

Gateway Development Commission
Meeting of The Board
Held via Teleconference

November 16, 2021

MINUTES

The following Commissioners were present:

NEW JERSEY

Balpreet Grewal-Virk, Co-Chair
Janine Bauer

NEW YORK

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

AMTRAK

Anthony R. Coscia, Vice Chair

Commissioner Jerry Zaro was absent from the public session of this meeting.

I. Call to Order

The public meeting was called to order by Co-Chair Grewal-Virk at approximately 10:30 a.m.

Co-Chair Grewal Virk advised that due to the ongoing public health crisis posed by COVID-19, and in light of advice from the State of New Jersey, the meeting was being held virtually via teleconference with audio live-streamed from the Gateway Program website.

Co-Chair Grewal-Virk 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. Report on Minutes of the July 12, 2021 Meeting

Acting Secretary Caulfield reported that copies of the Minutes of the meeting of July 12, 2021 were delivered in electronic form by Acting Secretary Caulfield to the Governors of New York and New Jersey on July 21, 2021 and that the time for action by the Governors of New York and New Jersey expired at midnight on August 5, 2021, at which time the actions recorded in the Minutes went into full force and effect.

III. Gateway Program Update

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

Following the presentation, Co-Chair Grewal-Virk thanked Mr. Sacr, Mr. Sigmund and Ms. Mandel for their update, and asked if there were any questions or comments from the Board. None of the Commissioners had any questions or comments.

IV. Public Comments

Co-Chair Grewal-Virk 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. She indicated that a form for soliciting these comments was posted to the Gateway Program website and was available throughout today's meeting. Nine comments were received by 5:00 PM on November 15, 2021 and had been distributed to the Board and posted on the Gateway Program website in advance of the meeting. Co-Chair Grewal Virk also noted that there were four comments previously received by the Commission for the previously scheduled October 25, 2021 Board meeting, which was canceled and rescheduled to November 16th due to scheduling conflicts on the original date. 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 following the initial November 15th deadline.

The following individuals provided comment:

Public Comments Received Prior to Rescheduled Oct. 25th Board Meeting:

Commenter	Topic
Michael Demauro, Individual	Gateway Project
Jay Arzu, University of Pennsylvania Stuart Weitzman School of Design	Board or Advisory Committee
Maurice Wells, Individual	Portal Bridge Construction
Joseph Clift, Individual	Portal North Bridge: Answers to questions requested from Commissioners

Public Comments Received for November 16, 2021 Board Meeting:

Commenter	Topic
George Lobman, UTCA	Tunnel timeline
Sanjeev Ramchandra, Individual	Transit proposal regarding Gateway Tunnel and Penn Station
Michael Shapiro, Brian Ansari and Associates Inc.	Board Meeting Notices
Laura Colacurcio, Association for a Better New York (ABNY), Inc.	Comments in Support of the Gateway Program
Ryan Spearing, MCFA	SDVOSB Goals
Ella Rodriguez, Individual	NJ Transit Commuter
Brian Fritsch, Build Gateway Now Coalition	Call for an improved rating for Hudson Tunnel Project from the FTA
Kathryn Wylde, Partnership for New York City	Hudson Tunnel FTA Rating
Robert Wessels, General Contractors Association of NY	Gateway Support
Felicia Park-Rogers, Tri-State Transportation Campaign	Gateway Project/Hudson Tunnels
Andrew Karas, Individual	Project Scope/Alternatives
Joseph Clift, Individual	Portal North Bridge

V. Action Item

#1121-01: Adoption of Policies

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

VI. Executive Session

Co-Chair Grewal-Virk 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 noted that the Board would reconvene the public meeting upon the conclusion of Executive Session for the purpose of adjourning the meeting, and no further business would be conducted. Co-Chair Cohen seconded the motion, and it was unanimously adopted at approximately 10:52 a.m.

VII. Reconvening of Public Meeting

The public meeting was reconvened by Co-Chair Grewal-Virk at approximately 12:23 p.m. Acting Secretary Caulfield confirmed that all Commissioners, with the exception of Commissioner Zaro, were present and that there was a quorum.

VIII. Adjournment

There being no further business, Co-Chair Grewal-Virk requested a motion to adjourn the meeting, and upon the motion being duly made by Co-Chair Grewal-Virk and seconded by Commissioner Dominguez, the meeting was adjourned at approximately 12:24 p.m.

Respectfully submitted,

/s/ Edmund Caulfield
Edmund Caulfield, Acting Secretary

#1121 - 01: ADOPTION OF POLICIES

The Gateway Development Commission Act (“GDC Act”) requires the Commission to “adopt a code of conduct applicable to commissioners, officers, employees, and vendors and other contractors with the Commission that shall, at minimum, include applicable standards established by law in each state.”

Further, pursuant to the GDC Act, the Commission is required to adopt guidelines detailing “the Commission's operative policy and instructions regarding the use, awarding, monitoring and reporting of procurement contracts,” and review the guidelines on an annual basis.

Further, pursuant to the GDC Act, the Commission shall have the power to “adopt its own public procurement rules and guidelines that the Commission deems necessary or appropriate to Facilitate the Project” using any combination of means and methods that may be available to the Commission under the GDC Act.

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

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

- Code of Conduct, attached hereto as Exhibit A;
- Procurement Guidelines, attached hereto as Exhibit B;

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 CODE OF CONDUCT

The Gateway Development Commission is a body corporate and politic created by the New York and New Jersey Gateway Development Commission Act (2019 N.Y. Sess. Laws ch. 108 and 2019 N.J. Sess. Law Serv. ch. 195) (collectively, the “**Act**”) to facilitate the passenger rail transportation project between Penn Station, Newark, New Jersey, and Penn Station, New York, New York, as more fully described in the Act.

This Code of Conduct (“**Code of Conduct**”), adopted pursuant to the requirements of the Act, shall serve as a guide for the conduct of the Commission’s employees, vendors, and persons acting for or seeking to do business with the Commission and is intended to promote ethical and professional execution of the Commission’s functions and to protect the interests of the public and of the Commission.

The Commission expects that all Employees, Commissioners, Officers and Vendors report, in good faith, any violations or suspected violations of the Code of Conduct. The Commission prohibits retaliation against any individual who, in good faith: (a) brings a complaint about a potential violation of this Code of Conduct; (b) participates in an investigation of a potential violation of this Code of Conduct; or (c) files, testifies, assists, or participates in any manner in any Commission investigation or any investigation, proceeding, or hearing conducted by a governmental enforcement agency related to a potential violation of this Code of Conduct.

Commissioners are subject to certain provisions of this Code of Conduct to the extent specified herein. However, nothing in this Code of Conduct is intended to supersede the requirements of the Gateway Development Commission Conflicts of Interest Policy and Code of Ethics for Commissioners and Officers. To the extent that there is any conflict or inconsistency between that policy and this Code of Conduct, if a Commissioner or Officer is subject to both policies, the more restrictive applicable provision shall apply.

Compliance with this Code of Conduct does not relieve any Commissioner, Officer, Employee, or Vendor of the obligation to comply with applicable federal, state, or local laws or regulations or other Commission or appointing authority’s policies, rules, or regulations.

I. CONTENTS

This Code of Conduct comprises Commission’s standards and policies regarding the following topics:

1. Employee Conflicts of Interest and Financial Disclosure;
2. Employee Gifts;
3. Employee Outside Employment;
4. Employee Policy Regarding Offers of Employment and Post-Employment Obligations;
5. Employee Political Activity;
6. Employment of Relatives;
7. Employee Confidentiality;

8. Equal Employment Opportunity and Prohibiting Discrimination, Harassment, and Workplace Violence; and
9. Vendor Code of Ethics.

II. GENERAL DEFINITIONS

Capitalized terms used in the policies comprising this Code of Conduct shall have the meanings assigned them below.

“Amtrak” means the National Railroad Passenger Corporation, a corporation organized under 49 U.S.C. § 24101 *et seq.* and the laws of the District of Columbia.

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

“Chief Ethics and Compliance Officer” means the chief ethics and compliance officer of the Commission or his or her designee(s).

“Chief Executive Officer” or **“CEO”** means the chief executive officer of the Commission or his or her designee(s).

“Chief Financial Officer” or **“CFO”** means the chief financial officer of the Commission or his or her designee(s).

“Commission” means the Gateway Development Commission and all subsidiaries thereof.

“Commission Matter” means any proposed or actual transaction, project, or proceedings in which the Commission has an interest, including, but not limited to: the purchase or sale of goods, services, or real property; the leasing or rental of real property; procurement, management, administration, or performance of contracts; the grant of easements, permits, or licenses for access to Commission property or facilities; the issuance of securities; the making of investments, loans, or donations; the making of or applying for grants; audits, or investigations; and arbitrations, grievances, lawsuits, or other formal disputes.

“Commissioner” means a commissioner of the Board appointed in accordance with the Act.

“Confidential Information” is non-public information related to Commission affairs that has been entrusted to an Employee by the Commission and that the Employee knows, or should know, is intended by the Commission to be kept confidential, including, but not limited to, materials designated as such.

“Employees” means, solely for purposes of this Code of Conduct and not as a matter of law, all staff of the Commission or workers performing the role of Commission staff pursuant to a secondment contract or similar understanding related to the secondment of workers that is not formalized under a secondment contract (excluding Vendors), regardless of their category of employment (permanent, probationary, project, summer or peak season, temporary, or part-time). For the avoidance of doubt, “Employee” does not include Commissioners.

“General Counsel” means the general counsel of the Commission, or his or her designee(s).

“Immediate Family Member” means a spouse, parent, child, sibling, domestic partner, or grandchild.

“Inspector General” means the inspector general of the Commission or his or her designee(s).

“Officer” means any person appointed by the Board to be an officer of the Commission.

“Participation”, to **“Participate,”** or **“Participating”** in a given Commission Matter refers to the performance of substantial work that is directly related to the matter, and that is not routine clerical, administrative, or data-entry work. Negotiating a contract is “Participation”; scheduling a negotiations meeting is not. Non-Commission individuals or entities “Participate” in a Commission Matter when they, or their employees or representatives, perform substantial work that is directly related to the matter, and that is not routine clerical, administrative, or data-entry work.

“Vendor” means, subject to the next sentence, any person, firm, corporation or other entity, including its officers, agents and representatives, that has provided, now provides, or offers or proposes to provide in the future goods or services to the Commission or has performed, now performs, or offers to perform in the future any other contract for or with the Commission. “Vendor” includes consultants but does not include (a) any governmental agency or Amtrak, (b) secondees, and (c) any entity that enters into a written agreement with the Commission that is principally focused on the use of real property; such agreements include leases, easements, and space permits.

III. APPEALS

1. Action to reverse or modify a determination of the General Counsel, Chief Ethics and Compliance Officer or any other Officer of the Commission so designated under any standard or policy set forth herein, requires the approval of the Board or a committee designated by the Board to make such reversal or modification. In connection with the review of any appeal submitted to the Board or such committee under this Code of Conduct, the Board or committee may delegate to the Chief Ethics and Compliance Officer, the Inspector General, or outside counsel the responsibility to undertake factual investigations and make recommendations to the Board or committee.

2. The decision of the Board, or committee designated by the Board, on an appeal from a determination of the General Counsel, Chief Ethics and Compliance Officer or any other Officer of the Commission so designated under any standard or policy set forth herein, shall be final.

IV. GUIDANCE AND EXCEPTIONS

Questions pertaining to the application of this Code of Conduct should be directed to the Chief Ethics and Compliance Officer. There may be rare occasions when the best interests of the Commission require that an exception to a standard or policy be granted. Requests for such exceptions shall be directed to, and will be subject to the prior written approval of, both the General

Counsel and the Chief Ethics and Compliance Officer, and in the event the same person is serving in both roles in accordance with the Bylaws, the General Counsel and Chief Administrative Officer.

Further administrative guidance not inconsistent with this Code of Conduct and related to the policies contained herein may be issued from time to time with the written approval of both the General Counsel and Chief Ethics and Compliance Officer, and one of the Chief Administrative Officer or Chief Executive Officer of the Commission.

V. POLICIES

The Policies enumerated in Section I, as attached hereto (as they may be subsequently modified by the Commission), are hereby incorporated in this Code of Conduct.

Additional policies, or future modifications to existing policies, related to the ethics and behavior of Employees may be promulgated by the Commission and may be incorporated by reference into this Code of Conduct.

Employee Conflicts of Interest and Financial Disclosure

This *Employee Conflicts of Interest and Financial Disclosure Policy* sets forth the ethical obligations of Employees to disclose and avoid conflicts between their official responsibilities and their personal interests. In addition, this Policy sets forth: (a) the disclosure procedures applicable to any Employee who becomes aware of a possible conflict of interest; and (b) the requirements for certain designated Employees to submit annual financial disclosure statements to the General Counsel.

A. Policy

Employees owe undivided loyalty to the Commission and to the public when performing their Commission responsibilities. Employees must never seek to realize financial gain, privileges, benefits, or other advantages through the use of their official authority or position. To maintain the public's trust, Employees must avoid even the appearance of divided interests, regardless of the Employee's actual intentions.

B. Definitions

“**Substantial Interest**” has the meaning set forth in Section C below.

C. Conflicts of Interest

1. Prohibition on Participation

Employees must not Participate in any Commission Matter if the Employee has, or the Employee's Immediate Family Member has:

(a) A Substantial Interest in an entity or property involved in the Commission Matter in which the Employee is Participating; or

(b) Direct or indirect financial involvement that (i) may reasonably be expected to impair the Employee's objectivity or independent judgment or (ii) may reasonably create the appearance of impropriety.

2. Substantial Interest

Subject to the exceptions outlined in Section C.3 below, an Employee or Immediate Family Member has a “**Substantial Interest**” in a Commission Matter if he or she:

(a) Owns or controls a share in an entity directly involved in the Commission Matter, which share (i) has a market value of at least \$10,000, (ii) resulted in the receipt of at least \$5,000 in the prior 12 months by the Employee or an Immediate Family Member, or (iii) owns or controls ten percent or more of the stock of such entity (or one percent in the case of a corporation whose stock is regularly traded on an established securities exchange);

(b) Owns an interest in any real property (including personal residences) directly involved in the Commission Matter, which property has a market value in excess of \$10,000 (without subtracting any debts, liens, or mortgages);

(c) Owes at least \$5,000 to any entity or individual directly involved in the Commission Matter, or is owed at least \$5,000 by such entity or individual; or

(d) Holds a position as an officer, director, employee, trustee, partner, manager, agent, or representative in an entity directly involved in the Commission Matter.

3. Exceptions

(a) No Substantial Interest in an entity is created by a merely passive interest in that entity. Examples of such passive interests include checking accounts, savings accounts, money market accounts, brokerage accounts, discretionary, independently managed pension or trust accounts, mutual funds, or index funds.

(b) An Employee does not have a Substantial Interest in tangible or real property held solely through trusts or other financial investment vehicles that are independently managed.

(c) This Policy does not preclude an Employee from acting as an officer or representative in a labor union or collective bargaining unit for purposes of the negotiation of, or disputes concerning, collective bargaining agreements with the Commission.

(d) Nothing in this Policy precludes Employees or their Immediate Family Members from initiating claims against the Commission or members of its staff, but such Employees may not Participate on behalf of the Commission in connection with the claim or attempt to exert influence on the disposition of the claim.

D. Employee Responsibilities Concerning Conflicts of Interest

All Employees have primary responsibility for recognizing, disclosing, and avoiding potential conflicts between their own interests and the interests of the Commission and the public.

When an Employee becomes aware that they are Participating in, or have been assigned to Participate in, a Commission Matter in which they have a Substantial Interest or that otherwise might create a conflict of interest, or the appearance of a conflict of interest, he or she must take the following steps:

(a) First, the Employee must immediately disclose the relevant facts in writing to the General Counsel.

(b) Second, the Employee must immediately recuse him or herself from Participation in the Commission Matter, unless and until the General Counsel informs the Employee in writing that the Employee may proceed with Participation.

E. Determination of a Conflict of Interest

1. Determination

(a) If the General Counsel is notified of or becomes aware of facts suggesting an Employee's possible conflict of interest, or the possible appearance of a conflict, he or she shall promptly obtain and assess all available relevant information (including, if needed, a discussion with the affected Employee) and make a written determination. In making such determination, the General Counsel, in his or her sole discretion, may consult with the Chief Ethics and Compliance Officer. The affected Employee shall be notified promptly in writing of the General Counsel's determination.

(b) If the General Counsel determines that there is no conflict, the affected Employee may commence or resume Participation in the Commission Matter in question and need not take any further action.

(c) If the General Counsel determines that there is a conflict of interest, he or she shall instruct the affected Employee and any other relevant persons of the steps needed to address the conflict, including, but not limited to, the Employee's recusal from the Commission Matter in question.

(d) The General Counsel may also determine that, although a conflict of interest does not, in fact, exist, an Employee's Participation may reasonably create the appearance of impropriety, such that he or she should not Participate in a particular Commission Matter or in particular aspects of, or activities in connection with, a Commission Matter. If the General Counsel determines that there is such an appearance of a conflict of interest, he or she shall instruct the affected Employee and any other relevant persons of the steps needed to address the appearance of a conflict, which may include, but need not be limited to, the Employee's recusal from the Commission Matter in question.

2. Consultation

The General Counsel, in his or her sole discretion, may seek input from outside counsel, other Officers, or the Board prior to a final determination regarding a possible conflict of interest.

F. Annual Financial Disclosure Statements Required of Designated Employees

1. Annual Disclosure

The following Employees shall annually complete a financial disclosure form as prepared by the General Counsel:

(a) Employees who hold policy-making positions as determined by the Commission;
and

(b) Employees whose base salary, either in the current or previous year, exceeds \$150,000, which shall be adjusted for inflation annually in accordance with the consumer price

index for all urban wage earners and clerical workers (CPI-W) as calculated by the federal government.

Should any question arise regarding applicability of this requirement to any individual Employee, such individual shall consult with the General Counsel or Chief Ethics and Compliance Officer.

2. General Counsel Responsibilities

Completed disclosure forms for Employees shall be received and maintained by the General Counsel.

Employee Gifts

This *Employee Gift Policy* sets forth the ethical obligations of Employees regarding the offering or acceptance of gifts, gratuities, favors, or other benefits or things of value that may be viewed as given or offered for the purpose of influencing the business of the Commission.

This policy seeks to prevent both actual impropriety and the appearance of impropriety and sets forth the obligations and restrictions for gifts involving any party that does, seeks to do or is likely to do business with the Commission; gifts between Commission employees and the procedures for reporting gifts and seeking guidance regarding giving and accepting gifts.

A. Definitions

As used in this Employee Gift Policy:

“**Gift**” is any item, service, gratuity, favor, discount or other thing of value that (i) provides a tangible, intangible or perceived benefit; and (ii) is worth more than a nominal amount.

“**Interested Party**” is (i) any individual or organization that does, seeks to do or is likely to do business with the Commission; and (ii) any individual or organization acting on behalf of an Interested Party.

B. Restrictions on Gifts

1. Rules on Receiving Gifts

(a) Employees have an obligation to avoid both actual impropriety and the appearance of impropriety. Therefore, employees and their Immediate Family Members may not request, demand, receive or accept a Gift from any entity or person they know or should reasonably know to be an Interested Party.

(b) Employees and their Immediate Family Members may not request, demand, receive or accept a Gift from any individual or entity when it would be reasonable to infer that the Gift was intended to influence or reward the Employee in connection with the performance of their official duties.

2. Prohibited Gifts to Employees

Examples of prohibited Gifts to Employees and Immediate Family Members can include, but are not limited to:

(a) merchandise or goods such as jewelry, electronic equipment, clothing, gift baskets, alcohol, or personalized or customized items;

(b) cash or cash equivalents such as checks, gift cards or gift certificates;

(c) stocks, bonds and other forms of securities;

- (d) loans or modifications of loan obligations or other debts;
- (e) meals, beverages, hotel accommodations, transportation, tickets or admission to sports, entertainment or other events;
- (f) discounts on goods, merchandise or services; and
- (g) services, business courtesies, and other favors.

3. Exceptions

The following are general exceptions from the rules set out in Section B.1. above, subject to conditions where indicated below.

- (a) Employees may accept items of nominal value; these include:
 - (i) awards, plaques, modest and appropriate retirement gifts, and other reasonable and customary ceremonial items given in recognition of service related to an Employee's official duties and responsibilities;
 - (ii) nominal refreshments such as non-alcoholic beverages, coffee, tea, soft drinks, juice or water and modest snacks such as bagels, muffins, fruits and vegetables, chips and pretzels, cookies, candy or cheese and crackers during a business meeting or event; and
 - (iii) small branded promotional items with a fair market value of less than \$15 such as pens, pencils, notepads or other small office supplies. Employees may not accept multiple items which individually have a fair market value of \$15 or less if the aggregate value of the items exceeds \$50 per year.
- (b) Employees may accept items or discounts that are widely available to the general public.
- (c) Employees may accept items or discounts that are available to:
 - (i) governmental employees;
 - (ii) all workers at a facility or office complex, regardless of employer; and
 - (iii) all employees through programs in which the Commission is a participating member.
- (d) Employees may accept awards, contest prizes and other raffle or door prizes offered to participants in contests or events, unless (i) entry into the contest or attendance at the event is based on Commission employment, or (ii) entry was paid for or reimbursed in whole or in part by the Commission.
- (e) With prior written approval from the Chief Ethics and Compliance Officer, Employees and their Immediate Family Members may accept Gifts from an Interested Party under

circumstances which make it entirely clear that (i) the Gift is motivated by a family or close personal relationship rather than the position of the Employee with the Commission, and (ii) the acceptance is otherwise consistent with Commission ethical standards.

(f) Employees and their Immediate Family Members may accept Gifts from a prior or current employer that is an Interested Party where such Gifts are (i) available to all similarly situated employees or former employees and (ii) not enhanced, dependent or conditioned in any way upon the position of the Employee with the Commission.

(g) Employees may accept continuing education or other professional membership credits received from a business event sponsored or co-sponsored by an Interested Party with prior written approval from the Chief Ethics and Compliance Officer.

4. Rules on Giving Gifts

(a) Employees are prohibited from giving Gifts to an Interested Party.

(b) In limited circumstances, Employees may give the following Gifts to an Interested Party if the Gifts are consistent with the Interested Party's own policy regarding such items and if the Gifts are:

(i) approved Commission promotional material or branded items;

(ii) business meals approved by the Chief Ethics and Compliance Officer that are otherwise consistent with Commission ethical standards under this Code of Conduct;

(iii) customary, reasonable tips and gratuities for services rendered during business events and business travel, including housekeeping services, restaurant services, car services and baggage handling services; or

(iv) given to an Interested Party embedded in Commission operations on a long-term basis and performing duties that would otherwise be performed by a Commission Employee, where the Gift is voluntarily made, reasonable in relation to the occasion for the giving, relatively modest in value, appropriate for the workplace, and approved by the Chief Ethics and Compliance Officer prior to exchange.

C. Gifts Between Employees

1. Rules

(a) Gifts can be exchanged between Commission Employees if voluntarily made, reasonable in relation to the occasion for the giving, relatively modest in value, and appropriate for the workplace.

(b) Supervisors may not solicit a Gift for themselves, or any other person, from subordinate Employees or request that subordinate Employees share the cost of a Gift for the supervisor or any other person. Supervisors may accept an unsolicited Gift from a subordinate

Employee only for important life events such as engagements, marriages, retirement, condolences or the arrival of a child.

2. Exceptions

(a) Employees who are involved in any way in an investigation, audit, disciplinary procedure or grievance may not solicit or accept a Gift from an Employee who is a target, subject or witness with respect to any of those processes or inquiries.

(b) Employees who provide advice and guidance as to the applicability and meaning of Commission policies or ethical obligations may not solicit or accept a Gift from an Employee who is seeking such advice or guidance.

(c) Employees who negotiate, interpret or enforce collective bargaining agreements, resolve labor and union grievances, or participate in Employee disciplinary processes on behalf of the Commission cannot solicit or accept a Gift from an Employee who is (i) directly involved in or directly affected by such activities, or (ii) acting in their role as a union official or on behalf of a union.

D. Relevant Procedures

1. Receipt and Handling of Gifts

(a) Employees must immediately report the request, offer, acceptance or receipt of any Gift that would violate this policy to the Chief Ethics and Compliance Officer.

(b) Questions as to any aspect of this policy, including whether an item constitutes a Gift, should be directed to the Chief Ethics and Compliance Officer.

2. Agency Gifts

In certain rare circumstances, Gifts may be offered to the Commission as an agency; such Gifts may be accepted only upon written approval from the Chief Ethics and Compliance Officer.

E. Violations

An Employee who violates this Policy may be subject to disciplinary action, up to and including termination of employment or discontinuance of services. Depending on the circumstances, a violation of this policy may also constitute a violation of federal, state, and/or local laws, including laws against bribes and kickbacks.

F. Application of Other Policies

Certain items or services that might otherwise be considered a Gift are regulated by other Commission policies.

(a) Offering or soliciting future employment for an Employee or their Immediate Family Members may constitute or create the appearance of an improper Gift. Employees must

comply with the rules and procedures set forth in the Commission's *Employee Policy Regarding Offers of Employment and Post-Employment Obligations* included in this Code of Conduct with respect to any such communications about future employment with an Interested Party.

(b) Waiving, paying for or otherwise reimbursing expenses incurred while conducting business on behalf of the Commission may constitute or create the appearance of an improper Gift. Employees must confer in advance with the Chief Ethics and Compliance Officer for such circumstances.

(c) Requesting or accepting honoraria, speaking fees or payments of any kind unrelated to official Commission duties may constitute or create the appearance of an improper Gift and/or constitute outside employment. Employees must comply with the Commission's policy regarding *Employee Outside Employment* included in this Code of Conduct, and receive prior permission to engage in any such activity or receive any such payments or benefits.

(d) Individuals who work for Vendors, as defined by this Code of Conduct, are required to comply with the *Vendor Code of Ethics* included in this Code of Conduct regarding the offering or receiving of gifts to or from Commission Employees or members of the Commission.

Employee Outside Employment

This *Employee Outside Employment Policy* sets forth the ethical obligations of Employees with respect to employment outside the Commission and provides standards for submission and evaluation of Employee requests for permission to engage in outside employment.

A. Policy

Employees have a responsibility to honor the public’s trust by demonstrating a steadfast commitment to their duties in service of the bi-state region. The public expects that Employees serve with the highest caliber of dedication and prioritize their Commission commitment above all other professional commitments. Employees must ensure that any external professional or business commitments will not, in any way, negatively impact their integrity as Employees or their ability to fulfill their Commission duties effectively. Employees cannot participate in outside work that is, or could be perceived as, a conflict of interest or that will prevent the Employee from taking the necessary time and care to perform their Commission responsibilities to the best of their talents.

B. Definitions

“**Outside Employment**” means any non-Commission employment for which any form of compensation is received, including, but not limited to, self-employment or operating a sole proprietorship, partnership, or family-owned corporation. If an Employee has an ownership interest in a private legal entity formed for profit (including, but not limited to, a sole proprietorship or family-owned business), any work done by the Employee on behalf of such entity, even if the Employee does not receive, or expects to receive, specific compensation for the work, is still considered “Outside Employment” for purposes of this Policy. “Outside Employment” does not include a secondee’s primary employment but does include a secondee’s other non-Commission employment.

C. Guidelines for Outside Employment

1. Permission Required

(a) An Employee must request and receive prior written permission from the Chief Executive Officer to engage in Outside Employment under the following circumstances:

- (i) Upon joining the Commission, if the Employee has existing Outside Employment they wish to continue;
- (ii) Prior to beginning any new Outside Employment;
- (iii) Upon changing outside employers or changing the job performed for the same outside employer; or
- (iv) Upon receiving a promotion or significantly changing job duties at the Commission.

(b) Employees should refer to the *Employee Political Activity Policy* included in this Code of Conduct to determine if the Outside Employment for which they are seeking permission may also require review under the Commission's policies regarding Employee political activities.

(c) An Employee who fails to obtain permission prior to engaging in Outside Employment may be subject to disciplinary action, up to and including termination of employment or discontinuance of services.

2. Conditions to Permission

(a) Permission may be granted, provided that: (i) the work does not create a conflict of interest and is not otherwise prejudicial to the Commission's interests; (ii) the Employee's Commission duties do not suffer; (iii) the Employee is in good standing; (iv) the Employee's conduct is in accord with the other provisions of this Code of Conduct, and (v) the work is not performed while the Employee is on duty for the Commission or using any Commission property or resources.

(b) Permission to engage in Outside Employment may be revoked at any time by the Chief Executive Officer, in consultation with the General Counsel if the conditions set forth in this Policy (or any conditions to permission stipulated in the Chief Executive Officer's written determination) are not met.

(c) The granting of permission to engage in Outside Employment shall not relieve the Employee from his or her obligation to comply with all other instructions, standards, rules, and regulations applicable to Employees.

Offers of Employment and
Post-Employment Obligations

This *Employee Policy Regarding Offers of Employment and Post-Employment Obligations* sets forth the ethical obligations of Employees in connection with the solicitation, demand, pursuit, negotiation, receipt, and acceptance of Offers of Employment from individuals or entities who do business (or are seeking to do business) with the Commission. This Policy also sets forth ethical obligations of former Employees acting on behalf of non-Commission individuals or entities in connection with Commission Matters.

A. Definitions

“**Offer of Employment**” means an offer of employment to either a current Employee or an Immediate Family Member of a current Employee.

B. Solicitations or Offers of Future Employment

1. Policy

(a) Employees who are Participating in a given Commission Matter must not solicit, demand, negotiate, pursue, or have any arrangement concerning future employment, either for themselves or for Immediate Family Members, with any non-Commission individual or entity Participating in that Commission Matter.

(b) Employees who are Participating in a given Commission Matter must not, without first consulting with the General Counsel as set forth in Section B.2 below, discuss, pursue, negotiate, or accept an unsolicited Offer of Employment, either for themselves or an Immediate Family Member, from any non-Commission individual or entity Participating in that Commission Matter.

(c) Employees who violate this Section B of this Policy may be subject to disciplinary action, up to and including termination of employment or discontinuance of services.

2. Procedures

(a) Employees must report to the General Counsel any unsolicited discussion with a non-Commission individual or entity about potential future employment if both the Employee and the non-Commission individual or entity are Participating in the same Commission Matter. Thereafter, the General Counsel will inform the Employee how to respond.

(b) Employees who are Participating in a given Commission Matter who receive an unsolicited Offer of Employment from a non-Commission individual or entity Participating in that same Commission Matter must promptly notify the General Counsel before discussing or responding to the Offer of Employment with the individual or entity. This reporting requirement applies regardless of whether the Employee wishes to pursue the unsolicited Offer of Employment. The General Counsel will inform the Employee how to respond.

(c) Employees that are pursuing employment from a non-Commission individual or entity doing business with the Commission consistent with this Section B, may not do so while on duty for the Commission, and may not at any time or location use Commission property, while engaging in such activity.

(d) Employees who accept employment from a non-Commission individual or entity doing business with the Commission consistent with this Section B must also comply with the post-employment obligations set forth in Section C below.

C. Post-Employment Obligations of Former Employees

1. Policy

(a) *One-Year Bar on Post-Employment Work on any Commission Matter.* Former Employees may not, for a period of one year after the end of their Commission employment, knowingly act as a principal, expert witness, consultant, employee, agent, or representative on behalf of any non-Commission individual or entity in connection with any Commission Matter, regardless of whether the Employee Participated in that Commission Matter while employed by the Commission.

(b) *Two-Year Bar on Participation in any Solicitation for New Commission Business.* For a period of two years following the end of their Commission employment, former Employees may not, on behalf of any non-Commission individual or entity, participate in the solicitation of any new contract or new business arrangement (including contract renewals or extensions) with the Commission. This two-year bar applies only to Participation in the solicitation of contracts or business arrangements from the Commission. The two-year bar does not prohibit former Employees from working on Commission Matters after the expiration of the one-year bar set forth in Section C.1(a) of this Policy (unless barred for life as provided in Section C.1(c)), so long as the Employee does not Participate in solicitation activities relating to that Commission Matter.

(i) For purposes of this Section C.1(b), prohibited solicitation activities during first two years after leaving Commission employment include:

- (A) Written or oral communications with one or more Employees in connection with seeking possible new contracts or business arrangements, including responses to requests for bids, proposals, or information;
- (B) Attending meetings, demonstrations, or negotiations in connection with seeking possible new contracts or business arrangements; and
- (C) Use of a former Employee's name by any non-Commission individual or entity in written or oral communications to seek or secure new contracts or business arrangements from the Commission.

- (ii) This prohibition on a former Employee's Participation in solicitation activities expires at the end of the second year following the end of the Employee's Commission employment.

(c) *Permanent Bar on Post-Employment Work on Certain Commission Matters in which Former Employee Participated.* Former Employees may never knowingly act as a principal, expert witness, consultant, employee, agent, or representative on behalf of any non-Commission individual or entity in connection with a Commission Matter in which the former Employee Participated while employed by the Commission.

(d) *Permanent Bar on Use of Confidential Information.* Former Employees have a continuing obligation after the end of their Commission employment not to use or disclose any Confidential Information obtained as a result of their Commission employment for their own personal gain, or the gain of any non-Commission individual or entity, including, but not limited to, a subsequent employer. Nothing in this paragraph prohibits an Employee from reporting possible violations of law to any governmental agency or entity or making other disclosures that are protected under whistleblower provisions of applicable law.

2. Exceptions

(a) Nothing in this Policy prevents a former Employee from carrying out official duties as an elected or appointed official or Employee of a federal, state, or local governmental agency, subject to the bar on the use of Confidential Information in Section C.1(d) above.

(b) Sections C.1(a) and C.1(b) above do not apply to former Employees whose employment ended pursuant to a consolidation or abolition of functions or a reduction in force. However, Sections C.1(c) and C.1(d) above apply to all former Employees, regardless of the circumstances under which they left the Commission.

Employee Political Activity

This *Employee Political Activity Policy* establishes standards for permitted and prohibited political activities as a condition of employment for all Employees.

A. Policy

The Commission carries out its responsibilities in an objective and non-partisan manner for the common good of the bi-state region. There must therefore be no interference in its administration by partisan political influence or considerations. In addition, to the extent the Commission is receiving federal funds for some of its projects, some of its Employees may be subject to certain federal requirements.

B. Definitions

1. **“Political Activity”** means activity directed toward the success or failure of a political party, candidate for Partisan Political Office or Partisan Political Group. Political activity includes soliciting Political Contributions.

2. **“Partisan Political Office”** means any office for which any candidate is nominated or elected as representing a political party but shall exclude any office or position within a political party or affiliated organization. The term “Partisan Political Office” does not include offices for which candidates are elected in a non-partisan election.

(a) **“Non-Partisan Election”** means an election in which candidates are not nominated or elected as representatives of a political party, and in which the candidates, if elected, will not serve as the chief executive of a municipality, county or other political division with a population of more than 10,000 people. An election for a school or library board may be non-partisan; an election for county executive of a large county will never be.

(b) Under certain circumstances, elections in which candidates are not formally nominated by political parties may nonetheless be considered partisan. Persons considering running for or accepting appointment to any official government or public agency position must consult with the Chief Ethics and Compliance Officer before proceeding.

3. **“Partisan Political Group”** means any committee, club or other organization which is affiliated with a political party or candidate for public office in a partisan election, is organized for a partisan purpose, or is engaged in partisan Political Activity.

4. **“Political Contribution”** means a:

(a) gift, subscription, loan, advance, purchase of tickets to political fundraising events, deposit of money or anything of value made to any political campaign, candidate for Partisan Political Office or Partisan Political Group;

(b) any contract, promise, pledge or agreement, express or implied, whether or not legally enforceable, to make a contribution to any political campaign, candidate for Partisan Political Office or Partisan Political Group;

(c) any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(d) the provision of personal services for any political purpose.

C. Permitted Political Activity

1. To the extent not expressly prohibited by this policy, Employees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal their right to participate in or to refrain from participating in, federal, state or local political processes.

2. Employees have the right to vote as they choose and to express opinions on political subjects and candidates. Subject to the particular restrictions set forth below, Employees may take an active part in a wide range of political activities.

D. Prohibited Political Activity

Employees may not:

1. Engage in Political Activity while

(a) the Employee is on duty;

(b) on any property owned or leased by the Commission;

(c) wearing clothing, pins, badges, uniforms, insignias, logos or other items that display the words “Gateway” “Gateway Commission” or “GDC” or otherwise suggest an affiliation with the Commission; or

(d) using any vehicle owned or leased by the Commission.

2. Use their official authority or influence for the purpose of interfering with or affecting the result of an election. Persons are prohibited under this Section D.2. from, among other things:

(a) using their Commission title or position while participating in Political Activity; and

(b) using their official authority to coerce, pressure or influence any person to participate in or to refrain from participating in Political Activity.

3. Directly or indirectly coerce, attempt to coerce, command, or advise a Commission Employee or an employee or officer of the states of New York and New Jersey to make a Political Contribution.

4. Solicit Political Contributions from Commission Employees (or from New York and New Jersey officers and employees) unless all the following conditions are met —

- (a) the employee being solicited is a member of the same labor union as the soliciting employee;
 - (b) the employee being solicited is not a subordinate of the soliciting employee; and
 - (c) the solicitation is for a contribution to a political committee of such labor union.
5. Inquire regarding the political affiliations or voting history of any person:
- (a) as a test of fitness for Commission employment or promotion; or
 - (b) in any situation involving the discipline, termination or other job-related action of a Commission Employee.
6. Use a prospective or current Employee's political affiliation or voting history or their refusal to respond to a prohibited inquiry about these subjects as a basis for hiring, terminating, promoting, disciplining or taking any other job-related action.
7. Encourage or discourage any person to participate or decline to participate in any Political Activity where that person —
- (a) has any grant, contract, ruling, license, permit or certificate from or with the Commission, or has any application for any grant, contract, ruling, license, permit, or certificate pending before the Commission; or
 - (b) is the subject of, or a participant in, an ongoing audit, investigation, disciplinary or enforcement action being carried out by the Commission.
8. Run for or be appointed to Partisan Political Office.

E. Procedures

1. Employees have primary responsibility for avoiding prohibited Political Activity. The Political Activity Reference Chart attached to this policy, which this policy incorporates by reference, answers commonly asked questions concerning political activity. Persons subject to this policy requiring further guidance concerning the interpretation or applicability of this policy should contact the Chief Ethics and Compliance Officer. In providing guidance, the Chief Ethics and Compliance Officer will consider federal, New York, and New Jersey laws and regulations concerning the political activities of public employees, and as necessary may consult with the General Counsel or outside counsel.
2. Persons who are contemplating paid employment involving Political Activity while continuing to work at the Commission must first notify the Chief Ethics and Compliance Officer,

who will determine, in consultation with the General Counsel or outside counsel as necessary, whether the proposed employment is consistent with this policy.

3. Employees must notify the Chief Ethics and Compliance Officer as soon as they become aware of an actual or potential conflict of interest between Political Activity in which they are or may become engaged, and the interests of the Commission.

Political Activity Reference Chart

Generally, Employees subject to this policy may actively participate in a broad range of political activities, subject to certain restrictions. This Reference Chart provides examples of the kinds of political activities in which they may or may not engage. Anyone with further questions about the application of this policy to proposed political activities should contact the Chief Ethics and Compliance Officer.

Prohibited at all Times	
• May not at any time or location use Commission assets, including office supplies, copiers, printers, email or social media accounts, telephones or computers, while engaging in political activity. • May not use official authority or influence to interfere with an election. • May not use official title or position while engaging in political activity; • May not purport to speak on behalf of or as a representative of the Commission while engaging in political activity; • May not use official authority to coerce, attempt to coerce or demand that any person, including employees of the Commission or the states of New York and New Jersey, engage or refrain from engaging in political activity or making political contributions. • May not solicit or discourage the political activity of any person with business or potential business before the Commission. • May not solicit or discourage the political activity of any person who is the subject of or a witness in an investigation or audit conducted by the Commission.	• May not solicit, accept, or receive political contributions (including hosting or inviting others to political fundraisers) from Commission Employees, unless both persons are members of the same labor or employee organization, the person solicited is not a subordinate employee, the solicitation is for a contribution to the organization's political action committee, and the solicitation does not occur while on duty or in the workplace. • May not inquire regarding the political affiliations or voting history of any person as a test of fitness for Commission employment; or promotion or in any situation involving the discipline, termination or other job-related action of a Commission Employee. • May not use a prospective or current employee's political affiliation or voting history, or their refusal to respond to a prohibited inquiry about these subjects, as a basis for hiring, terminating, promoting, disciplining or taking other job-related action. • May not be a candidate for Partisan Political Office.
Prohibited While: (1) on duty; (2) on Commission premises, (3) using Commission vehicles, or (4) wearing apparel, badges or insignia, uniforms, or logos indicating affiliation with the Commission	
• May not endorse or urge that any person support or vote for a candidate for partisan political office. • May not wear, display, or distribute partisan political materials or items, campaign literature, t-shirts, hats,	• May not perform any campaign-related chores or tasks; • May not make or solicit political contributions; • May not use e-mail or social media accounts to engage in political activity.

buttons, badges, signs, stickers or apparel.	
Permitted (subject to the limitations described above)	
• May register and vote according to personal choice. • May engage in political activity, including: ○ May endorse a candidate for partisan political office orally or in writing; ○ May campaign for or against candidates in partisan elections; ○ May wear, display, or distribute partisan political materials literature; ○ May attend and be active at political rallies, meetings or other political or campaign-related events ○ May express opinions about partisan groups and candidates in partisan elections. ○ May express opinions about political issues. • May make political contributions and purchase tickets to political fundraising events.	• May solicit, accept, or receive political contributions, including by hosting or selling tickets to political fundraisers, subject to certain express prohibitions. • May join, be active, and hold office in partisan political groups. • May run for non-executive and non-legislative offices for which membership in a political party is not a requirement. • May accept appointment to similar positions. • May sign and circulate nominating petitions. • May assist in voter registration drives. • May act as a poll watcher, poll challenger or poll recorder. • May drive voters to the polls.

Employment of Relatives

This *Policy Regarding Employment of Relatives* is intended to provide consistent guidelines concerning the hiring, employment, promotion, and transfer of Relatives of Employees and Commissioners to ensure effective management and avoid actual or perceived conflicts of interest between Employees and their supervisors.

A. Definitions

“Close Personal Relationship” means unmarried couples, regular dating relationships, live-in relationships, business partners, others with whom the Employee has business or financial dealings, or any other close personal friendships that might influence judgment.

“Relative” of an Employee or Commissioner means a spouse, parent, child, sibling, half-sibling, grandparent, grandchild, aunt, uncle, niece, nephew, first cousin, corresponding in-law, “step” relative, or someone with whom the Employee or Commissioner has a Close Personal Relationship.

B. Guidelines

1. Hiring

An Employee may not be involved in any way in a hiring decision related to his or her Relative. A Relative of a Commissioner may not be employed in any office or position at the Commission.

2. Job Arrangements

(a) A supervisor is prohibited from supervising his or her Relative. This prohibition includes situations where a supervisor directly supervises a subordinate Relative, or where the subordinate works in the same work unit as his or her Relative and the supervision is exercised through intermediate supervisors.

(b) While generally not allowed, Relatives may serve in the same work unit only after submitting a written request and receiving the approval of the General Counsel.

(c) Employees in oversight units may not have access to sensitive information, such as investigatory information, related to a Relative or the Relative’s work unit.

(d) When a supervisory/subordinate relationship exists or develops, or when an Employee in an oversight unit may have access to investigatory information related to a Relative or the Relative’s work unit, it may be required that one Employee be reassigned or cease working with the Commission.

3. Disclosure and Complaints

(a) Any Employee must promptly disclose to the General Counsel in writing any supervisory/subordinate relationship with a Relative (including as described in 2(a)) or any other actual potential conflict of interest in terms of working with a Relative.

(b) If an Employee perceives an activity or relationship among co-workers to be a conflict of interest, he or she should promptly notify his or her supervisor or the General Counsel.

Employee Confidentiality

- A. Confidential Information acquired by an Employee in the course of his or her duties as an Employee must be held in confidence and may not be used as a basis for personal gain by the Employee, or any Immediate Family Member of the Employee, or others, and may not be disclosed in breach of the Employee's duties to the Commission.
- B. An Employee must refrain from transmitting any information about the Commission or its deliberations or decisions, or any other information that the Employee obtained from the Commission that might be prejudicial to the interests of the Commission, to any person, other than in connection with the discharge of the Employee's responsibilities, except to the extent that the information is publicly available.
- C. Unless expressly authorized to do so in furtherance of the business of the Commission, Employees, Vendors, or third parties working for or on behalf of the Commission are prohibited from accessing, sending, or otherwise distributing proprietary information, trade secrets or other Confidential Information that is not the property of Employees, Vendors, or third parties working for or on behalf of the Commission. Unauthorized access to or dissemination of such information may result in the Commission taking severe disciplinary action, including termination, as well as substantial civil and criminal penalties under applicable law.
- D. Pursuant to the Defend Trade Secrets Act, the Commission hereby provides notice that: (a) an individual will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and (ii) solely for the purpose of reporting or investigating a suspected violation of law, or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal, and (B) does not disclose the trade secret, except pursuant to court order.
- E. Nothing in this section prohibits an Employee from reporting in good faith possible violations of law 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, or making other disclosures that are protected under whistleblower provisions of applicable law or when otherwise required by law. See also the Gateway Development Commission Whistleblower Protection Policy.

Equal Employment Opportunity Policy
Prohibiting Discrimination, Harassment, and Workplace Violence

This *Equal Employment Opportunity Policy Prohibiting Discrimination, Harassment, and Workplace Violence* sets forth the official policy of the Commission affirming the Commission's commitment to providing equal opportunity for all employees and applicants for employment, prohibiting discrimination and discriminatory harassment, and promoting a workplace environment free from harassment, intimidation, violence, and disruptive behavior of a violent or intimidating nature.

A. Non-Discrimination

It is the policy of the Commission to promote fair and equitable treatment of all Employees, applicants for employment, and Vendors and to comply with all applicable laws and regulations governing equal employment opportunity. The Commission is committed to providing equal opportunity in all employment matters, including, but not limited to, recruitment, hiring, upgrading, selection for training, promotion, transfer, demotion, layoff, termination, rates of pay or other forms of compensation, use of facilities, and treatment of Employees. The Commission is also committed to establishing a working environment for all Employees, applicants for employment, and Vendors that is free from discrimination and harassment. The Commission strictly prohibits discrimination and harassment based on actual or perceived race, religion, color, national origin, ancestry, age, sex, sexual orientation, gender identity and expression, pregnancy, disability, genetic information, marital status, civil union status, domestic partnership status, military service, veteran status, creed, familial status, status as a victim of domestic violence, stalking or sexual offenses, and any other category protected by law. The Commission's commitment to equal opportunity employment applies to all persons involved in its operations and prohibits unlawful discrimination by any Employee, Officer, Commissioner, or Vendor.

B. Disability and Accommodation

1. Policy

The Commission is committed to creating an environment where all individuals are valued and provided with the opportunity to fully contribute, fully compete, and fully maximize their performance. The Commission is committed to complying with all applicable federal, state, and local laws. This policy governs all aspects of employment including recruitment, application, selection, promotion, benefits, compensation, employee counseling and discipline, transfers, and training. The Commission is committed to enforcing this policy and prohibiting retaliation against Employees and applicants who request an accommodation in good faith.

2. Accommodations

(a) The Commission will make reasonable accommodations for the known physical or mental limitations of an otherwise qualified individual with a disability who is an Employee or applicant for employment, unless undue hardship and/or a direct threat to the health and/or safety of the individual or another person would result. Reasonable accommodations may include, but are not limited to: making existing facilities readily accessible to and usable by individuals with

disabilities; acquisitions or modification of equipment or devices; provision of qualified readers or interpreters; appropriate adjustment or modification of examinations, training materials, or policies; part-time or modified work schedules; job restricting (reassignment of non-essential job functions); unpaid leave; and reassignment to a vacant position.

(b) Any Employee or applicant for employment who requires an accommodation in order to perform the essential function of his or her job, enjoy an equal employment opportunity, and/or obtain equal job benefits should contact the General Counsel to request such an accommodation. The General Counsel will communicate with the Employee or applicant and engage in an interactive process to determine the nature of the issue and what, if any, reasonable accommodation(s) may be appropriate. The Commission reserves the right to have the disability and/or accommodation verified by a doctor of its choosing.

(c) The Commission will also consider requests for reasonable accommodations for medical conditions related to pregnancy, childbirth, and lactation where supported by medical documentation and/or as required by applicable federal, state, or local law.

C. Harassment

1. Policy

The Commission is committed to creating and maintaining a supportive and positive work environment that is safe and secure and free from prohibited harassment. As a result, the Commission maintains a strict policy prohibiting sexual harassment and harassment against Employees and applicants for employment based on any legally recognized status, including, but not limited to, actual or perceived race, religion, color, national origin, ancestry, age, sex, sexual orientation, pregnancy, gender identity or expression, disability, genetic information, marital status, civil union status, domestic partnership status, military service, veteran status, creed, familial status, status as a victim of domestic violence, stalking or sexual offenses, or any other category protected by law.

2. Applicability

This anti-harassment policy covers all persons involved in the Commission's operations, regardless of their position, and prohibits harassing conduct by any Commissioner or Employee, including Officers, managers, supervisors, and nonsupervisory Employees. This anti-harassment policy also covers prohibited harassment by or towards non-Employees, such as applicants for employment or Vendors, to the extent that the Commission has control over such individuals and that such individuals' conduct affects the work environment or interferes with the performance of work. This anti-harassment policy applies to all harassment occurring in the work environment, whether on Commission premises or in other work-related settings.

3. Sexual Harassment

(a) Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal and/or physical conduct of a sexual nature, and constitutes sexual harassment when:

- (i) Submission to such conduct is made (either explicitly or implicitly) a term or condition of an individual's employment or engagement;
- (ii) Submission to, or rejection of, such conduct by an individual is used as the basis for employment or contracting decisions affecting such individual; or
- (iii) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) The following are non-exclusive examples of prohibited conduct constituting sexual harassment:

- (i) Unwelcome sexual advances or propositions, including repeated and unwelcome requests for dates;
- (ii) Offers of employment benefits in exchange for sexual favors;
- (iii) Making or threatening reprisals after a negative response to sexual advances;
- (iv) Physical conduct such as touching, assault, or impeding or blocking normal movements;
- (v) Visual conduct such as leering, making sexual gestures, or displaying sexually suggestive objects or pictures, cartoons, posters, websites, emails, or text messages;
- (vi) Verbal conduct such as making or using sexually derogatory comments, innuendos, epithets, slurs, sexually explicit jokes, or comments about an individual's body or dress, whistling or making suggestive or insulting sounds; or
- (vii) Verbal and/or written abuse of a sexual nature, graphic verbal and/or written sexually degrading commentary about an individual's body or dress, or sexually suggestive or obscene letters, notes, invitations, emails, text messages, tweets, or other social media postings.

4. Other Harassment

(a) For purposes of this policy, other harassment is defined as verbal or physical conduct that denigrates or shows hostility or aversion toward an individual based on any characteristic protected by law that:

- (i) Creates an intimidating, hostile or offensive work environment; or
- (ii) Unreasonably interferes with an individual's work performance.

- (b) Examples of such harassment include, but are not limited to:
 - (i) Verbal conduct such as using ethnic slurs or racial epithets; mocking, ridiculing, or mimicking another's culture, accent, appearance, or customs; threatening, intimidating, or engaging in hostile or offensive acts (including jokes and pranks) that focus on an individual's actual or perceived race, religion, color, national origin, ancestry, age, sex, sexual orientation, gender identity and expression, pregnancy, disability, genetic information, marital status, civil union status, domestic partnership status, military service, veteran status, creed, familial status, status as a victim of domestic violence, stalking or sexual offenses, or any other factor protected by law;
 - (ii) Visual and/or written conduct such as displaying on walls, bulletin boards, or elsewhere on Commission premises, or circulating in the workplace, written or graphic material that denigrates or shows hostility or aversion toward a person or group because of an individual's actual or perceived race, religion, color, national origin, ancestry, age, sex, sexual orientation, gender identity and expression, pregnancy, disability, genetic information, marital status, civil union status, domestic partnership status, military service, veteran status, creed, familial status, status as a victim of domestic violence, stalking or sexual offenses, or any other factor protected by law; or
 - (iii) Physical conduct such as assault, unwanted touching, or blocking or impeding normal movement because of an individual's protected status.

D. Workplace Violence

1. Policy

The Commission prohibits workplace violence committed by or against Commissioners, Officers, Employees, or Vendors. Specifically, the Commission will not tolerate violence, threats of violence, harassment, intimidation, or disruptive behavior of a threatening nature towards people or property. Threats or acts of violence include conduct against persons or property that is sufficiently severe, offensive, or intimidating to alter the conditions of employment, or to create a hostile, abusive, or intimidating work environment for one or more Commissioners, Officers, Employees, Vendors, customers, or business partners. Complaints involving workplace violence will be given the serious attention they deserve. Individuals who violate this policy may be removed from Commission premises and will be subject to disciplinary and/or legal action, up to and including termination of employment, severing of relationship with the Commission, and/or criminal prosecution.

2. Workplace Violence

(a) For purposes of this policy, workplace violence is defined as any actual or threatening behavior of a violent nature, as understood by a reasonable person, occurring (i) on Commission property, (ii) while conducting Commission work or (iii) which otherwise impacts

the workplace, regardless of the relationship between the Commission and the individual involved. Therefore, workplace violence includes, but is not limited to, physical or verbal intimidation, harassment, or coercion that either arises out of or impacts the workplace.

- (b) Examples of workplace violence include, but are not limited to:
 - (i) Threatening, aggressive or hostile behavior (physical or verbal) that creates an objective reasonable fear of injury to another person or subjects another individual to emotional distress;
 - (ii) The intentional destruction or threat of destruction of property owned, operated, or controlled by another Employee or Vendor, or by the Commission;
 - (iii) Hitting or shoving a Commissioner, Officer, Employee, or Vendor, with any part of one's body and/or with any object;
 - (iv) Threatening to harm a Commissioner, Officer, Employee, or Vendor, or his or her family, friends, associates, or property;
 - (v) Harassing or threatening with telephone calls, letters, emails, text messages, or other written or electronic forms of communications, including social media;
 - (vi) The willful, malicious and repeated following of another person, also known as "stalking";
 - (vii) Possession of a weapon, any components that can readily be assembled into a weapon, or any instrument utilized as a weapon, while on Commission premises or while on Commission business, unless specifically approved as a job-related requirement (e.g., for a law enforcement or security officer); or
 - (viii) Suggesting to a Commissioner, Officer, Employee, or Vendor that he or she engage in any of the preceding acts.

E. Non-Retaliation

1. The Commission prohibits retaliation against any individual who, in good faith: (a) asserts their rights pursuant to this Policy to bring a complaint of discrimination, harassment, workplace violence, or other potential violation of this Policy; (b) participates in an investigation of discrimination, harassment, workplace violence, or other potential violation of this Policy; or (c) files, testifies, assists, or participates in any manner in any Commission investigation or any investigation, proceeding, or hearing conducted by a governmental enforcement agency.

2. Retaliation is a serious violation of this Policy and must be reported immediately. Retaliation is an offense separate from the original complaint and will be considered independently from the merits of the underlying complaint.

F. Reporting and Investigation

1. Any Employee, Officer, Commissioner, or Vendor who believes that he or she has been discriminated against, harassed by, or subject to violence or retaliation by a Commissioner, Officer, other Employee (including a supervisor or co-worker), Vendor, agent, client, or customer of the Commission in violation of any of the foregoing policies, or any Commissioner, Officer, Employee, or Vendor who is aware of any such harassment of, discrimination against, or retaliation against others, must immediately report it to the General Counsel or if the General Counsel is involved, to the Chief Executive Officer.

2. Any Employee, Officer, Commissioner, or Vendor who is witness to an act of workplace violence must report it immediately to a supervisor/manager, or if the supervisor/manager is involved, to the General Counsel, or if the General Counsel is involved, to the Chief Executive Officer. If managers and supervisors receive reports, observe or otherwise become aware of workplace violence, they must report them immediately to the General Counsel or if the General Counsel is involved, to the Chief Executive Officer. Reports shall be kept confidential to the extent possible.

3. When an Employee, Officer, Commissioner, or Vendor makes a report of discrimination, harassment, workplace violence, or retaliation, the Commission will undertake a prompt investigation as may be appropriate under the circumstances. The steps to be taken during the investigation cannot be fixed in advance, but will vary depending on the nature of the allegation. The Commission will maintain confidentiality throughout the investigative process to the extent practical, permitted by law, and consistent with the Commission's need to undertake a full investigation.

4. If a complaint of prohibited discrimination, harassment, workplace violence, or retaliation is substantiated, appropriate administrative and/or disciplinary action, up to and including termination of employment or contract, will be taken. If a complaint cannot be substantiated, the Commission may take appropriate action to reinforce its commitment to providing a work environment free from discrimination, harassment, and violence.

5. An individual who makes a complaint that is demonstrated to be intentionally false or who knowingly makes a material misstatement of fact as part of a complaint or in connection with an investigation thereof may be subject to disciplinary action, up to and including termination. Anyone who believes that he or she has been the subject of a false complaint may meet with the General Counsel to discuss the allegations. The initiation of a good faith complaint will not be grounds for disciplinary action, even if the allegations cannot be substantiated. The filing of a complaint that does not result in a finding of prohibited conduct is not alone evidence of the intent to file a false complaint.

6. Nothing in this section prohibits an Employee from reporting in good faith possible violations of law 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, or making other disclosures that are protected under whistleblower provisions of applicable law or when otherwise required by law.

G. Management Responsibility

1. All Officers, managers, and supervisors employed by the Commission are responsible for:

(a) Implementing this Policy, which includes, but is not limited to, taking steps to prevent harassment and retaliation;

(b) Ensuring that all Employees and Vendors under their supervision have knowledge of and understand this Policy;

(c) Promptly reporting any complaints to the General Counsel so they may be investigated and resolved in timely manner;

(d) Taking and/or assisting in prompt and appropriate corrective action when necessary to ensure compliance with this Policy; and

(e) Conducting themselves, at all times, in a manner consistent with this Policy.

Failure to meet these responsibilities may lead to disciplinary action, up to and including termination.

2. Officers, managers, and supervisors at all levels are also responsible for ensuring the effectiveness of this Policy throughout the Commission. Thus, Officers, managers, and supervisors are notified that their performance in implementing this Policy may be formally measured, in the same manner through the performance appraisal process, as their performance of other Commission business objectives. Officers, managers, and supervisors at all levels need to understand both the purpose and application of this Policy in order to enforce the policy objectives and to work with the General Counsel to maintain an environment free from discrimination and harassment. The success of this Policy will benefit the Commission through fuller utilization and development of women, minorities, and individuals with disabilities.

Vendor Code of Ethics

A. General

1. This Code of Ethics for Vendors (as it may be amended from time to time, this “**Vendor Code**”) is intended to augment, not to replace, existing laws and policies.
2. The Commission reserves the right to amend this Vendor Code at any time and to require additional ethical obligations for Vendors within its contracts or procurement documents.
3. This Vendor Code shall be deemed to be a substantial and integral part of every Commission invitation for bid, request for qualifications, request for proposals, or other procurement solicitation. A Vendor’s lack of knowledge shall not in any way relieve the Vendor of any of the provisions of this Vendor Code.
4. If the Commission enters into an agreement with a Vendor, or renews, extends, or amends an existing agreement, it is on the understanding that the Vendor has read and agreed to abide by this Vendor Code, and this Vendor Code is hereby made a part of any such agreement.
5. Capitalized terms used but not defined in this Vendor Code shall have the meanings assigned to them elsewhere in the Commission’s *Code of Conduct*.

C. Vendor Obligations

1. Gifts and Conflicts of Interest

(a) A Vendor shall not (either directly or indirectly) give, offer to give, or agree to give any gift, gratuity, or favor to: (1) any Employee, Officer, or Commissioner; (2) any Immediate Family Member of an Employee, Officer, or Commissioner; or (3) any partnership, firm, or corporation with which any Employee, Officer, or Commissioner is employed or in which any Employee, Officer, or Commissioner has a Substantial Interest, as defined in the Commission’s *Employee Conflicts of Interest and Financial Disclosure Policy*.

(b) The solicitation of any fee, commission, compensation, gift, gratuity, or other thing of value by an Employee, Officer, or Commissioner from any Vendor shall be immediately reported in writing by the Vendor to the Commission’s Chief Ethics and Compliance Officer, setting forth the details of any such solicitation.

(c) A Vendor shall not influence, attempt to influence, or cause to be influenced, any Employee, Officer, or Commissioner acting in his or her official capacity in any manner that might tend to impair the objectivity or independence of judgment of any Employee, Officer, or Commissioner.

(d) A Vendor shall not request, influence, or attempt to request, influence, or cause to be requested or influenced, any Employee, Officer, or Commissioner to use, or attempt to use, his or her official position in any manner to secure unwarranted privilege or advantage for the Vendor or any other person.

2. Fair Employment; Diversity and Inclusion

(a) Vendors must maintain fair employment practices in connection with work the Vendor performs for or on behalf of the Commission and must not: (1) discriminate based on actual or perceived race, religion, color, national origin, ancestry, age, sex, sexual orientation, gender identity and expression, pregnancy, disability, genetic information, marital status, civil union status, domestic partnership status, military service, veteran status, creed, familial status, status as a victim of domestic violence, stalking or sexual offenses, or any other category protected by law; (2) engage in sexual or other prohibited harassment; (3) charge workers recruitment fees or knowingly employ workers through an agency charging workers such fees, provided, however, that it is permissible to make use of a hiring agency that itself charges fees, so long as the fees are not passed on to workers; or (4) fail to promptly pay wages and benefits.

(b) Vendors should demonstrate their commitment to business practices that support diversity and inclusion by making good faith efforts to provide business opportunities to minority, women-owned, small, and disadvantaged business enterprises, including providing opportunities to be part of the Vendor's supply chain or perform as Vendor subcontractors, and taking actions to have a workforce whose makeup is representative of the communities in which the Vendor operates.

3. Post-Employment Obligations of Commission Employees

Vendors are prohibited from requiring a current or former Employee to perform work that the Vendor knows or has reason to know would cause the Employee to breach their post-employment ethical obligations under the Code of Conduct.

4. Records and Communications

(a) *Records.* All records created or compiled by a Vendor and provided to the Commission must be accurate and complete, to the best of the Vendor's knowledge. Such records should contain no misrepresentations or material omissions. Records must be maintained in such a way that the Commission is able to conduct a comprehensive and prompt audit as to whether a Vendor has performed its obligations in compliance with law and this Vendor Code.

(b) *Protected Information.* A Vendor may sometimes be given access by the Commission to non-public information related to the business or operations of the Commission that the Commission has designated confidential, privileged, or protected, or that the Vendor otherwise knows, or should know, is intended by the Commission to be kept confidential (collectively, "**Protected Information**"). Vendors must never use Protected Information for any purposes other than complying with the Vendor's contractual obligations to the Commission or with applicable law and Commission policies. Vendors must never disclose Protected Information to any member of the public, or to a Vendor's other business partners, unless required to do so by subpoena, public information request or other legal process. If there is a possibility that Protected Information may be provided in response to a legal requirement, the Commission should be given ample notice and an opportunity to be heard, to the extent doing so is lawful, so that the Commission may determine how to proceed. Nothing in this paragraph prohibits a Vendor from

reporting possible violations of law to any governmental agency or entity or making other disclosures that are protected under whistleblower provisions of applicable law.

(c) *Commission Intellectual Property.* In connection with promotional or marketing materials, a Vendor must not use the Commission's name or logo, or any images of Employees, Officers, or Commissioners or Commission property, without the prior written consent of the General Counsel.

(d) *Computer Use.* During the course of performance of work for the Commission, some Vendors may be given access by the Commission to the Commission's computing and communications hardware and software, including the Commission's network (the components of which are referred to individually and collectively herein as the "**Commission's IT System**"). Any such access is provided only as necessary for the business purposes of the Commission and only if those Vendors provided access comply with applicable rules and policies, including any future rule or policy issued by the Commission concerning computer use and security. No Vendor may conduct personal or non-Commission-related business using the Commission's IT System. The Commission reserves the right to inspect, monitor, and log all activities conducted using the Commission's IT System without providing prior or subsequent notice that it has done so. Vendors have no expectation of privacy when using or accessing the Commission's IT System.

5. Reporting and Investigations

(a) Vendors are required to immediately report to the Commission any information that they acquire concerning a violation, or any potential violation, of the Commission's *Code of Conduct* (including this Vendor Code) or *Conflicts of Interest Policy and Code of Ethics for Commissioners and Officers*, or of law or policies pertaining to the Vendor's work for or on behalf of the Commission. Vendors also have a duty to immediately report to the Commission if they become aware of any activities on Commission premises involving any person or persons that might constitute a crime or other violation of law, or that might threaten public safety, including, but not limited to, physical violence or harm.

(b) To facilitate reporting, this Vendor Code strictly forbids all Vendors from taking any retaliatory action against individuals who make any reports required hereunder, including, without limitation, any adverse job-related action taken by, or at the direction or request of, a Vendor as a result of any individual's (i) good-faith report with respect to a violation, or potential violation, of the Commission's *Code of Conduct* (including this Vendor Code) or *Conflicts of Interest Policy and Code of Ethics for Commissioners and Officers*, or of applicable law or policies, or (ii) cooperation in any investigation of misconduct conducted by the Commission or by federal, state, or local law enforcement officials. Adverse job-related action includes, without limitation, any material alteration to existing terms, conditions, and privileges of employment, such as dismissal, demotion, suspension, compulsory leave, disciplinary action, creation of a hostile work environment, negative performance evaluation, any action resulting in loss of staff, office space, or equipment, or other benefit, reduction in compensation, failure to appoint, failure to promote, or any transfer or assignment, or failure to transfer or assign, against the wishes of the affected Vendor employee.

(c) Vendors must actively cooperate in any investigations or audits conducted by the Commission with respect to any violation or potential violation of the Commission's *Code of Conduct* (including this Vendor Code) or *Conflicts of Interest Policy and Code of Ethics for Commissioners and Officers*, or of law or policies pertaining to the Vendor's work for or on behalf of the Commission.

6. Violations and Compliance

(a) Upon learning that a Vendor employee has violated this Vendor Code, the Vendor must immediately notify the Commission's Chief Ethics and Compliance Officer. A Vendor's employee who has violated this Vendor Code must immediately be prevented from participating in any further work for or on behalf of the Commission, unless and until the Commission issues a contrary directive.

(b) The Commission will not prescribe the details of how a Vendor's compliance program should function. Different circumstances may call for different programs. Upon request by the Commission, a Vendor must provide a written description of its efforts to comply with this Vendor Code in connection with its work for the Commission. The Commission reserves the right to request changes in a Vendor's compliance program to assure that it is sufficiently rigorous.

(c) Violations of applicable law may subject a Vendor or Vendor employees to civil or criminal penalties. In addition, in the case of violation of any provision of the law or this Vendor Code, the Commission may pursue any available remedy, including, but not limited to, determining that a Vendor is in material breach of its contract or that, in the future, the Commission will have no further commercial dealings with the Vendor. Violations of law may be reported to federal, state, or local law enforcement officials as appropriate.

CODE OF CONDUCT ACKNOWLEDGEMENT FORM

I hereby acknowledge that I have received and reviewed the Gateway Development Commission Code of Conduct, including the confidentiality provisions included therein.

I further acknowledge that I understand my obligations, duties and responsibilities under the Code of Conduct and will abide by standards and policies contained in the Code of Conduct, including the confidentiality provisions included therein.

I understand that nothing contained in the Code of Conduct is intended as a contract or enforceable promise and that the standards and policies described herein are subject to change at the sole discretion of the Gateway Development Commission at any time.

I understand that any violation of the Code of Conduct is grounds for disciplinary action, up to and including termination of my employment or services.

I further understand that upon accessing the Code of Conduct, should I have any questions about any of the policies contained therein, I will contact the Chief Ethics and Compliance Officer.

EMPLOYEE SIGNATURE

DATE

EMPLOYEE'S NAME (PRINTED)

EXHIBIT B

GATEWAY DEVELOPMENT COMMISSION PROCUREMENT GUIDELINES

The Gateway Development Commission (the “**Commission**”) is a body corporate and politic created by the New York and New Jersey Gateway Development Commission Act (2019 N.Y. Sess. Laws ch. 108 (the “**New York Act**”) and 2019 N.J. Sess. Law Serv. ch. 195) (the “**New Jersey Act**,” and together with the New York Act, the “**Act**”) to facilitate the passenger rail transportation project between Penn Station, Newark, New Jersey, and Penn Station, New York, New York, as more fully described in the Act (the “**Project**”). These “**Guidelines**” are hereby adopted by the Commission to establish requirements applicable for the use, awarding, monitoring, and reporting of procurement contracts of the Commission as set forth below. These Guidelines are not intended and shall not be deemed to grant or confer any rights or remedies to or upon any third party.

I. OVERVIEW

A. Applicability. Except as otherwise provided herein, these Guidelines apply to all Procurement Contracts procured by the Commission. Consistent with the Act, the term “**Procurement Contract**” refers to any written agreement for the acquisition of goods or services of any kind, in the actual or estimated amount of \$5,000 or more. Procurement Contracts procured under these Guidelines may include, without limitation, contracts for goods, such as: office equipment, furniture, and supplies; computer and telecommunications equipment, systems, and software; construction materials and equipment; and security, safety, and maintenance equipment and supplies; and contracts for services, such as: legal, financial advisory, audit, accounting, risk management, architectural, engineering, design, surveying, construction management, construction and trade work, rehabilitation, repair, maintenance, hazardous materials mitigation, informational technology, communications, and printing.

B. Funding Compliant Procurements. Where federal or state law, rules, or regulations applicable to any funds received by the Commission prescribe procurement requirements that differ from these Guidelines, the requirements of such laws, rules, or regulations will govern with respect to contracts funded with such funds.

C. Selection of Procurement Method

1. In its Procurement Contracts, the Commission seeks to secure a high standard of quality at a reasonable cost and at the required time, on a competitive basis whenever practicable. The Commission’s Chief Executive Officer, or his or her delegate (hereinafter referred to as the “**Chief Executive Officer**”), chooses the appropriate procurement method and, when indicated, negotiates with vendors. Determinations required to be made by the Commission or Chief Executive Officer, including determinations related to source selection, vendor responsibility, and the basis for award, shall be documented in the contract file.

2. Except as otherwise provided in these Guidelines, or as specifically authorized by the Board of Commissioners of the Commission (the “**Board**”), Procurement Contracts should be awarded through a competitive process. In general, competitive selection may be made through competitive sealed bidding procedures described in Section II.B or the competitive sealed proposal

procedures described in Section II.C. Prequalification procedures may be used in the case of construction or specialized services or commodities. Personal and professional services may be procured in accordance with the competitive qualifications-based selection process described in Section II.A.2. In the case of projects delivered through alternative delivery methods (including, without limitation, design-build, design-build-finance-operate-maintain, or any combination of the foregoing) or other complex methods, procurements may be handled through the competitive sealed proposal process or through such other competitive process as the Chief Executive Officer determines is appropriate.

3. The Chief Executive Officer may elect to use a method of source selection authorized by Sections II.D (small purchases), II.E (sole-source procurement), II.F (emergency procurement) and II.G (purchases from government contracts or cooperatives agreements) of these Guidelines after making a determination that it is not practicable, not best practice, or otherwise not in the best interest of the Commission to use one of the procurement processes described in Sections II.A-C. By adopting this Policy, the Board has hereby determined that a full competitive process will not be required and is waived in such circumstances. The Board may also waive competition by resolution in such other circumstances as the Board determines to be in the best interest of the Commission.

II. METHODS OF SOURCE SELECTION

A. Personal and Professional Services

1. It shall be the policy of the Commission to announce publicly all requirements for personal and professional services and to enter into contracts for such services with vendors qualified for the type of services required, and at fair and reasonable prices. Personal and professional services shall be procured by the Commission in accordance with the qualifications-based selection procedure described in Subsection 2 below, through competitive sealed bids or proposals as described in Sections II.B and II.C, respectively, as authorized by Sections II.D-G, or as otherwise authorized by the Commission with respect to particular services or types of services.

2. Qualifications-Based Selection. For personal or professional services Procurement Contracts procured using qualifications-based selection procedures, the Commission shall solicit and evaluate statements of qualification and other proposal information submitted regarding the proposed contract (hereinafter collectively referred to as “**SOQs**”). The Chief Executive Officer shall seek SOQs from at least three persons or firms regarding the contract and shall make reasonable efforts to encourage firms or persons engaged in the lawful practice of their profession, including local and minority- and women-owned firms, to respond to the solicitation. SOQs shall be ranked, in order of preference, based upon criteria set forth in the solicitation regarding the respondents’ competence and qualifications, to identify one or more firms deemed by the Commission to be the most highly qualified to provide the services required and eligible for selection. The Chief Executive Officer shall negotiate a contract with the highest-qualified respondent at compensation that the Chief Executive Officer determines to be reasonable and fair to the Commission. Should the Chief Executive Officer be unable to negotiate a satisfactory contract with the highest-qualified respondent at a fair and reasonable price, the Chief Executive Officer may terminate negotiations with that respondent and undertake negotiations with the next most qualified respondent(s), in order of preference.

B. Competitive Sealed Bidding

1. In circumstances deemed by the Chief Executive Officer to be appropriate for the use of competitive sealed bidding, an “Invitation for Bids” (“**IFB**”) shall be issued, including a purchase description and all applicable contractual terms and conditions. Adequate public notice of the IFB shall be given by publication on the Commission’s website a reasonable time prior to the date for the opening of bids. In addition, the Commission may seek to increase awareness of the solicitation through such other means as appropriate. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the IFB. The amount of each bid, the name of each bidder, and the bid security, if any, shall be recorded. The record and each bid shall be open to public inspection.

2. The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB. Criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable (such as discounts, transportation costs, and total or lifecycle costs) and may include criteria to determine acceptability (such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose). After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Commission or fair competition shall be permitted. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted in instances in which the Chief Executive Officer finds that it is in the Commission’s interest to do so. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Chief Executive Officer.

C. Competitive Sealed Proposals

1. In circumstances deemed by the Chief Executive Officer to be appropriate for the use of competitive sealed proposals, proposals shall be solicited through a “Request for Proposals” (“**RFP**”). Adequate public notice of the RFP shall be given in the same manner as provided in Section II.B.1. Proposals shall be opened so as to avoid disclosure of contents to competing proposers during the process of negotiation.

2. In employing a competitive sealed proposal process, the Chief Executive Officer may consider using a two-phase selection procedure, in which the Commission will, first, issue a “Request for Qualifications” (“**RFQ**”) describing the opportunity and soliciting SOQs from which the most highly qualified proposers may be identified and shortlisted, and second, issue an RFP to the shortlisted proposers, pursuant to which the shortlisted proposers will submit price and non-price/technical proposals. As provided in the RFP, the Commission may conduct one-on-one meetings with potential proposers regarding solicitation, proposal, and contract requirements, evaluation criteria, reference information, and any other industry feedback.

3. Award shall be made to the responsible and responsive proposer whose proposal is determined to be the most advantageous or to offer the best value to the Commission, taking into consideration the evaluation factors set forth in the RFP. Proposals shall be evaluated on the basis of price and the quality of the proposals, based on the relative importance of criteria identified in the RFP, such as (without limitation) capacity to execute the proposal (including financial

capacity), qualifications to provide specialized services or products, experience in the services, the community to be served or studied, or the site of the work, past performance, technical solutions, completion schedule, and potential risks to the Commission of the proposal.

4. As provided in the RFP, discussions may be conducted after proposal submission with responsible proposers reasonably susceptible of being selected for award to clarify proposals and assure full understanding of, and proposals' responsiveness to, the solicitation requirements. In conducting discussions, the Commission will not disclose any proprietary or confidential information derived from competing proposals. Proposal revisions may be permitted after initial submissions and prior to award for the purpose of obtaining best and final offers. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals.

D. Small Purchases

1. Any Procurement Contract with an estimated total value not exceeding \$40,000 may be entered into pursuant to direct negotiation, without regard to any of the competitive source selection procedures set forth above.

2. Any procurement for a contract with an estimated total value exceeding \$40,000 but not exceeding \$250,000 may be entered into without regard to the competitive source selection procedures set forth above, *provided* that the Chief Executive Officer shall use reasonable efforts to obtain offers or quotations from at least three responsible persons or entities, including from minority- or women-owned business enterprises. Solicitations for small purchases may be made by telephone, email, mail, or advertisement on the Commission's website.

3. Award of small purchases may be made by purchase order or contract. The contract file shall include records of the vendors approached and their responses, and documentation of the award, including findings that the purchase price is fair and reasonable, and that adequate competition was solicited. Procurements shall not be artificially divided so as to constitute a small purchase under this Section II.D.

E. Sole-Source Procurements. A contract for goods or services may be awarded to a sole source without competition when the Chief Executive Officer determines either (1) that there is only one source for the required goods or services, or (2) even where required goods or services may be available from two or more sources, that an award without competition is in the best interest of the Commission and the public, which determination may be based on a particular vendor being preferable because of specific factors including, without limitation, past experience with a particular issue, familiarity with the Commission's operations, experience with similar projects of the Commission, demonstrated expertise or capacity and willingness to respond to the situation, and the continuation of ongoing work under an existing contract. If, in complying with the requirements of Sections II.A-D, II.F and II.G, the Commission only obtains an offer from one person or entity, or does not itself undertake a competitive procurement process, it will not be considered a sole source procurement under these Guidelines.

F. Emergency Procurement. Notwithstanding any other provision of these Guidelines, the Commission's Chief Executive Officer may make, or authorize others to make, an emergency

procurement when: (1) there exists a threat to public health, welfare, or safety, or to public property or property in which the Commission has an interest; (2) a critical need or unforeseen circumstance requires immediate action and cannot await competitive selection; or (3) under such other emergency conditions as identified specifically by the Chief Executive Officer; *provided* that such emergency procurement shall be made with such competition as is practicable under the circumstances and shall be limited to the procurement of the goods or services necessary to avoid or mitigate the emergency condition. A written determination of the basis for the emergency and for the selection of the particular vendor shall be included in the contract file.

G. Other Government Contracts and Cooperative Procurements. Notwithstanding any other provision of these Guidelines to the contrary, if the Chief Executive Officer determines it to be in the best interest of the Commission:

1. If there is a federal, state, city, or other governmental contract or pricing agreement for goods or services that permits the Commission to utilize the contract or pricing agreement, or to obtain goods and services from the vendor on substantially similar terms, and that it is in the best interest of the Commission (for reasons of efficiency, complexity, pricing, or otherwise), then the Commission may (a) utilize such contract or pricing agreement to obtain goods and services from such vendor under the terms of such contract or agreement or (b) enter into a contract with such vendor on terms that are substantially similar to those under such contract or agreement.

2. The Commission may (a) enter into a cooperative purchasing or procurement process for goods or services with one or more partner federal, state or local governments, governmental agencies, or government-owned corporation (each, a “**Partner Agency**”), including, without limitation, the State of New York, the State of New Jersey, the Port Authority of New York and New Jersey, the New Jersey Transit Corporation, and the National Railroad Passenger Corporation (“**Amtrak**”) or (b) authorize a Partner Agency to conduct a procurement on the Commission’s behalf, in accordance with such Partner Agency’s lawful procurement policies and procedures, and, upon any award by and pursuant to such procurement, enter into a contract with the successful vendor or authorize the Partner Agency to do so on behalf of the Commission. The roles of the applicable Partner Agencies and the Commission in any such procurement may be outlined in a memorandum of understanding or similar document. The Commission may at any time accept assignment of a contract entered into by a Partner Agency on behalf of the Commission pursuant to this Section II.G.2, subject to the terms and conditions of such contract and with the written consent of the Partner Agency.

3. The Chief Executive Officer is hereby authorized, on behalf of the Commission, to enter into an agreement with the Gateway Program Development Corporation (the “**Corporation**”) accepting assignment of contracts procured by the Corporation for the Project.

4. For the avoidance of doubt, with respect to procurements and contracts authorized by this Section II.G, the terms of the applicable governmental or Corporation contract and/or the procurement policies and procedures of the lead Partner Agency, as applicable, shall take precedence over these Guidelines to the extent allowed by applicable law.

III. ECONOMIC OPPORTUNITY

A. M/WBE Program

1. It is the policy of the Commission to maximize business opportunities available to minority and women entrepreneurs in the New York and New Jersey region to the fullest extent consistent with the legal requirements for such programs. The Commission will identify opportunities for meaningful participation by minority business enterprises (“**MBEs**”) and women-owned business enterprises (“**WBEs**”), as such terms are defined in the Act. This will include the identification of those areas or types of contracts for which MBEs and WBEs may best bid or propose so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises. The Commission shall provide notice of contract opportunities to professional and other organizations that serve MBEs and WBEs providing the types of services or goods, as applicable, being procured in the applicable solicitation.

2. The Commission shall establish appropriate goals for participation by MBEs and WBEs in Procurement Contracts awarded by the Commission and for the utilization of MBEs and WBEs as subcontractors and suppliers by vendors that have been awarded contracts with the Commission. In setting such goals, the Commission may accept the reported findings of the State of New York or the State of New Jersey, and any agencies, instrumentalities, departments, commissions or authorities thereof, or of a Partner Agency, regarding disparity between the availability and utilization of certain ethnic, racial, and gender groups in contracting in the New York and New Jersey region, or may undertake its own disparity and utilization study.

B. Geographic Preferences. Except to the extent that the inclusion of such provisions could jeopardize the receipt or use of federal, state, or local funds in support of the Project, the Commission shall develop and incorporate into every contract awarded by the Commission certain policies to promote the participation by business enterprises and residents of the State of New York and the State of New Jersey. For purposes of this Section III.B, the terms “New Jersey business enterprise,” “New Jersey resident,” “New York business enterprise,” and “New York resident” shall have the meanings ascribed to those terms in the Act.

IV. ETHICS AND NON-COLLUSION

A. Procurements Involving Former Commission Officers and Employees. Former Commission officers and employees shall comply with, and the Commission shall require that all procurements undertaken by the Commission comply with, applicable laws and rules, regulations, and policies adopted by the Board with respect to involvement of former Commission officers and employees in contracts procured by the Commission, including the Conflicts of Interest Policy and Code of Ethics for Commissioners and Officers adopted by the Board and the Code of Conduct to be developed and adopted by the Board.

B. Statement of Non-Collusion in Bids or Proposals

1. Each solicitation for a Procurement Contract issued by the Commission shall require that all bids or proposals contain the following statement subscribed by the bidder or

proposer and affirmed by such bidder or proposer as true under the penalties of perjury (*provided* that terminology may be adjusted as appropriate for RFPs):

- “1. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:
2. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
3. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
4. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.”

2. A bid or proposal shall not be considered for award nor shall any award be made where the provisions of Subsection 1 above have not been complied with; *provided, however*, that if in any case the bidder or proposer cannot make the foregoing certification, the bidder or proposer shall so state and shall furnish with the bid or proposal a signed statement which sets forth in detail the reasons therefor. Where the provisions of Subsection 1 have not been complied with, the bid or proposal shall not be considered for award, nor shall any award be made unless the Commission or official thereof determines that such disclosure was not made for the purpose of restricting competition. The fact that a bidder or proposer (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure.

3. Any bid or proposal submitted to the Commission by a corporate bidder or proposer for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is utilized, and where such bid or proposal contains the certification referred to in Subsection 1 hereof shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid or proposal and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

V. PROCUREMENT AND CONTRACT MANAGEMENT

A. Vendor Responsibility. Procurements shall be made from, and contracts shall be awarded to, responsible vendors only. Each solicitation issued by the Commission shall set forth requirements for responsible bidders/proposers and contractors, including requirements with respect to authorization to do business in the State of New York and/or the State of New Jersey, as applicable, licensing, and other qualifications such as, without limitation, contractor integrity,

compliance with laws and ethics policies, experience and record of past performance, financial resources and/or adequate financial security, and capability to perform.

B. Specifications or Scope of Work/Services. Each solicitation issued by and/or contract for goods or services entered into by the Commission shall include a description of the types of any goods to be purchased, and with respect to procurement of services, a description of those areas of responsibility and oversight requiring the use of personal services and the reasons for the use of personal services in such area. Reasons for soliciting contracts for services may include, without limitation, the lack of, or unavailability of, sufficient staff or other resources, the need for specialized expertise, or the need for only short-term or limited services. The Commission shall ensure that any product specifications incorporated in any procurement requirements or contract terms for contracts procured by the Commission shall comply with the requirements of Subsection 15(b) of Section 2 of the New York Act and Section 16(b) of the New Jersey Act.

C. Cancellation or Termination of Procurements. The Commission reserves the right, at any time, in its discretion, with or without cause, to cancel or withdraw any solicitation issued by the Commission, and/or to terminate any procurement initiated or conducted by the Commission (including rejecting all submitted bids or proposals or terminating any negotiations with a vendor in connection therewith) and may also commence a new procurement for the proposed contract or project. The Commission reserves all rights with respect to procurements that are available to the Commission under applicable laws.

D. Protest Procedure. Procedures to protest the solicitation terms or procurement outcome will be identified in the solicitation. Such protest procedure will be the sole administrative remedy for protesting procurement decisions.

E. Standard Contract Terms. The Commission shall develop a listing of the types of provisions to be contained in contracts procured by the Commission, including provisions concerning the nature and monitoring of the work to be performed, the use of Commission supplies and facilities, the use of Commission personnel, and any other appropriate provisions. Except for small purchases under Section II.D, it is generally anticipated that each Procurement Contract will include terms and conditions with respect to the following, as appropriate: (1) the contract term and any renewal options; (2) the respective powers, duties, responsibilities, obligations, and functions of the Commission and the vendor; (3) compensation or payments to the vendor or Commission; (4) the rights of the Commission with respect to oversight, monitoring, inspections, auditing, and access to records and information; (5) vendor reporting obligations; (6) rights and remedies of the Commission for vendor default, including termination; (7) insurance requirements; (8) requirements to comply with applicable laws; and (9) provisions for amendment of the contract.

F. Compliance with Law. As a matter of policy, each Procurement Contract shall require compliance with the enactments, ordinances, resolutions, and regulations of the respective states and local governments where the relevant work is located in regard to, as applicable, the construction and maintenance of the work and in regard to health and fire protection that would be applicable if the Commission were a private corporation, to the extent that the Commission finds it practicable to do so, without interfering with, impairing, or affecting the efficiency of its purposes, or its ability to effectuate its work upon a self-supporting basis, or its obligations, duties, and responsibilities to New York and New Jersey, its bondholders, if any, and the general public.

G. Performance Monitoring. All Procurement Contracts with terms longer than one year shall include vendor obligations with respect to annual reporting and disclosures and shall be subject to evaluation by the Commission for such vendor's performance as set forth in the Procurement Contract.

H. Cancellation or Disqualification for Failure to Cooperate with Investigation.

1. Each Procurement Contract shall include a clause providing that upon the refusal by a person, when called before a grand jury, head of a state department, temporary state Commission or other agency of the State of New York or the State of New Jersey, the organized crime task force in the department of law of the State of New York, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the applicable state, any political subdivision thereof, a public authority or with any public department, agency or official of the State of New York or the State of New Jersey or of any political subdivision thereof or of a public authority, to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning such transaction or contract, such person, and any firm, partnership or corporation of which he or she is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with the Commission or official thereof, for goods, work or services, for a period of five years after such refusal.

2. Any person who, when called before a grand jury, head of a state department, temporary state commission or other state agency of the State of New York or the State of New Jersey, the organized crime task force in the department of law of the State of New York, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the applicable state, any political subdivision thereof, a public authority or with a public department, agency or official of the state or of any political subdivision thereof or of a public authority, refuses to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant questions concerning such transaction or contract, and any firm, partnership or corporation, of which he or she is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids or proposals to or receiving awards from or entering into any contracts with the Commission or any official of the Commission, for goods, work or services, for a period of five years after such refusal. Such disqualification shall be effective starting on the date the Commission receives notice of such refusal in accordance with Section 2(15)(d) of the New York Act and Section 16(d) of the New Jersey Act.

3. Any firm, partnership or corporation which has become subject to the cancellation or termination of a contract or disqualification to contract on account of the refusal of a member, partner, director or officer thereof to waive immunity when called to testify shall be entitled to exercise its rights of appeal set forth in Section 2(15)(e) of the New York Act and Section 16(e) of the New Jersey Act, as applicable.

VI. COMMISSION REPORTING

A. Statutory Reporting Requirements. The Commission shall annually prepare, approve, and submit a report on Procurement Contracts entered into by the Commission for such year in accordance with the requirements of the Act, which shall include these Guidelines and any other procurement guidelines adopted by the Commission pursuant to requirements of the Act, an explanation of such guidelines, and any amendments thereto since the last annual report. Such report on Procurement Contracts may be a part of any other annual report that the Commission or Corporation is required to make. The Commission shall make available to the public copies of its annual report on Procurement Contracts upon reasonable request therefor.

B. Reports to the Board. The Chief Executive Officer shall report to the Board no less often than annually on all Procurement Contracts procured by the Commission pursuant to these Guidelines and any material amendments thereto, including the vendor name, the procurement method, the award date and the total contract amount.

VII. MISCELLANEOUS

A. Reservation of Rights; No Beneficiaries. The Commission's failure to comply with the provisions of these Guidelines shall not alter, modify the terms of, affect the validity of, or impair any of the Commission's rights or privileges under any Procurement Contract to which the Commission is a party. Nothing contained in these Guidelines 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.

B. Waiver. Any provision of these Guidelines may be waived by the Board, or such individuals as they may designate, except to the extent prohibited by law. A waiver may also be in the form of a ratification. If a contract is federally assisted, prior to issuing a waiver, consideration should be given to the steps that may be taken to assure that federal assistance is not jeopardized.