



Niagara Frontier Transportation Authority
Serving Buffalo Niagara

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January 24, 2013

Mr. Robert M. Graber
Clerk
Erie County Legislature
25 Delaware Avenue
Buffalo, New York 14202

Re: NFTA Board Minutes

Dear Mr. Graber:

Enclosed, for your information and files, please find a copy of the Minutes from the Niagara Frontier Transportation Authority's Board Meeting held on December 17, 2012.

Very truly yours,

A handwritten signature in blue ink, appearing to read "D. State", is written over a horizontal line.

David J. State
General Counsel

DJS:lf

Enclosure

**NIAGARA FRONTIER TRANSPORTATION AUTHORITY
 NIAGARA FRONTIER TRANSIT METRO SYSTEM, INC.
 REGULAR BOARD MEETING
 DECEMBER 17, 2012 3:30 PM
 MINUTES**

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D. Executive Director's Report:

Executive Director Kimberley Minkel presented a year end synopsis to the Board. Highlights included; establishment of a Citizen's Advisory Committee, increased ridership despite fare increases, the completed runway project at NFIA, implementation of a workforce development program, hiring a lobbyist firm to focus on equity issues that exist with our State Transit Operating Assistance (STOA) as compared to other transit systems in New York and the completion and submission of a Sustainable Master Plan for BNIA which was awarded the ACEC Gold Award for Excellence in Engineering. She also reviewed cost control measures, raised fares, the closing of Direct Air, service increases of Allegiant and Spirit Airlines and the successful season of the NFTA Boat Harbor including increased sales at Dug's Dive, slip rentals, gas sales, boat launches, a summer concert series and a new marketing campaign. Nine audits by various agencies were conducted this year and the Authority continues to go green with the acquisition of new paratransit vehicles capable of running on CNG and the implementation of our first ever green roof bus shelter. The NFTA's safety record for recordable injuries was the best it has ever been with 90 recordable injuries.

1. CALL TO ORDER

A. Meeting Called to Order

Chairman Zemsky called the meeting to order at approximately 12:40 p.m.

B. Approval of Minutes of the NFTA Regular Board Meeting held on November 26, 2012

It was moved by Commissioner Hughes, seconded by Commissioner Durand, that the Minutes of the November 26, 2012, Regular Board Meeting of the Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc., be accepted and approved.

AYES: ZEMSKY, SLOMA, LEWIN, DEMAKOS, DURAND,
GURNEY, HUGHES, PERRY

NOES: NONE

- 2. NFTA CORPORATE REPORT**
 - A. Audit and Governance Committee Report (Howard Zemsky)
 - B. Consolidated Financial (Debbie Leous)
 - C. Human Resource Report (Adam Perry)
 - D. Corporate Resolutions (Kim Minkel)

Corporate Resolutions

- i. Niagara Frontier Transportation Authority, Acceptance of Corporate Resolutions 2. D. (1) through 2. D. (6)
1. Adoption of Operating and Capital Budgets, Niagara Frontier Transportation Authority and NFT Metro System, Inc., Fiscal Year 2013-2014
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6. Authorization for Settlement, General Star Insurance Company v. Niagara Frontier Transit Metro System, Inc.

CORPORATE:

2. D. (i) **Niagara Frontier Transportation Authority, Acceptance of Corporate Resolutions 2. D. (1) through 2. D. (6)**

The Executive Director advised that Items 2. D. (1) through 2. D. (6) have been discussed with the Board of Commissioners of the NFTA, and the Board is unanimously in favor of all subject Resolutions.

Whereupon, it was moved by Commissioner Lewin, seconded by Commissioner Demakos, that the following Resolution be adopted:

“RESOLVED, that the Resolutions of the Niagara Frontier Transportation Authority, identified as numbers 2. D. (1) through 2. D. (6) and dated December 17, 2012 as set forth herein, be and hereby are accepted and approved in their entirety.”

AYES: ZEMSKY, SLOMA, LEWIN, DEMAKOS, DURAND, GURNEY, HUGHES, PERRY

NOES: NONE

ADOPTED

CORPORATE:

2. D. (1) **Adoption of Operating and Capital Budgets, Niagara Frontier Transportation Authority and NFT Metro System, Inc., Fiscal Year 2013-2014**

RECOMMENDATION: Staff recommends that the Board adopt the Operating and Capital Budgets for the NFTA and NFT Metro System, Inc. for the Fiscal Year ending March 31, 2014. The consolidated budget for FYE'14 is \$203.4 million.

INFORMATION: The NFTA is a public benefit corporation of the State of New York created by legislation enacted under Chapter 717 of the laws of 1967. The mission of the NFTA is to provide safe, efficient and professional transportation services that enhance the quality of life in the Buffalo Niagara region in a manner, consistent with the needs of our customers. To that end and for such purpose, the NFTA operates the Niagara Falls International Airport, Buffalo Niagara International Airport, various non-transportation property assets as managed by our Property Group, Transportation Centers in the Cities of Buffalo and Niagara Falls, and through its subsidiary corporation, NFT Metro System, Inc., operates bus, paratransit and light rail transit systems in the counties served by NFTA.

The NFTA adopts an annual budget covering its operations for the Fiscal Year that begins April 1 and extends through March 31 of the following calendar year. The budget for FYE'14 is balanced as required by New York State and was prepared based on a management approach integrating financial and strategic requirements necessary for the continued operation of the Authority.

As a comparison to the current year forecast, the FYE'14 budget assumes a \$1.3 million, or 1.2%, increase in revenues from Authority operations and a \$1.7 million, or 1.8%, increase in operating assistance.

The budget assumes a \$7,033k, or 4.0%, increase in expenses for FYE'14, while providing for the continued efficient delivery of transportation services to the public and communities served by the NFTA and Metro without increasing transit fares to our customers.

Finally, the FYE'14 budget includes \$12.14 million for net debt service and operating reserves related to the Buffalo Niagara International Airport Improvement Program (AIP) project, \$0.94 million in debt service for the glycol collection project and equipment lease financing for energy savings initiatives, and \$7.5 million in the NFTA equity share of our capital spending total of \$64.6 million estimated for FYE'14.

Among some of the initiatives included in the budget are Authority-wide \$300k in personnel savings with the implementation of our time capture management system, locking-in favorable terms and allowing for cost certainty on 24% of our anticipated diesel fuel usage and participation in health care contributions from all employees.

The Surface Transportation budget includes funds for the mid-life light rail rebuild project; completion of the facility consolidation study; and green initiatives including the conclusion of

an alternative fuel implementation study, a CNG Fueling Station and a CNG Equipment Project, and to directly benefit our customers, to highlight a few projects, we have included the design of the new fare collection system, 15 new small buses, 4 trolleys and passenger information systems. Community Projects includes the Niagara Street Corridor project and NFTA Metro will also move forward on the Amherst-Buffalo Corridor Alternatives Analysis.

In the Aviation Division, Buffalo Niagara International Airport (BNIA) is assuming a 1% increase in enplanements. Major capital projects at BNIA include continuing our noise mitigation measures in residences, community facilities and businesses where excessive noise from airport operations is present and the addition of approximately 1,000 surface parking spaces and baggage claim expansion.

The Niagara Falls International Airport's capital budget includes funds for the new terminal apron project.

The Property Management Division anticipates a more normalized boating season and includes capital funds for the upgrade of our 485 Cayuga Road facility.

The following are the budget assumptions and highlights, comparing the FYE'13 forecast to FYE'14:

- New York State Operating Assistance increases \$2,245k representing a partial equity adjustment to start to bring Metro in line with the other upstate transit authorities.
- Total Federal Operating Assistance to decrease \$1,003k, or 7.0% based on the new MAP 21 reauthorization bill, changes to the urbanized area formulas for transit and the expiration of the ARRA grant for Transit Police.
- Erie County Sales Tax is anticipated to increase \$470k, or 2.5%.
- BNIA is assuming a 1% increase in enplanements.
- NFTA/Metro contractual/step increases reflective of labor agreements.
- New York State Pension costs are increasing \$311k, or 6.0%.
- NFTA/Metro health insurance costs are increasing a net \$1,087k, or 4.3% based on increased union participation.
- NFTA/Metro workers' compensation costs are increasing \$877k, or 13.3%.
- NFTA/Metro utilities are increasing \$549k, or 11.1%, reflecting a return to a more normal market environment.
- NFTA/Metro safety and security allocated costs are increasing \$794k, or 18.9%, primarily as a result in the loss of the ARRA grant and increased airport private security costs due to prevailing wage adjustments.
- Lower transit fuel/power expenses of \$49k, or 0.6%.

"RESOLVED, that the Operating and Capital Budgets of the NFTA and NFTA Metro System, Inc., for the fiscal year ending March 31, 2014, be and are hereby adopted as provided herein; and

BE IT FURTHER RESOLVED, that the Executive Director is authorized during the course of the 2013-14 fiscal year to establish, for non-represented employees, the appropriate salary levels consistent with the merit-based system for all new hires and to adjust, on the basis of performance, the salary level of all employees; and

BE IT FURTHER RESOLVED, that the Executive Director is authorized during the course of the 2013-14 fiscal year to establish, for represented employees, the appropriate step, within the budgeted salary grade, for all new hires and to adjust, on the basis of performance and as provided by collective bargaining agreements, the grade and step of all current employees.”

CORPORATE:

2. D. (2) **Authorization for Agreement, Superior ID Services, Inc., Identification Cards and Printing Services, NFTA/Metro**

RECOMMENDATION: Staff recommends that the Board authorize an Agreement with Superior ID Services, Inc., of East Amherst, New York, for the provision of identification cards and associated printing services and supplies.

INFORMATION: NFTA/Metro uses identification cards for fare media and identification purposes. RFP 4220 was issued in accordance with NFTA Procurement Guidelines. Superior ID Services submitted the only responsive proposal. The proposal was evaluated based on compliance with technical specifications, cost, and qualifications/experience. The review team, comprised of the Assistant Cash Manager, Cost Analyst, Operations Manager - Special Services, Business Development Specialist, Superintendent - Special Services, and Money Center Supervisor, determined Superior ID Services' proposal complied with all requirements of the RFP. The proposed costs were determined to be fair and reasonable based upon prior purchases.

Specific items/services to be provided by Superior ID Services are identification cards for monthly Metro passes, university passes, summer youth passes, reduced fare identification, retiree/temporary employee passes and paratransit identification and PAL passes. Printing supplies to be provided are monochrome ribbon kits and laminates.

The term of the contract will be for three years with an option to renew for two additional one-year terms, to be exercised at the discretion of the NFTA. The total estimated costs for year one is \$46,440; year two \$49,309; and year three \$52,377. Option year four is estimated at \$55,120 and year five \$58,443. The estimated total cost for all five years is \$261,690 (see attached spreadsheet).

FUNDING: Funding is included in the operating budgets of NFTA/Metro.

“RESOLVED, that the Board hereby authorizes an Agreement with Superior ID Services, Inc., for identification cards and associated printing services for an estimated five-year cost of \$261,690.00 as described above; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and/or the Chairman, be and are hereby authorized to execute an Agreement with Superior ID Services, Inc., for the total amount of \$261,690.00 as described above; and

BE IT FURTHER RESOLVED, that said Agreement shall include such additional terms, conditions and safeguards to the Authority as deemed appropriate by the General Counsel; and

BE IT FURTHER RESOLVED, that the Chief Financial Officer, be and she is hereby authorized to make payments under said Agreement upon certification by the Business Centers, that such payments are in order.”

RFP # - 4220 METRO PASSES

Retiree/Temporary Employees	250	\$ 26.51	\$ 28.37	\$ 30.35	\$ 31.87	\$ 33.46	\$ 150.56
Para Transit ID	4,000	\$ 393.04	\$ 420.56	\$ 450.00	\$ 472.48	\$ 496.12	\$ 2,232.20
Darien Lake	1,500	\$ 147.39	\$ 157.71	\$ 168.75	\$ 177.18	\$ 186.05	\$ 837.08
PAL Passes	10,000	\$ 1,927.00	\$ 1,984.80	\$ 2,044.40	\$ 2,105.70	\$ 2,168.90	\$ 10,230.80
Total	251,750	\$ 31,587.38	\$ 33,722.00	\$ 36,002.26	\$ 37,762.15	\$ 39,609.13	\$ 178,682.92
	Estimated # of Supplies/Year	Year 1	Year 2	Year 3	Year 4	Year 5	Grand Total
COST - Ribbon Supplies							
Total	492	\$ 14,852.84	\$ 15,587.12	\$ 16,375.48	\$ 17,358.04	\$ 18,834.36	\$ 83,007.84
GRAND TOTAL	252,242	\$ 46,440.22	\$ 49,309.12	\$ 52,377.74	\$ 55,120.19	\$ 58,443.49	\$ 261,690.76

CORPORATE:

2. D. (3) **Authorization for Agreement, Kronos Incorporated, Payroll Time Reporting Software and Implementation, NFTA, Metro**

RECOMMENDATION: Staff recommends that the Board authorize an Agreement with Kronos Incorporated, located in Chelmsford, Massachusetts, for the implementation of their workforce management solution. The solution offers the Kronos TimeKeeper and TeleStaff Scheduling products along with implementation services, training, and time clock equipment, for an amount not to exceed \$1,329,056.30, based on a five year contract. Implementation of this software will greatly aid in the effort to reduce internal cost, provide access to effective management tools, and reduce errors in payroll calculations.

INFORMATION: The NFTA has \$134.4 million in personnel costs and all payroll data is currently inputted manually.

The NFTA publicly advertised and solicited a Request for Proposal for the Payroll Time Reporting Software and Implementation Solution. Responsive proposals received were from Kronos Inc, Sumtotal, ADP, WorkForce Software, NovaTime and Time Link. The Evaluation Team comprised of the following: the Procurement Manager, Director of Internal Audit, Director Human Resources, Manager MIS, Manager, Accounting Services, Manager, Metro Accounting, Sr. Operations Manager, Lieutenant for Transit Police, Rail General Manager, Senior Analyst Programmer, and Payroll Clerks evaluated the proposals based on the following criteria:

1. 40% - Qualifications and Experience
2. 30% - Technical requirements
3. 30% - Cost.

Kronos Inc., scored the highest based on the above criteria, and was selected as the best supplier to implement the Workforce Management Solution.

SumTotal and Workforce were considered, but they had very limited transit experience and did not have an adequate solution to address the "Operator's Windowsheet/Timecard" process. Kronos was able to provide its Operator time card solution by offering its TeleStaff product. Kronos has experience working with interfaces to our existing scheduling (Hastus and Trapeze) and payroll applications (Lawson/InFor). The Kronos' solution was found to be more "user" friendly. Kronos also offers Change Management Consulting which can assist the NFTA to gain greater user acceptance and provide for a smooth transition to the new Timekeeping application.

Kronos clients include Canisius College, Catholic Health, Columbia University, Cornell University, ECMC, Independent Health, Kaleida, Long Island Rail Road, MTA Bus, MTA Bridges and Tunnels, R.I.T., SUNY at Buffalo and Binghamton, Wegman's, Dallas Area Rapid Transit, and Metro Transit St. Louis among hundreds of others.

The fully integrated application for time and labor, employee scheduling and leave management will ensure payroll accuracy and will benefit the NFTA in the form of reduced internal costs (\$1,500,000 over 5 years), access to effective management tools, a reduction in process redundancies and provide our employees with readily available benefit information. This system

will automate all payroll calculations against business rules as defined by the NFTA and/or collective bargaining agreements, for vacation, sick, holiday, overtime and Fair Labor Standards Act (FLSA) work periods, increasing efficiency and accuracy. Having a workforce management system in place will allow the NFTA to better adhere to changing regulatory requirements and effectively administer and manage planned and unplanned absences. Management will have the tools to better forecast staffing issues, track by shift, uncover trends and take a proactive approach in managing our workforce – all of which contribute to maintaining and improving service levels. In addition to the effectiveness and efficiencies discussed above, electronic timecards would be a major contribution to our green initiative. Implementing electronic time cards will eliminate the need for thousands of paper documents, the ink necessary to create them, and the fuel necessary to transport them on a weekly basis, thereby reducing waste and upholding our environmental responsibility.

FUNDING: Funding is provided for in the FYE 2012-13 Capital Budgets.

“**RESOLVED**, that the Board authorizes an Agreement with Kronos Incorporated for payroll software and installation, for an amount not-to-exceed \$1,329,056.30, as described hereinabove; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and/or the Chairman, be and hereby are authorized to execute an Agreement with Kronos Incorporated for an amount not-to-exceed \$1,329,056.30, with terms and conditions as set forth above and as negotiated; and

BE IT FURTHER RESOLVED, that said Agreement shall include such terms, conditions and safeguards to the Authority as deemed appropriate by the General Counsel; and

BE IT FURTHER RESOLVED, that the Chief Financial Officer be and she is hereby authorized to make payments upon the terms of the Agreement upon certification by the Executive Director, that such payments are in order.”

**RFP 4519 Payroll Time Reporting
Competitive Range Analysis**

RFP DOCUMENTS REQUIRED (Completed by Procurement)		Kronos Chelmsford, MA	WorkForce Livonia, MI	Sum Total Gainesville, FL
Non-Collusive Cert		x	x	x
Disclosure of Prior Non-rep Determinations		x	x	x
Cover Letter		x	x	x
Description of products/services		x	x	x
Firm, Mgmt. & Staff Qualifications		x	x	x
References		x	x	x
Itemized Cost Proposal		x	x	x
Certificate Regarding Lobbying		x	x	x
Contractor Cert. Form ST-220-TD		x	x	x
SELECTION CRITERIA (Completed by Team)				
Qualifications and Experience	40%	9.00	5.00	7.00
Compliance with Technical Requirements	30%	9.00	5.00	7.00
Cost	30%	5.00	10.00	7.10
	TOTAL	7.80	6.50	7.03
COST PROPOSAL				
TimeKeeper Software		\$87,474.00	\$55,985.00	\$75,858.58
Additional Years				\$3,200.00
Setup Fee		\$2,430.00	\$5,000.00	
Equipment (Time Clocks)		\$12,042.00		
Software (Testing and Staging)				\$91,980.00
Telestaff Software		\$219,300.00		
Telestaff Equipment		\$2,100.00		
Telestaff Implementation		\$59,277.00		
Training		\$29,718.50	\$29,550.00	\$23,940.00
Professional Services (Implementation)		\$162,225.00	\$315,360.00	\$422,415.00
Change Management Consulting		\$7,000.00		
Expenses		\$26,580.30	\$31,334.25	
	1st Year Cost	\$608,146.80	\$437,229.25	\$617,393.58
2nd year Equipment		\$12,042.00		
3rd year Equipment		\$12,042.00		
4th year Equipment		\$12,042.00		
5th year Equipment		\$12,042.00		
2nd Year Subscription		\$87,474.00	\$55,985.00	\$78,134.34
3rd Year Subscription		\$87,474.00	\$55,985.00	\$80,478.37
4th Year Subscription		\$87,474.00	\$61,584.00	\$82,892.72
5th Year Subscription		\$87,474.00	\$61,584.00	\$85,379.50
2nd year Support		\$76,027.00		
3rd year Support		\$79,068.00		
4th year Support		\$82,230.00		
5th year Support		\$85,520.00		
	5 Year Total Cost	\$1,329,056.00	\$672,367.25	\$944,278.51

CORPORATE:

2. D. (4) **Authorization for Settlement, David Smith v. Niagara Frontier Transit Metro System, Inc. and Eugene B. Jenkins**

RECOMMENDATION: Staff recommends that the Board authorize payment of the settlement amount of \$210,000 in the matter of David Smith v. Niagara Frontier Transit Metro System, Inc. and Eugene B. Jenkins.

INFORMATION: This action arises out of an accident that occurred on September 30, 2005 at 7:30 a.m. on Tonawanda Street, near Hunt, in the city of Buffalo. The bus operator testified that he was traveling on Tonawanda and overshot Hunt, where he was supposed to make a left turn. He stopped the Paratransit van, checked traffic and backed up at approximately 2 miles per hour, at which time he heard and felt a bump. Although the van was equipped with digital video surveillance cameras, the location of the contact was difficult to view on the video.

The plaintiff, then 50 year-old, David Smith, testified that he stopped his 2005 Harley Davidson motorcycle a car length behind the van. When the van started to back up he yelled and attempted to pull his motorcycle back, but was unable to do so before contact was made. The rear bumper of the van went over the top of his front wheel and knocked him to the ground, where he landed on his left side. We paid \$2,195 in damage to the motorcycle.

The plaintiff declined an ambulance and was taken from the scene to Sisters Hospital by his girlfriend. He was treated for an acute right hamstring strain, which he had injured the month before. Three days later he complained of back pain. Initial x-rays revealed degenerative disc disease at L5-S1. An MRI performed on November 21, 2005 revealed disc bulges and protrusions at L2-3, L3-4, L4-5 and L5-S1. A second MRI performed on July 12, 2006 revealed disc herniations at L2-3 and L4-5. Due to ongoing complaints of low back pain and left leg pain and numbness, Mr. Smith underwent a discectomy with interbody fusion and insertion of pedicle screws at L3-4, L4-5 and L5-S1. After surgery, Mr. Smith continued to complain of low back pain but reported that he no longer had pain radiating into his left leg. His back pain was aggravated by sitting or standing for long periods of time, or any repetitive twisting, turning, bending, lifting, pushing or pulling. X-rays taken on the same date as the aforementioned examination revealed that the L2-3 level immediately above the fusion is going on to collapse and it was further difficult for the neurosurgeon to determine whether the multi-level fusion has healed. The neurosurgeon further reported that Mr. Smith is permanently and totally disabled as a result of the injuries he sustained in the accident and further opined that a second surgery would be necessary in the future.

On August 13, 2007, Mr. Smith was examined at our behest by a neurosurgeon. Based upon his review of the medical records, the MRIs and the history he obtained from the plaintiff, he opined, to a reasonable degree of medical certainty, that the plaintiff did not sustain an acute disc herniation as a result of the accident and there was absolutely no evidence of radiculopathy. A nerve conduction study revealed no irritation to the lumbar nerve roots. The neurosurgeon also

opined that the degenerative changes in the lumbar spine pre-existed the accident of September 30, 2005.

The plaintiff was employed as a truck driver with Royal Bedding at the time of the accident, which was a labor-intensive job, and required him to load and unload heavy bedding materials. The economist hired by the plaintiff estimated his past lost earnings in excess of \$100,000 and his future lost earnings in excess of \$590,000. He has not returned to work since the accident.

The last verbal report the Board received on this case was following a trial that took place in July of 2008. As you may recall, plaintiff's counsel requested that the jury return a verdict of \$3,000,000 at the close of proof. The jury returned a damages verdict of \$22,745, in favor of the plaintiff, adopting NFT Metro's argument that only the injury to the right hamstring was causally related to the accident in question.

Procedurally, following the jury trial, plaintiff's counsel made a Motion to Set Aside the Verdict before the trial court. The trial court judge set aside the verdict and granted a new trial unless NFT Metro would stipulate to increase (additur) the jury verdict to \$350,000. NFT Metro was unwilling to increase the jury verdict and filed a Notice of Appeal to the Fourth Department, Appellate Division. NFT Metro requested that the Order granting the Motion to Set Aside the Jury Verdict be reversed and that the original jury verdict be reinstated. Plaintiff's counsel filed a Cross-Notice of Appeal on the grounds that the additur to \$350,000 was inadequate.

On July 2, 2010, the Fourth Department issued a decision, wherein it determined that the lower court abused its discretion in setting aside the jury verdict and further abused its discretion in granting the plaintiff's Motion for a Directed Verdict on liability against NFT Metro during the trial. The Fourth Department then went one step further and ordered a new trial on both liability and damages, as opposed to merely reinstating the jury verdict as NFT Metro requested.

Following the appeal, the matter was re-assigned to Supreme Court Justice, Joseph R. Glowonia. We have appeared before Judge Glowonia for numerous pre-trial conferences over the past four years, most recently on August 22, 2012. Until recently, the parties have been at an impasse as far as settlement negotiations are concerned. One difficulty in resolving the case centered on outstanding liens and costs incurred by the plaintiff during the first trial, for which the plaintiff currently remains obligated to satisfy. NFT Metro's own trial and appellate expenses exceeded \$125,000. We anticipate similar costs to try this case a second time. The parties are each faced with the uncertainty of the potential verdict of a second jury.

Based upon the foregoing, the parties have agreed to settle this matter for \$210,000, subject to Board approval. Once outstanding liens and costs are compromised and paid, this figure will net the plaintiff \$50,000. The matter was scheduled for jury selection on November 2, 2012, with the trial to commence immediately thereafter.

FUNDING: Provided by NFT Metro System, Inc. through Self-Insurance Reserves.

“**RESOLVED**, that the Board hereby authorizes payment of the settlement amount of \$210,000 in the matter concerning the accident which occurred on September 30, 2005; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee, and/or the Chairman be and hereby are authorized to execute such payments as necessary to resolve the matter of David Smith v. Niagara Frontier Transit Metro System, Inc. and Eugene B. Jenkins, said authorization providing for payments in the not-to-exceed amount of \$210,000; and

BE IT FURTHER RESOLVED, that the Chief Financial Officer be and she is hereby authorized to make payments under said agreement upon certification by the General Counsel, that such payments are in order.”

CORPORATE:

2. D. (5) **Authorization for Settlement Agreement, Edwin Negron, as Administrator of the Estate of Juana Negron, and Juan Negron v. Michael K. DiFranco, Niagara Frontier Transit Metro System, Inc. and Niagara Frontier Transportation Authority**

RECOMMENDATION: Staff recommends that the Board authorize payment of the settlement amount of \$275,000 in the matter of Edwin Negron, as Administrator of the Estate of Juana Negron, and Juan Negron v. Michael K. DiFranco, Niagara Frontier Transit Metro System, Inc. and Niagara Frontier Transportation Authority.

INFORMATION: This action arises out of a fatal motor vehicle accident that occurred on October 2, 2007 at approximately 3:50 p.m. at the intersection of Main Street and Delavan Avenue in the City of Buffalo. NFTA Transit Police Officer, Michael DiFranco, was operating a 2006 Dodge Charger police vehicle in a northerly direction on Main Street, en route to an emergency call with lights and sirens activated. The plaintiff, Juan Negron, was operating a 2005 Ford Taurus in an easterly direction on Delavan Avenue when the collision occurred. A Metro bus headed southbound on Main Street had stopped at the intersection before the collision occurred and was equipped with a digital video surveillance system, which captured and recorded the accident in question.

Officer DiFranco testified at deposition that as he was monitoring student activity at the Utica Station, he received an emergency radio transmission advising that two other Transit Police officers were in the midst of a large gang fight at Main and Amherst and that they needed assistance. He proceeded north on Main Street with lights and sirens engaged. Witnesses and the bus video support the contention that lights and sirens were engaged. Officer DiFranco could not recall his speed or the color of the light as he entered the intersection of Main and Delavan; however, an accident reconstruction performed by the New York State Police calculated his speed at approximately 55-58 m.p.h. The posted speed limit is 30 m.p.h. The bus video confirmed that Officer DiFranco had a red light as he entered the intersection.

Then 77 year old Juan Negron testified at deposition that he was traveling east on Delavan and entered the intersection of Main and Delavan on a green light at approximately 20-25 m.p.h. Prior to the collision, he did not hear any sirens and a building and a tree to his right on the southwest corner partially blocked his view south on Main Street. At the very last minute he saw a police vehicle and tried to stop. Mr. Negron's wife, then 65 year old Juana Negron, was a belted front seat passenger. The point of impact was the front passenger side.

Both Mr. and Mrs. Negron were transported to Erie County Medical Center via ambulance. Mrs. Negron sustained fatal multiple and massive internal injuries affecting her chest cavity and abdominal cavity. She remained in a coma from the time she was transported from the scene until the time she expired at 4:00 a.m. the next morning. Mr. Negron was treated for bilateral rib fractures, a sternal fracture and a right knee injury. He followed up with, and continues to treat with, a neurologist and a psychotherapist for ongoing complaints related to sleeplessness, nightmares, post traumatic stress and depression.

Under the Vehicle and Traffic Law, an authorized emergency vehicle is afforded the privilege of proceeding past a steady red signal, a flashing red signal or a stop sign after slowing down "as may be necessary for safe operation." In turn, the plaintiff was obligated to yield the right of way to an authorized emergency vehicle.

From a liability perspective, the plaintiffs allege, among other things, that the Defendants were reckless, grossly negligent and acted in gross disregard for the safety of others, negligently inflicted emotional harm to the passengers of the Negrón vehicle and were negligent and/or grossly negligent in the lack of due care and caution in the ownership, operation, management and control of the police vehicle.

The damages alleged by the Estate of Juana Negrón include: pre-impact terror, multiple blunt force injuries, multiple fractures, closed head injury, internal bleeding, multi-system organ damage requiring surgery on October 3, 2007 at ECMC; and death. The damages alleged by Juan Negrón include: pre-impact terror; fractured sternum; fractured ribs; bruised kidney; multiple contusions and bruises, sleeplessness; depression; post-traumatic stress; anxiety; and emotional and psychological pain and suffering. The plaintiffs further allege that Juan Negrón was in the zone of danger and witnessed his wife in tremendous pain and suffering, witnessed the severe injuries which resulted in her death, and claims emotional pain and suffering and post-traumatic stress disorder from witnessing the impact on his wife.

Juan Negrón underwent an independent orthopedic examination at our behest on January 20, 2011, which essentially confirmed Mr. Negrón's orthopedic injuries, with the exception of the sternal fracture, which our expert did not visualize on x-ray. An expert medical record review of Juana Negrón's records confirmed the abovementioned cause of death and that she was comatose following the accident.

The plaintiffs disclosed their retention of various experts to testify at the trial of this matter, which included: an accident reconstructionist; an expert on police procedure and protocol; and an economist. Plaintiffs' experts opined that Officer DiFranco failed to slow his vehicle as he approached the intersection, as required by the statute; failed to follow proper police procedure in failing to slow his vehicle; and further, that the intersection contained significant sight obstructions. They further opined that proceeding through the intersection at the speed and in the manner in which he did, rose to the level of reckless conduct.

Plaintiffs' initial settlement demand was \$1,750,000. Numerous and protracted settlement negotiations resulted in an agreement to settle this case for a total of \$290,000, which includes a \$275,000 contribution from NFTA and a \$15,000 contribution from Liberty Mutual, relative to NFTA's counterclaim against Juan Negrón. The settlement is subject to both Board and Surrogate Court approval. The matter was scheduled for jury selection on December 7, 2012, with a two-week trial to commence immediately thereafter in New York State Supreme Court.

FUNDING: Provided by NFTA, through Self-Insurance Reserves.

“RESOLVED, that the Board hereby authorizes payment of the settlement amount of \$275,000 in the matter concerning the accident which occurred on October 2, 2007; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee, and/or the Chairman be and hereby are authorized to execute such payments as necessary to resolve the matter of Edwin Negron, as Administrator of the Estate of Juana Negron and Juan Negron v. Michael K. DiFranco, Niagara Frontier Transit Metro System, Inc. and Niagara Frontier Transportation Authority, said authorization providing for payments in the not-to-exceed amount of \$275,000; and

BE IT FURTHER RESOLVED, that the Chief Financial Officer be and she is hereby authorized to make payments under said agreement upon certification by the General Counsel, that such payments are in order.”

CORPORATE:

2. D. (6) **Authorization for Settlement, General Star Insurance Company v. Niagara Frontier Transit Metro System, Inc.**

RECOMMENDATION: Staff recommends that the Board authorize payment of the settlement amount of \$374,778, in the matter of General Star Insurance Company v. Niagara Frontier Transit Metro System, Inc.

INFORMATION: This complex insurance coverage matter arises out of an underlying personal injury action James P. Bracken commenced against the Niagara Frontier Transportation Authority, which alleged that on March 12, 1996, Mr. Bracken was a passenger on an outbound LRRT train when he was assaulted by an unidentified group of young males. Mr. Bracken sustained a significant eye injury as a result of the assault and ultimately lost vision in the right eye.

The plaintiff named the NFTA as the sole defendant in the action and alleged, among things, a failure to use reasonable care to protect passengers from being injured or assaulted, a failure to expel unruly or dangerous passengers and a failure to intervene to prevent continuing and escalating aggressive behavior on the train. At the time of the incident, NFTA was insured under a Police Professional Liability insurance policy issued by General Star Insurance Company, which provided coverage for losses up to \$2,000,000 and carried a \$50,000 deductible. Although NFTA Metro is a subsidiary of the NFTA, the General Star policy provided coverage to NFTA Metro by virtue of a change endorsement.

The NFTA tendered its defense and indemnity in the *Bracken* matter to General Star, which in turn, retained a third-party administrator, Summit Risk Services, to adjust the claim. Summit issued a letter to NFTA on February 19, 1997, in which it reserved its right to deny coverage on certain grounds (willful violations of local, state or federal statutes and claims for punitive damages) and agreed to provide coverage to NFTA. NFTA Metro was not a party to the action; therefore there was no reservation of rights letter issued to NFTA Metro.

At some point during the litigation, the plaintiff moved to amend his Complaint to name NFTA Metro as a party to the action. Once the Complaint was amended, NFTA was dropped from the action and General Star immediately assumed NFTA Metro's defense without reserving its right to deny coverage on any ground. Over the course of the litigation, NFTA Metro paid the \$50,000 deductible applicable to General Star's policy, reasonably expecting General Star's continued provision of a defense and indemnity.

In 2002, five years into the litigation and two months before trial, General Star, for the first time, notified NFTA Metro that the *Bracken* claim was not covered; claiming liability did not arise out of NFTA's activities. We disputed the late disclaimer. Ultimately, General Star paid \$350,000 on behalf of NFTA Metro to settle the *Bracken* action. The parties reserved the right to litigate the issue of indemnity, resulting in the instant litigation. In 2004, General Star filed a declaratory judgment action seeking reimbursement of the \$350,000, plus interest, and moved for summary judgment in June 2009. NFTA Metro cross-moved for summary judgment on the ground that

General Star should be estopped from denying coverage because: 1) it controlled NFT Metro's defense without ever reserving its right to deny coverage; and 2) its disclaimer was untimely under Insurance Law §3420(d).

The New York State Supreme Court granted NFT Metro's cross-motion for summary judgment and denied General Star's motion for summary judgment. General Star appealed the Supreme Court's Decision and Order. In March 2011, the Fourth Department reversed the Supreme Court's Decision and Order and granted General Star's motion for summary judgment. NFT Metro filed leave to appeal to the Court of Appeals, which was denied.

Following the Court of Appeals denial, NFT Metro offered to pay \$350,000 together with the 4% statutory interest NFT Metro is required to pay under the Public Authorities Law, from the date of the Fourth Department's reversal, to the date of tender. General Star rejected the offer and argued that it was entitled to 9% interest applicable to non-public entities and that the interest was due from 2002 to the present. In March 2012, NFT Metro filed a motion to settle the record before the original Supreme Court Judge who was assigned to this case. The Supreme Court determined that the applicable rate of interest under the Public Authorities Law is 4% and that the interest only started to run when the Fourth Department reversed the trial court's Order in March 2011. General Star filed a Notice of Appeal from that Decision and Order, but has yet to perfect the appeal.

Following a recent pre-trial conference, General Star finally agreed to accept the amount we have argued is actually owed, the total sum of \$374,778, which reflects the original settlement amount of \$350,000 tendered by General Star, together with 4% statutory interest of \$24,778, calculated through December 31, 2012.

FUNDING: Provided by NFT Metro System, Inc. through Self-Insurance Reserves.

"RESOLVED, that the Board hereby authorizes payment of the settlement amount of \$374,778 in the matter concerning an insurance coverage dispute arising out of a tort claim that occurred on March 12, 1996; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee, and/or the Chairman be and hereby are authorized to execute such payments as necessary to resolve the matter of General Star Insurance Company v. Niagara Frontier Transit Metro System, Inc., said authorization providing for payments in the not-to-exceed amount of \$374,778; and

BE IT FURTHER RESOLVED, that the Chief Financial Officer be and she is hereby authorized to make payments under said agreement upon certification by the General Counsel that such payments are in order."

- 3. AVIATION BUSINESS GROUP REPORT**
- A. Aviation Committee Report
 - B. Financial Update
 - C. Business Update
 - D. Resolutions

Aviation Resolutions

1. Authorization for Standard Lease Agreement, Ground Support Operators, NFIA

AVIATION:

3. D. (1) **Authorization for Standard Lease Agreement, Ground Support Operators, NFIA**

RECOMMENDATION: Staff recommends that the Board authorize a standard Lease Agreement with ground support operators for the use of certain premises in the terminal building at NFIA for office and support services for a term of one year with annual renewal options at the discretion of the NFTA. The annual rent is \$10.00 per square foot per annum.

INFORMATION: Ground support operators at NFIA provide support services to airlines serving NFIA. These support services include passenger and baggage handling, passenger check in, aircraft servicing, and ramp services. Offices of approximately 105 square feet of space behind the ticket counters in the terminal building are available for the operators at a rental rate of \$10.00 per square foot per annum. Presence in the terminal building will enhance customer service. The term of the lease agreements will be one year with annual renewal options at the discretion of the NFTA who also retains the right to terminate the lease upon thirty days written notice.

FUNDING: No funding is necessary.

Whereupon, it was moved by Commissioner Perry, seconded by Commissioner Demakos, that the following Resolutions be adopted:

“RESOLVED, that the Board hereby authorizes a Standard Lease Agreement for the ground support operators at the Niagara Falls International Airport as described above; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and/or the Chairman, be and hereby are authorized to execute Lease Agreements with ground support providers as stated hereinabove and as negotiated; and

BE IT FURTHER RESOLVED, that said Lease Agreement shall include such additional terms, conditions and safeguards to the Authority as deemed appropriate by the General Counsel.”

AYES: ZEMSKY, SLOMA, LEWIN, DEMAKOS, DURAND, GURNEY, HUGHES, PERRY

NOES: NONE

- 4. SURFACE TRANSPORTATION BUSINESS GROUP REPORT**
 - A. Surface Transportation Committee Report
 - B. Financial Update
 - C. Business Update
 - D. Resolutions

Surface Transportation Resolutions

- i. Niagara Frontier Transportation Authority, Acceptance of Surface Transportation Resolutions 4. D. (1) through 4. D. (3)
- 1. Authorization for Agreement, Hatch Mott MacDonald, Design Services, Catenary and Insulation Replacement, LRRT
- 2. Authorization for Agreement, Louis T. Klauder and Associates, Design Services, Fare Collection System Upgrade, LRRT
- 3. Authorization for Interim Agreements, PepsiCo and A-1 Vending, Vending Machines, NFTA

SURFACE:

4. D. (i) **Niagara Frontier Transportation Authority, Acceptance of Surface Transportation Resolutions 4. D. (1) through 4. D. (3)**

The Executive Director advised that Items 4. D. (1) through 4. D. (3) have been discussed with the Board of Commissioners of the NFTA, and the Board is unanimously in favor of all subject Resolutions.

Whereupon, it was moved by Commissioner Hughes, seconded by Commissioner Perry, that the following Resolution be adopted:

“RESOLVED, that the Resolutions of the Niagara Frontier Transportation Authority, identified as numbers 4. D. (1) through 4. D. (3) and dated December 17, 2012 as set forth herein, be and hereby are accepted and approved in their entirety.”

AYES: ZEMSKY, SLOMA, LEWIN, DEMAKOS, DURAND, GURNEY, HUGHES, PERRY

NOES: NONE

ADOPTED

SURFACE:

4. D. (1) Authorization for Agreement, Hatch Mott MacDonald, Design Services, Catenary and Insulator Replacement, LRRT

RECOMMENDATION: Staff recommends that the Board award the subject design service contract to the NFTA Term Consultant, Hatch Mott MacDonald, for a lump sum amount of \$88,273.00.

INFORMATION: The catenary power system provides power to the light rail vehicles. It consists of copper wire, insulators, and support system. The project objective is to improve the reliability, availability, and maintainability of the catenary system. This will be facilitated by replacing the contact wire and insulators for the entire system, approximately six and half mile inbound and outbound. The hanger supports will be replaced or refurbished as needed. This project will be implemented in three phases over three years.

Hatch Mott MacDonald will develop a design rationale report that outlines the work for the three project phases, prepare bid documents, and assist the NFTA with the bid process for the Phase 1 work.

A summary of design services negotiation is shown below.

	Initial Proposal	Final Proposal
Engineer's Estimate	\$92,686.00	\$92,686.00
Hatch Mott MacDonald	\$177,174.00	\$88,273.00

Hatch Mott MacDonald intends to complete the scope of work with 100% of their own staff. The EEO Department has been notified of the intended award.

FUNDING: Funding will be provided by account code 120000000-3107-2-9322.

FTA	80%	\$ 70,618.40
NYSDOT	10%	\$ 8,827.30
NFTA	10%	<u>\$ 8,827.30</u>
	Total	\$ 88,273.00

“RESOLVED, that the Board hereby authorizes an Agreement with Hatch Mott MacDonald, for design services as described above for a cost of \$88,273.00; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and/or the Chairman, be and are hereby authorized to execute an Agreement with Hatch Mott MacDonald, for the total amount of \$88,273.00; and

BE IT FURTHER RESOLVED, that said Agreement shall include such additional terms, conditions and safeguards to the Authority as deemed appropriate by the General Counsel; and

BE IT FURTHER RESOLVED, that the Chief Financial Officer, be and she is hereby authorized to make payments under said Agreement upon certification by the Director, Engineering, that such payments are in order.”

SURFACE 4. D. (1)

SURFACE:

4. D. (2) **Authorization for Agreement, Louis T. Klauder and Associates, Design Services, Fare Collection System Upgrade, LRRT**

RECOMMENDATION: Staff recommends that the Board award the subject design service contract to Louis T. Klauder and Associates for a lump sum amount of \$664,857.00.

INFORMATION: The project objectives are to upgrade outdated fare collection equipment, improve accountability, streamline fare collection operations, and utilize smart card technology. The project scope of work associated with this upgrade will include the design for:

- replacement of fare boxes on 307 transit buses and 74 para-transit vehicles,
- replacement of the cash box vault system at the three bus garages,
- replacement of the ticket vending machines at fourteen rail stations and four transit centers,
- replacement of the fare collection computer work station and associated IT infrastructure,
- installation of new fare gates at all eight underground rail stations.

Louis T. Klauder and Associates will develop and issue a Request for Information on behalf of the NFTA in order to ascertain information about the current technology for fare collection system. After obtaining the information for the fare collection systems, the consultant will prepare a design rationale report, develop design documents, and assess the impact on current NFTA staffing levels and skills. In addition, they will assist the NFTA with the development of the system Request for Proposal (RFP) and provide technical review of the proposals.

The Consultant selection process was initiated by publically soliciting the qualification based RFP pursuant to FTA and NFTA procurement guidelines from interested consultant teams on August 28, 2012. The RFP included design services and support for the construction RFP. Technical proposals were received on September 25, 2012. Two proposals were received. The proposals were evaluated on scope of work, project implementation, project organization, labor plan, work location, key personnel, related projects, background, and experience.

The Consultant Selection Committee consisted of the Operations Manager for Special Services, Communication and Fare Collection Supervisor, Metro Equipment Engineer, Bus Garage Operations Manager, Senior Project Manager, and Project Manager. The Committee scored Louis T. Klauder and Associates as the highest ranked qualified technical proposer.

The following, in descending order of evaluation, are the ranking of the respondents.

1. Louis T. Klauder and Associates
Ambler, Pennsylvania
George N. Dorshimer, Partner
2. IBI Group
New York, New York
Paul Lavallee, Project Director

A summary of design services negotiation is shown below.

	Initial Proposal	Final Proposal
Engineer's Estimate	\$738,014.00	\$738,014.00
Louis T. Klauder and Associates	\$672,076.18	\$664,857.00

Louis T. Klauder and Associates intends to complete the scope of work with 58% of their own staff and 42% with sub-consultant staff. The sub-consultant work will be divided between the following three firms:

- Parson Brinckerhoff, Inc.,
- Triunity Engineering & Management, Inc., (DBE)
- Encada, LLC.

Both Trinity and Encada are applying for DBE status with NFTA Staff assistance and it is anticipated that DBE participation will be approximately 20.5%. The EEO/Diversity office has been briefed of the proposed DBE participation.

FUNDING: Funding will be supported by account code 120000000-3107-2-3406.

FTA	80%	\$531,885.60
NYSDOT	10%	\$ 66,485.70
NFTA	10%	<u>\$ 66,485.70</u>
	Total	\$664,857.00

“RESOLVED, that the Board hereby authorizes an Agreement with Louis T. Klauder and Associates, for design services as described above for a cost of \$664,857.00; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and/or the Chairman, be and are hereby authorized to execute an Agreement with Louis T. Klauder and Associates, for the total amount of \$664,857.00; and

BE IT FURTHER RESOLVED, that said Agreement shall include such additional terms, conditions and safeguards to the Authority as deemed appropriate by the General Counsel; and

BE IT FURTHER RESOLVED, that the Chief Financial Officer, be and she is hereby authorized to make payments under said Agreement upon certification by the Director, Engineering, that such payments are in order.”

SURFACE:

4. D. (3) **Authorization for Interim Agreements, PepsiCo and A-1 Vending, Vending Machines, NFTA**

RECOMMENDATION: Staff recommends that the Board authorize Interim Agreements with PepsiCo & A-1 Vending for vending services at the Metropolitan Transportation Center (MTC), Buffalo, NY, the transportation center located at 1124 Portage Rd., Niagara Falls, and the Niagara Falls Transportation Center (NFTC) located at 2250 Factory Outlet Blvd in the Town of Niagara.

INFORMATION: The Board authorized a five year Agreement with Food Art Concessions, LLC for vending machine services at the three transportation centers and food service at the NFTC. These services included food, beverage and vending services at the Niagara Falls Transportation Center for which they experienced operating losses. Negotiations between Food Art and NFTA were pursued to address business continuity and maximum revenue generation for the Authority upon payment failure by Food Art. All of Metro's attempts to resolve the matter were ultimately unsuccessful and the Agreement with Food Art was terminated effective November 30, 2012. Staff is in the process of preparing a Request for Proposals for vending and food services at the three transportation centers, and anticipates that the process will be complete in four to five months.

To provide services in the interim staff requested quotes from the three companies currently providing vending services as subcontractors of Food Art. PepsiCo and A-1 Vending provided the highest percentage of revenue, 35%, and was the only proposal to provide all product categories of the vending services that staff feels are necessary for the travelling public, cold and hot drinks and snacks. The existing subcontracted vendors have been allowed to stay in place until Board approval of this item, subject to payment to Metro of 33% of revenues collected (the lowest percentage bid by a vendor).

FUNDING: No funding is required.

“RESOLVED, that the Board hereby authorizes Interim Agreements with PepsiCo and A-1 Vending for vending services as described above; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and/or the Chairman, be and are hereby authorized to execute Interim Agreements with PepsiCo and A-1 Vending as described above; and

BE IT FURTHER RESOLVED, that said Interim Agreements shall include such additional terms, conditions and safeguards to the Authority as deemed appropriate by the General Counsel.”

- 5. PROPERTY/RISK MANAGEMENT GROUP REPORT**
- A. Property/Risk Management Committee Report
 - B. Financial Update
 - C. Business Update
 - D. Resolutions

Property/Risk Management Resolutions

- i. Niagara Frontier Transportation Authority, Acceptance of Property/Risk Management Resolutions 5. D. (1) through 5. D. (2)
- 1. Authorization for License Agreement, Luminina Corporation, d/b/a Hope Chest, Boat Harbor/Gallagher Beach Area
- 2. Authorization for Lease Agreement, Funtime After Dark, LLC, NFTA Outer Harbor

PROPERTY:

5. D. (i) **Niagara Frontier Transportation Authority, Acceptance of Property Resolutions 5. D. (1) through 5. D. (2)**

The Executive Director advised that Items 5. D. (1) through 5. D. (2) have been discussed with the Board of Commissioners of the NFTA, and the Board is unanimously in favor of all subject Resolutions.

Whereupon, it was moved by Commissioner Lewin, seconded by Commissioner Gurney, that the following Resolution be adopted:

“RESOLVED, that the Resolutions of the Niagara Frontier Transportation Authority, identified as numbers 5. D. (1) through 5. D. (2) and dated December 17, 2012 as set forth herein, be and hereby are accepted and approved in their entirety.”

AYES: ZEMSKY, SLOMA, LEWIN, DEMAKOS, DURAND, GURNEY, HUGHES, PERRY

NOES: NONE

ADOPTED

PROPERTY:

5. D. (1) **Authorization for License Agreement, Luminina Corporation, d/b/a Hope Chest, Boat Harbor/Gallagher Beach Area**

RECOMMENDATION: Staff recommends that the Board authorize a License Agreement with the Luminina Corporation, (Susan Mumma, President) for use of the Boat Harbor/Gallagher Beach area facilities for the 2013 Hope Chest Dragon Boat Festival.

INFORMATION: This is the second annual Hope Chest Buffalo Niagara Dragon Boat Festival to be held at the NFTA Boat Harbor. This festival is the primary fundraiser for the Hope Chest free exercise and paddling programs open to all breast cancer survivors in western New York.

Luminina is retaining the services of Pan Am Dragon Boat Racing as the race organizer and provider of the boats and event crew. The event is scheduled for Saturday, June 15, 2013 and will be comprised of approximately 10 dragon boats and over 30 teams consisting of 20 paddlers from our community and neighboring cities.

The Luminina Corporation will be required to provide all appropriate insurance coverages. No additional operating costs will be incurred by the NFTA.

FUNDING: No funding is necessary.

“RESOLVED, that the Board hereby authorizes a License Agreement with the Luminina Corporation, for use of the Boat Harbor/Gallagher Beach area facilities for the 2013 Hope Chest Dragon Boat Festival, as described hereinabove; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and/or the Chairman, be and hereby are authorized to execute a License Agreement with the Luminina Corporation as set forth above and as negotiated; and

BE IT FURTHER RESOLVED, that said License Agreement shall include such terms, conditions and safeguards to the Authority as deemed appropriate by the General Counsel.”

PROPERTY:

5. D. (2) **Authorization for Lease Agreement, Funtime After Dark, LLC, NFTA Outer Harbor**

RECOMMENDATION: Staff recommends that the Board authorize a Lease Agreement with Funtime After Dark, LLC, (Chris Ring, Artie Kwitchoff and Donnie Kutzbach, Principals) for approximately 7 acres of land located on the Outer Harbor in the vicinity of the former Pier Restaurant.

INFORMATION: The NFTA issued a Request for Proposals for a Waterfront Event Promoter following up on the interest expressed after last summer's concert series at the former Pier Restaurant site. The RFP permitted responses for either exclusive use of the property or on an event basis only.

We received two proposals; one from Funtime After Dark, LLC and one from RGF Creative Communications, Inc. Staff ranked the proposal submitted by Funtime After Dark the highest based upon the criteria of revenue (50%), business plan (30%), and experience (20%). The principals of Funtime After Dark have extensive experience in booking and producing concerts both locally and throughout the northeastern United States for the past thirty years.

Funtime After Dark plans on using the NFTA property to book concerts from a variety of musical genres, including alternative, Canadian, southern and folk rock, as well as weddings, races and other types of events/promotions. Their proposal was based upon exclusive use of the Outer Harbor property. The term of the Lease Agreement will be for three years. After the first year each party has the right to terminate the Agreement by giving the other party six months notice, but no later than January 1 for that summer concert season.

Funtime After Dark will be responsible for maintenance of the leased premises. The entire area will be fenced for concert events to ensure security and safety. Funtime After Dark's security plan for each concert event will be subject to the review of the NFTA Chief of Police. Funtime After Dark, LLC, will indemnify the NFTA and provide the appropriate insurance coverages. The NFTA will not be providing any staff assistance for events. The NFTA will agree to permit parking at the 901 Fuhrmann Parking lot for major concerts as long as the NFTA still owns the property and the parking does not interfere with any tenant operations.

Funtime After Dark, LLC, will be making an expenditure of approximately \$100,000 in the first lease year to have sod placed on 2-3 acres of the gravel area of the leased premises. Rent to the NFTA will be a minimum payment Year 1 of \$25,000.00, payable upon execution of the Agreement, Year 2 \$35,000 payable January 1, 2014 and Year 3 \$45,000 payable January 1, 2015. Funtime After Dark will also pay the NFTA 20% of all parking fees collected.

FUNDING: No funding is necessary.

“RESOLVED, that the Board hereby authorizes a Lease Agreement with Funtime After Dark, LLC for use of the NFTA’s Outer Harbor property as described hereinabove; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and/or the Chairman, be and hereby are authorized to execute a Lease Agreement with Funtime After Dark, LLC with terms and conditions as set forth above and as negotiated; and

BE IT FURTHER RESOLVED, that said License Agreement shall include such terms, conditions and safeguards to the Authority as deemed appropriate by the General Counsel.”

6. General Counsel Report – Written
7. Executive Session - None
8. Adjournment

At approximately 1:20 p.m., the Chairman indicated that there was no further business coming before the Board, whereupon it was moved by Commissioner Lewin, seconded by Commissioner Durand, and unanimously approved that the Regular Meeting of the Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc. be adjourned.

**AYES: ZEMSKY, SLOMA, LEWIN, DEMAKOS, DURAND,
GURNEY, HUGHES, PERRY**

NOES: NONE

D