

Title: Guidelines for the Disposal of Canal Corporation Personal Property

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Guidelines for the Disposal of Canal Corporation Personal Property

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Note: Revision # should be listed in descending order starting with most recent version at the top

Revision Date	Revision #	Description/Modification	Revision Section (s)	Author
12/1/18	1	Added Definition of Discarded Property Added Personal Property Discarded by the Corporation Revised Violations Section	3 4.6 5	Kevin King Director Transactional Procurement
11/15/2018	0	Original Issue	N/A	Kevin King Director Transactional Procurement

1 PURPOSE AND SCOPE

This Policy for the disposal of Canal Corporation (“Corporation”) Personal Property, (“Policy”) which complies with Title 5-A, Article 9 of the Public Authorities Law, establishes the Corporation’s Policy and instructions regarding the use, award, monitoring and reporting of the disposal of personal property. In addition, the Policy designates a Contracting Officer who is responsible for the Corporation’s compliance with, and enforcement of, the Policy.

Powers and duties relating to the New York State Canal System, which were transferred to and merged with the New York Power Authority pursuant to Canal Law Article 1-A, may be exercised by the Authority directly or through the Corporation.

2 APPLICABILITY

This Policy applies to all New York State Canal Corporation employees, Initialisms (Acronyms) and Definitions

3 INITIALISMS (ACRONYMS) AND DEFINITIONS

Abandoned Motor Vehicles – a type of tangible Personal Property with special statutory and regulatory requirements for disposal and processing (see Section 5.2.A.).

Abandoned, Lost or Found Personal Property – Property that remains unclaimed after notification to an owner, if known, and/or after being held for the required holding periods as prescribed by law. This includes all lost or mislaid property found on Corporation property/premises, as well as property which is knowingly abandoned.

Authority – Power Authority of the State of New York

Contracting Officer – The Authority’s Vice President - Strategic Supply Management or his/her designee

Corporation – The Canal Corporation

Discarded Property – Personal Property of the Corporation, or other personal property that has come into the Corporation’s possession, that the Corporation has discarded, or designated to be discarded, as scrap or junk.

Disposals –The sale of Personal Property, the transfer of title or any beneficial interest in Personal Property in accordance with this Policy such as leases, and the exchange of Personal Property. Disposals do not include permits, licenses or temporary use documents that are otherwise revocable due to operational requirements or in the best interests of the Corporation.

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Consistent with prior Board action, permits do not convey or transfer a beneficial interest in the Personal Property.

Fair Market Value – The estimated dollar amount that a willing buyer would pay to a willing seller for the Property in an arms-length transaction in the appropriate marketplace and under similar circumstances. Fair market value may be determined by consulting industry-recognized sources, contacting original suppliers, depreciation analysis, appraisals, fair market valuations by public auction or other methods of valuation generally accepted in the industry in which such Property is utilized, as may be approved by the Contracting Officer or authorized designee.

PAL – Public Authorities Law

Personal Property – Property, other than Real Property, owned by the Corporation, regardless of value, and any 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. Property may include, but is not limited to, materials (Corporation warehouse controlled inventory and Corporation direct turnover materials), tools, equipment or vehicles.

Real Property – Real property, including land, tenements and inherited property owned by the Corporation, and any other interest in such real property, to the extent that such interest may be conveyed to another person or entity for any purpose, excluding an interest securing a loan or other financial obligation of another party.

Relative – is any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee's grandparents or the spouse of such descendant, as referred to in Subsection 9.E.1 of these Guidelines. The term Relative may include, but is not limited to, the relationship of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law or son-in-law.

Transactions – For purposes of this Policy, transactions shall include, but not be limited to, disposals and the issuance of permits, licenses and other temporary use documents for the use of Personal Property.

4 POLICY IMPLEMENTATION

4.1 General Principles

The Corporation shall maintain adequate inventory controls and accountability systems for all Personal Property under its control.

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- A. Personal Property that is 1) encroaching on real property under the jurisdiction of the Corporation; or 2) located on real property under the jurisdiction of the Corporation that is: (a) not authorized by the applicable permit, license or lease; or (b) left behind following the expiration, revocation or termination of a permit, license or lease; shall be handled in accordance with this Policy, the terms and conditions of the lease, license or permit regarding the removal of such property, and/or the Canal Law, if applicable.
- B. The Corporation may dispose of any Personal Property not necessary for its corporate purposes in whatever timeframe that either the Contracting Officer or the Corporation Board deems appropriate.
- C. The Corporation may authorize the use of Corporation Personal Property by an entity for any period or term using a temporary, revocable permit, license or other document that does not transfer a beneficial interest in the Personal Property. Such temporary, revocable use is not considered a Disposal for purposes of this Policy.
- D. Personal Property shall not be disposed of by the Corporation for less than fair market value, except in limited circumstances as set forth in Paragraph E, sections 1, 2 and 3 of this Section. Fair Market Value may be determined through the use of appraisals, requests for proposals, the bid or auction process, or other means.
- E. No asset owned, leased or otherwise in the control of the Corporation with a value in excess of \$5,000 may be sold, leased, or otherwise alienated for less than its fair market value except if:
 1. the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;
 2. the purpose of the transfer is within the purpose, mission or governing statute of the Corporation; or
 3. in the event the Corporation 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 the Corporation's mission, purpose or governing statutes, the Corporation 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 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 days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the governor, senate, and assembly, the Corporation may effectuate such transfer.

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- F. In the event a below fair market value asset transfer is proposed, the following information must be provided by the Manager, Administrative Services as a trustee item for the Corporation Board at the next scheduled Trustee meeting and the public:
1. a full description of the asset;
 2. an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the Corporation Board;
 3. a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated as are required by the transfer;
 4. a statement of the value to be received compared to the fair market value;
 5. the names of any private parties participating in the transfer, and if different than the statement required by Subparagraph (4) of this Paragraph, a statement of the value to the private party; and
 6. the names of any other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.
- G. Before approving the disposal of any property for less than fair market value, the Corporation Board shall consider the information described in Paragraph F of this Section and make a written determination that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.
- H. The Corporation must use a competitive process as required by the PAL and any related statutes, including public advertising for Disposals exceeding \$15,000 in value, except in limited circumstances. In order to dispose of Personal Property by negotiation or public auction without public advertising, but subject to obtaining competition as is feasible under the circumstances, one of the following must be met:
1. the Personal Property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value, or if the Personal Property is to be sold in such quantity that, if it were disposed of by public advertising, would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;
 2. the fair market value of the property does not exceed \$15,000;
 3. bid prices after advertising are not reasonable, either as to all or some part of the Personal Property, or have not been independently arrived at in open competition;
 4. the Disposal will be to the State or any political subdivision, and the estimated fair market value of the Personal Property and other satisfactory terms of disposal are obtained by negotiation;
 5. under those circumstances permitted by Section 5.1 (Paragraphs E, F, and G) of this Policy; or
 6. the action is otherwise authorized by law.

Guidelines for the Disposal of Canal Corporation Personal Property

- I. For Personal Property valued at over \$15,000 disposed of by negotiation, an explanatory statement is required. Not less than 90 days in advance of the Disposal, an explanatory statement shall be prepared and distributed by the Contracting Officer in accordance with PAL § 2897, detailing the circumstances of the Disposal including, but not limited to, the proposed price.
- J. The Corporation shall create a clear and comprehensive record for each Transaction that documents its compliance with this Policy. Such record shall be maintained in a manner and for a period consistent with the applicable document retention policy.

4.2 General Practices

- A. Abandoned Motor Vehicles - The handling and disposal of Abandoned Motor Vehicles is statutorily covered under Vehicle and Traffic Law and not under this Policy.
- B. Abandoned, Lost or Found Personal Property

Abandoned, Lost or Found Personal Property with a value over the statutory limits must, within ten days after the finding or acquisition by Corporation employees or the Corporation's related agents (for example, contractor), be turned over to the New York State Police for processing and forwarding to the Bureau of Office and Building Maintenance Services ("Office Services") at headquarters in Albany. Office Services will return the property to the owner, if known; if the owner of the property is not immediately known, then the property must be held until the statutory holding period has run. At that time, if the property has not been claimed by the true owner or someone with verifiable ownership rights, then Office Services shall return the property to the known independent finder. If the original finder was a Corporation employee or one of its related agents as defined above, ownership then vests in the Corporation and may be treated as other Corporation owned property.

- C. Special Abandoned Personal Property
 1. Personal Property purposely left behind on Corporation property after termination of a previously issued permit, license or lease shall be handled, removed or disposed of under the terms of the permit, license or lease, or if required, pursuant to the applicable provisions of the Canal Law governing encroachments.
 2. Abandoned Personal Property originally issued by the Corporation such as unclaimed wages or benefits, or unclaimed consumer balances shall be held for the required holding times as prescribed by the Personal Property Law and Abandoned Property Law, at which time the property vests in the Corporation.
 3. Other Personal Property such as unclaimed bonds, dividends, interest, securities, etc. owed to security holders shall be held for the required statutory periods by the Corporation's properly delegated trustees or other fiduciaries.

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D. Surplus Personal Property

The Manager, Administrative Services or his or her designee will provide the Executive Deputy Director or his or her designee with information on all items of Personal Property declared surplus.

4.3 Disposal Process

The Manager, Administrative Services or his or her designee will prepare a list of all Personal Property to be disposed of and prepare an internal estimate of the value of such property.

A. The method of disposal shall be based on the following Personal Property values:

1. Personal Property valued at less than \$1,000 may be sold or donated, or when having an estimated resale value less than the cost of handling and sale may be disposed of as scrap or junk. The provisions of Section 5.6 will apply to such property.
2. Solicitation via telephone, email, and/or direct mailings may be used where the estimated Fair Market Value of the Property to be disposed of does not exceed \$15,000. All bids must be submitted in writing on the Corporation generated forms or an appropriate substitute and in the manner prescribed by this Policy and by the date and time included in the solicitation.
3. Personal Property valued in excess of \$5,000 up to and including \$15,000 may be negotiated or made by public auction without publicly advertising for bids when approved by the Contracting Officer or, where required, by the Board, such as in Section 5.1 (Paragraphs E and F).
4. Personal Property valued in excess of \$15,000 shall be offered for sale by a formal competitive process that includes public advertising for bids unless one of the exceptions listed in Section 5.1.E is met. If such an exception exists, disposal may be by negotiation or public auction without public advertising, when approved by the Contracting Officer or, where required, by the Board, such as in Section 5.1.G.

Note: For Personal Property valued in excess of \$15,000 disposed of by negotiation, an explanatory statement is required as described in Section 5.1.I.

B. When public advertising is required for disposals, the following steps must be taken pursuant to PAL § 2897:

1. The advertisement 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 Personal Property;
2. All bids shall be publicly disclosed at the time and place stated in the advertisement; and
3. The award shall be made with reasonable promptness by notice to the responsible bidder whose bid, in conformance with the solicitation, will be most advantageous to the Corporation, price and other factors considered, provided that any and all bids may be rejected when it is in the public interest to do so.

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- C. When property is sold by sealed bid, by public auction or by an electronic auction, sale prices are approved by the Manager, Administrative Services or his or her designee. If such person determines that property should be offered at an established or set price due to its unusual nature, or any other special conditions that would make competitive bidding impractical, Manager, Administrative Services or designee will recommend an acceptable price and a method of sale to the Contracting Officer for approval.
- D. If the Manager, Administrative Services or designee determines that the best interests of the Corporation are served by selling at public auction, the Manager, Administrative Services) or designee shall supervise the auction and may reject any and all bids considered to be unacceptable.
- E. Where permitted by law, Disposals may be performed by the Commissioner of General Services on behalf of the Corporation when the Corporation has entered into an agreement with the Commissioner of General Services pursuant to PAL and/or other applicable statutes.

4.4 Reports

The Corporation will annually develop and distribute reports regarding Personal Property having a Fair Market Value in excess of \$5,000 that was disposed of during the reporting period, including the full description, price (if any) received and the name of the purchaser for all such Personal Property disposed of by the Corporation during such period as required by law. The report shall be delivered to the New York State Comptroller, the Director of the Budget, the Commissioner of General Services, the New York Legislature and the Authorities Budget Office.

4.5 Procurement of Surplus Personal Property by Employees

Corporation employees and relatives of such employees or third parties acting on behalf of such employees shall not have any personal interest in, or engage in, any activity, inclusive of bidding for the purchase of Canal Property that would create or appear to create a conflict with the proper discharge of their public duties and are prohibited from subsequently acquiring in any manner. It is important, even in the absence of any impropriety, that no appearance of impropriety is given. Therefore, pursuant to the Public Officers Law, all Corporation employees, their spouses and any children and stepchildren under age 18, stepparents, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, nephew, niece, mother in law, father in law, sister in law, brother in law, daughter in law, son in law are prohibited from procuring Corporation Surplus Personal Property or otherwise securing such property through the use of an agent or other third party.

In addition, Corporation employees, other than the Manager, Administrative Services or designee, shall not disclose to any non-employee any information that they obtain regarding such property due to the nature of their employment. Such disclosure by the Manager, Administrative Services or designee shall only be made in the course of the proper discharge of their official duties.

4.6 Personal Property Discarded by the Corporation

Corporation employees shall not, without written permission of the Executive Deputy Director: (1) retrieve or otherwise take possession of Discarded Property for their own use or for the use of other persons, even for purposes of donation; (2) give Discarded Property to other persons; or (3) sell Discarded Property. Any permissions granted pursuant to this section will be retained by the Manager, Administrative Services.

4.7 Signing Authority

1. The Board, if the Fair Market Value of the Property is greater than \$500,000 or if the Disposal is for less than Fair Market Value in accordance with Section 5 (paragraphs F and G).
2. The Contracting Officer if the Fair Market Value is up to \$500,000.00.
3. The Executive Deputy Director if the Fair Market Value is up to \$100,000.00.
4. The Manager, Administrative Services if the Fair market Value of the Property is \$5,000 or less.
5. For Fleet related transactions, the Vice President of the Authority's Enterprise Shared Services or equivalent(s), if the Fair Market Value of the Property is up to \$500,000.
6. For Fleet related transactions, the Director of the Authority's Fleet Operation, if the Fair Market Value of the Property is up to \$100,000.

- 4.8** At the request of the Executive Vice President and General Counsel, all Authority Business Units and Department Heads shall support and provide assistance in the coordination and administration of this Policy.

5 VIOLATIONS

Violations of this Policy and related policies and procedures by employees may result in disciplinary action up to and including termination. In addition, where the conduct engaged in is illegal, violators may be subject to prosecution under applicable federal, state or local laws.

6 REFERENCES

Abandoned Property Law
Canal Law
Personal Property Law
Public Authorities Law
Vehicle and Traffic Law

8 POLICY REVIEW AND EXPIRATION

This document will be reviewed and updated as business needs require. However, a mandatory review will be required on the anniversary date of the approved document.

Revision cycle : Every Year

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9 ATTACHMENTS

Attachment 9.1: Sales Agreement

ATTACHMENT 9.1

**PERSONAL PROPERTY
SALES AGREEMENT**

_____, the Buyer, and the New York State Canal Corp ("Canal Corp"), agree as follows:

- 1) The personal property identified herein is sold by the Canal Corp and purchased by Buyer "AS IS, WHERE IS" at the price(s) shown, plus any applicable sales tax.
- 2) **THE CANAL CORP DOES NOT IN ANY WAY WARRANT THE FITNESS OF THE PERSONAL PROPERTY FOR ANY PARTICULAR USE OR ITS MERCHANTABILITY AND DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, THE QUALITY, CHARACTER, PERFORMANCE, OR CONDITION OF THE PERSONAL PROPERTY OR ANY OF ITS COMPONENT PARTS, ASSEMBLIES, OR ACCESSORIES.**
- 3) The Buyer warrants that he/she/it is not a current or former Canal Corp employee, is not related to a Canal Corp employee and did not bid on behalf of a Canal Corp employee. Buyer is aware that Canal Corp employees and their family members are precluded from subsequently receiving, or acquiring, in whole or in part, by any manner including gift, sale, loan or lease, the personal property acquired by the Buyer pursuant to this sale. The term "related to" as used in this paragraph means the relationships of spouse, child, parent, sister, brother, grandparent, grandchild, aunt, uncle, cousin, niece, nephew, stepchild, stepparent, stepsister, stepbrother, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, or son-in-law. The Canal Corp reserves the right to invoke any available legal or equitable remedy in the event of a breach by the Buyer of his or her warranty under this paragraph, including but not limited to, rescinding the sale and recovering the property sold and all costs associated with the sale and the rescission of said sale.
- 4) The Buyer shall indemnify and hold harmless the State of New York, New York Power Authority and the Canal Corp and all of its officers, agents and employees from any loss, damage, remedial or response cost, liability or expense, on account of damage or contamination to property and injuries, including death, to all persons, including Buyer's employees, or any third parties, arising or in any manner growing out of the sale of any personal property or the performance of any work under this agreement and shall defend at its own expense any suits or other proceedings brought against the State of New York, New York Power Authority and the Canal Corp and its officers, agents and employees, or any of them, on account thereof, and pay all expenses and satisfy all judgments which may be incurred by or rendered against them or any of them in connection therewith.



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5) Except for disposals by public auction, the Buyer shall remove the personal property from the Canal Corp premises by _____ at Buyer's expense. The Buyer shall make payment upon delivery by certified check payable to the New York State Canal Corporation.

Description of Personal Property:

Selling Price: _____

Executed this _____ day of _____, 20_____.

Buyer (Print or Type):

Seller:

New York State Canal Corporation
30 South Pearl Street
Albany, New York,

Authorized Signature

Authorized Signature

Full Name (Printed)

Title

Title

PRIVACY LAW NOTIFICATION

SECTION 94(1)(d) OF THE NEW YORK PUBLIC OFFICERS LAW REQUIRES THIS NOTICE TO BE PROVIDED WHEN COLLECTING PERSONAL INFORMATION FROM POTENTIAL PURCHASERS OF CANAL CORPORATION PROPERTY.

Guidelines for the Disposal of Canal Corporation Personal Property

This information is requested pursuant to Article 5, Title I of the Public Authorities Law. The principal purpose for which the information is collected is to assist the New York State Canal Corporation in the sale of Canal Corp personal property in accordance with Section 96(1) of the Personal Privacy Protection Law, particularly subdivisions (b), (e) and (f).

Failure to provide the requested information may result in ineligibility for participation in a program, sale or benefit provided by the Canal Corp.

This information will be maintained by the Procurement Department at the New York State Canal Corp Corporate Office.