

# GRIFFISS UTILITY SERVICES CORPORATION

## PROPERTY DISPOSITION GUIDELINES

Adopted as of 3/29/13

Griffiss Utility Services Corporation ("GUSC") is required by Section 2896 of the Public Authorities Law to adopt by resolution comprehensive guidelines which shall (a) detail GUSC's operative policy and instructions regarding the use, awarding, monitoring and reporting of contracts for the disposal of Property (as defined herein) and (b) designate a Contracting Officer (as defined herein) who shall be responsible for GUSC's compliance with, and enforcement of, such guidelines. The following guidelines ("Guidelines") have been adopted by GUSC's Board of Directors (the "Board") pursuant to the aforesaid statute and are applicable with respect to the use, awarding, monitoring and reporting of all Property Disposition Contracts (as defined herein) which are entered into by GUSC.

### **ARTICLE I** **DEFINITIONS**

1. "Contracting Officer" shall mean an officer or employee of GUSC appointed by resolution of the Board to be responsible for the disposition of Property of GUSC.
2. "Dispose" or "disposal" or "disposition" shall mean the transfer of title or any other beneficial interest in Property from GUSC to any unrelated third party.
3. "Property" shall mean personal property in excess of Five Thousand Dollars (\$5,000.00) in value, real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party.
4. "Property Disposition Contracts" shall mean written agreements for the sale, lease, transfer or other disposition of Property from GUSC to any unrelated third party.
5. "Real Property" shall mean real property and interests therein.

### **ARTICLE II** **APPOINTMENT AND DUTIES OF CONTRACTING OFFICER**

#### **A. Appointment**

The Contracting Officer shall be an officer or employee of GUSC appointed by the Board who is responsible for the supervision and direction over the custody, control and disposition of Property and responsible for GUSC's compliance with and enforcement of these Guidelines. Without limiting the generality of the foregoing, the Contracting Officer shall comply with Section 2896 of the Public Authorities Law, GUSC's Certificate of Incorporation and any other applicable law for the disposal of property. The Contracting Officer of GUSC is John Nash, CFO.

**B. Duties** The duties of the Contracting Officer shall include the following:

1. Maintaining adequate inventory controls and accountability systems for all Property under the control of GUSC.
2. Periodically conducting an inventory of such Property to determine which Property may be disposed of.
3. Preparing an annual written report of all Property of GUSC. Each report shall include a list of all of GUSC's Real Property, a full description of all Property disposed of by GUSC during the reporting period, the price received and the name of the purchaser for the Property sold by GUSC during each reporting period. Each report shall be completed and delivered to the New York State Comptroller, the Director of the Budget, the Commissioner of General Services, the New York State Legislature and the Authorities Budget Office no later than ninety (90) days following the completion of GUSC's fiscal year.
4. Disposing of Property as promptly as possible in accordance with these Guidelines, as directed by GUSC.

**ARTICLE III**  
**PROPERTY DISPOSITION REQUIREMENTS**

**A. Method of Disposition**

Subject to such exceptions and/or requirements as are set forth in these Guidelines, in the event that GUSC determines to dispose of any of its Property, GUSC shall endeavor to dispose of such Property for at least the fair market value of the Property. The disposition of Property may be made by sale, exchange, or transfer, for cash, credit or other property, with or without warranty, and upon such other terms and conditions as the Contracting Officer deems proper, and GUSC may execute such documents for the transfer of title or other interests in Property and take other actions it deems necessary or proper to dispose of such Property under the provisions of this Section. Provided, however, no disposition of Real Property shall be made unless an appraisal of the value of such Real Property has been made by an independent appraiser and included in the record of the transaction, and provided further that no disposition of any other Property which because of its unique nature or the unique circumstances of the proposed transaction is not readily valued by reference to an active market for similar property shall be made without similar appraisal.

**B. Award and Approval of Property Disposition Contracts**

1. Compliance with Guidelines; Approval Requirements. All dispositions of Property shall be conducted in accordance with these Guidelines by or under the supervision of the Contracting Officer, subject to approval of the Board.

2. Disposition by Public Bid.

(a) All Property Disposition Contracts may be made only after publicly advertising for bids, unless one of the criteria set forth in Article III(B)(3) below has been satisfied for such contracts to be made by negotiation or public auction.

(b) Whenever public advertising for bids is required, (i) the advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions, as shall permit full and free competition consistent with the value and nature of the Property; (ii) all bids shall be publicly disclosed at the time and place stated in the advertisement; and (iii) the award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to GUSC and New York State, price and other factors considered.

(c) Any public bid for the disposition of Property may be rejected, refused, or declined by GUSC on any basis or ground allowable at law.

3. Disposition by Negotiated Sale/Public Auction. The following dispositions are exempt and excepted from the public bidding requirements set forth above in Article III(B)(2) and may be consummated through a negotiated sale or by public auction:

(a) Below Fair Market Value. GUSC may dispose of Property for less than the fair market value of the Property where:

- (i) Transferee is a government or public entity and terms of the transfer require ownership and use of the Property to remain with the government or public entity; or
- (ii) Purpose of the transfer is within the purpose, mission or Certificate of Incorporation of GUSC; or
- (iii) In the event that GUSC seeks to transfer an asset for less than its fair market value to other than a governmental entity, which disposal would not be consistent with GUSC's mission, purpose or Certificate of Incorporation, GUSC shall provide written notification thereof to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate, and such proposed transfer shall be subject to denial by the Governor, the Senate, or the Assembly. Denial by the Governor shall take the form of a signed certification by the Governor. Denial by either house of the Legislature shall take the form of a resolution by such house. The Governor and each house of the Legislature shall take any such action within sixty (60) days of receiving notification of such proposed transfer during the months of January through June, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the

Legislature may take any such action within sixty (60) days of January first of the following year. If no such resolution or certification is performed within sixty (60) days of such notification of the proposed transfer to the Governor, Senate and Assembly, GUSC may effect such transfer.

If a below fair market value transfer is proposed, the following information is required to be provided to the Board and to the public:

- (1) A full description of asset;
- (2) An appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the Board;
- (3) Description of the purpose of the transfer, the kind and amount of the benefit to the public resulting from the transfer such as jobs and wages created or preserved;
- (4) Value received compared to fair market value;
- (5) Names of private parties to the transaction and value received;
- (6) Names of private parties that have made an offer, the value of offer, and purpose for which the asset would have been used.

The Board must make a written determination that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer.

(b) Disposition of Certain Personal Property. GUSC may dispose of personal property where such personal property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity or other quality of similar effect, that would tend to increase its value, or if the personal property is to be sold in such quantity that, if it were to be disposed of through public advertisement and bidding, would adversely affect the state or local market for such personal property.

(c) Disposition of Low FMV Property. GUSC may dispose of Property the fair market value of which does not exceed Fifteen Thousand Dollars (\$15,000.00).

(d) Disposition Following Receipt of Unacceptable Bid Prices. GUSC may dispose of Property where the bid prices received by GUSC after public advertising are not commercially reasonable (either as to all or some part of the Property) as determined by GUSC in its sole discretion.

(e) Disposition to a Political Subdivision. GUSC may dispose of Property to New York State or any political subdivision of New York State.

(f) Disposition Authorized by Law. GUSC may dispose of Property where such disposition is otherwise authorized by law.

4. Reporting Requirements Regarding Negotiated Dispositions.

(a) Preparation of Written Statements. The Contracting Officer shall prepare a written statement explaining the circumstances of each negotiated disposition of Property involving any of the following:

- (i) the negotiated disposition of personal property which has an estimated fair market value in excess of Fifteen Thousand Dollars (\$15,000.00);
- (ii) the negotiated disposition of Real Property that has an estimated fair market value in excess of One Hundred Thousand Dollars (\$100,000.00);
- (iii) the negotiated disposition of Real Property that will be disposed of by lease if the estimated annual rent over the term of the lease is in excess of Fifteen Thousand and NO/100 Dollars (\$15,000.00); or
- (iv) the negotiated disposition of Real Property or real and related personal property where the same will be disposed of by exchange, regardless of value, or any Property any part of the consideration for which is Real Property.

(b) Submission of Written Statements. Written statements prepared pursuant to Article III(B)(4) shall be submitted to the New York State Comptroller, the Director of the Budget, the Commissioner of General Services, the New York State Legislature and Authorities Budget Office no later than ninety (90) days prior to the date on which the disposition of Property is expected to take place. The Contracting Officer shall maintain a copy of all written statements at GUSC's principal office.

**ARTICLE IV**  
**GENERAL PROVISIONS**

**A. Annual Review and Submission of Guidelines**

These Guidelines shall be annually reviewed and approved by the Board. On or before March 31<sup>st</sup> of each year, the Contracting Officer shall file a copy of the most recently reviewed and adopted Guidelines with the New York State Comptroller, and shall post the Guidelines on GUSC's website. Guidelines posted on GUSC's website shall be maintained at least until the Guidelines for the following year are posted on GUSC's website.

**B. Effect of Awarded Contracts**

These Guidelines are intended for the guidance of the officers, members, directors, employees and authorized representatives of GUSC only. Nothing contained herein is intended or shall be construed to confer upon any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof, or be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, these Guidelines. Without limiting the generality of the preceding sentence, any deed, bill of sale, lease, or other instrument executed by or on behalf of GUSC, purporting to transfer title or any other interest in Property shall be conclusive evidence of compliance with these Guidelines insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of compliance with these Guidelines prior to the closing.