

**FOR CONSIDERATION**

January 24, 2018

**TO:** The Governance Committee of the Board of Trustees

**FROM:** Thomas Falcone

**REQUEST:** Recommendation for the Approval of the Revised Governance Committee Charter

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Requested Action

The Governance Committee is being requested to adopt a resolution recommending revisions to the Long Island Power Authority (the “Authority”) Governance Committee Charter (the “Charter”) in the form attached hereto.

Background

The Charter was adopted by the Board of Trustees on November 26, 2013 and was last revised in January 2017. It establishes the purpose, membership, meeting requirements and responsibilities of the Governance Committee (the “Committee”) and serves as the governing document for the Committee. Consistent with the Charter, the Committee has undertaken a thorough review of the Charter’s adequacy and compliance with applicable law, and has noted certain changes that provide consistency with the New York State Open Meetings Law and New York State Public Officers Law and those provisions relating to a “quorum” of the Committee.

Recommendation

Based upon the foregoing, I recommend approval of the above-requested action by adoption of the resolution attached hereto.

Attachments

Exhibit A Resolution

**RECOMMENDATION FOR THE APPROVAL OF THE REVISED LONG ISLAND POWER AUTHORITY GOVERNANCE COMMITTEE CHARTER**

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WHEREAS, the Trustees adopted, on November 26, 2013, a Governance Committee Charter (“Charter”) which establishes, among other things, the purpose, powers, composition and key responsibilities of the Governance Committee (the “Committee”); and

WHEREAS, the Committee has reviewed the proposed revised Charter and believes it is reasonable and appropriate to revise it for the reasons set forth in the accompanying memorandum.

NOW, THEREFORE, BE IT RESOLVED, that the Governance Committee hereby recommends to the Board of Trustees the adoption of the Long Island Power Authority’s “Governance Committee Charter (January 24, 2018)” in the form presented at this meeting.

Attachment A-1 Governance Committee Charter - Redline

Attachment A-2 Governance Committee Charter – Clean Version of Charter for Adoption

Dated: January 24, 2018

## GOVERNANCE COMMITTEE CHARTER

Long Island Power Authority  
Revised January 25~~24~~, 20172018

### PURPOSE

Pursuant to Section 2824 of the Public Authorities Law of the State of New York, the purpose of the Long Island Power Authority's (the "Authority") governance committee (the "Governance Committee") is to assist the Trustees of the Authority (collectively, the "Board") by:

- Keeping the Board informed of current best governance practices;
- Reviewing corporate governance trends for their applicability to the Authority;
- Updating the Authority's corporate governance principles;
- Ensuring that the Board's policies provide strategic direction for the Authority and that the Board is being effective in the utilization of the Authority's assets and oversight of the Authority's activities; and
- Advising those responsible for appointing Trustees on the skills and experiences required of potential Trustees.

### MEMBERSHIP

The Committee shall consist of three or more Trustees, who shall be appointed by, and serve at the discretion of, the Chair of the Board of Trustees, including the member designated as its chair ("Committee Chair"). The members shall serve until their resignation, retirement, or removal by the Chair of the Board of Trustees. The Chair of the Board shall serve as an ex-officio, voting member of the Committee.

Each Committee member shall meet the independence requirements set forth in the Public Authorities Accountability Act of 2005<sup>1</sup>.

### MEETINGS

Meetings of the Committee shall be convened by the Committee Chair and are authorized as often as the Committee Chair deems necessary, but not less than four times a year. A majority of the members of the Committee then sitting shall constitute a quorum for the transaction of any business

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<sup>1</sup> An "independent" member is defined in the Act as one who: 1. is not, and in the past two years has not been a) employed by the public authority or an affiliate in an executive capacity; b) employed by an entity that has received remuneration valued at more than fifteen thousand dollars for goods and services provided to the public authority or received any other form of financial assistance valued at more than fifteen thousand dollars from the public authority; c) a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the public authority or an affiliate; and 2. is not a relative of an executive officer or employee in an executive position of the public authority or an affiliate.

or the exercise of any power or function of the Committee ~~and the Committee shall have the power to act by a majority of the members present (in person or via video conference) at any meeting.~~ Meeting agendas will be prepared for every meeting and provided to the Committee members at least two (2) days in advance of the scheduled meeting, along with the appropriate materials needed to make informed decisions.

Meetings of the Committee shall be open to the public and governed by the rules regarding public meetings set forth in the applicable provisions of the Public Authorities Law and Article 7 of the Public Officers Law that relate to public notice, public speaking and the conduct of executive session, and minutes will be taken and maintained.

The Committee may request any officer or employee of the Authority, PSEG Long Island or the Authority's outside counsel or other consultants to attend a meeting of the Committee or to meet with any members of, or consultants to, the Committee.

## **RESPONSIBILITIES**

The Board hereby assigns the Governance Committee the responsibility to review, develop, draft, revise or oversee policies and practices for which the Governance Committee has specific expertise or delegated responsibility, as follows:

### General Responsibilities

- Develop and recommend to the Board policies for the sound governance of the Authority including but not limited to the Board's Mission, the purpose and role of the Board, the Board's relationship with the Chief Executive Officer ("CEO") of the Authority and other Board-appointed officers, Codes of Ethics and Conduct, performance standards for the Board and employees of the Authority, and other such policies as it deems necessary or appropriate to address transparency, independence, accountability, fiduciary responsibilities, and management oversight (which responsibility may be delegated by this Committee to other board committees that have greater first-hand knowledge or experience with the issue, at its discretion).
- Develop and recommend to the Board the number and structure of committees to be created by the Board, including this Committee.
- Develop and provide recommendations to the Board evaluation of the performance of the Board, its committees and senior management<sup>2</sup> in the Authority's governance process, including coordination and oversight of such performance evaluations.
- Examine potential ethical and conflict of interest issues and situations.

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<sup>2</sup> The responsibility to evaluate the Board-appointed executives has been delegated to the Personnel and Compensation Committee

## **Specific Responsibilities**

- Develop, review on a regular basis, and update as necessary the Authority's Mission Statement, Policy Goals and Operations and Oversight Plan (collectively, the strategic plan) to ensure that the Authority is establishing and following the appropriate and necessary direction for itself, the CEO and all of LIPA's service providers for the immediate and long term benefit of the customer-owners and residents of Long Island.
- Develop, review on a regular basis, and update as necessary the Authority's Code of Ethics and Conduct, which shall be at least as stringent as the laws, rules, regulations and policies applicable to state officers and employees.
- Develop and recommend to the Board any required revisions to the Authority's written policies regarding the protection of whistleblowers from retaliation, as included in the Code.
- Develop and recommend to the Board any required updates on the Authority's written policies regarding procurement of goods and services, including policies relating to the disclosure of persons who attempt to influence the Authority's procurement process.
- Develop and recommend to the Board any required updates on the Authority's written policies regarding the disposition of real and personal property.
- Develop and recommend to the Board all updates on the Authority's other written policies that are required by statute or by resolution of the Board which have not been delegated to other Board committees or retained to itself by the Board.
- Develop and recommend to the Board any other policies or documents relating to the governance of the Authority, including rules and procedures for conducting the business of the Board, such as the Authority's by-laws. The Governance Committee will oversee the implementation and effectiveness of the by-laws and other governance documents and recommend modifications as needed.
- Review and report to the Board at least annually on the effectiveness of the Board, the Board's governance structure and the Board's policies, and make such recommendations to the Board as will improve the effectiveness of the Board, the utilization of the Authority's assets and the Board's oversight of the Authority's operations. The Committee will similarly assess its own activities and effectiveness as a Committee and report that to the Board annually.
- Develop a description of the competencies and personal attributes required of Trustees to assist those authorized to appoint members to the Board in identifying qualified individuals.

- Develop and provide recommendations to the Board regarding Trustee education, including new Trustee orientation and regularly scheduled Trustee training.
- Review and report to the Board on the requirement under the LIPA Reform Act to keep the Authority's staffing at only those levels necessary to ensure that the Authority is able to meet its obligations with respect to its bonds and notes and all applicable statutes and contracts, and oversee the activities of its service provider<sup>3</sup>.

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<sup>3</sup> This responsibility has been delegated to the Personnel and Compensation Committee

## **GOVERNANCE COMMITTEE CHARTER**

Long Island Power Authority  
Revised January 24, 2018

### **PURPOSE**

Pursuant to Section 2824 of the Public Authorities Law of the State of New York, the purpose of the Long Island Power Authority's (the "Authority") governance committee (the "Governance Committee") is to assist the Trustees of the Authority (collectively, the "Board") by:

- Keeping the Board informed of current best governance practices;
- Reviewing corporate governance trends for their applicability to the Authority;
- Updating the Authority's corporate governance principles;
- Ensuring that the Board's policies provide strategic direction for the Authority and that the Board is being effective in the utilization of the Authority's assets and oversight of the Authority's activities; and
- Advising those responsible for appointing Trustees on the skills and experiences required of potential Trustees.

### **MEMBERSHIP**

The Committee shall consist of three or more Trustees, who shall be appointed by, and serve at the discretion of, the Chair of the Board of Trustees, including the member designated as its chair ("Committee Chair"). The members shall serve until their resignation, retirement, or removal by the Chair of the Board of Trustees. The Chair of the Board shall serve as an ex-officio, voting member of the Committee.

Each Committee member shall meet the independence requirements set forth in the Public Authorities Accountability Act of 2005<sup>1</sup>.

### **MEETINGS**

Meetings of the Committee shall be convened by the Committee Chair and are authorized as often as the Committee Chair deems necessary, but not less than four times a year. A majority of the members of the Committee then sitting shall constitute a quorum for the transaction of any business

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<sup>1</sup> An "independent" member is defined in the Act as one who: 1. is not, and in the past two years has not been a) employed by the public authority or an affiliate in an executive capacity; b) employed by an entity that has received remuneration valued at more than fifteen thousand dollars for goods and services provided to the public authority or received any other form of financial assistance valued at more than fifteen thousand dollars from the public authority; c) a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the public authority or an affiliate; and 2. is not a relative of an executive officer or employee in an executive position of the public authority or an affiliate.

or the exercise of any power or function of the Committee. Meeting agendas will be prepared for every meeting and provided to the Committee members at least two (2) days in advance of the scheduled meeting, along with the appropriate materials needed to make informed decisions.

Meetings of the Committee shall be open to the public and governed by the rules regarding public meetings set forth in the applicable provisions of the Public Authorities Law and Article 7 of the Public Officers Law that relate to public notice, public speaking and the conduct of executive session, and minutes will be taken and maintained.

The Committee may request any officer or employee of the Authority, PSEG Long Island or the Authority's outside counsel or other consultants to attend a meeting of the Committee or to meet with any members of, or consultants to, the Committee.

## **RESPONSIBILITIES**

The Board hereby assigns the Governance Committee the responsibility to review, develop, draft, revise or oversee policies and practices for which the Governance Committee has specific expertise or delegated responsibility, as follows:

### General Responsibilities

- Develop and recommend to the Board policies for the sound governance of the Authority including but not limited to the Board's Mission, the purpose and role of the Board, the Board's relationship with the Chief Executive Officer ("CEO") of the Authority and other Board-appointed officers, Codes of Ethics and Conduct, performance standards for the Board and employees of the Authority, and other such policies as it deems necessary or appropriate to address transparency, independence, accountability, fiduciary responsibilities, and management oversight (which responsibility may be delegated by this Committee to other board committees that have greater first-hand knowledge or experience with the issue, at its discretion).
- Develop and recommend to the Board the number and structure of committees to be created by the Board, including this Committee.
- Develop and provide recommendations to the Board evaluation of the performance of the Board, its committees and senior management<sup>2</sup> in the Authority's governance process, including coordination and oversight of such performance evaluations.
- Examine potential ethical and conflict of interest issues and situations.

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<sup>2</sup> The responsibility to evaluate the Board-appointed executives has been delegated to the Personnel and Compensation Committee



## **Specific Responsibilities**

- Develop, review on a regular basis, and update as necessary the Authority's Mission Statement, Policy Goals and Operations and Oversight Plan (collectively, the strategic plan) to ensure that the Authority is establishing and following the appropriate and necessary direction for itself, the CEO and all of LIPA's service providers for the immediate and long term benefit of the customer-owners and residents of Long Island.
- Develop, review on a regular basis, and update as necessary the Authority's Code of Ethics and Conduct, which shall be at least as stringent as the laws, rules, regulations and policies applicable to state officers and employees.
- Develop and recommend to the Board any required revisions to the Authority's written policies regarding the protection of whistleblowers from retaliation, as included in the Code.
- Develop and recommend to the Board any required updates on the Authority's written policies regarding procurement of goods and services, including policies relating to the disclosure of persons who attempt to influence the Authority's procurement process.
- Develop and recommend to the Board any required updates on the Authority's written policies regarding the disposition of real and personal property.
- Develop and recommend to the Board all updates on the Authority's other written policies that are required by statute or by resolution of the Board which have not been delegated to other Board committees or retained to itself by the Board.
- Develop and recommend to the Board any other policies or documents relating to the governance of the Authority, including rules and procedures for conducting the business of the Board, such as the Authority's by-laws. The Governance Committee will oversee the implementation and effectiveness of the by-laws and other governance documents and recommend modifications as needed.
- Review and report to the Board at least annually on the effectiveness of the Board, the Board's governance structure and the Board's policies, and make such recommendations to the Board as will improve the effectiveness of the Board, the utilization of the Authority's assets and the Board's oversight of the Authority's operations. The Committee will similarly assess its own activities and effectiveness as a Committee and report that to the Board annually.
- Develop a description of the competencies and personal attributes required of Trustees to assist those authorized to appoint members to the Board in identifying qualified individuals.

- Develop and provide recommendations to the Board regarding Trustee education, including new Trustee orientation and regularly scheduled Trustee training.
- Review and report to the Board on the requirement under the LIPA Reform Act to keep the Authority's staffing at only those levels necessary to ensure that the Authority is able to meet its obligations with respect to its bonds and notes and all applicable statutes and contracts, and oversee the activities of its service provider<sup>3</sup>.

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<sup>3</sup> This responsibility has been delegated to the Personnel and Compensation Committee

## **FOR CONSIDERATION**

January 24, 2018

**TO:** The Governance Committee of the Board of Trustees

**FROM:** Thomas Falcone

**SUBJECT:** Recommendation for the Approval of Revisions to the Board Policy on Property Disposition.

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### Requested Action

The Governance Committee of the Board of Trustees of the Long Island Power Authority (the "Authority") is requested to adopt a resolution recommending approval of revisions to the Board Policy on Property Disposition.

### Board Policy on Property Disposition

Section 2896 of the Public Authorities Law ("PAL") requires the Authority to adopt, and periodically review and approve comprehensive guidelines regarding the use, awarding, monitoring and reporting of contracts for the disposal of Authority property. Such guidelines were last reviewed and approved by the Trustees on March 29, 2017. Based on Staff's review, the proposed Board Policy on Property Disposition is intended to replace the prior guidelines and incorporates the following modification:

- (i) Removes an unnecessary and potentially confusing reference to a \$5,000 threshold set forth in the definition of "Property" as it relates to personal property. In accordance with the PAL, Section C.3 of the Property Disposition guidelines already allow for disposition of personal property up to \$15,000 without, generally, the need for public bidding or auction.

The Authority is required to annually file with the State and make available on its website a report on all property dispositions, including the value received and method of procurement, which is provided to the Board of Trustees.

### Recommendation

Based upon the foregoing, I recommend the approval of the above requested action by adoption of the resolution in the form attached hereto as Exhibit A. Further, Staff has reviewed all other Board governance policies, as applicable, and the Trustee Code of Ethics and Conduct and recommends no change at this time.

### Attachments

Exhibit A Resolution re: Board Policy on Property Disposition  
Exhibit B Proposed Board Policy on Property Disposition (Redline)  
Exhibit C Proposed Board Policy on Property Disposition (Clean)

**EXHIBIT A**

**RECOMMENDATION FOR THE APPROVAL OF BOARD POLICY ON  
PROPERTY DISPOSITION**

RESOLVED, that the LIPA Governance Committee hereby recommends to the Board of Trustees the adoption of the Board Policy on Property Disposition, in the form presented at this meeting to be effective immediately.

Long Island Power 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 Board Policy (the “Policy”) is adopted pursuant to such requirement and is applicable with respect to the use, awarding, monitoring and reporting of all Property Disposition Contracts which are (i) entered into by the Authority and (ii) solicited or awarded by the Authority on behalf of the Long Island Lighting Company d/b/a LIPA and d/b/a Power Supply Long Island or on behalf of the Utility Debt Securitization Authority (collectively, 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

Long Island Power 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 Board Policy (the “Policy”) is adopted pursuant to such requirement and is applicable with respect to the use, awarding, monitoring and reporting of all Property Disposition Contracts which are (i) entered into by the Authority and (ii) solicited or awarded by the Authority on behalf of the Long Island Lighting Company d/b/a LIPA and d/b/a Power Supply Long Island or on behalf of the Utility Debt Securitization Authority (collectively, 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, 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