

Gateway Development Commission  
Meeting of The Board  
Held via Teleconference

July 12, 2021

MINUTES

The following Commissioners were present:

**NEW JERSEY**

Balpreet Grewal-Virk, Co-Chair  
Janine Bauer  
Jerry Zaro

**NEW YORK**

Steven M. Cohen, Co-Chair  
Jamey Barbas  
Marie Therese Dominguez

**AMTRAK**

Anthony R. Coscia, Vice Chair

**I. Call to Order**

The public meeting was called to order by Co-Chair Cohen at approximately 3:00 p.m.

Co-Chair Cohen advised that due to the ongoing public health crisis posed by COVID-19, and in light of the recommendations from the Centers for Disease Control and Prevention (“CDC”) and the State of New Jersey, the meeting was being held virtually via teleconference with audio live-streamed from the Gateway Program website. Co-Chair Cohen specifically noted that the State of New York had lifted all COVID-19 restrictions, but since the Gateway Development Commission (“Commission”) is a bi-state entity and due to continuing guidance from the CDC and the State of New Jersey, the Commission is continuing to meet virtually. Co-Chair Cohen indicated that the expectation is that the Commission will gather in-person for the September Board meeting.

Co-Chair Cohen also advised that as part of the Commission public speakers’ program, the Commission was continuing to solicit comments from the public for today’s virtual meeting and that a form for soliciting these comments was posted on the Gateway Program website for those who wished to submit a comment for today’s meeting.

Acting Secretary Caulfield conducted a roll call and confirmed that there was a quorum.

Acting Secretary Caulfield stated that adequate notice of today’s regular public meeting of the Board of Commissioners of the Commission had been provided in accordance with the Commission’s enabling legislation.

**II. Executive Session**

Co-Chair Cohen requested a motion to enter Executive Session to discuss contract negotiations, personnel matters and matters in which the release of information could impair a right to receive funds from the United States or other grantor. Co-Chair Grewal-Virk seconded the motion, and it was unanimously adopted.

**III. Reconvening of Public Meeting**

The public meeting was reconvened by Co-Chair Cohen at approximately 4:00 p.m. Acting Secretary Caulfield confirmed that all Commissioners were present and that there was a quorum.

Co-Chair Cohen welcomed all attendees to the meeting of the Gateway Development Commission.

**IV. Report on Minutes of the May 12, 2021 Meeting**

Acting Secretary Caulfield reported that copies of the Minutes of the meeting of May 12, 2021 were delivered in electronic form by Vice Chair Coscia to the Governors of New York and New Jersey on May 25, 2021 and that the time for action by the Governors of New York and New Jersey expired at midnight on June 9, 2021, at which time the actions recorded in the Minutes went into full force and effect.

**V. Gateway Program Update**

Frank Sacr, Stephen Sigmund, and Suma Mandel provided an update presentation on the Gateway Program.

Following the presentation, Co-Chair Cohen thanked Mr. Sacr, Mr. Sigmund and Ms. Mandel for their update. Co-Chair Cohen specifically noted that the States of New York and New Jersey are currently actively focused on the Memorandum of Understanding (“MOU”) required by the GDC Act that requires the States to memorialize equal funding from the States for Phase One of the Gateway Program. Co-Chair Cohen noted that this MOU should also consider critical portions of Phase Two, and he hoped that the MOU would be brought to completion in the next few weeks.

Co-Chair Cohen asked if any Commissioners had any questions or comments.

Commissioner Dominguez noted that the delay data presented by Mr. Sigmund in the presentation proved the need for the Hudson Tunnel Project and noted that in the EIS this is a project focused on resiliency particularly after the impacts of Superstorm Sandy. She also noted that moving expeditiously on the development and construction front on the Hudson Tunnel Project will help resolve these delays.

Commissioner Barbas noted that in light of the continued delay data, even during times of lower ridership, as referenced in the presentation, she was seeking a detailed response from Amtrak to the level of difficulty of the rehabilitation recommendations contained in the report by London Bridge Associates. She was wondering whether Amtrak’s interim repairs would be more problematic now given ongoing electrical power, traction and signal issues that continue to occur.

Co-Chair Cohen noted that he would follow up to obtain a response to Commissioner Barbas’ questions.

**VI. Public Comments**

Co-Chair Cohen announced that prior to voting on today’s action items that the Commission had solicited comments from the public in advance of, and during, today’s virtual meeting. A form for soliciting these comments was posted to the Gateway Program website and was available throughout today’s meeting. Ten comments were received by 5:00 PM on July 11, 2021 and had been distributed to the Board and posted on the Gateway Program website in advance of the meeting. All comments received during the meeting would be distributed to the Board, posted on the Gateway Program website, and filed in the Commission’s records after the meeting. There were three additional comments received on July 12, 2021.

The following individuals provided comment:

Commenter:

Bruce Hain, Individual

Brian Fritsch, Build Gateway Now Coalition

Peter Kiernan, Venable LLP

Maurice Wills, Individual

Laura Colacurcio, Association for a Better New York  
(ABNY)

Henry Ickes, Individual

Linden Wallner, Individual

Leon Zaharis, Individual

Earl Stephenson, Homeland Construction Services, Inc.

Charles Eigner, Retired

Carlos Castell Croke, NY League of Conservation Voters

Felicia Park-Rogers, Tri-State Transportation Campaign

Peggy Brockman, Individual

Topic:

Concerns about the existing tunnel and the advisability of current plans

Support for the Gateway Program

Contracting and Project Management

Funding for projects

Gateway Program

Sub-Hudson (North) River rail traffic level

The Hudson Tunnel Project

What tunneling and tunnel construction method has been chosen?

Construction Contracting Employment for MBE, SBE

About time

Gateway Support

Gateway Program – Hudson Tunnel Project

Cost of Insurance

**VII. Action Item**

**#0721-01: Adoption of Policies**

The Board also acted on the referenced action item, enclosed herewith. Co-Chair Cohen made a motion, and Co-Chair Grewal-Virk seconded the motion. The roll call vote is referenced in the attached Resolution.

**VIII. Adjournment**

There being no further business, Co-Chair Cohen requested a motion to adjourn the meeting, and upon the motion being duly made by Co-Chair Cohen and seconded by Co-Chair Grewal-Virk, the meeting was adjourned at approximately 4:23 p.m.

Respectfully submitted,

/s/ Edmund J. Caulfield  
Edmund Caulfield, Acting Secretary

## #0721 - 01: ADOPTION OF POLICIES

The Gateway Development Commission Act (“GDC Act”) requires the Commission to “establish a whistleblower access and assistance program protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate conduct based upon the recommendation of the chief ethics and compliance officer.”

Further, pursuant to the GDC Act, the Commission shall “establish a policy requiring all commissioners, officers, and employees with decision-making authority to maintain records regarding contact with lobbyists.”

Further, pursuant to the GDC Act, the Commission shall “adopt and promulgate appropriate bylaws, rules or regulations concerning the rights of the public to obtain records of the commissioner’s activities or public business.”

Further, pursuant to the GDC Act, “the board shall adopt, prior to the appropriation of any property appropriate rules and regulations concerning disposition, acquisition and transfer of real property or any interest in real property by the Commission ... “

Further, pursuant to the GDC Act, the Commissioners shall adopt “appropriate policies concerning proper notice to the public and the news media of its meetings and the right of the public and the news media to be present at meetings of the Commission.”

Further, the Commission wishes to amend Article IV, Section 4.02(b) of the Bylaws and Section IV.C.2 of the Open Meetings Policy, which Bylaws and Policy were adopted by the Board on March 5, 2021, to correct certain ministerial errors and more closely conform to the GDC Act.

Additional Commission policies will be adopted at future Board Meetings of the Commission.

Pursuant to the foregoing report, the following resolution was adopted, with Commissioners Barbas, Bauer, Cohen, Coscia, Dominguez, Grewal-Virk and Zaro voting in favor:

**RESOLVED**, pursuant to the GDC Act, the Commission adopts the following Policies, which are attached as exhibits hereto:

- Whistleblower Protection Policy, attached hereto as Exhibit A;
- Lobbying Contacts Policy, attached hereto as Exhibit B;
- Public Records Access Policy, attached hereto as Exhibit C;
- Policy on the Acquisition and Disposition of Property, attached hereto as Exhibit D.

**RESOLVED**, Article IV, Section 4.02(b) of the Bylaws, and Section IV.C.2 of the Open Meetings Policy are hereby amended and restated in their entirety as set forth in Exhibit E, attached hereto.

**RESOLVED**, that the Commission take all actions as may be necessary to promptly post the Policies on the Commission's website.

# **EXHIBIT A**

**GATEWAY DEVELOPMENT COMMISSION  
WHISTLEBLOWER PROTECTION POLICY**

**I. DEFINITIONS**

Unless otherwise provided, when used in this Policy:

“Board” means the Board of Commissioners of the Commission.

“Commission” means the Gateway Development Commission.

“Commissioner(s)” means the commissioners appointed to the Board.

“Employees,” solely for purposes of this Policy, means those persons employed at the Commission, including but not limited to: full-time and part-time employees, those employees on probation, temporary employees, Officers, and Commissioners.

“Good Faith” means the reasonable belief of the individual making a disclosure of potential Wrongdoing that such information is true and accurate and reasonably constitutes a potential Wrongdoing.

“Inspector General” means the Inspector General of the Commission appointed by the Board in accordance with the Commission’s Bylaws.

“Officers” means positions identified as an officer by the Commission in accordance with the GDC Act and the Commission’s Bylaws.

“Retaliatory Action” means, without limitation, firing, discharging, demoting, suspending, harassing, threatening, or discriminating against an Employee as a result of acting in the role of a Whistleblower.

“Whistleblower” means any Employee of the Commission who discloses information concerning acts of Wrongdoing.

“Wrongdoing” means any act of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an Employee or third parties doing business with the Commission, including, but not limited to, such act concerning the Commission’s investments, travel, acquisition of real or personal property, the disposition of real or personal property, or the procurement of goods and services.

**II. WHISTLEBLOWER ACCESS AND ASSISTANCE PROGRAM**

A. The Chief Ethics and Compliance Officer shall have primary responsibility for the development and operation of the Commission’s Whistleblower Access and Assistance Program, which shall be administered by the Inspector General.

B. The Commission will no later than 90 days after the date of adoption of this Whistleblower policy establish, and will thereafter maintain an email address, toll-free telephone number and facsimile and text messaging lines, or any other methods deemed appropriate by the



***Whistleblower Protection Policy  
Adopted – July 12, 2021***

Commission for Employees who wish to report Wrongdoing, including Wrongdoing by the Commission itself or any other concern regarding any issue at the Commission, and any unwritten reports received through these channels will be promptly reduced to writing. Information concerning the Commission's Whistleblower Protection Policy and such methods of communication will be prominently posted on the Commission's website and in any office the Commission may maintain. Such information will also be available upon request.

C. If an Employee intending to report Wrongdoing, including Wrongdoing by the Commission itself or any other concern regarding any issue at the Commission, believes that for any reason in the Employee's judgment, such report should go directly to the Inspector General, then such Employee may contact the Inspector General directly. Contact information for the Inspector General will include an email address, toll-free telephone number and facsimile and text messaging lines, and will be prominently posted on the Commission's website and in any office the Commission may maintain. Such information will also be available upon request.

D. Should an Employee believe in Good Faith that disclosing information through the reporting processes identified in Sections II.B. and II.C. would hinder the investigation or expose them to a Retaliatory Action, the Employee may report such Wrongdoing to the Chief Executive Officer ("CEO") or, if the Wrongdoing involves Officers, the Employee may report to either Co-Chairperson, and the CEO or Co-Chairperson will determine the appropriate manner in which to pursue such investigation, and if they determine it is appropriate under the circumstances, they may consult with the Board or any Officer on such investigation. Nothing in this policy prohibits an Employee from reporting in Good Faith possible Wrongdoing to a law enforcement agency with jurisdiction, including the New Jersey Office of Attorney General or the New York State Office of the Attorney General.

E. Unless an Employee expressly waives confidentiality in writing, all communications between an Employee and the Inspector General, the Chief Ethics and Compliance Office, or any investigator described in Section III that are made pursuant to this Policy shall be held strictly confidential, except that such confidentiality shall not exempt an investigator from disclosing such information to the Inspector General nor shall it exempt any such investigator or the Inspector General from disclosing such information, where appropriate, to the Board and/or any law enforcement authority.

### **III. INVESTIGATION**

All reports of alleged Wrongdoing shall be thoroughly reviewed and investigated. All Employees are required to cooperate in investigations conducted pursuant to this Policy. Investigators may include representatives from different departments within the Commission, internal or external auditors, and outside counsel. The Chief Ethics and Compliance Officer initially will review all reports of Wrongdoing submitted in accordance with Section II.B, directed to him or her by the Inspector General, or otherwise delivered to the Chief Ethics and Compliance Officer. Upon such review, if the Chief Ethics and Compliance Officer determines that the report of Wrongdoing involves a report of fraud, waste or abuse or otherwise should be directed to the Inspector General, they will immediately submit such report to the Inspector General for review and investigation.

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The Chief Ethics and Compliance Officer will direct and supervise all investigations for reports of Wrongdoing submitted in accordance with Section II.B, or otherwise delivered, that are not directed to the Inspector General in accordance with this Policy. If at any time during such investigation, the Chief Ethics and Compliance Officer determines that the investigation should be handled directly by the Inspector General, the Chief Ethics and Compliance Officer will immediately notify the Inspector General and deliver all materials regarding such investigation to the Inspector General.

The Inspector General will review, and direct and supervise the investigations for, all reports of Wrongdoing that are submitted in accordance with Section II.C, directed to them by the Chief Ethics and Compliance Officer, or otherwise delivered to the Inspector General.

On a quarterly basis (or more frequently as requested by the Inspector General or determined appropriate by the Chief Ethics and Compliance Officer), the Chief Ethics and Compliance Officer shall report to the Inspector General regarding the status of all reports and open investigations of Wrongdoing and the resolution of all Wrongdoing investigations closed since the last date of such report. The Inspector General may re-open any such investigation or take over supervision of any such investigation as he/she deems appropriate or necessary.

The findings of investigations conducted under this Policy shall, as appropriate, be set forth in a written report created under the supervision of the Inspector General, which shall include findings of fact, conclusions, and recommendations, including recommendations concerning any disciplinary action (“Report”). The Inspector General shall provide the Board with completed Reports, as appropriate, prepared under this Policy.

The Board shall take appropriate action, as needed, upon review of each completed written Report. Appropriate action may include referral to the applicable law enforcement agency or referral to the Chief Executive Officer for recommended disciplinary or administrative action.

#### **IV. NO RETALIATORY ACTIONS**

The Commission shall not take any Retaliatory Action against an Employee because of such Employee’s role as a Whistleblower or for participating in an investigation conducted pursuant to this Policy where such Employee's actions have been legal, and the report of Wrongdoing or the participation in the investigation was made in Good Faith.

Employees are prohibited from taking any Retaliatory Action against a Whistleblower because of such Employee's role as a Whistleblower where such Employee's actions have been legal, and the report of Wrongdoing was made in Good Faith. Employees also are prohibited from taking any Retaliatory Action against a witness who participates in Good Faith in an investigation conducted pursuant to this Policy. Neither the Commission, nor its Employees, nor any person having business dealings with the Commission shall improperly interfere with a Whistleblower’s rights under this Policy.

Employees who believe that they or another Employee has been the subject of a Retaliatory Action should report the same to the Inspector General, and such report may be made via the contact information described in Section II.B above (subject to Sections II.C and II.D above). All allegations of Retaliatory Actions shall be thoroughly investigated by the Inspector General in accordance with this policy.

Employees who take a Retaliatory Action against a Whistleblower in violation of this Policy shall be subject to disciplinary action, including informal and formal corrective action, up to and including, termination from employment.

Should a Commissioner be found to have taken a Retaliatory Action against a Whistleblower in violation of this Policy, the Commission shall notify the appropriate appointing authority of such finding.

If any Employee's report of Wrongdoing is found to be a knowingly false allegation or not brought in Good Faith after an investigation, the Employee who provided the knowingly false information or who did not report the Wrongdoing in Good Faith will be subject to disciplinary action, up to and including termination of employment, in accordance with the terms of their employment.

#### **V. PERIODIC REPORTING TO THE BOARD**

Periodically, but not less than once a year, the Inspector General, in consultation with the other Officers, shall provide a written summary to the Board for the applicable period setting forth the status of pending matters reported pursuant to this Policy, including all claims of Retaliatory Action.

#### **VI. ADMINISTRATION OF POLICY DURING A VACANCY OF THE OFFICE OF INSPECTOR GENERAL**

During any vacancy of the office of Inspector General of the Commission, including during the period prior to the initial appointment of the Inspector General by the Commission, the General Counsel of the Commission shall perform the duties of the Inspector General set forth in this Policy, with such duties to be modified pursuant to this Section VI.

In performing the duties of the Inspector General under this Policy, the General Counsel shall consult with the Co-Chairpersons of the Board in determining how best to approach the investigation of each report of Wrongdoing that involves claims of fraud, waste, or abuse or where the General Counsel believes it appropriate to appoint an independent third-party investigator, which may include external auditors, outside counsel or other external investigators.

Upon appointment of an Inspector General, and so long as such office is not vacant in accordance with the Bylaws, this Section VI of this Policy shall be of no force or effect. In the event of a vacancy, recusal, or conflict in the office of General Counsel, the Co-Chairpersons of the Board may appoint a designee, which may include independent outside counsel, to perform the duties of the General Counsel set forth in this Section VI.

#### **VII. ADMINISTRATION OF POLICY DURING A VACANCY OF THE OFFICE OF CHIEF ETHICS AND COMPLIANCE OFFICER**

During any vacancy of the office of Chief Ethics and Compliance Officer of the Commission, including during the period prior to the initial appointment of the Chief Ethics and Compliance Officer by the Commission, the General Counsel of the Commission shall perform the duties of the Chief Ethics and Compliance Officer set forth in this Policy.

***Whistleblower Protection Policy***  
***Adopted – July 12, 2021***

Upon appointment of a Chief Ethics and Compliance Officer, and so long as such office is not vacant in accordance with the Bylaws, this Section VII of this Policy shall be of no force or effect. In the event of a vacancy, recusal, or conflict in the office of General Counsel, the Co-Chairpersons of the Board may appoint a designee, which may include independent outside counsel, to perform the duties of the General Counsel set forth in this Section VII.

**VIII. RECUSAL**

In the event it becomes necessary for Officers, Commissioners, or Employees to recuse themselves from responsibilities assigned to them under this policy, these practices and procedures shall be administered with such reasonable adjustments as are necessary in furtherance of their purpose, and such adjustments shall be documented.

# **EXHIBIT B**

**GATEWAY DEVELOPMENT COMMISSION  
LOBBYING CONTACTS POLICY**

**I. DEFINITIONS**

Unless otherwise provided, when used in this Policy:

“Board” means the Board of Commissioners of the Commission.

“Commission” means the Gateway Development Commission.

“Commissioners” means the commissioners appointed to the Board.

“Contact” means any conversation, in person or by telephonic or other electronic means, or correspondence between any Lobbyist engaged in the act of Lobbying and any Decision-Maker.

“Decision-Maker” means any person within the Commission who has authority to make or influence a decision on the subject of the Lobbying on behalf of the Commission, and shall include all Commissioners and Officers and any employee who has authority to make or influence such a decision. The General Counsel, in conjunction with the Lobbying Contact Administrator (if a designee), shall designate which titles and positions, in addition to Commissioners and Officers, are Decision-Makers and shall notify those individuals of such designation and shall make such designation available for review. The General Counsel, in conjunction with the Lobbying Contact Administrator (if a designee), may, from time to time, revise such list.

“Lobbyist” means any person or organization (a) who receives or agrees to receive, directly or indirectly compensation, in money or anything of value including reimbursement of his or her expenses, where such compensation (including reimbursement) exceeds \$100 in any three-month period, to engage in Lobbying, (b) is otherwise retained, employed, or designated by any other person or organization to engage in Lobbying on behalf of such other person or organization, or (c) who is registered as a lobbyist under the laws of the State of New Jersey or the State of New York. The term “Lobbyist” does not include a person that would not be considered a lobbyist or that is engaging in the types of activities that would not be considered lobbying under this policy and under both New Jersey and New York Law in each case based on guidance provided by the General Counsel from time to time.

“Lobbying” means and includes any attempt to influence the adoption or rejection of any rule or regulation having the force and effect of law by the Commission, the outcome of any proceeding by the Commission to establish, levy, or collect fees, tolls, charges, or fares, the authorization, approval, or award of any agreements, contracts, or purchase orders valued at \$500,000 or more.

“Lobbying Contact Administrator” means the General Counsel of the Commission or their designee.

“Officers” means positions identified as an officer by the Commission in accordance with the GDC Act and the Commission’s Bylaws.

## **II. RECORDING AND MAINTENANCE OF CONTACTS**

Every Contact must be contemporaneously recorded by the applicable Decision-Maker who receives such Contact. The record of such Contact must contain the day and time of the Contact, the identity of the Lobbyist and any other participants, and a general summary of the substance of the Contact, and such other information as the Lobbying Contact Administrator may require, and the Decision-Maker shall promptly deliver such record to the Lobbying Contact Administrator.

The Lobbying Contact Administrator shall establish and maintain a file of all records of Lobbying Contacts delivered to the Lobbying Contact Administrator. The Lobbying Contact Administrator shall organize the records in a manner so as to make such records useful to determine whether the decisions of the authority were influenced by Lobbying Contacts. Each record shall be maintained for not less than seven (7) years from the date of the Lobbying Contact.

# **EXHIBIT C**



**GATEWAY DEVELOPMENT COMMISSION  
PUBLIC RECORDS ACCESS POLICY**

**I. RECORDS ACCESS ADMINISTRATOR**

The Chief Executive Officer or General Counsel of the Commission shall designate a Records Access Administrator (“Records Access Administrator”) to receive and respond to written requests to inspect and/or copy records in the possession of the Commission. References herein to Records Access Administrator shall mean such individual or their designee(s).

The Records Access Administrator shall also be responsible for ensuring that:

- (a) The public has notice of the process to request public records, including record request form(s), on the Commission’s website and through any other appropriate means;
- (b) A subject matter list of Commission records is maintained, which shall be updated annually and posted on the Commission’s website;

**II. REQUESTS FOR PUBLIC ACCESS TO RECORDS**

**A.** Requests for Commission records must contain sufficient information to enable the Commission to identify and locate the particular records sought. Such requests must not be overly broad, must be as detailed as possible, and must provide, at a minimum, a clear description of the record, the type of record or information being sought.

**B.** Requests for records shall be made to the Records Access Administrator of the Commission in writing, and may be submitted:

- 1. by electronic means, such as electronic mail (“e-mail”) at the e-mail address designated for this purpose, or through a website form, which shall be posted on the Commission’s website;
- 2. by postal or private delivery, at the Commission's office, to the attention of the Records Access Administrator; or
- 3. in person, by appointment.

**III. COMMISSION RESPONSE**

**A.** Except for those records to which immediate access must be granted in compliance with law, the Records Access Administrator shall give a response to a request within 5 business days of receipt of such request by:

- 1. Granting or denying access to records, in whole or in part, pursuant to this Policy;  
or

2. Informing the requester that the request or portion of the request does not reasonably describe or identify the records sought and including direction, to the extent possible, that would enable that person to reasonably describe the records sought; or

3. Acknowledging the receipt of a request in writing, including when the request will be granted or denied, in whole or in part, which date shall be reasonable under the circumstances of the request. If the Records Access Administrator determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within 20 business days from the date of the acknowledgement of the receipt of the request, the Commission shall state, in writing, both the reason for the inability to grant the request within 20 business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part.

**B.** Upon locating any records responsive to the request, the Records Access Administrator shall take one of the following actions:

1. Make a copy of any public record available upon payment or offer to pay established fees as soon as practical or required by law or this Policy;

2. Permit the requester to make an appointment to inspect and copy any public record in person; or

3. Upon identifying responsive Commission records that fit in at least one exclusion and/or exemption category in the New York Freedom of Information Law and at least one exclusion and/or exemption category in the New Jersey Open Public Records Act, deny access to such records, in whole or in part, and explain in writing the reasons therefor.

**C.** In determining a reasonable time for granting or denying a request under the circumstances of a request pursuant to subsection (A)(3) above, the Records Access Administrator shall consider: the volume of the request; the ease or difficulty in locating or retrieving records; the complexity of the request; the need to review records to determine the extent to which they must be disclosed; the number of requests received by the agency; whether the request is for records to which immediate access shall be ordinarily granted by law; and similar factors that bear on the ability to grant access to records promptly and within a reasonable time.

**D.** A failure to comply with the time limitations described herein shall constitute a denial of a request, except that the Commission's communication within such time limitations regarding any deposit or estimated fee required to be paid before access is provided shall not be considered a denial.

#### **IV. APPEALS**

**A.** Any denial of a request for access to records by the Records Access Administrator may be appealed by the requester to the General Counsel within 30 days of a denial.

**B.** Pursuant to the New York Freedom of Information Law, a requester must first exhaust the appeals process under this Section before the requester may bring a proceeding for review of any denial of a request for access to records in the courts of the State of New York, in accordance with New York Public Officers Law Section 89(4)(b).

**C.** Pursuant to the New Jersey Open Public Records Act, a requester may institute a proceeding to challenge the denial of a request for access to records by the Commission by filing an action in New Jersey Superior Court or a complaint with the Government Records Council, as set forth in N.J.S.A. Section 47:1A-6 of Title 47, without first filing an appeal with the General Counsel under this Section. If, however, such person elects to file an appeal under this Section in lieu of first proceeding by filing an action in New Jersey Superior Court or a complaint with the Government Records Council, as set forth in N.J.S.A. Section 47:1A-6 of Title 47, the Commission hereby agrees that the limitations period applicable to any claim under Section 47:1A-6 arising out of a denial of a request for access to records shall be tolled and suspended until such time as the appeal is decided.

**D.** A requester may institute a proceeding under either Part IV.B or IV.C, but a requester cannot institute proceedings under both sections for denial of the same request for access to records by the Commission.

**E.** The Commission shall immediately forward to the New York State Committee on Open Government a copy of such appeal when received by the agency and the ensuing determination thereon, pursuant to Section 89 of the New York Public Officers Law.

**F.** The time for deciding an appeal to the General Counsel under this section shall commence upon the General Counsel's receipt of a written appeal identifying:

1. the date and location of the denied requests for records;
2. a description, to the extent possible, of the records that were denied; and
3. the legal and/or factual basis upon which the requester alleges that the Records Access Administrator's denial violated applicable law or this Policy.

**G.** The General Counsel's failure to determine an appeal within 10 business days of its receipt by granting access to the records sought or fully explaining the reasons for further denial in writing shall constitute a denial of the appeal.

## **V. FEES**

**A.** The General Counsel may determine whether, and in what amount, fees may be charged for the fulfillment of requests for access to records. All fees shall be reasonable and reflect or estimate the costs to the Commission to fulfill the request.

**B.** The Records Access Administrator shall require payment of any fee charged under this Part V before copies of records are provided or access to records is granted to the requester.

C. For any fee charged under this Part V, the Records Access Administrator shall inform the requester of the estimated fee before the charge is incurred.

D. Any fee schedule used by the Records Access Administrator shall be posted on the Commission's website, and the Records Access Administrator shall be responsible for maintaining it in updated form.

E. For any fee that is calculated, in whole or in part, based on the agency's actual cost, the Records Access Administrator shall perform and document such calculation.

## **VI. ENFORCEMENT**

The provisions of Article 78 of the Civil Practice Law and Rules of the State of New York or P.L. 1963, c. 73 (C. 47:1A-1, et seq.) of the laws of the State of New Jersey, as applicable, shall apply to enforce the provisions of this Policy.

## **VII. INTENT AND INTERPRETATION; ACCESS TO PERSONAL INFORMATION**

This Policy is intended to be consistent with both the New York Freedom of Information Law and the New Jersey Open Public Records Act. To the extent any person who makes a request for records contends that this Policy is in any way inconsistent with the New York Freedom of Information Law or the New Jersey Open Public Records Act, this Policy shall be interpreted in a way that renders it consistent with those laws. When there is an inconsistency between the law of the State of New York and the law of the State of New Jersey, the law of the state that provides the greatest rights of access shall apply.

The Commission shall be deemed an "agency" and treated as such under the laws of New York, for all purposes under articles 6 and 6-A of the public officers law, and shall be deemed a "public agency" and treated as such under New Jersey, P.L.1963, c.73 (C.47:1A-1, et seq.), pertaining to the disclosure of government records.

The Commission acknowledges that it is subject to Article 6-A of the New York public officers law, which is known as the Personal Privacy Protection Law. To meet certain requirements of the Personal Privacy Protection Law, the Commission hereby directs and authorizes the Chief Ethics and Compliance Officer to develop a set of rules regarding access to personal information that will be published on the Commission's website, and will, at a minimum, address the following: (1) procedures by which a person about whom personal information has been collected by the Commission (a "data subject") can learn if a system of records contains any records pertaining to him or her; (2) reasonable times, places and means for verifying the identity of a data subject who requests access to his or her record; (3) procedures for providing access, upon the data subject's request, to the data subject's record; and (4) procedures for reviewing a request from a data subject for access to, and for correction or amendment of his or her record, for making a determination on such request, and for an appeal within the agency of an initial adverse agency determination.

***Public Records Access Policy***  
***Adopted – July 12, 2021***

For purposes of this policy, the address of the Commission’s office, and a link for making a records request (including instructions for making an in-person appointment) will be published on the Commission’s website.

# **EXHIBIT D**

**GATEWAY DEVELOPMENT COMMISSION  
POLICY ON THE ACQUISITION AND DISPOSITION OF PROPERTY**

**I. CONTRACTING OFFICER**

The Chief Executive Officer (“CEO”) of the Commission, or such other officer or employee of the Commission as shall be appointed by resolution of the Board, shall be the “Contracting Officer” for purposes of this Policy and shall serve in such position until the appointment of his or her successor, or until his or her prior death, resignation, or removal. References herein to Contracting Officer shall mean such individual or their designee(s).

**II. METHODS OF DISPOSING OF REAL PROPERTY**

The Commission shall dispose of real property in accordance with the New York and New Jersey Gateway Development Commission Act, a version of which was adopted by each of the State of New York and the State of New Jersey, (2019 N.Y. Sess. Laws ch. 108 and 2019 N.J. Sess. Law Serv. ch. 195) (the “Act”) and other applicable laws.

The Contracting Officer shall supervise and direct all dispositions of Commission real property. The real property may be disposed of for not less than fair market value for cash, credit, or other property, with or without warranty, upon such terms and conditions as the Contracting Officer deems proper, except as otherwise permitted herein in Parts IV and VI.

No disposition of real property, or any interest in real property, shall be made unless an appraisal of the value of such real property has been made by an independent appraiser and included in the record of the transaction, and, provided further, that no disposition of any other real 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 real property, shall be made without a similar appraisal.

To the extent that the Commission disposes of any real property, the Commission anticipates utilizing two methods of disposition: Request for Proposals (“RFP”) and negotiated disposition. A disposition pursued under either method or any other method must be approved by the Commission’s Board of Commissioners (the “Board”) prior to execution in accordance with Part VI below.

For the avoidance of doubt, the reversion of real property to the original conveying party pursuant to the terms of the original conveyance shall not constitute a disposition subject to the requirements of this Policy. Any other determination as to whether a transaction constitutes a disposal subject to the requirements of this Policy, shall be determined by the General Counsel in consultation with the Contracting Officer.

**III. REAL PROPERTY RFPs**

The RFP process is a process whereby potential purchasers or tenants are invited to submit proposals to purchase or lease one or more properties. In an effort to create full and free competition consistent with the value and nature of the property, RFPs will be advertised on

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the Commission's website, through other channels as determined by the Contracting Officer, and, on occasion, distributed to a direct mailing list.

All RFPs for real property sales and ground leases must include a site description, proposal requirements and selection criteria.

Although the selection criteria for each RFP will vary, as appropriate, the Commission may include selection criteria for reviewing submissions and selecting a proposal that include a proposer's financial offer, financial viability and method of financing, and property use and design proposals.

Depending on the nature of the real property, RFPs may or may not include all of the above and may include additional selection criteria.

The contract for sale or lease of real property will be awarded to the candidate presenting the most advantageous terms, price and other factors considered, as approved by the Board. The Commission may reject the proposals when the minimum terms and conditions have not been met, competition is insufficient and/or it is in the Commission's interest to do so.

#### **IV. REAL PROPERTY NEGOTIATED DISPOSITION**

RFP by advertisement is not always the most appropriate and effective means of disposal of real property. In certain instances the Commission may proceed with a negotiated disposition subject to obtaining such competition as is feasible under the circumstances. In some circumstances, the disposition will involve a sole source disposition.

Real property may be disposed of through a negotiated disposition when:

- the fair market value of the property does not exceed \$250,000;
- 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;
- competitive market interest to support an RFP does not exist in the Contracting Officer's reasonable determination, including where there is insufficient response to or interest in a request for information or other similar processes or market inquiries;
- the disposal will be to the State of New York or New Jersey or any agency, authority, or political subdivision thereof, to the Port Authority of New York and New Jersey, or to Amtrak, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation; or
- the disposal of real property is for less than fair market value and (a) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the real property will remain with the government or any other public entity or (b) the purpose of the transfer is within the purpose, mission, or governing statute of the Commission and a written determination is made by the Board that there is



no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer, prior to Board approval of such a transfer.

If a proposed disposition meets one of the criteria described above for a negotiated disposition, the Contracting Officer may direct that the disposition of the real property be considered a negotiated disposition. All such negotiated dispositions are subject to Board approval in accordance with Part VI below.

In cases where a sole source disposition is presented to the Board for approval, the Board must be informed of the factors justifying a sole source disposition.

## **V. REAL PROPERTY ACQUISITIONS**

Real property may be acquired (including, without limitation, by gift, lease, purchase, exchange, eminent domain or condemnation in accordance with the Act) by the Commission. The purpose of such acquisition shall be to further the purpose, mission or governing statute of the Commission. The Contracting Officer shall approve the terms of the acquisition and obtain the approval of the Board for the same in accordance with Part VI below. Further, at the discretion of the CEO of the Commission or their designees, where the Commission has a right of reacquisition of previously disposed of property, it may exercise this right.

## **VI. BOARD APPROVAL OF REAL PROPERTY TRANSACTIONS**

Each real property disposition, acquisition, or transfer is subject to Board approval. The following information shall be made available to the Board at the meeting where approval of such disposition, acquisition, or transfer is scheduled:

- a full description of the property;
- a description of the purpose of the disposition, acquisition, or transfer;
- a statement of the value to be received from such a disposition, acquisition, or transfer;
- the names of any private parties participating in the disposition, acquisition, or transfer; and
- in the case of a property disposition for less than fair market value, an explanation and a written determination by the board that there is no reasonable alternative to the proposed below-market value that would achieve the same purpose of such disposition.

Before approving the disposal of any real property for less than fair market value, the Board shall consider the information described in the above paragraph, and if that information so dictates, 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.

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Not less than 10 days in advance of any meeting of the Board at which the Board is to consider an action to authorize the sale of real property owned by the Commission, the CEO of the Commission shall provide public notice of such proposed action along with relevant material terms and provisions of such sale including, but not limited to, the information required to be made available to the Board above, by posting on the Commission's website.

**VII. MONITORING AND REPORTING CONTRACTS FOR REAL PROPERTY DISPOSAL**

Prior to the disposal of the real property, an authorized Commission employee involved in the disposition shall be the primary person responsible for the monitoring of compliance with the policies and procedures, the RFP, terms of the contract or other agreement or memorandum for the disposal and shall keep the Contracting Officer informed of all major issues that arise and of the status of the disposition.

The Contracting Officer shall cause a record to be maintained of all real property disposed of by the Commission.

**VIII. DISPOSITION OF PERSONAL PROPERTY**

The CEO of the Commission may authorize or arrange for contracts for the sale of personal property owned by the Commission upon such terms and conditions as the CEO may deem proper and execute the same on behalf of the Commission where the value of such personal property is not in excess of \$1,000,000; provided, however, that personal property valued at more than \$250,000 shall not be sold by authority of the CEO other than to the highest bidder after public advertisement. Where the value of such personal property is in excess of \$1,000,000, the sale of such property must be authorized by the Board upon such terms as the Board may deem proper.

For the purposes of this Policy, the value of personal property will be verified by the Contracting Officer in advance of any sale or disposition.

**IX. FEDERAL LAW**

Where federal law, rules, regulations, or policies applicable to any funds received by the Commission (including, but not limited to, any particular laws, rules, regulations or policies governing federal grants or loans) prescribe requirements regarding the acquisition, disposition or transfer of real or personal property that differ from this Policy, the requirements of such federal laws, rules, regulations, or policies (including, but not limited to, any particular laws, rules, regulations or policies governing federal grants or loans) will govern with respect to contracts acquiring, disposing or transferring of real or personal property that are funded with such funds.

**X. BROKERS**

The Commission may retain brokers or third-party vendors that facilitate online auctions, or assist in disposing of surplus real and personal property of the Commission.

# **EXHIBIT E**

**EXHIBIT E to Resolution #0721-01**

**Bylaws - Article IV, Section 4.02(b)**

(b) *Public Notice.* At least five Business Days before any Meeting of the Board or any Committee thereof, the Secretary shall provide notice of the time and place of such Meeting to appropriate media outlets, conspicuously post such notice in one or more areas designated by the Co-Chairpersons and conspicuously post such notice on the Commission's official website. The Commission shall make meeting agendas available to the public at least seventy-two hours before each meeting. No later than 72 hours before such Meeting or as soon as practicable, the Secretary shall make the agenda and any public documents pertaining to such Meeting available for public inspection at an office of the Commission and post such agenda and such public documents on the Commission's website.

**Open Meetings – Section IV.C.2**

2. At least five Business Days before any meeting of the Board or any Committee thereof, the Secretary shall provide notice of the time and place of such meeting to appropriate media outlets, conspicuously post such notice in one or more areas designated by the Co-Chairpersons and conspicuously post such notice on the Commission's official website. The Commission shall make meeting agendas available to the public at least seventy-two hours before each meeting. No later than 72 hours before such meeting or as soon as practicable, the Secretary shall make the agenda and any public documents pertaining to such meeting available for public inspection at an office of the Commission and post such agenda and such public documents on the Commission's website. "Business Day" means a day other than, Saturday, Sunday or a public holiday in New York or New Jersey.