustee self-evaluations; and to recommend By-Laws which include rules and procedures for conduct of Trustee business.

ARTICLE VI – FISCAL MANAGEMENT

Section 6.1. Fiscal Year. The Trustees shall have the power to fix, and may from time to time change by resolution, the fiscal year of the Authority. Unless otherwise fixed by the Trustees, the calendar year shall be the fiscal year. The fiscal year of the Authority shall commence January 1 of each calendar year and conclude December 31 of the same calendar year.

Section 6.2. Annual Budgets and Reports. The Trustees shall annually adopt a budget for the Authority. As prescribed by Public Authorities Law Section 2800, the Authority shall submit and make available an annual report, within ninety days after the end of its fiscal year. Such annual report shall be approved by the Board of Trustees and certified in writing by the Chair and the Chief Financial Officer in accordance with Public Authorities Law Section 2800(3).

Section 6.3. Disbursement of Funds. The Trustees, except as otherwise provided in these By-Laws, may authorize any officer, person or other employee to execute any requisition, voucher, draft or check for the disbursement or transfer of funds of the Authority.

ARTICLE VII – AMENDMENTS

Section 7.1. Amendment of By-Laws. These By-Laws may be amended by resolution duly adopted at any meeting, provided that notice of intention to present such resolution shall be given at least two days in advance of the meeting at which the motion to adopt such resolution is made. Such notice may be given by any manner, including orally at any meeting, in which event such notice shall be noted in the minutes of the meeting at which it is given. Advance notice of motions to amend motions to amend the By-Laws need not be given.

ARTICLE VIII – SUSPENSION OF BY-LAWS

Section 8.1. Suspension of By-Laws. Any and all of the provisions of the By-Laws may be suspended by unanimous consent of the Trustees constituting a quorum present at any meeting of the Authority.

ARTICLE IX – INDEMNIFICATION OF TRUSTEES, OFFICERS AND EMPLOYEES

Section 9.1. Purpose and Definitions. The purpose of this Article is to provide for indemnification of Trustees, Officers and employees of the Authority so as to encourage the service of the most competent and civic-minded persons to effectuate the purposes of the Act. In this Article, the following terms shall have the meanings indicated below:

(1) “action or proceeding” shall be broadly construed and shall include, without limitation, the investigation, preparation, defense, settlement and appeal of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative;

(2) “party to an action or proceeding” means a person made, or threatened to be made, a defendant or respondent or otherwise a party in an action or proceeding, and includes a person called upon, voluntarily or by subpoena, to give testimony, produce documents or respond to interrogatories in connection with any action or proceeding;

(3) “Trustee” means each Trustee of the Authority appointed pursuant to the Act, including the Trustee designated as Chair;

(4) “Officer” means each officer of the Authority holding office pursuant to the Act and these By-Laws;

(5) “employee” means each employee of the Authority who is not also a Trustee or Officer;

(6) “Trustee,” “Officer” and “employee” of the Authority each includes persons who formerly served in such capacity and the estates of deceased persons who had served in such capacity, and the legal or personal representative of such persons;

(7) “applicable standard of conduct” means that the Trustee, Officer or employee seeking to be indemnified hereunder acted (or omitted to take action) in good faith for a purpose which he or she reasonably believed to be in the best interests of the Authority and, in criminal actions or proceedings, had reasonable cause to believe his or her action or inaction was lawful; and in no case shall any acts or omissions by the Trustee, Officer or employee which may be determined to constitute negligence, recklessness, or gross negligence be deemed violative of the applicable standard of conduct. Furthermore, the termination of any action or proceeding by judgment, settlement, conviction or upon plea of nolo contendere, or its equivalent, shall not in itself create a presumption that any such Trustee,

Officer or employee did not act in accordance with the applicable standard of conduct.

Section 9.2. General Scope of Indemnification. The Authority hereby confers the benefits of Section 18 of the New York Public Officers Law ("POL § 18") on the Authority's Trustees, Officers and employees and agrees to be held liable for the costs thereof. Further, the Authority shall, to the fullest extent permitted by law, including, but not limited to, POL § 18, indemnify and hold harmless any person who becomes a party to an action or proceeding by reason of the fact that he or she is or was a Trustee, officer or employee of the Authority against judgments, penalties, amounts paid in settlement and reasonable expenses, including attorney's fees actually and necessarily incurred as a result thereof, unless the conduct of such Trustee, officer or employee in the matters at issue in such action or proceeding is found by a final judgment of a court of applicable jurisdiction, in the manner prescribed in the Article, not to have met the applicable standard of conduct. Neither the failure of the Authority (including its Trustees or counsel) to have made a determination that the person seeking indemnification or advancement of expenses is entitled to indemnification or advancement of expenses in the circumstances nor an actual determination by the Authority (including its Trustees or independent legal counsel) that the person seeking indemnification or advancement of expenses is not so entitled shall be a defense to an action or create a presumption that the person seeking indemnification or advancement of expenses is not so entitled.

Section 9.3. Representation of Persons Indemnified. Where not otherwise inconsistent with law, the Authority may, either by its own in-house counsel or by outside counsel of its choice, assume the representation of any person entitled to indemnification by the Authority who becomes a party to an action or proceeding, except in situations in which the Authority's Chair or counsel determines that it is a conflict or otherwise inappropriate or inadvisable for such person to be represented by counsel chosen by the Authority. In the event that the Authority does not assume such representation, such person shall have the right to engage private counsel of his or her choice and the Authority shall have the obligation of indemnification for the reasonable fees and expenses of such private counsel as provided in this Article; provided however, that the Authority as a condition to such indemnification for the cost of private counsel may, and where the Attorney General has so required as a condition to indemnification by the State of New York shall, require appropriate groups of persons to be represented by the same counsel except when there is a conflict.

Section 9.4. Advances of Expenses. (a) Trustee, officer or employee who becomes a party to an action or proceeding may request that the Authority advance expenses pending the final disposition of such action or proceeding. Upon such request, the Authority shall promptly pay, from time to time in advance of the final disposition of the action or proceeding, reasonable expenses as described in Section 9.2 incurred by such Trustee, officer or employee in connection with such action or proceeding.

(b) The Authority shall require each person receiving amounts under paragraph (a) of this Section 9.4 to agree in writing that the same shall be repaid if the person receiving such advance is ultimately found not to be entitled to indemnification, or to the extent the expenses so advanced by the Authority exceed the indemnification to which he or she is ultimately found to be entitled.

Section 9.5. Indemnification on Final Disposition. (a) A person who has been wholly successful, on the merits or otherwise, in the defense of an action or proceeding shall be deemed to have met the applicable standard of conduct and shall be entitled to indemnification against reasonable expenses as described in Section 9.2, and the Authority shall make such indemnification without necessity for any authorization, findings or other action by the Trustees prior to such indemnification (b) A Trustee, officer or employee who has not been wholly successful in the defense of an action or proceeding, or who was a party to an action or proceeding without being a defendant or respondent therein, may request indemnification from the Authority. Upon such request: (i) if there is a quorum of Trustees who are not parties to such action or proceeding, the Authority shall make a finding as to whether the requesting Trustee, officer or employee has met the applicable standard of conduct; or (ii) if such a quorum of Trustees is not obtainable with due diligence, the Authority shall obtain an opinion in writing of outside legal counsel as to whether such standard of conduct has been met by the requesting Trustee, officer or employee. If a quorum of Trustees makes such finding or outside legal counsel gives such opinion, the Authority shall authorize, and the Authority shall make, indemnification as provided in Section 9.2, upon a determination by the Trustees (or a person or body designated by the Trustees) that expenses sought be to indemnified were reasonable and actually and necessarily incurred as a result of the action or proceeding, and that any amounts paid in settlement (unless approved by the Trustees prior to such settlement) were reasonable in the circumstances.

Section 9.6. Insurance. The Authority may purchase and maintain insurance, at its expense, to protect itself and any Trustee, officer or employee of the Authority against any expense, liability or loss sought to be indemnified, whether or not the Authority would have the power to indemnify such person against such expense, liability or loss under this Article.

Section 9.7. Applicability of this Article. (a) This Article is to be construed liberally in favor of each Trustee, officer or employee to the fullest extent permitted by law, and any ambiguity, uncertainty or reasonable doubt as to facts, interpretation or legal conclusions shall be resolved in favor of such Trustee, officer or employee.

(b) The provisions of this Article shall not impair, limit or modify the rights and obligations of any insurer under any policy of insurance.

(c) The provisions of this Article shall be in addition to and shall not supplant any indemnification by the State heretofore or hereafter conferred upon any Trustee, officer or employee by the Act, by applicable provisions of the Public Officers Law, or otherwise. The indemnification hereby granted by the Authority shall be in addition to and not in restriction or limitation of any other privilege or power which the Authority may lawfully exercise with respect to the indemnification or reimbursement of Trustees, Officers or employees.

(d) Unless and until this Article shall be amended, supplemented or repealed in accordance with Article IX, including, without limitation, paragraph (e) below, the provisions of this Article shall constitute a contract between the Authority and each Trustee, officer or employee for indemnification in accordance with the provisions of this Article, which contract shall survive the termination of the term of service of such Trustee, officer or employee. In the event that any Trustee, officer or employee shall be aggrieved by a determination of the Authority or the Trustees or outside counsel made under this Article, or by a failure of the Authority or

Trustees to act as provided herein, he or she shall be entitled to seek appropriate relief against the Authority in any court of competent jurisdiction within the State of New York in accordance with the standards for indemnification set forth herein.

(e) This Article shall be applicable to any claim for indemnification made after its adoption as a Bylaw of the Authority, whether the action or proceeding to which such claim relates commenced, or the matters at issue therein occurred, before or after the adoption of this Article. It is contemplated that no subsequent amendment, supplement or repeal of this Article which deprives a Trustee, officer or employee of any substantial right or benefit conferred herein will be made applicable with respect to any claim for indemnification arising out of conduct of such Trustee, officer or employee occurring or alleged to have occurred after the adoption of this Article and prior to such amendment, supplement or repeal.

(f) The provisions of this Article are severable, and if any section, provision, or clause of this Article or the application thereof to any person or circumstances is held unconstitutional or invalid in whole or in part by any court of competent jurisdiction, such holding of unconstitutionality or invalidity shall in no way affect or impair any other section, provision or clause of this Article or the application of any such provision to such person or circumstances or to any other person or circumstance; and the Authority shall nevertheless indemnify each Trustee, officer or employee to the fullest extent permitted by any applicable portion of this Article that shall not have been invalidated, or by any other applicable law.

ARTICLE X – MISCELLANEOUS

Section 10.1. Activities Limited. The activities of the Authority shall be limited to issuing and servicing restructuring bonds and related activities in accordance with the Act.

Section 10.2. Severability. In case any one or more of the provisions of these By-Laws shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of these By-Laws and the By-Laws shall be construed as if such illegal or invalid provisions had not been contained herein.

Section 10.3. Governing Law. These By-Laws shall be construed and enforced in accordance with the substantive laws of the State of New York.

**UTILITY DEBT SECURITIZATION AUTHORITY
PROCUREMENT CONTRACTS GUIDELINES
MARCH 28, 2017**

Utility Debt Securitization Authority (referred to herein as the “Authority”) is required by Section 2879 of the Public Authorities Law to adopt by resolution comprehensive guidelines, to be annually reviewed and approved by the Trustees of the Authority, regarding the use, awarding, monitoring and reporting of procurement contracts. The following guidelines (the “Guidelines”) are adopted pursuant to such requirement and are applicable with respect to the use, awarding, monitoring and reporting of all Procurement Contracts which are entered into by the Authority.

I. DEFINITIONS

1. “Best Value” means the basis for awarding contracts which best achieves the criteria specified by the Authority in a solicitation for proposals, including without limitation, quality, cost and efficiency.
2. “Electricity” means electric energy or capacity, transmission capacity or services, including related financial rights, or ancillary services.
3. “Electricity Contract” means any Procurement Contract for the acquisition of electric energy or capacity, transmission capacity or services, including related financial rights, or ancillary services.
4. “Goods” consist of supplies, materials and equipment acquired by the Authority, but shall not include product acquired pursuant to an Electricity Contract.
5. “Procurement Contract” means any written agreement signed by the Authority, and any amendment thereto, for the acquisition of Goods, Services, Technology, Electricity, and construction in the actual or estimated amount of five thousand dollars or more.
6. “Procuring Officer” means the Authority officer conducting any procurement of Goods, Services, Technology, Electricity and construction pursuant to Section I.1 of Article II of these Guidelines.
7. “Proposer” means anyone, including without limitation potential contractors, consultants, suppliers, manufacturers, subcontractors and sub-consultants, seeking to enter into a Procurement Contract with the Authority.
8. “Services” consists of legal, accounting, management consulting, investment banking, planning, training, statistical, research, public relations, construction management, architectural, engineering, surveying, or other services, whether personal or non-

personal, of a consulting, professional, technical or other nature for a fee, commission or other compensation by a person or persons who are not providing such services as officers or employees of the Authority.

9. “Technology” includes a Good or a Service or a combination thereof, that results in a technical method of achieving a practical purpose or in improvements in productivity.

II. PROCUREMENT CONTRACTS

A. Reason(s) for Use of Services Contracts

Services contracts may be entered into because of one or more of the following factors or considerations:

1. Requirement of special expertise or unusual qualifications.
2. Nature, magnitude or complexity of Services required.
3. Lack of sufficient in-house resources, support staff, specialized facilities or equipment.
4. Lower cost.
5. Short-term or infrequent need for the Services does not warrant permanent Authority staffing.
6. Distance of the location or locations where the Services must be performed from the Authority offices or facilities.
7. Performance of a function requiring independence from the Authority management (e.g., independent auditors).
8. To meet unusual schedule requirements or emergencies.

B. Selection Procedures

1. Selection Procedures for Procurement Contracts

Except as specifically waived for one or more of the reasons set forth in Section B.2 of Article II of these Guidelines or as otherwise may be required or authorized by law, Procurement Contracts shall be awarded as set forth below.

a. General Policy for Procurement Contracts

The Authority is adopting these Guidelines in accordance with Section 2879 of the New York Public Authorities Law (the “PAL”). In accordance with Section 2879 of the PAL, all Procurement Contracts shall be awarded in accordance with these Guidelines. To the extent required by Section 1020-cc of the PAL, contracts for construction or purchase of Goods shall be let pursuant to Section 103 or, as applicable, Section 120-w(4)(e) of the New York General Municipal Law (the “GML”).

The Procurement Officer conducting any procurement of any contract for construction or purchase of Goods shall determine, in consultation with the Authority’s General Counsel, whether Section 103 of the GML, Section 120-w(4)(e) of the GML, or any other provisions of New York State law (including State Finance Law Section 163 (“Wick’s Law”) are applicable to the procurement. If it is determined that such contract is to be let in accordance with Section 103 or Section 120-w(4)(e) of the GML, the provisions of such section and, to the extent not inconsistent therewith, these Guidelines shall govern such procurement.

Procurement Contracts are to be awarded to persons/firms on a competitive basis to the maximum extent possible. Such awards are to be made by the Authority on the basis of:

- (i) lowest price or Best Value for contracts procured pursuant to Section 103 of the GML; provided, however, that contracts for construction of public works pursuant to Article 8 of the New York Labor Law shall be awarded on the basis of lowest price; and
- (ii) Best Value for all other Procurement Contracts;

and based upon receipt and evaluation of proposals or other information obtained from responsible persons/firms submitting a responsive bid or proposal in response to a request for proposals, an invitation for bid or other method of procurement.

The Authority encourages the use of qualified labor, suppliers and other resources from the Authority’s service area to the extent possible consistent with law and these Guidelines.

b. Public Notice

To the extent required by Article 4-C of the Economic Development Law, notice of all Procurement Contract opportunities estimated to be \$50,000 or more shall be advertised in the State's procurement opportunities newsletter. Notice of the award of all Procurement Contracts valued at \$50,000 or more shall also be posted in the State's procurement opportunities newsletter.

In addition to the above, all invitations for bids for Procurement Contracts for construction or purchase of Goods pursuant to Section 103 of the GML involving an expenditure of more than \$20,000 shall be advertised in the principal newspaper of the Authority's service area, if any, or, if none, in such newspaper of general circulation in the service area as may be designated by the officer supervising such procurement. All solicitations for proposals for Procurement Contracts for construction or purchase of Goods conducted in accordance with Section 120-w(4)(e) of the GML shall be advertised in (i) the principal newspaper of the Authority's service area, if any, (ii) at least one newspaper of general circulation (which may be the principal newspaper of the Authority's service area), (iii) the state register and (iv) the environmental notice bulletin.

c. Soliciting and Accepting Proposals

- (i) For every procurement, a record shall be maintained ("Procurement Record") documenting the basis for all the decisions made by the Authority during the procurement process.
- (ii) Except as otherwise provided in these Guidelines, the Authority shall select a competitive procurement process and document this process in the Procurement Record. The method of award, including the evaluation methodology, must be established prior to the opening of bids or proposals.
- (iii) The solicitation shall prescribe the specifications or requirements that must be met in order to be considered responsive and shall describe and disclose the general manner in which the evaluations and selection shall be conducted.
- (iv) The Authority may seek clarification from Proposers for purposes of assuring a full understanding as to responsiveness of the proposal to the procurement's specifications and/or requirements.
- (v) The Authority may clarify the requirements set forth in the solicitation document.
- (vi) The Authority may negotiate with one or more Proposers determined to be susceptible of being selected for contract award prior to award.
- (vii) The Authority may conduct competitive negotiations.

- (viii) The Authority may, prior to making an award, request best and final offers from one or more Proposers determined to be susceptible of being selected for contract award.
- (ix) The Authority may withdraw any pending solicitation at any time for cause or no cause. All proposals may be rejected. Where provided in the solicitation, separable portions of proposals may be rejected.
- (x) Prior to making an award of contract, based upon such criteria and factors as the Authority shall have established, the Authority shall make a determination of the responsiveness of each proposal and of the responsibility under State Finance Law of the selected Proposer(s).
- (xi) Except as may be provided for in the solicitation or as may be required by law, disclosure of the content of competing proposals received in response to a solicitation, or of any clarifications, modifications, revisions or supplements thereto, shall be prohibited prior to approval of the contract.
- (xii) The solicitation shall prescribe the designated point(s) of contact for the Authority (“Designated Contacts”), consistent with the Authority’s obligations under State Finance Law Sections 139-j and 139-k (as more fully set forth in Article II.F of these Guidelines), and shall require a Proposer to identify in its proposal a single point of contact. The solicitation shall prescribe that Proposer shall not communicate or make contact, as defined in State Finance Law Section 139-j(1)(c), (a “Contact”) with anyone other than the Authority’s Designated Contacts, except as authorized by State Finance Law Section 139-j (3). The solicitation shall further prescribe that all Contacts by a Proposer must be recorded and that impermissible Contacts may be grounds for finding the Proposer non-responsible and ineligible for a contract award. The solicitation shall require all Proposers to disclose prior findings of non-responsibility pursuant to State Finance Law Sections 139-j and 139-k. The solicitation shall include a summary of the policy and prohibitions regarding permissible contacts and shall also require a written affirmation by the Proposer as to its understanding of the Authority’s procedures in accordance with the provisions of State Finance Law Section 139-j(3) and its agreement to comply.

d. Letting of Procurement Contracts

- (i) Selection and award of any Procurement Contract shall be made by the Authority in a manner consistent with the method of award established for the procurement. The award(s) and the basis for determining the award(s) shall be documented in the procurement record.

- (ii) To the extent provided in the solicitation and determined to be in the best interests of the Authority, the Authority may elect to award a contract for Services or Technology or an Electricity Contract to more than one responsive and responsible Proposer. When multiple contract awards are made, the selection of the contractor to provide the required services or technology shall be based on the most practical and economical alternative to the Authority at the time of purchase. The basis for determining the most practical and economical alternative shall be documented in the Procurement Record.

2. Waiver of Selection Procedures for Procurement Contracts

Except as may otherwise be required by law, Procurement Contracts (other than Electricity Contracts) may be awarded to persons/firms without regard to Section B.1 of Article II when any of the following circumstances exist:

- a. In the event of an emergency or other extraordinary circumstances including but not limited to i) a threat to: a) the health or safety of the public, b) Authority employees and any other workers, including contracted labor, operating, maintaining or otherwise performing services on the Authority's transmission and distribution system and/or related facilities; ii) those necessary to assure the proper functioning of the Authority's transmission and distribution system; iii) those necessary to adhere to schedule for completion of capital improvements and operation and maintenance projects wherein the failure to complete projects on time will result in lost revenue, penalties or unnecessary and unreasonable expenses or cost increases; and iv) storm restoration.
- b. Only one source for the Goods, Services or Technology is available (sole source procurement).
- c. Legal, professional, technical or other specialized services are required for which a certain person/firm has unique expertise, or has greatly superior qualifications to perform the service at a cost that is determined to be fair and reasonable (single source procurement).
- d. The contract is based upon an unsolicited proposal or offer, submitted at the sole initiative of the Proposer, and involving unique, innovative, or unusually meritorious methods or ideas, after having considered other options.
- e. The compatibility of Technology, equipment, accessories, or spare or replacement parts is the paramount consideration.
- f. Technology or Services are required to extend or complement a prior procurement and it is impracticable or uneconomical to have a source other than the original source continue the work.

- g. A sole or single supplier's item is needed for trial use or testing, or a proprietary item is sought for which there is only one source; or
- h. The Procurement Contract (i) is (a) less than \$50,000 for Goods, construction, Services or Technology; or (ii) involves an expenditure not exceeding \$200,000 for the purchase of Goods or Services from New York State small business concerns or from those firms certified as Minority/Women Owned Business Enterprises (M/WBE) by the Department of Economic Development pursuant to Article 15A of the executive law, or for purchases of goods or technology that are recycled or remanufactured; or (iii) involves the purchase of goods or services using the terms and conditions and pricing contained in contracts awarded by any department, agency, officer, political subdivision, public authority or public corporation of New York State, including, but not limited to, the Office of General Services, the Federal government or any other governmental entity; or (iv) involves the purchase of goods or services using the terms and conditions and pricing contained in contracts let by any electric utility if it is unlikely that the Authority will achieve savings through a competitive procurement.

When a Procurement Contract is awarded pursuant to this Section B.2 of Article II of these Guidelines, the Authority shall make a determination that the specifications or requirements for said purchase have been designed in a fair and equitable manner. The Authority shall document in the procurement record the basis for a determination to purchase pursuant to this Section B.2 of Article II of the Policy.

3. Selection Procedures for Electricity Contracts

- a. Electricity Contracts are not subject to Section B.1 of Article II if they are (i) entered into in accordance with rate schedules or tariffs filed with applicable federal or state regulatory agencies or adopted and maintained by the Authority, the Subsidiary or a public agency vendor not regulated by the Federal Energy Regulatory Commission, or (ii) subject to rates provided in rate schedules or tariffs regulated by the Federal Energy Regulatory Commission, or established by the Authority or a public agency vendor, and shall be awarded in accordance with such rate schedules and tariffs.
- b. All other Electricity Contracts are subject to Section B.1 of Article II.

C. Minority and Women-Owned Business Enterprises

It is the policy of the Authority to foster and promote the participation of minority and women-owned business enterprises in Authority procurements, to develop such enterprises and to facilitate the awarding of a fair share of Procurement Contracts to such enterprises. In contracting, the Authority shall use its best efforts to give minority business enterprises and women-owned business enterprises an opportunity to compete for the Authority's business by eliminating barriers to participation by M/WBEs in Authority procurements. When adopting its annual goals for the participation of M/WBEs, the Authority shall consult the most recent disparity study published by the State of New York.

The Authority shall administer the rules and regulations promulgated by the Director of the Division of Minority and Women-Owned Business Development within the Department of Economic Development in a good faith effort to meet the maximum feasible portion of the Authority's adopted goals. The Authority hereby designates the Division of Minority and Women-Owned Business Development within the Department of Economic Development to certify and decertify minority and women-owned business enterprises.

1. The Authority hereby designates the Special Counsel for Ethics, Risk and Compliance (or individual serving in a comparable role) to oversee its M/WBE program.

2. The Authority shall maintain a list of qualified certified M/WBEs that have expressed an interest in doing business with the Authority and ensure that such list is regularly updated. To assist in developing such list, the Authority shall periodically invite the submission of statements of qualifications from minority business enterprises and women-owned businesses for the purpose of identifying firms having experience in the type of Goods, Services and Technology contracted for by the Authority or Subsidiary. The list shall also include all M/WBEs that have responded to Authority solicitations for bids and proposals and/or have inquired about notices of Authority procurements placed in the State's procurement opportunities newsletter.

3. When soliciting bids and proposals, in addition to publication in the State's procurement opportunities newsletter, the Authority shall (a) consult the Directory of certified M/WBEs maintained by the Department of Economic Development; (b) provide each bidder and proposer with a copy of said Directory; and (c), provide notice to professional and other organizations that serve minority and women-owned business enterprises providing the types of services procured by the Authority.

4. To foster the increased use of M/WBEs, the Authority may seek a single proposal not exceeding \$200,000 in the aggregate, including all amendments, from a certified M/WBE that offers a reasonable price for such goods and/or services.

5. When provided for in the solicitation, bids and proposals shall be accepted from joint ventures between MWBEs and non-minority and women-owned business enterprises.

6. The Authority shall evaluate each contract to determine the goal for M/WBE participation in subcontracting opportunities based on the level of subcontracting needed and the

availability of certified M/WBEs to competitively respond to subcontracting opportunities. Each solicitation shall set forth the goal for M/WBE subcontracting opportunities. The Authority shall consider, where practicable, separating a single procurement into several for the purpose of maximizing M/WBE participation.

7. Where subcontracting goals are established for a Procurement Contract, the solicitation shall require that bidders and proposers submit a subcontractor utilization plan with the bid or proposal and which the Authority shall review as required. A contractor who is a certified M/WBE may count the work it performs toward meeting its goal for either minority or women participation, but not both.

8. In determining to award a contract, the Authority shall, where practicable, feasible and appropriate, assess the diversity practices of a bidder or proposer; provided, however, that a bid or proposal shall not be automatically rejected based on a lack of diversity practices.

9. The Authority shall verify M/WBE participation to the extent indicated in the bid or proposal selected for contract award.

10. Every Authority contract shall contain a provision expressly providing that any contractor who willfully and intentionally fails to comply with the M/WBE requirements imposed upon contractors by Article 15-A of the Executive Law shall be liable to the Authority for liquidated or other damages, as specified, and shall include other appropriate remedies on account of such non-compliance. The Authority shall consider compliance with the requirements of any federal law concerning opportunities for minority and women-owned business enterprises which effectuates the purpose of Article 15-A of the Executive Law.

11. The Authority may waive obligations of the contractor relating to minority and women-owned business enterprise participation only after a showing of good faith efforts to comply with the requirements of Article 15-A of the Executive Law pursuant to the waiver provisions contained in Subdivision 6 of Section 313 of the Executive Law.

12. Upon execution of a contract, the Authority shall post on its web site any required minority and women-owned business enterprise subcontractor utilization plans and any waivers of compliance approved by the Authority within 30 days after such approval is granted.

13. The requirements of this section shall not apply to Electricity Contracts that meet the requirements of Section B.3(a) of Article II.

D. New York State Business Enterprises and New York Residents

It is the policy of the Authority to promote participation in Procurement Contracts by New York State business enterprises and New York residents, including without limitation, business enterprises located in the service area and residents of the service area, by encouraging them to compete through measures including, but not limited to:

1. Collecting and consulting the specifications of New York State business enterprises in developing any specifications for any Procurement Contract for the purchase of goods where possible, practicable, feasible, and consistent with open bidding, except for procurement contracts for which the Authority would be expending funds received from another state. The Authority will, where feasible, make use of the stock order specification forms prepared by the Commissioner of General Services and, where necessary, consult with the Commissioner of General Services in developing such specifications and make such determinations.
2. With the cooperation of the Department of Economic Development and through cooperative efforts with contractors, providing for the notification of New York State business enterprises of opportunities to participate as subcontractors and suppliers on Procurement Contracts in an amount estimated to be equal to or greater than one million dollars and promulgating procedures which will assure compliance by contractors with such notification. Once awarded the contract, contractors shall be required to document their efforts to encourage the participation of New York State business enterprises as subcontractors and suppliers on such Procurement Contracts. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has (a) solicited bids, in a timely and adequate manner, from New York State business enterprises, including certified minority and women-owned businesses, or (b) contacted the New York State Department of Economic Development to obtain listings of New York State business enterprises, or (c) placed notices for subcontractors and suppliers in newspapers, journals, and other trade publications circulated in New York State, or (d) participated in bidder outreach conferences. If a contractor determines that New York State business enterprises are not available to participate on the contract as subcontractors or suppliers, the contractor shall provide a statement indicating the method by which such determination was made. If the contractor does not intend to use subcontractors on the contract, the contractor shall provide a statement verifying such intent.
3. Except for Procurement Contracts for which the Authority would be expending funds received from another state, including in all solicitations a statement that information concerning the availability of New York State subcontractors and suppliers is available from the New York State Department of Economic Development, including the directory of certified minority and women-owned businesses, and that it is the policy of the Authority to encourage the use of New York State subcontractors and suppliers and to promote the participation of minority and women-owned businesses, where possible, in the procurement of goods and services.
4. With the cooperation of the Community Services Division of the Department of Labor and through cooperative efforts with contractors, providing for the notification to New York State residents of employment opportunities arising in New York State out of Procurement Contracts in an amount estimated to be equal to or greater than one million dollars; and assuring compliance by contractors by requiring contractors to submit post-award compliance reports documenting their efforts to provide such notification through listing any such positions with the Community Services Division

or providing for such notification in such manner as is consistent with existing collective bargaining contracts or agreements.

5. Including in each solicitation a statement notifying potential Proposers in foreign countries that the Authority may assign or otherwise transfer offset credits created by such procurement contract to third parties located in New York State; providing for the assignment or other form of transfer of offset credits created by such procurement contracts, directly or indirectly, to third parties located in New York State, in accordance with the written directions of the Commissioner of Economic Development; and providing for the Authority otherwise to cooperate with the Department of Economic Development in efforts to get foreign countries to recognize offset credits assigned or transferred to third parties located in New York State created by such Procurement Contracts.
6. Each contract shall expressly obligate contractors to comply with the federal Equal Employment Opportunity Act of 1972 (Pub. L. 92-261), as amended.

As used in this section the terms “New York State business enterprise” and “New York resident” shall have the meaning assigned to such terms in Section 2879 of the PAL.

E. New York State Service-Disabled Veteran-Owned Businesses (“SDVOBs”)

It is the policy of the Authority to promote participation in Procurement Contracts by SDVOB’s including without limitation, SDVOB’s located in the Authority’s service area.

New York State has established an overall goal of 6% for contracting with SDVOB’s and the Authority shall utilize its best efforts to assist the state in meeting these goals. In addition, the Authority shall utilize its best efforts to assist the Division of Service-Disabled Veterans' Business Development in the furtherance of these goals in accordance with their guidelines: <http://www.ogs.ny.gov/Core/docs/Guidelines.pdf>.

F. Restrictions on Procurement Lobbying

Pursuant to State Finance Law Sections 139-j and 139-k, an Offerer (as defined in Section 139-j(1)(h)) is restricted to making Contact with the Authority’s Designated Contacts only from the earliest solicitation of offers through final award and approval of procurement contracts (as defined in Section 139-j(1)(g)) by the Authority and, if applicable, Office of the State Comptroller (“Restricted Period”) except as provided for in State Finance Law Section 139-j(3)(a). When a Contact is received during the Restricted Period, Authority employees are required to obtain the name, address, telephone number, place of employment and occupation of the person or organization making the Contact and whether the person or organization was the Offerer or was retained, employed or designated by the Offerer to Contact the Authority about the procurement. If the Contact is received by an Authority employee who is not a Designated Contact, the Special Counsel for Ethics, Risk and Compliance (or individual serving in a comparable role) shall be notified who shall investigate the impermissible Contact.

If the General Counsel, or designee, determines that there is sufficient cause to believe that the Offerer violated the provisions of State Finance Law Section 139-j(3), notice shall be given to the Offerer who shall have the opportunity to be heard. If it is determined that the impermissible Contact was knowing and willful, the Offerer is non-responsible and shall not be awarded a contract except as otherwise provided in State Finance Law Section 139-j (10). In the event of two such findings within a 4-year period, the Offerer is debarred from participating in or receiving an Authority procurement contract, as defined by in Section 139-j(1)(g) for four years.

Proposers shall be provided with a summary of the Authority's policies and procedures regarding permissible contacts and shall affirm in writing its understanding and agreement to comply with the same. All contractors shall certify that information provided to the Authority pursuant to State Finance Law Sections 139-j and 139-k is true and accurate. All contracts shall include a provision that the contract may be terminated if the certification is found to be intentionally false or intentionally inaccurate.

G. Additional Certifications

It is the policy of the Authority to promote increased public confidence in its procurement practices, including requiring Proposers to certify in writing, upon submission of their proposals and at the time of execution of a contract with the Authority, the following:

1. Non-Collusion

- a. The prices in the bid or proposal have been arrived at independently, without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Proposer or with any competitor.
- b. Unless otherwise required by law, the prices which have been quoted in the bid or proposal have not knowingly been disclosed by Proposer, and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly, to any other Proposer or to any competitor.
- c. No attempt has been made or will be made by the Proposer to induce any other person, partnership or corporation to submit or not submit a bid or proposal for the purpose of restricting competition.

Proposer shall make this certification under penalty of perjury, in accordance with Section 2878 of the PAL.

2. Contingent Fees

- a. Proposer has not employed or retained and will not employ or retain any individual or entity for the purpose of soliciting or securing any Authority contract or any amendment or modification thereto pursuant to any agreement or understanding for receipt of any form of compensation which in whole or in part is contingent or dependent upon the award of any such contract or any amendment or modification thereto.
- b. Proposer will not seek or be paid an additional fee that is contingent or dependent upon the completion of a transaction by the Authority provided however that this provision shall not apply to real estate brokers and other real property buyer/seller/lessor/lessee representatives engaged to act on behalf of the Authority.

A Proposer's failure to provide the certifications required by Sections G(1) and (2) of Article II will be grounds for disqualification from the procurement process.

A Proposer's violation of Section G(2)(a) or (b) of Article II will be grounds for disqualification from the procurement process.

H. Penalties

A Proposer's failure to comply with any of the provisions contained in these Guidelines is grounds for disqualification in the procurement process, and may constitute a crime under State or Federal Law.

I. Conduct of Procurements; Approval Process for Contracts

1. All procurements shall be conducted in accordance with these Guidelines by the responsible Procuring Officer.
2. The award of Procurement Contracts for Services, including those Procurement Contracts awarded without regard to Section B.1 of Article II, shall be approved as follows:
 - a. Procurement Contracts for Services having a value less than or equal to \$1,000,000 shall be approved by the responsible Procurement Officer and either the Chief Financial Officer or the Chief Executive Officer.
 - b. Procurement Contracts for Services having a value greater than \$1,000,000 and/or to be rendered over a period in excess of one year (regardless of the value) shall be approved by the Authority Board of Trustees.

3. The award of Procurement Contracts for Goods or Technology, including those Procurement Contracts awarded without regard to Section B.1 of Article II, shall be approved as follows:
 - a. Procurement Contracts for Goods or Technology having a value less than \$1,000,000 shall be approved by the responsible Procurement Officer and either the Chief Financial Officer or the Chief Executive Officer.
 - b. Procurement Contracts for Goods or Technology having a value equal to or greater than \$1,000,000 and/or to be rendered over a period in excess of one year (regardless of the value) shall be approved by the Authority Board of Trustees.
4. The award of Electricity Contracts shall be approved as follows:
 - a. Electricity Contracts having a term greater than 60 months shall be approved by the Authority Board of Trustees.
 - b. All other Electricity Contracts shall be approved by the responsible Procurement Officer, and either the Chief Financial Officer or the Chief Executive Officer, unless Board approval is otherwise required by applicable law, including to comply with the State Environmental Quality Review Act.
5. Procurement Contracts in an amount greater than \$50,000 shall not be valid, effective or binding upon the Authority until approved by the State Comptroller and filed in that office.

J. Employment of Former Officers and Employees

To the extent permitted by Public Officers Law Section 73, former Authority officers and employees are eligible to be considered to be retained as contractors and/or consultants, provided that they meet all criteria for contractors and/or consultants generally as specified in these Guidelines and upon the approval of the Trustees.

K. Types of Provisions to be Contained in Procurement Contracts

The following types of provisions shall be contained in all Authority procurement contracts, unless one or more such provision is inapplicable and/or unnecessary based on the nature and/or duration of the contract or any other circumstance that the Authority deems to be in its interest.

1. Description/Scope of Work
2. Term
3. Compensation
4. Relation between the Contractor and the Authority, including Supervision of Work, Use of Subcontractors, Conflict of Interest and Use of Authority Supplies, Facilities and Personnel

5. Ownership, Maintenance, Confidentiality and Other Provisions Related to Documents and Records
6. Termination
7. Provisions Required by Federal, State and Local Law
8. Warranty, Indemnity, Contingent Fee and Other Standard Provisions
9. Billing Policy
10. Insurance
11. The percentage of minority and women-owned subcontracting goals
12. The percentage of New York State Service-Disabled Veteran-Owned Business (SDVOB) subcontracting goals
13. Notice, Service of Process and Other Miscellaneous Provisions

III. GENERAL

A. Implementation of Guidelines

The Chief Executive Officer, Chief Financial Officer and/or General Counsel are empowered to prepare:

1. Such supplemental procedures as may be required to effectively implement these Guidelines, copies of which shall be provided to the Trustees; and
2. Proposed amendments to these Guidelines for approval by the Authority Board of Trustees when and as required.

B. Reports

1. No less frequently than annually, the Authority will prepare a report which summarizes its Procurement Contract activity for the period of the report, which will include a list of all Procurement Contracts entered into, all contracts entered into with New York State business enterprises and the subject matter and value thereof, all contracts entered into with certified minority or women-owned business enterprises and the subject matter and value thereof, all referrals made and all penalties imposed pursuant to section three hundred and sixteen of the executive law, all contracts entered into with foreign business enterprises, and the subject matter and value thereof, the selection process used to select such contractors, all Procurement Contracts which were exempt from the publication requirements of Article 4-C of the Economic Development Law, the basis of such exemption and the status of existing Procurement Contracts.
2. Also on an annual basis, the Authority will prepare and approve a report on Procurement Contracts, which report will include these Guidelines and an explanation of these Guidelines and any amendments to them since the last report. The Authority will submit this report to any such governmental entities as may be entitled to receive it under applicable law, including the Public Authorities Law and the State Finance

Law, and will make this report available to members of the public on the Authority's website.

These guidelines shall be annually reviewed and approved by the Authority.

C. Effect of Awarded Contracts

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

**UTILITY DEBT SECURITIZATION AUTHORITY
PROPERTY DISPOSITION GUIDELINES
MARCH 28, 2017**

Utility Debt Securitization Authority (referred to herein as the "Authority") is required by Section 2896 of the Public Authorities Law to adopt by resolution comprehensive guidelines, to be annually reviewed and approved by the Trustees of the Authority, regarding the use, awarding, monitoring and reporting of contracts for the disposal of Property. The following guidelines (the "Guidelines") are adopted pursuant to such requirement and are applicable with respect to the use, awarding, monitoring and reporting of all Property Disposition Contracts which are entered into by the Authority.

I. DEFINITIONS

1. "Contracting Officer" shall mean the General Counsel or his or her designee.
2. "Dispose" or "disposal" shall mean transfer of title or any other beneficial interest in personal or real property in accordance with these guidelines.
3. "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for the Real Property in an arms-length transaction in the appropriate marketplace
4. "Property" shall mean personal property in excess of five thousand dollars in value, real property, and any inchoate or other interest in such property owned by the Authority, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party. Neither electricity nor natural gas nor any attributes derived therefrom, shall be considered Property for purposes of this guideline.
5. "Property Disposition Contracts" shall mean written agreements for the sale, lease, transfer or other disposition of Property.
6. "Real Property" shall mean real property and interests therein.

II. PRINCIPAL DUTIES OF CONTRACTING OFFICER

The Contracting Officer, as designated in Section I.1, is responsible for the supervision and direction over the custody, control and disposition of Property and responsible for the

Authority's compliance with, and enforcement of, these guidelines. The Contracting Officer shall: (a) maintain adequate inventory controls and accountability systems for all Property under the Authority's control; (b) periodically inventory such Property to determine which Property shall be disposed of; (c) transfer or dispose of such Property as promptly as possible in accordance with these guidelines; and (d) produce and submit reports pursuant to Section IV.B. of these guidelines.

III. PROPERTY DISPOSITION CONTRACTS

A. Reason(s) for Use of Property Disposition Contracts

Property Disposition Contracts may be entered into for the purpose of disposing of Property which is no longer necessary or useful for the operations of the Authority or the Subsidiary to warrant retention, if the disposition of such Property will result in cost savings or other benefits to the Authority, the disposition thereof will result in the receipt of valuable consideration or other benefits by the Authority, or the disposition is of neutral or nominal value to the parties.

B. Method of Disposition

The Authority may dispose of Property for no less than the Fair Market Value by sale, exchange, or transfer, for cash, credit or other Property, with or without warranty, upon such terms and conditions as are determined by the Contracting Officer; except as otherwise permitted by this Section III.B. and Section III.C.4 (below). However, no disposition of Real Property, or any interest in Real Property shall be made unless an appraisal of such Property has been made by an independent appraiser and included in the record of the transaction. Further, no disposition of any other property, which because of its unique nature or the unique circumstances of the proposed transaction is not readily valued by reference to an active market for similar property, shall be made without a similar appraisal.

In addition to the circumstances permitted by Section III.C.4 (below), the Authority may dispose of Property for less than Fair Market Value when the value of the transaction is nominal and the Property Disposition Contract is temporary and revocable. For such transactions, the requirements of Sections III.C.5, 6 and 7 (also below) do not apply.

C. Award of Property Disposition Contracts; Selection Criteria for Property Disposition Contracts

1. All sales or other dispositions of Property shall be conducted in accordance with these Guidelines by or under the supervision of the Contracting Officer.
2. All Property Disposition Contracts shall be made after publicly advertising for bids unless the criteria set forth below in the Guidelines at Section III.C.3. have been met for such contracts to be made by negotiation or public auction. Whenever public advertising for bids is required, (i) 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 Property; (ii) all bids shall be publicly disclosed at the time and place stated in the advertisement; and (iii) 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 state, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

3. Property Disposition Contracts may be negotiated or made by public auction without regard to the criteria set forth above in the Guidelines at Section III.C.2. but subject to obtaining such competition as the Contracting Officer determines is feasible under the circumstances, if (i) the personal property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity or other quality of similar effect, that would tend to increase its value, or if the personal property is to be sold in such quantity that, if it were disposed of by publicly advertising for bids, would adversely affect the state or local market for such property, and the estimated Fair Market Value of such property and other satisfactory terms of disposal can be obtained by negotiation; (ii) the Fair Market Value of the Property does not exceed fifteen thousand dollars; (iii) bid prices after advertising therefor are not reasonable, either as to all or some part of the Property, or have not been independently arrived at in open competition; (iv) the disposition of Property will be to the state or any political subdivision, and the estimated Fair Market Value of the Property and other satisfactory terms of disposal are obtained by negotiation; (v) under the circumstances permitted by Section III.C.4, or (vi) such action is otherwise authorized by law.
4. Property may not be disposed of for less than Fair Market Value unless the following criteria are met: (i) the property is transferred to a government or other public entity and the terms and conditions of the transfer require that the ownership and use of the property will remain with the government or any other public entity; (ii) the purpose of the transfer is within the purpose, mission or governing statute of the public authority; or (iii) if the transfer is other than to a governmental entity and would not be consistent with the Authority's mission, purpose or governing statute, the Authority shall provide written notification to the governor, speaker of the assembly and temporary president of the senate. The governor, senate or assembly may deny the transfer. The governor or either house of the legislature will take action within sixty days of receiving notification of the proposed transfer from January through June. If the notification is received by the legislature from July through December, the legislature may take any action within sixty days of January first of the following year. In the event that there is no denial within sixty days of the notification to the governor, senate and assembly, the Authority may effectuate the transfer.
5. In the event the Authority proposes that property be disposed of for less than Fair Market Value, the following information must be provided to the Authority Board of Trustees and the public prior to being approved by the Board of Trustees:

- (i) a full description of the property;
 - (ii) an appraisal of the Fair Market Value of the property and any other information establishing the Fair Market Value sought by the Board of Trustees;
 - (iii) a description of the purpose of the transfer and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits to the communities in which the property is situated
 - (iv) a statement of the value to be received as compared to the Fair Market Value;
 - (v) the names of any private parties participating in the transfer and a statement of the value to the private party if different than the statement in (iv) above;
 - (vi) the names of other private parties who have made an offer for such an asset, the value offered, and the purpose for which the asset was sought to be used.
6. Before approving the disposition of property for less than Fair Market Value, the Board of Trustees must consider the information described in paragraph 5 above 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. Such determination may be provided on a case-by-case basis or a blanket basis for all such dispositions that have substantially similar circumstances.
7. Except for dispositions where the purpose of the transfer is within the purpose, mission or governing statute of the Authority, the Contracting Officer shall transmit a statement explaining the circumstances of the negotiated disposition of Property by at least ninety days prior to such disposal to each of the State Comptroller, the Director of the Budget, the Commissioner of General Services, the State legislature, and the Authorities Budget Office, and a copy thereof shall be preserved in the files of the Authority. Such a statement shall be prepared in connection with a negotiated disposition of Property of any of the following: (i) any personal property which has an estimated Fair Market Value in excess of fifteen thousand dollars; (ii) any Real Property that has an estimated Fair Market Value in excess of one hundred thousand dollars, except that any real property disposed of by lease or exchange shall only be subject to clauses iii and iv of this Section.; (iii) any Real Property disposed of by lease if the estimated annual rent over the term of the lease is in excess of fifteen thousand dollars; (iv) any Real Property or related personal property disposed of by exchange, regardless of value, or any Property any part of the consideration for which is Real Property.

To the extent that Property Disposition Contracts are competitively awarded, such awards shall be made upon receipt and evaluation of bids or proposals or other information obtained from persons/firms responding to a request for proposals or other form of solicitation on the basis of the criteria specified in the request for proposals or other solicitation. The Contracting Officer shall document the processes by which Property is sold or otherwise disposed of, by making a record summarizing the nature and scope of the Property disposed, the name of each person or organization submitting, or requested to submit, a bid or proposal, the

price or other consideration bid and received, and the basis for selection of both the purchaser and method of disposition of the Property.

8. All dispositions of Property also shall be subject to compliance with Section 6.15 of the Financing Agreement, dated as of May 1, 1998, between the Authority and the Subsidiary (the "Financing Agreement") and Section 714 of the Electric System General Revenue Bond Resolution adopted by the Authority on May 13, 1998, as supplemented (the "General Resolution"). In furtherance thereof, no Property of the Authority or the Subsidiary shall be sold or otherwise disposed of unless the Chief Financial Officer has determined that such disposition (i) is desirable in the conduct of the business of the Authority or the Subsidiary, (ii) is not disadvantageous in any material respect to the holders of the Authority's Obligations (as defined in the General Resolution), (iii) does not materially impair the ability of the Authority and the Subsidiary to comply with their respective obligations to comply with the rate covenants contained in Section 6.1 of the Financing Agreement and Section 701 of the General Resolution, and (iv) does not breach any covenants of the Authority or the Subsidiary relating to the exclusion of interest on the Authority's Obligations, which determinations shall be evidenced in writing and maintained with the records of the Authority relating to the disposition of such Property.

D. Approval Process for Property Disposition Contracts

In addition to any other approvals required by law, the award of Property Disposition Contracts and any related determinations made in connection therewith shall be approved as follows:

1. Property Disposition Contracts in amounts equal to or less than \$1,000,000 and related determinations shall be approved by the Contracting Officer and the Chief Financial Officer or the Chief Executive Officer.
2. Property Disposition Contracts in amounts greater than \$1,000,000 and related determinations shall be approved by the Trustees of the Authority.

IV. GENERAL

A. Implementation of Guidelines

The Contracting Officer is empowered to prepare such supplemental procedures as may be required to effectively implement these Guidelines, copies of which shall be provided to the Trustees.

B. Reports

1. Property Disposition Guidelines approved by Authority shall be annually reviewed and approved by the Trustees of the Authority. On or before the thirty-first day of March in each year, the Authority shall file with the State Comptroller a copy of the most recently reviewed and adopted guidelines, including the name of the Contracting Officer, and must post such guidelines on the Authority's website. Guidelines posted on the Authority's website shall be maintained at least until the disposition guidelines for the following year are posted on the website.
2. Within ninety days of the end of the fiscal year, the Contracting Officer shall prepare and submit to the Trustees, 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 Authorities Budget Office, a report listing all Real Property of the Authority having an estimated Fair Market Value in excess of fifteen thousand dollars that the Authority disposed of during the previous fiscal year. The report shall contain the price received by the Authority and the name of the purchaser for all such property sold by the Authority during such period.

C. Effect of Awarded Contracts

These Guidelines are intended for the guidance of the officers and employees of the Authority and the Subsidiary only. Nothing contained herein is intended or shall be construed to confer upon any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof, or 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. In accordance with Section 2897.5 of the Public Authorities Law, a deed, bill of sale, lease, or other instruments executed by or on behalf of the Authority or the Subsidiary, purporting to transfer title or any other interest in Property shall be conclusive evidence of compliance with these guidelines insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of compliance with these guidelines prior to the closing

**UTILITY DEBT SECURITIZATION AUTHORITY
REAL PROPERTY ACQUISITION GUIDELINES
MARCH 28, 2017**

Utility Debt Securitization Authority (the "Authority") is required by Section 2824 of the Public Authorities Law to establish policies and procedures regarding, among other things, the acquisition of real property. The following guidelines (the "Guidelines") are adopted pursuant to such requirement and are applicable with respect to the use, awarding, monitoring and reporting of all Property Acquisition Contracts which are entered into by the Authority.

I. DEFINITIONS

1. "Contracting Officer" shall mean the officer or employee of the Authority who shall be responsible for the acquisition of Property. The Contracting Officer is hereby designated the Authority's Chief Executive Officer or the equivalent(s) or designee.
2. "Fair Market Value" shall mean the estimated dollar amount that a willing buyer would pay to a willing seller for Real Property in an arms-length transaction in the appropriate marketplace and under similar circumstances
3. "Property Acquisition Contracts" shall mean written agreements for the acquisition by purchase or lease of Real Property.
4. "Real Property" shall mean real property and interests therein.

II. PRINCIPAL DUTIES OF CONTRACTING OFFICER

The Contracting Officer shall be responsible for the supervision and direction over the acquisition of Real Property and responsible for the Authority's compliance with, and enforcement of these Guidelines.

III. PROPERTY ACQUISITION CONTRACTS

A. Reason(s) for Use of Property Acquisition Contracts

Property Acquisition Contracts may be entered into for the purpose of acquiring Real Property which is determined to be necessary or useful for the operations of the Authority.

B. Award of Property Acquisition Contracts

1. All Property Acquisition Contracts shall be entered into in accordance with these Guidelines by the responsible Authority officer.
2. Property Acquisition Contracts shall be entered into on a negotiated basis, unless the Contracting Officer shall have determined that a sufficient number of parcels of Real Property are available and of equivalent usefulness to the Authority so as to make a competitive process feasible and desirable. The Authority shall document the processes by which Real Property is acquired, by making a record summarizing the nature and scope of the Real Property acquired, the name of the seller, the price or other consideration paid for the Real Property acquired, the method of determining the price or other consideration paid for the Real Property, and any Real Property considered as an alternative to the Real Property acquired and the reason for the selection of the Real Property acquired

C. Approval Process for Property Acquisition Contracts

In addition to any other approvals that may be required by law, all Property Acquisition Contracts and any related determinations made in connection therewith shall be approved as follows:

1. Property Acquisition Contracts in amounts equal to or less than \$1,000,000 and related determinations shall be approved by the Contracting Officer (if other than the Chief Executive Officer), the Chief Financial Officer and the Chief Executive Officer, or their respective designees.
2. Property Acquisition Contracts in amounts greater than \$1,000,000 and related determinations shall be approved by the Trustees of the Authority.

IV. GENERAL

A. Implementation of Guidelines

The Contracting Officer is empowered to prepare such supplemental procedures as may be required to effectively implement these Guidelines, copies of which shall be provided to the Trustees.

B. Reports; Periodic Review

1. Within ninety days of the end of each fiscal year, the Contracting Officer, or their designees, shall prepare and submit 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 Authorities Budget Office, with a copy to the Trustees, a list of all Real Property of the Authority having an estimated Fair Market Value in excess of fifteen thousand dollars that the Authority acquired during the previous fiscal year.
2. Property Acquisition Guidelines approved by Authority shall be periodically reviewed and approved by the Trustees of the Authority. A copy of these Guidelines shall be posted on the Authority's website.

C. Effect of Awarded Contracts

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

**UTILITY DEBT SECURITIZATION AUTHORITY
PROCUREMENT LOBBYING GUIDELINES
MARCH 28, 2017**

I. INTRODUCTION

In furtherance of the Utility Debt Securitization Authority’s (“UDSA’s”) commitment to ensure the transparency and accountability of its operations, the following guidelines (the “Guidelines”) set forth UDSA’s policy on recording attempts to influence the outcome of UDSA’s (a) Procurements and (b) Rules, Regulations or Ratemaking activity. These Guidelines are applicable to all employees, officers and Trustees of UDSA and are in compliance with the requirements of the “Procurement Lobbying Law” found in the State Finance Law and the “Lobbying Contacts” provisions of the Public Authorities Law. The restrictions and/or reporting requirements associated with both types of lobbying activity are outlined below.

II. PROCUREMENT LOBBYING

This section of the Guidelines has been issued pursuant to the State Finance Law, which generally prohibits, with limited exception, individuals or entities from communicating with anyone other than the person(s) designated by UDSA to communicate with such individuals or entities about a procurement for a prescribed period of time during the procurement process. UDSA is required to collect and record certain information pertaining to attempts to influence the procurement (a “**Contact**,” defined below) during the procurement period from the earliest solicitation of a proposal to the final approval of the procurement (the “**Restricted Period**,” defined below). The specific requirements related to these activities are set forth as follows:

A. Statutory Definitions¹

Article of Procurement

A commodity, service, technology, public work, construction, revenue contract, the purchase, sale or lease of real property or an acquisition or granting of an interest in real property that is the subject of a governmental procurement.

Contact²

Any oral, written or electronic communication with UDSA staff or its consultants about UDSA procurement under circumstances where a reasonable person would infer that the

¹ Defined terms are in bold.

² Note that the statutory definition for “Contact” is different for Procurement Lobbying discussed in Article II of these Guidelines and for Rule, Regulation or Ratemaking Lobbying discussed in Article III of these Guidelines.

communication was intended to influence the procurement.

Governmental Entity

All New York State agencies and authorities; both houses of the Legislature; the Unified Court System; municipal agencies and their respective employees.

UDSA Procurement

shall mean (i) the preparation or terms of the specifications, bid documents, requests for proposals, or evaluation criteria for a procurement contract, (ii) solicitation for a procurement contract, (iii) evaluation of a procurement contract, (iv) award, approval, denial or disapproval of a procurement contract, or (v) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved by the Comptroller, as applicable), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the **Offerer**.

Offerer

The individual or entity, or any employee agent or consultant or person acting on behalf of such individual or entity, that **Contacts** UDSA about a **UDSA Procurement** during the restricted period of the procurement.

Procurement Contract

Any contract or other agreement for an **Article of Procurement** involving an estimated annualized expenditure in excess of \$15,000. Grants, State Finance Law Article XI-B contracts between UDSA and not-for-profit organizations, intergovernmental agreements, railroad and utility force accounts, utility relocation project agreements or orders, and eminent domain transactions shall not be deemed **Procurement Contracts**.

Restricted Period

The period of time commencing with the earliest date of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from **Offerers** intending to result in a **Procurement Contract** with UDSA and ending with the final contract award and approval by

UDSA, and where applicable, the Office of the State Comptroller.

B. Exemptions

Certain communications are exempt from the Guidelines. These include: (i) submissions in response to an invitation for bid, a request for proposal or other solicitation, (ii) submissions of written questions to an invitation for bid, a request for proposal or other solicitation, (ii) submissions of written questions to a designated contact set forth in an invitation for bid, request for proposal or other solicitation, (iii) participation in a conference provided for in an invitation for bid, request for proposal or other solicitation, (iv) contract negotiations, (v) inquiries regarding the factual status of a **Procurement Contract**, and (vi) complaints and protests regarding the procurement process and outcome.

In addition, any communication received by UDSA from members of the New York State Legislature or the Legislative Staff, when acting in their official capacity, shall not be considered a **Contact** for recording purposes.

C. Violations

A violation of these Guidelines occurs when there is a **Contact** during the **Restricted Period** between the **Offerer** and someone other than the person(s) designated by UDSA to receive communications for the particular **UDSA Procurement**. This includes instances where the **Offerer Contacts** UDSA regarding a procurement of another **Governmental Entity**.

Attempts by an **Offerer** to influence a **UDSA Procurement** in a manner that would result in a violation of the Public Officers Law or any other applicable ethics code shall also be a violation of these Guidelines.

D. Procedures

a. Notifying Vendors of Procurement Lobbying Guidelines

- i. For each **Procurement Contract**, UDSA will designate a person or persons to receive communications from **Offerers** concerning the **UDSA Procurement**.**
- ii. UDSA will incorporate a summary of the policy governing lobbying during a **UDSA Procurement** in its documents relating to the **Procurement Contract** and provide a copy of the policy and prohibitions regarding permissible communications to **Offerers**.**

- iii. UDSA shall seek written affirmation from all **Offerers** indicating that they understand and agree to comply with these Guidelines (*See Attachment 1*).

b. Making Determinations of Responsibility

- i. Prior to award of a **Procurement Contract**, UDSA must make a responsibility determination with respect to the **Offerer** to be recommended for the award of the contract based upon, among other things, the information supplied by that **Offerer**, using the **Offerer Disclosure of Prior Non-Responsibility Determinations Form** (*See Attachment 2*), whether it has been found non-responsible within the last four years by any **Governmental Entity** for: (1) failure to comply with State Finance Law § 139 j, or (2) the intentional provision of false or incomplete information. This disclosure must be certified by the **Offerer** and must affirmatively state that the information supplied by the **Offerer** to UDSA is complete, true and accurate.
- ii. The **Procurement Contract** must include a provision allowing UDSA to terminate the contract if the certification is subsequently found to be incomplete, false or inaccurate. Admissions by the **Offerer** of past findings of non-responsibility may constitute a basis for rejection of the **Offerer** by UDSA. UDSA can award a contract to the **Offerer** despite the past findings of non-responsibility if it determines that the award of the **Procurement Contract** to the **Offerer** is necessary to protect public property or public health or safety, and that the **Offerer** is the only source capable of supplying the required **Article of Procurement** within the necessary time frame. The basis of such a finding must be included in procurement record of the **UDSA Procurement**.

c. Recording Contacts

- i. All UDSA employees must record any **Contact** from any person or entity. **Contacts** may be initiated by parties with an interest in the **UDSA Procurement** that are not necessarily connected directly to the **Offerer**. **Contacts** may come in the form of telephone conversations, correspondence, electronic mail and person-to-person discussions. The Record of Contact Form (*See Attachment 3*) should be used to record all **Contacts**. The form is also available to employees on the UDSA Intranet.
- ii. Examples of **Contacts** for which a Record of Contact must be completed include:

1. During the **Restricted Period**, an **Offerer Contacts** a UDSA employee (other than the employee designated to receive such communications) to discuss the **Offerer's** cost, competitiveness or its suitability to be selected for a contract.
 2. A court reporter, expert witness or any other vendor offers a UDSA employee a gift of any monetary value during the **Restricted Period**.
- iii. Examples of permissible communications which may be directed to persons other than those designated by UDSA to receive communications from **Offerers** concerning the **UDSA Procurement** include:
1. Inquiries as to the status of the procurement process.
 2. Requests to be included on UDSA's **Offerer** list.
 3. Receipt of advertising material.
 4. Intra-agency communications of administrative details concerning the procurement.
 5. Responses to UDSA-issued Requests for Information.
 6. Written questions submitted by **Offerers** regarding a solicitation during the allowable time period of a competitive procurement.
 7. Complaints about the procurement process or outcome.
 8. Participation in an **Offerer's** conference as provided for in a Request for Proposals of Invitation for Bids.
 9. Submission of a proposal or bid in response to a Request for Proposals or Invitation for Bids.
 10. Contract negotiations.
 11. Debriefing of an **Offerer** after a contract award has been made.

None of the above communications require the preparation of a Record of Contact unless such communication constitutes an attempt to influence the **UDSA Procurement**.

- iv. If a UDSA employee is in doubt about whether a communication was intended to influence the **UDSA Procurement**, he or she should record the communication on the Record of Contact Form and submit it to the Director and Procurement for further investigation.
- v. The UDSA Officer responsible for the procurement, or his or her designee, will be required to ensure that all Records of Contacts are included in the procurement record for the related **Procurement Contract**.

E. Investigation of Contacts/Penalties for Violations

- a. All reported **Contacts** will be immediately investigated by the Director of Procurement, or his or her designee. If the Director of Procurement finds sufficient cause to believe that an **Offerer** has violated these Guidelines, the **Offerer** will be notified in writing of the investigation and will be afforded an opportunity to respond to the alleged violation. Investigations will be completed as soon as practicable so as not to delay the progress of the **UDSA Procurement**.
- b. If the Director of Procurement should find at the conclusion of the investigation that the **Offerer** knowingly and willfully made a prohibited **Contact** in violation of these Guidelines, then the **Offerer** shall be disqualified as non responsible, unless UDSA makes a finding that the award of the **Procurement Contract** to the **Offerer** is necessary to protect public property or public health or safety, and that the **Offerer** is the only source capable of supplying the required **Article of Procurement** within the necessary time frame. The basis of such a finding must be included in the procurement record of the **Procurement Contract**.

III. RULE, REGULATION OR RATEMAKING LOBBYING

This section of these Guidelines has been issued pursuant to the Public Authorities Law, and establishes measures to create and maintain records of any attempt by a “**Lobbyist**” (as defined below) to influence: (a) the adoption or rejection of any rule or regulation by UDSA, and/or (b) the outcome of any ratemaking proceeding by UDSA, as follows:

A. Statutory Definitions³

- Contact** Any conversation, in person or by telephonic or other remote means, or correspondence between any **Lobbyist** engaged in the act of **Lobbying** and any employee, officer or trustee within UDSA who can make or influence a decision on the subject of the **Lobbying** on behalf of the UDSA.
- Lobbying** Any attempt to influence: (a) the adoption or rejection of any rule or regulation by UDSA, and/or (b) the outcome of any ratemaking proceeding by UDSA.
- Lobbyist** Every person or organization retained, employed or designated by any client to engage in **Lobbying**. **Lobbyist** does not include any officer, director, trustee, employee, counsel or agent of the state, or of any municipality or subdivision of New York State, when such persons are discharging their official duties.⁴

B. Responsibilities

- a. An employee, officer or trustee who is contacted by a **Lobbyist** shall make a contemporaneous record of such **Contact** on a form including the day and time of the **Contact**, the identity of the **Lobbyist** and a summary of the substance of the **Contact**. The employee, officer or trustee shall notify and deliver the completed form to the General Counsel.
- b. The General Counsel shall prescribe such form to be used by all employees, officers and trustees to record such lobbying **Contacts** under these Guidelines. (Attachment 4)
- c. Upon receipt of a record of **Contact**, the General Counsel shall maintain or cause to be maintained such record for a period of not less than seven (7) years in a filing system that is indexed or otherwise organized in a manner in which such records are readily identifiable and referenced to UDSA decisions regarding (a) the

³ Defined terms are in bold.

⁴ Officers, directors, trustees, employees, counsels or agents of colleges as defined by New York Education law §2(2) are considered lobbyists for purposes of PAL §2987.

adoption or rejection of any rule or regulation by UDSA and (b) the outcome of any ratemaking proceeding by UDSA.

Any questions regarding these Guidelines and/or interpretation of these Guidelines should be directed to UDSA's General Counsel.

**TRUSTEE CODE OF ETHICS AND CONDUCT
OF THE
UTILITY DEBT SECURITIZATION
AUTHORITY**

March 28, 2017

Long Island Power Authority
333 Earle Ovington Boulevard
Uniondale, New York 11553

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- X. Reporting of Violations of the Code**

- Exhibit 1 Section One-M of the Legislative Law**
- Exhibit 2 Section One-C of the Legislative Law**
- Appendix A Section 73 of the New York Public Officers Law**
- Appendix B Section 73 – a of the New York Public Officers Law**
- Appendix C Section 74 of the New York Public Officers Law**
- Appendix D Joint Commission on Public Ethics regulations on gifts codified at 19 NYCRR Part 933 and 934.**
- Appendix E Governor Paterson’s Executive Order 7 “Prohibition Against Personal Use of State Property and Campaign Contributions to the Governor”**
- Appendix F Annual Certification Form**
- Appendix G Anti-Retaliation Policy**

UTILITY DEBT SECURITIZATION AUTHORITY TRUSTEE CODE OF ETHICS AND CONDUCT

I. Introduction

The Utility Debt Securitization Authority (the “Authority”), as a public entity, has a responsibility for maintaining the highest level of honesty, ethical conduct and public trust in all its activities. To meet this responsibility, the Authority adopted codes of ethics and conduct for its Trustees. This Trustee Code of Ethics and Conduct (the “Code”) addresses the ethical and professional standards of conduct expected of the Authority’s Board of Trustees.

The Code applies to the Authority's current Trustees and Former Trustees and states in specific form the Authority's position on Conflicts of Interest (as defined below). Personal integrity is the cornerstone of the Code. Each Trustee has the primary responsibility for avoiding Financial Interests and Other Interests which might create a conflict with his or her position as a fiduciary of the Authority and Authority property. As the Authority is a public entity, Trustees are responsible for conducting Authority business solely in the public interest.

The Code is not intended to address all situations or answer all questions related to daily ethical conduct. Trustees should inquire of the General Counsel of the Authority if they have questions as to whether certain conduct might violate the Code. In addition, Trustees who have questions as to whether a prospective personal or business Transaction or assumption of a position of responsibility or trust would violate the Code, may request in writing an advance determination on the matter from the General Counsel of the Authority pursuant to Section VIII of the Code.

Violations of the Code or applicable statutory provisions may subject a Trustee to discipline up to and including removal from the board by the appointing authority and/or expose the Trustee to civil and/or criminal penalties.

The Code will be reviewed and updated by the Governance Committee as necessary with a copy distributed to each Trustee.

II. Definitions

The following definitions apply to the Code.

- A. “Authority” means the Utility Debt Securitization Authority.
- B. "Benefit" means any gain or advantage to, or reduction in the liabilities of, the beneficiary and includes any gain or advantage to, or reduction in the liabilities of, a third person pursuant to the desire or consent of the beneficiary.
- C. "Confidential Information" means information which is available to a Trustee only because of his or her status as a Trustee and is not a matter of public knowledge.

D. "Conflict of Interest" means a situation in which the financial, familial, or personal interests of a Trustee or Former Trustee conflict, may conflict or could be perceived as conflicting with their responsibilities to the Authority

E. "Dependent Child" means either (1) any son, daughter, stepson or stepdaughter of a Trustee who is under age eighteen, unmarried and living in the household of the Trustee; or (2) a "dependent" of the Trustee within the meaning of section 152 of the Internal Revenue Code of 1954.

F. "Trustee's Independent Business" means, for the purposes of Section IV (B) (12) of the Code: (1) a firm or association of which a Trustee, or a Trustee's Spouse or Dependent Child is a member; or (2) a corporation, 10% or more of the stock of which is owned or controlled directly or indirectly by a Trustee or a Trustee's Spouse or Dependent Child.

G. "Financial Interest" means any of the following:

1. Ownership or control of 10 percent or more of the stock of any entity (or 1 percent 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;

2. Ownership of an interest in a business or real property which interest (a) reflects a 10 percent or more ownership of the business, or (b) in the case of a Trustee or a Trustee's Spouse or Dependent Child, constitutes 10 percent or more of the net worth of the person owning such interest, or the combined net worth of the Trustee and his or her Spouse and Dependent Child. In determining net worth, the value of any interest in the Trustee's personal residence(s) shall be excluded. In determining the value of an interest, debts, mortgages, liens or other encumbrances thereon are to be disregarded; or

3. Liability or indebtedness to a person or business in excess of \$5,000, excluding liabilities owed to relatives and excluding mortgages, liens or other encumbrances on or secured by real property which constitutes the Trustee's personal residence(s) or furniture or appliances therein.

H. "Former Trustee" means persons who are no longer Trustees of the Authority but were Trustees at any time following the Authority's adoption of this Code or any predecessor code of ethics and conduct.

I. "Gift" means a payment, advance, forbearance, rendering, or deposit of money, or anything of more than nominal value, unless the donor receives consideration of equal or greater value. Nominal value is interpreted as an item or service with a fair market value of \$15 or less.

J. "Operations Services" means the management of the daily operation of the Authority's electric transmission and distribution system and the management of the Authority's

power supply resources.

K. "Other Interest" means holding a position in a business such as an officer, director, trustee, partner, proprietor, executor, employee, or a position of management, or acting as a consultant, agent or representative therefore in any capacity.

L. "Policy-Making Position" means those management and non-management positions (including trustees) designated as Policy-Making positions by the Authority, because the individual holding the position exercises responsibilities of a broad scope in the formulation of plans for the implementation of goals or policy for the Authority or acts as an advisor to an individual in such a position.

M. "Relative" shall mean a Trustee's Spouse, child, stepchild, stepparent, or any person who is a direct descendant of the grandparents of the Trustee or of the Trustee's Spouse.

N. "Spouse" shall mean the husband or wife of the Trustee unless living separate and apart from the Trustee with the intention of terminating the marriage or providing for permanent separation or unless separated pursuant to: (i) a judicial order, decree or judgment, or (ii) a legally binding separation agreement. Individuals who enter into same sex marriages legally performed in jurisdictions within or outside of New York are "Spouses" of one another for the purposes of this definition.

O. "Trading" means, in reference to securities, the buying and selling of securities, or the buying and selling of options, calls, puts, or any other right relating to a security.

P. "Transaction" means buying, selling, renting (as lessor or lessee), or otherwise acquiring or disposing of services, materials, supplies, equipment, or property having a value of one hundred dollars or more or an interest having a value of one hundred dollars or more in such services, materials, supplies, equipment or property; borrowing or investment of money; preparing, requisitioning, ordering, approving, advising on, administering or otherwise acting in reference to a contract having a value of one hundred dollars or more; or the promulgation of rules and regulations affecting such activities.

Q. "Trustee" means the Trustees of the Authority appointed or elected, as the case may be, pursuant to Public Authorities Law §1020-b (21).

III. Recusal Procedure

If a Trustee has or has reason to believe the Trustee may have a Conflict of Interest, then the Trustee shall:

A. Promptly disclose the Trustee's potential Conflict of Interest to the Chair of the Board of Trustees and the Authority's General Counsel and describe all material facts concerning the potential Conflict of Interest known to the Trustee. After such disclosure, the Chair of the Board of Trustees, in consultation with the Authority's General Counsel, shall make a record of such disclosure and advise appropriate staff that they are prohibited from communicating with such

Trustee about such matter. Further, if after such disclosure such matter is on an agenda for or is otherwise raised at a Board meeting, the Trustee shall recuse him/herself from all consideration and voting on such matter and such recusal and the reason therefore shall be recorded in the minutes of such Board meeting. As a best practice, the Trustee should leave the Board meeting while the other Trustees complete their discussion, consideration and vote.

B. After full disclosure to the Chair of the Board of Trustees and the Authority's General Counsel, nothing contained herein shall be construed or applied to prohibit any firm, association, corporation or entity, in which the Trustee is a member, associate, retired member, of counsel, shareholder or owner, from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with the Authority or its service provider where such Trustee does not participate in any way on behalf of the party conducting such business, does not participate in the decision to award the contract, and does not share in the net revenues resulting therefrom, or, acting in good faith, it is reasonably believed that such Trustee would not share in the net revenues therefrom, and where such Trustee otherwise complies with all other directives provided by the Authority's General Counsel.

IV. Standards and Principles of Conduct

The following standards and principles of conduct are to be followed to assure compliance with the Code. A breach of these standards and principles constitutes a violation of the Code.

A. General Standards

1. Trustees are subject to New York State Ethics Laws including New York Public Officers Law Sections 73-a, 74, and the rules and regulations promulgated thereunder as may be amended or modified by the New York State Legislature. (Public Officers Law Section 73-a and 74 are annexed as Appendices B and C, respectively).

2. Trustees should endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to engage in acts that are in violation of the public trust.

B. Specific Standards and Principles

Personal or Financial Interests/Independence/Privileges

1. A Trustee shall not have any interest or incur any obligation, financial or otherwise, direct or indirect, or engage in any business or Transaction or professional activity, which is in conflict with the proper discharge of his or her duties in the public interest.

2. A Trustee shall avoid any action, whether or not specifically prohibited by the Code, which might result in or create the appearance of:

- (a) using his or her official position for private gain;

- (b) giving preferential treatment to any person, including himself or herself or any Relative
 - (c) lacking independence or impartiality;
 - (d) affecting adversely the confidence of the public in the integrity of the Authority;
- or
- (e) violating any provision of the Code.

3. A Trustee should abstain from making personal investments in enterprises which he or she has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his or her duty in the public interest and his or her private interest.

4. If any Trustee shall have a Financial Interest, either direct or indirect, in any Transaction to which the Authority is, or is to be, a party, such interest shall be promptly disclosed in writing to the General Counsel of the Authority.

5. No Trustee shall (1) accept other employment or engage in any business, professional or other activity which will impair his or her independence of judgment in the exercise of his or her official duties or which involves a matter in which the Authority has a substantial interest, or (2) receive or enter into any agreement for any compensation for the appearance or rendition of services against the interest of the Authority in relation to any case, proceeding, or matter.

6. No Trustee shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others.

Improper Influence/Lobbying

7. A Trustee shall not by his or her conduct give reasonable basis for the impression that any person may improperly influence him or her or unduly enjoy his or her favor in the performance of his or her official duties, or that he or she is affected by the kinship, rank, position or influence of any party or person.

8. A Trustee shall report to the Authority's General Counsel any communication directed to the Trustee in cases where a reasonable person would infer that the communication was intended to influence the consideration or outcome of an active procurement being conducted by the Authority or its service provider. Attempts by third parties to influence procurements are required to be collected and reported by the Authority and may result in Trustee recusal from actions related to the procurement or elimination of bidders from the procurement.

Transactions Involving the Trustee, Trustee's Spouse, Dependent Child or Trustee's Independent Business

9. No Trustee shall be involved in any Transaction as representative or agent of the Authority with, or be involved in any evaluation of, any business entity in which the Trustee, the Trustee's Spouse or Dependent Child has a direct or indirect Financial Interest. Prior to becoming involved in any Transaction as representative or agent of the Authority with, or becoming involved in any evaluation of, a business entity in which the Trustee, the Trustee's Spouse or Dependent Child holds a Financial Interest, the Trustee, the Trustee's Spouse or Dependent Child must sell or transfer such Financial Interest.

10. No Trustee, Trustee's Spouse or Dependent Child shall acquire, except by Gift, inheritance or the dissolution of a trust, any Financial Interest in any business entity which the Trustee has reason to believe may be directly involved in decisions to be made by him or her which will create conflict between his or her duty in the public interest and his or her private interest. If a Trustee, a Trustee's Spouse or Dependent Child receives such a Financial Interest by Gift, inheritance, operation of an automatic dividend reinvestment plan or the dissolution of a trust, the interest shall be promptly sold or transferred. If a Trustee's Spouse or Dependent Child receives or retains such a Financial Interest in violation of the foregoing provisions, it will be deemed to be a violation by the Trustee of this provision.

11. No Trustee, Trustee's Spouse or Dependent Child, or a Trustee's Independent Business shall (1) sell any goods or services having a value in excess of twenty-five dollars to the Authority, or (2) contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by the Authority or any of its officers, unless such goods or services are provided pursuant to an award of contract let after public notice and competitive bidding. If a Trustee's Spouse or Dependent Child engages in the conduct described in the preceding sentence, it will be deemed to be a violation by the Trustee of this provision.

12. (a) No Trustee, Trustee's Spouse or Dependent Child shall, directly or indirectly, solicit, accept or receive any Gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, hospitality, thing, discount, forbearance or promise, or in any other form, from an "interested source" defined as any person or entity which is (i) regulated by the Authority or (ii) does business or is seeking to do business with the Authority or (iii) a registered lobbyist who lobbies the Authority (or the spouse or emancipated child thereof), (iv) is involved in any ongoing official action or proceeding adverse to the Authority; or (v) has received or applied for funds from the Authority during the last 12 months. A gift from an interested source is presumed to be impermissible unless it is unreasonable to infer that the item or service was intended to influence or reward the Trustee for performing one's job.

(b) No Trustee, Trustee's Spouse or Dependent Child shall, directly or indirectly, solicit, accept or receive any Gift or gratuity of more than nominal value where the circumstances would permit the inference that: (i) the Gift was intended to

influence the Trustee in the performance of official business; or (ii) the Gift constituted a tip, reward, or sign of appreciation for any official act by the Trustee.

(c) No Trustee, Trustee's Spouse or Dependent Child shall (i) solicit, accept, or receive any gift, as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to section one-m of the legislative law, attached hereto as Exhibit 1, unless under the circumstances it is not reasonable to infer that the gift was intended to influence him, or (ii) permit the solicitation, acceptance or receipt of any gift, as defined in section one-c of the legislative law, from any person who is prohibited from delivering such gift pursuant to section one-m of the legislative law to a third party including a charitable organization, on such official's designation or recommendation or on his or her behalf, under circumstances where it is reasonable to infer that the gift was intended to influence him. A list of exclusions from the definition of gift is attached as Exhibit 2. A Trustee may not solicit, accept or receive a Gift of any value if to do so would constitute a substantial conflict with the proper discharge of his or her duties in the public interest.

(d) If a Trustee's Spouse or Dependent Child engages in the conduct prohibited by paragraph (a), (b), or (c) above, it will be deemed to be a violation by the Trustee of such provisions.

Decisions Relating to a Relative

13. (a) No Trustee may take part in any hiring or employment decision relating to a Relative including any decision to hire, promote, discipline or discharge a Relative, for any compensated position at, for or within the Authority. If such a Relative is hired, no Trustee shall be permitted to supervise such Relative. If a hiring or employment matter arises relating to a Relative, then the Trustee must advise the Chair of the Board of Trustee of the relationship, and must be recused from all discussions or decisions relating to the matter.

(b) No Trustee may take part in any contracting decision: (i) relating to a Relative, (ii) relating to any entity in which a Relative is an officer, director or partner, or in which a Relative owns or controls 10% or more of the stock of such entity, (iii) involving the payment of more than \$1,000 dollars to the Trustee, any Relative of that Trustee, or any entity in which that Trustee or any Relative has a Financial Interest, or (iv) to invest public funds in any security of any entity in which that Trustee or any Relative of that Trustee has a Financial Interest, is an underwriter, or receives any brokerage, origination or servicing fees. If a contracting matter arises relating to a Relative, then the Trustee must advise the Chair of the Board of Trustees of the relationship, and must be recused from all discussions or decisions relating to the contracting matter.

Campaign Contributions and Political Activity and Affiliations

14. Trustees are prohibited from using Authority supplies, equipment, computers, personnel and other resources for non-Authority purposes, including for personal purposes or for outside activities of any kind. In addition, no Trustee appointed by the Governor may make campaign contributions to the Governor. See Executive Order No. 7 “Prohibition of Personal Use of State Property and Campaign Contributions to the Governor” (issued by Governor Paterson and continued by Governor Andrew M. Cuomo) attached hereto as Appendix E and incorporated herein by reference.

15. (a) No Trustee involved in the awarding of grants or contracts may ask a current or prospective grantee or contractor, or any officer, director or employee thereof, to disclose (i) the party affiliation of such grantee or contractor, or any officer, director or employee thereof; (ii) whether such grantee or contractor, or any officer, director or employee thereof, has made campaign contributions to any party, elected official, or candidate for elective office; or (iii) whether such grantee or contractor, or any officer, director or employee thereof, cast a vote for or against any elected official, candidate or political party.

(b) No Trustee may award or decline to award any state grant or contract, or recommend, promise or threaten to do so, in whole or in part, because of a current or prospective grantee’s or contractor’s refusal to answer any inquiry prohibited by paragraph (a) of this subdivision, or giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

16. (a) No Trustee may during the consideration of an employment decision ask any applicant for public employment to disclose: (i) the political party affiliation of the applicant; (ii) whether the applicant has made campaign contributions to any party, elected official, or candidate for elective office; or (iii) whether the applicant cast a vote for or against any elected official, candidate or political party. The provisions of this paragraph shall not apply where (1) such inquiry is necessary for the proper application of any state law or regulation; or (2) such inquiry is consistent with publicly disclosed policies or practices of any state agency or public authority, whose purpose is to ensure the representation of more than one political party on any multi-member body.

(b) No Trustee may decline to hire or promote, discharge, discipline, or in any manner change the official rank or compensation of any state official or employee, or applicant for employment, or promise or threaten to do so, based upon a refusal to answer any inquiry prohibited by paragraph (a) of this subdivision, or for giving or withholding or neglecting to make any contribution of money or service or other valuable thing for any political purpose.

(c) No Trustee shall, directly or indirectly, use his or her official authority to compel or induce any other Trustee to make or promise to make any political contribution, whether by gift of money, service or other thing of value.

17. (a) Regulation 19 NYCRR Part 932.4 of the Joint Commission on Public

Ethics (the “Commission”) requires that Trustees, by virtue of holding Policy-Making Positions, shall not serve as: (1) officers of any political party or political organization; or (2) members of any political party committee, including political party district leaders or as members of a political party national committee. “Political organization” means any organization affiliated with a political party but does not include a judicial nominating committee, an organization supporting a particular cause with no partisan activities, a campaign or fundraising committee, or serving as a delegate to a state or national party convention.

(b) Consistent with this Code, Trustees are otherwise free to participate in the political process on their own time, but there must be a clear separation between their political activities and the discharge of their duties as Trustees of the Authority.

Outside Employment

18. Trustees may not hold outside employment that is in conflict with their Authority duties. See Conflicts of interest.

Annual Financial Disclosure Filing

19. Section §73-a of the Public Officers Law requires the filing of an annual statement of financial disclosure by Trustees. This disclosure statement is an annual disclosure of the financial holdings and associations of filers and their Spouses. The purpose of the financial disclosure is to highlight potential conflicts of interest. (See Appendix B). The Commission can assess penalties for late and delinquent filings.

C. Applicable New York Law

These standards do not replace and are in addition to the requirements of law, particularly Sections 73 and 74 of the New York Public Officers Law, which, among other things, govern the business activities of Trustees and Former Trustees and set forth the State Code of Ethics. Copies of Sections 73, 73-a and 74 of the Public Officers Law are attached to and made a part of this Code as Appendices A, B and C, respectively.

Under the New York Penal Law, it is a felony for Trustees to solicit, accept or agree to accept any Benefit from another person upon an agreement or understanding that their vote, opinion, judgment, action, decision or exercise of discretion as public servants will thereby be influenced. It is also a felony for Trustees to solicit, accept or agree to accept any Benefit from another person for having violated their duties as public servants. It is a misdemeanor for Trustees to solicit, accept or agree to accept any Benefit for having engaged in official conduct which they were required or authorized to perform, and for which they were not entitled to any special or additional compensation.

V. Trading of Securities of Companies Providing Operations Services to the Authority and Certain Energy Companies

The acquisition or trading of securities issued by companies that provide Operations Services to the Authority, the parent corporations of such companies and other subsidiaries or affiliates of such parent corporations, if any, presents a possible Conflict of Interest for all Trustees.

To protect against the potential of a Conflict of Interest with respect to Transactions involving companies that provide Operations Services to the Authority, it is the Authority's policy that a Trustee, a Trustee's Spouse or Dependent Child may not Trade in or otherwise acquire securities in any companies, including parent corporations and other subsidiaries or affiliates of such parent corporations, if any, that provide Operations Services to the Authority. A Trustee, a Trustee's Spouse or Dependent Child who has acquired the securities, not including such securities that are included within a mutual fund or pension fund investment, of such companies must sell or transfer the securities within one year of (i) the Trustee's date of appointment with the Authority, or (ii) the date of such receipt, whichever is later.

No Trustee of the Authority may Trade in or, except as permitted below, otherwise acquire securities in any company engaged in the generation, transmission or sale of electric energy or gas or the provision of fuel to generation facilities, if that Trustee's responsibilities include (i) representing the Authority in Transactions involving such companies; (ii) participating in the evaluation of, or Authority decisions with respect to, Transactions with such companies, or (iii) representing the Authority before regulatory agencies or independent system operators (or their successors) on matters in which such companies have a potential financial interest. Excepted from this provision are those securities that are included within a mutual fund or pension fund investment.

There is no prohibition against the ownership or Trading of Authority bonds and notes which are publicly held and traded subject to the limitations set forth below in Section VI.

VI. Use of Material, Nonpublic and Confidential Information

It is the policy of the Authority to prohibit all Trustees and Former Trustees from (1) Trading in securities based on material, nonpublic information derived from or relating to Authority activities and (2) disclosing Confidential Information to unauthorized third parties.

A. Trading of Securities Based on Material, Nonpublic Information

1. Trustees and Former Trustees shall not Trade in bonds or other securities issued by the Authority based on material, nonpublic information derived from any source and shall not disclose such information for the purpose of allowing third parties to profit from Trading in Authority securities.

2. Trustees and Former Trustees shall not Trade in stocks, bonds or other securities issued by other business entities based on material, nonpublic information

obtained in the course of their duties for the Authority and shall not disclose such information for the purpose of allowing third parties to profit from Trading in securities issued by other business entities based on such information.

Information is material if there is a substantial likelihood that a reasonable investor would consider the information important in making his or her investment decision concerning the securities in question.

Information is nonpublic if, in the case of Authority securities, it has not been publicly disseminated by the Authority. Information is nonpublic if, in the case of securities issued by other business entities, it has not been publicly disseminated by those business entities.

B. Disclosure or Use of Confidential Information

Trustees and Former Trustees shall not disclose Confidential Information to any third party not authorized to receive such information and shall not profit from the use of such information or use such information to further his or her personal interests of the interests of any Relative.

If a Trustee or Former Trustee has a question concerning the confidential status of any information, he or she should consult with the General Counsel of the Authority regarding such information prior to disclosing it to a third party.

Trustees and Former Trustees who violate the provisions of this section may be subject to civil and criminal penalties under Federal and State laws, including fines and/or imprisonment. In addition, Trustees who violate the provisions of this section may be subject to disciplinary action by the Authority, including termination of employment.

VII. Annual Certification of Absence of Conflict of Interest

All Trustees are required to certify annually that they have read the Code, that they understand and agree to comply with the provisions thereof and that they have no known conflict of interest. The Annual Certification Form is attached hereto as Appendix F. These certifications shall be timely submitted to the Authority's General Counsel or Compliance Officer.

Any Trustee who knowingly fails to complete, sign and submit the required Annual Certification Form is in violation of the Code and may be subject to disciplinary action.

VIII. Requests for Interpretation, Clarification or Waiver of the Code

A. Interpretation and Clarification

A Trustee or Former Trustee may submit a written request to the General Counsel of the Authority for an interpretation or clarification of one or more provisions of the Code.

B. Waivers

A Trustee or Former Trustee may submit a written request to the Chair of the Board of Trustees for a waiver of any restriction contained in the Code, provided that the restriction is not otherwise required by State or Federal law. All waiver requests shall include a description of the nature of the restriction or prohibition for which waiver is sought; the nature of the Trustee's or Former Trustee's interest involved; the effect on the Trustee or Former Trustee or the Authority of the restriction or prohibition for which the waiver is sought; and the reasons why the waiver should be granted. A copy of the written request shall be provided to the General Counsel of the Authority.

IX. Remedies for Breaches of the Code

In addition to any other remedies, civil or otherwise, which the Authority may have, a Trustee or Former Trustee who violates the Code may be disciplined under the Code. Remedies or disciplinary action may be imposed only upon the basis of a written statement of findings and recommendations by the General Counsel of the Authority, and may include one or more of the following:

1. issuance of written warnings;
2. direction of corrective action to eliminate and/or ameliorate the conflict of interest; or
3. restitution.

A Former Trustee found to have violated the Code is subject to one or more of the following in addition to any other remedies, civil or otherwise, that the Authority may have: warnings; termination of existing Transactions involving the individual in question to the extent permitted by law; disqualification or suspension from future Transactions of the Former Trustee and/or the person on whose behalf he or she is participating in Transactions with the Authority; and notification to appropriate persons that a conflict exists.

X. Reporting of Violations of the Code

Trustees and Former Trustees are encouraged to promptly report any violations of the Code to the Chair of the Board of Trustees or General Counsel of the Authority and shall cooperate in any official investigation of such violations. Retaliation against Trustees or Former Trustees who in good faith report violations of the Code, other provisions of law or policies, or the public trust, is prohibited. (See the Authority's Anti-Retaliation Policy, attached hereto as Appendix G.)

The General Counsel of the Authority will inform the Authority's Governance Committee of the Board of Trustees about the status and disposition of official investigations and issues thereof raised under the Code.

**UTILITY DEBT SECURITIZATION AUTHORITY
PROMPT PAYMENT POLICY
MARCH 28, 2017**

Section 1.1 Purpose and Applicability

- (a) The purpose of this policy is to implement Section 2880 of the Public Authorities Law by detailing the Authority’s policy for making payment promptly on amounts properly due by the Authority under Contracts. This policy constitutes the Authority’s prompt payment policy as required by that Section.
- (b) This policy generally applies to payments due by the Authority to a person or business in the private sector under a Contract it has entered into with the Authority. This policy does not apply to payments due:
 - 1) under the Eminent Domain Procedure Law;
 - 2) as interest allowed on judgments rendered by a court pursuant to any provision of law except Section 2880 of the Public Authorities Law;
 - 3) to the federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government, including but not limited to counties, cities, towns, villages, school districts, special districts, or any of their related instrumentalities; to any public authority or public benefit corporation; or to its employees when acting in or incidental to their public employment capacity;
 - 4) if the Authority is exercising a legally or authorized set-off against all or part of the payment; or
 - 5) if other State or Federal law, rule, or regulation specifically requires otherwise.

Section 1.2 Definitions: As used in this policy, the following terms shall have the following meanings:

- (a) “Authority” means the Utility Debt Securitization Authority.
- (b) “Contract” means an enforceable agreement entered into between the Authority and a Contractor.
- (c) “Contractor” means any person, entity, partnership, private corporation or association providing goods, property or services to the Authority pursuant to a Contract.

- (d) “Designated payment office” means the office within the Authority to which a proper invoice is to be submitted by a Contractor.
- (e) “Payment” means provision by the Authority of funds in an amount sufficient to satisfy a debt properly due to a Contractor and payable under all applicable provisions of a Contract to which this policy applies and of law, including but not limited to provisions for retained amounts or provision which may limit the Authority’s power to pay, such as claims, liens, attachments, or judgments against the Contractor which have not been properly discharged waived or released. Payment shall be deemed to occur on the date the Authority places the funds in the mail addressed to the Contractor, or, in the event payment is made electronically, on the date on which the Authority initiates the electronic transfer.
- (f) “Payment due date” means the date by which payment must occur, in accordance with the provisions of Section 1.3 through 1.5 of this policy, in order for the Authority not to be liable for interest pursuant to Section 1.6.
- (g) “Prompt payment” means a payment within the time periods applicable pursuant to Sections 1.3 through 1.5 of this policy in order for the Authority not to be liable for interest pursuant to Section 1.6.
- (h) “Proper invoice” means a written request for a Contract payment that is submitted by a Contractor setting forth the description, price or cost, and quantity of goods, property, or services delivered, or rendered by the Contractor in such form, and supported by such other substantiating documentation, as the Authority may reasonably require, including but not limited to any requirements set forth in the Contract.
- (i) “Public holiday” shall have the meaning ascribed to it in New York General Construction Law § 24.
- (j) “Receipt” of an invoice
 - 1) “Receipt” of an invoice means:
 - A. If the payment is one for which an invoice is required, the later of;
 - i. the date on which a proper invoice is actually received in the designated payment office during the normal business hours; or
 - ii. the date by which, during normal business hours; the Authority has actually received all the purchased goods, property, or services covered by a proper invoice previously received in the designated payment office.
 - B. If a Contract provides that a payment will be made on a specific date or at a predetermined interval without the Contractor being required to submit a written invoice, the thirtieth calendar day, excluding public holidays, before the date so specified or predetermined.

- 2) For purposes of this subdivision, if the Contract requires a multifaceted, completed, or working system, or delivery of no less than a specific quantity of goods, property, or services and only a portion of such systems or less than the required goods, property, or services are working, completed or delivered, even though the Contractor has invoiced the Authority for the portion working, completed, or delivered, the Authority will not be considered in receipt of an invoice until the specified minimum amount of the system, goods, property, or services are working, completed or delivered.
- (k) “Set-off” means 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 1.3 Prompt Payment Schedule: Except as otherwise provided by law or regulation or in Sections 1.4 and 1.5 of this policy, the payment due date of an amount properly due by the Authority under a Contract shall be thirty calendar days, excluding public holidays, after receipt of an invoice for such amount due; except that if such thirtieth calendar day falls on a Saturday or Sunday, the payment due date shall be the following business day.

Section 1.4 Payment Procedures

- (a) Unless otherwise specified by a Contract provision, proper invoice submitted by the Contractor to the designated payment office shall be required to initiate payment for goods, property, or services. As soon as any invoice is received in the designated payment office during normal business hours, such invoice shall be date-stamped. The invoice shall then promptly be reviewed by the Authority.
- (b) The Authority shall notify the Contractor within fifteen calendar days after receipt of an invoice of:
 - 1) any defects in the delivered goods, property, or services;
 - 2) any defects in the invoice; and
 - 3) suspected improprieties of any kind.
- (c) The existence of any defects or suspected improprieties shall prevent the commencement of the time period specified in Section 1.3 until any such defects or improprieties are corrected or otherwise resolved.
- (d) If the Authority fails to notify a Contractor of a defect or impropriety within the fifteen calendar day period specified in subdivision (b), the sole effect shall be that the number of days allowed for payment after the defects or improprieties have been corrected or otherwise resolved shall be reduced by the number of days between the fifteenth day and the day that notification was transmitted to the Contractor. If the Authority fails to provide

reasonable grounds for its contention that a defect or impropriety exists, the sole effect shall be that the payment due date shall be calculated using the original date of receipt of an invoice.

- (e) In the absence of any defect or suspected impropriety, or upon satisfactory corrections or resolution of a defect or suspected impropriety, the Authority shall make payment consistent with any such correction or resolution and the provisions of this policy.

Section 1.5 Exceptions and extension of payment due date. The Authority has determined that, notwithstanding the provisions of Section 1.3 and 1.4, any of the following facts or circumstances, which may occur concurrently or consecutively, reasonably justify extension of the payment due date;

- (a) If any documentation, supporting data, performance verification, or notice specifically required by the Contract or other State or Federal mandate has not been submitted to the Authority on a timely basis, then the payment due date shall be extended by the number of calendar days from the date by which all such matter was to be submitted to the Authority to the date when the Authority has actually received such matter.
- (b) If an inspection or testing period, performance verification, audit, or other review or documentation independent of the Contractor is specifically required by the Contract or by other State or Federal mandate, whether to be performed by or on behalf of the Authority or another entity, or is specifically permitted by the Contract or by other State or Federal provision and the Authority or other entity with the right to do so elects to have such activity or documentation undertaken, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when any such activity or documentation has been completed, the Authority has actually received the results of such activity or documentation conducted by another entity, and any deficiencies identified or issues raised as a result of such activity or documentation have been corrected or otherwise resolved.
- (c) If an invoice must be examined by a State or Federal agency, or by another party contributing to the funding of the Contract, prior to payment, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when the State or Federal agency, or other contributing party to the Contract, has completed the inspection, advised the Authority of the results of the inspection, and any deficiencies identified or issues raised as a result of such inspection have been corrected or otherwise resolved.
- (d) If appropriate funds from which payment is to be made have not yet been appropriated or, if appropriated, not yet been made available to the Authority, then the payment due date shall be extended by the number of calendar days from the date of receipt of an invoice to the date when such funds are made available to the Authority.

Section 1.6 Interest eligibility and computation: If the Authority fails to make prompt payment, the Authority shall become liable for interest payments to a Contractor on the payment. Interest shall be computed and accrue to the overpayment rate set by the Commissioner of Taxation pursuant to Subsection (e) of Section 1096 of the Tax Law of the State of New York. Interest on such a payment shall accrue for the period beginning on the day after the payment due date and ending on the earliest to occur of (i) the date of payment, (ii) the date of a notice of intention to file a claim, (iii) the date of a notice of a claim, and (iv) the date commencing a legal action for the payment of such interest.

Section 1.7 Sources of funds to pay interest: Any interest payable by the Authority pursuant to this policy shall be paid only from the same accounts, funds, or appropriates that are lawfully available to make the related Contract payment.

Section 1.8 Incorporation of Prompt Payment Policy into Contracts: The provisions of this policy in effect at the time of creation of a Contract shall be incorporated into and made part of such Contract and shall apply to all payments as they become due pursuant to the terms and conditions of such Contract, notwithstanding that the Authority may subsequently amend this policy.

Section 1.9 Notice of objection: Unless a different procedure is specifically prescribed in a Contract, a Contractor may object to any action taken by the Authority pursuant to this policy which prevents the commencement of the time in which interest will be paid by submitting a written notice of objection to the Authority. Such notice shall be signed and dated and concisely and clearly set forth the basis for the objection and be sent to the Chief Financial Officer of the Authority. The Chief Financial Officer or his designee shall review the objection for purposes of affirming or modifying the Authority's action. Within 15 working days of the receipt of the objection, the Chief Financial Officer or his designee shall notify the Contractor either that the Authority's action is affirmed or that it is modified or that, due to the complexity of the issue, additional time is needed to conduct the review; provided, however, in no event shall the extended review period exceed 30 calendar days.

Section 1.10 Judicial Review: Any determination made by the Authority pursuant to this policy which prevents the commencement of the time in which interest will be paid is subject to judicial review in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules. Such proceedings shall only be commenced upon completion of the review procedure that may be specified in the Contract or by law, rule or regulation.

Section 1.11 Court Action or other Legal Processes

- (a) Notwithstanding any other law to the contrary, the liability of the Authority to make an interest payment to a Contractor pursuant to this policy shall not extend beyond the date of a notice of intention to file a claim, the date of a notice of a claim, or the date commencing a legal action for the payment of such interest, whichever occurs first.
- (b) With respect to the court action or other legal process referred to in Subdivision (a) of this Section, any interest obligation incurred by the Authority after the date specified therein pursuant to any provision of law other than Public Authorities Law Section 2880 shall be determined as prescribed by such separate provision of law, shall be paid as directed by the court, and shall be paid from any source of funds available for that purpose.