Niagara Frontier Transportation Authority
Serving Buffalo Niagara

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ECLEG MAY 23 '12 PM 1:30

May 21, 2012

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 April 23, 2012.

Very truly yours,

David J. State
General Counsel

DJS:lf

Enclosure

NIAGARA FRONTIER TRANSPORTATION AUTHORITY
NIAGARA FRONTIER TRANSIT METRO SYSTEM, INC.
ANNUAL BOARD MEETING
APRIL 23, 2012
MINUTES

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1. A. **CALL TO ORDER**
   B. **APPROVAL OF MINUTES (March 26, 2012)**
   C. **EXECUTIVE DIRECTOR'S REPORT**

2. **NFTA CORPORATE REPORT**
   A. Audit and Governance Committee Report (Henry Sloma)
   B. Consolidated Financial (Debbie Leous)
   C. Corporate Resolutions (Kim Minkel)
      1. Election of Officers, Niagara Frontier Transportation Authority
      2. Election of Officers, Niagara Frontier Transit Metro System, Inc.
      3. Approval of 2012/2013 Investment Guidelines Policy for NFTA and NFT Metro System, Inc.
      4. Approval of 2012/2013 Travel Policy and Guidelines Policy for NFTA and NFT Metro System, Inc.
      5. Approval of 2012/2013 Guidelines for Dispositions and Transfers of Capital and Non-Capital Assets, NFTA and NFT Metro System, Inc.
      6. Approval of 2012/2013 NFTA Master Liability Management Policy
      7. Adoption of Amended Procurement Guidelines for NFTA and NFT Metro System, Inc.
      8. Authorization for Term Consultant Agreements
      9. Authorization for Agreement, Lawson Software Americas, Inc., Provision of Payroll Support Services
      10. Authorization for License Agreement Renewal and Procurement, Oracle Database, NFTA
      11. Authorization for Procurement, Corr Distributors and Hill & Markes, Paper Products, NFTA and NFT Metro

3. **AVIATION BUSINESS GROUP REPORT**
   A. Aviation Committee Report (Carmen Granto)
   B. Financial Update (Bill Vanecek)
   C. Business Update (Bill Vanecek)
   D. Aviation Resolutions (Kim Minkel)
      1. Acceptance of Bid, John W. Danforth Company, HVAC Rehabilitation, TAPD Airport Office
      2. Authorization for License Agreement, Sleep Inn-Buffalo Airport, Inc., BNIA
      3. Authorization for Agreement, YWCA of Niagara, Concessions, NFIA

4. Authorization for Supplement No. 3 and Final, Urban Engineers of New York, P.C., Airside Pavement Maintenance 2011, BNIA

4. **SURFACE TRANSPORTATION BUSINESS GROUP REPORT**
   A. Surface Transportation Committee Report (Eunice Lewin)
   B. Financial Update (Tom George)
   C. Business Update (Tom George)
   D. Surface Transportation Resolutions (Kim Minkel)

      1. Authorization for Change Order, Shepard Bros., Paratransit Vehicles, NFT Metro

5. **PROPERTY RISK/MANAGEMENT GROUP REPORT**
   A. Property/Risk Management Committee Report (Peter Demakos)
   B. Financial Update (Dave State)
   C. Business Update (Dave State)
   D. Property Development Resolutions (Kim Minkel)

      1. Approval of Guidelines for Acquisitions and Dispositions of Real Property, NFTA and NFT Metro System, Inc.
      2. Authorization for Lease Agreement, 2D Imaging, Inc., 247 Cayuga Road
      3. Authorization for Lease Agreement, Split Second Courier, Inc., 247 Cayuga Road
      4. Authorization for License Agreement, Carly's Club, Boat Harbor/Gallagher Beach Area
      5. Authorization for Permit, Buffalo Triathlon Club, Inc., NFTA

6. **GENERAL COUNSEL'S REPORT (David State)**
7. **EXECUTIVE SESSION -**
8. **ADJOURNMENT**

1. CALL TO ORDER

A. Meeting Called to Order

Acting Chairman Sloma called the meeting to order at approximately 12:30 p.m.

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

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

AYES: SLOMA, LEWIN, DEMAKOS, EAGAN, GRANTO, HELFER, HUGHES, PERRY

NOES: NONE

2. NFTA CORPORATE REPORT

A. Audit and Governance Committee Report (Henry Sloma)
B. Consolidated Financial (Debbie Leous)
C. Corporate Resolutions (Kim Minkel)

Annual Meeting
April 23, 2012

Corporate Resolutions

1. Election of Officers, Niagara Frontier Transportation Authority
2. Election of Officers, Niagara Frontier Transit Metro System, Inc.
3. Approval of 2012/2013 Investment Guidelines Policy for NFTA and NFT Metro System, Inc.
4. Approval of 2012/2013 Travel Policy and Guidelines Policy for NFTA and NFT Metro System, Inc.
5. Approval of 2012/2013 Guidelines for Dispositions and Transfers of Capital and Non-Capital Assets, NFTA and NFT Metro System, Inc.
6. Approval of 2012/2013 NFTA Master Liability Management Policy
7. Adoption of Amended Procurement Guidelines for NFTA and NFT Metro System, Inc.
8. Authorization for Term Consultant Agreements
9. Authorization for Agreement, Lawson Software Americas, Inc., Provision of Payroll Support Services
10. Authorization for License Agreement Renewal and Procurement, Oracle Database, NFTA
11. Authorization for Procurement, Corr Distributors and Hill & Markes, Paper Products, NFTA and NFT Metro

CORPORATE:

2. C. (1) Election of Officers, Niagara Frontier Transportation Authority

The By-Laws of the Niagara Frontier Transportation Authority provide for the annual election of officers, with the exception of the Chairman, by vote of the Board of Commissioners.

After discussion, it was moved by Commissioner Croce, seconded by Commissioner Granto, that Commissioner Sloma be nominated as Vice Chair, that Commissioner Demakos be nominated as Secretary, and that Commissioner Lewin be nominated as Treasurer.

Whereupon, it was moved by Commissioner Croce, seconded by Commissioner Granto, and unanimously agreed, that the above nominations for the election of officers be accepted and nominations closed, and that the following resolution be adopted:

> "**RESOLVED**, that the officers of the Niagara Frontier Transportation Authority for the period ending March 31, 2013, be and hereby are:
>
> Vice Chair .....Commissioner Sloma.
> Secretary .....Commissioner Demakos.
> Treasurer .....Commissioner Lewin.

AYES: **SLOMA, LEWIN, DEMAKOS, CROCE, EAGAN, GRANTO, HELFER, HUGHES, PERRY, ZEMSKY**

NOES: **NONE**

ADOPTED

CORPORATE:

2. C. (2) Election of Officers, Niagara Frontier Transit Metro System, Inc.

The By-Laws of the Niagara Frontier Transit Metro System, Inc. provide for the annual election of officers, with the exception of the Chairman, by vote of the Board of Commissioners.

After discussion, it was moved by Commissioner Granto, seconded by Commissioner Hughes, that Commissioner Sloma be nominated as Vice Chair, that Commissioner Demakos be nominated as Secretary, and that Commissioner Lewin be nominated as Treasurer.

Whereupon, it was moved by Commissioner Granto, seconded by Commissioner Hughes, and unanimously agreed, that the above nominations for the election of officers be accepted and nominations closed, and that the following resolution be adopted:

> "**RESOLVED**, that the officers of the Niagara Frontier Transit Metro System, Inc. for the period ending March 31, 2013, be and hereby are:
>
> Vice Chair .....Commissioner Sloma.
> Secretary .....Commissioner Demakos.
> Treasurer .....Commissioner Lewin.

AYES: **SLOMA, LEWIN, DEMAKOS, CROCE, EAGAN, GRANTO, HELFER, HUGHES, PERRY, ZEMSKY**

NOES: **NONE**

ADOPTED

CORPORATE:

2. C. (3) **Approval of 2012/2013 Investment Guidelines Policy for NFTA and NFT Metro System, Inc.**

RECOMMENDATION: The Audit and Governance Committee has reviewed this item and recommends that the Board approve the Investment Guidelines Policy for 2012/2013 for the Niagara Frontier Transportation Authority and its subsidiary.

INFORMATION: The investment guidelines were originally established in the early 1980's pursuant to New York State Public Authorities Law and Investment Guidelines for Public Authorities as promulgated by the Office of the State Comptroller. The NFTA's guidelines were last approved by the Board on April 25, 2011. There have been no changes since that time.

FUNDING: No funding is required.

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

> "**RESOLVED**, that the Board hereby approves the 2012/2013 Guidelines for Investments for the Niagara Frontier Transportation Authority and its subsidiaries, as generally described hereinabove and as set forth in the attachment hereto."

AYES: **SLOMA, LEWIN, DEMAKOS, CROCE, EAGAN, GRANTO, HELFER, HUGHES, PERRY, ZEMSKY**

NOES: **NONE**

ADOPTED

2012/2013 - INVESTMENT GUIDELINES FOR

NIAGARA FRONTIER TRANSPORTATION AUTHORITY

AND ITS SUBSIDIARIES

Section 1. Title

These guidelines shall be known as "Guidelines for Investment by the Niagara Frontier Transportation Authority and its Subsidiaries," hereafter referred to as the "Investment Guidelines".

Section 2. Purpose and Objectives

The purpose of the Investment Guidelines is to establish comprehensive guidelines which detail the operative policy and instructions to officers and staff of the Niagara Frontier Transportation Authority ("Authority") regarding the investing, monitoring and reporting of funds of the Authority and its subsidiary corporations in compliance with the Public Authorities Law Section 2925 and OSC Investment Guidelines for Public Authorities and State Regulations at 2 NCYRR Part 201.

The prime investment objectives are to:

- Minimize risk;
- Assure liquidity;
- Maximize interest earnings on a competitive basis.

Section 3. Definitions

1). "Authority" shall be defined to include the Niagara Frontier Transportation Authority as enacted by Section 1299 of the Public Authorities Law, and each subsidiary corporation thereof.

2). "Funds" shall be defined to include all monies and other financial resources available for investment by the Authority, on its own behalf, or on behalf of any other entity or individual. Funds shall not be defined to include Pension Funds which are separately administered pursuant to New York State and Federal Law.

Section 4. Annual Review and Approval

The Investment Guidelines shall be reviewed at least annually, amended as necessary and recommended by the Audit and Governance Committee for approval by the Authority's Board of Commissioners (the "Board").

Section 5. Permitted Investments

The following is a listing of the permitted investments, all of which are consistent with the appropriate provisions of law relating to the Authority and any additional requirements pursuant to any contract with bond and note holders:

1). Certificates of Deposit issued by a bank or trust company authorized to do business in New York State;

2). Time Deposit, Demand Deposit, and Money Market Accounts in a bank or trust company authorized to do business in New York State;

3). Obligations of the United States Government;

4). Obligations of New York State or any municipality or municipal corporation located therein;

5). Repurchase Agreements involving the purchase and sale of direct obligations of the United States Government.

Section 6. Diversification of Investments

Investments of the Authority shall be reasonably diversified, as shall firms with which the Authority transacts business. This section shall not be construed to mandate absolute diversification in the event that the Authority Board or its Executive Director on advice of the Chief Financial Officer considers, in a certain instance, that diversification is not in the best interest of the Authority. Diversification shall be reviewed quarterly with the Audit and Governance Committee with respect to type of investment and the allocation of investments among financial institutions. See attached example.

Section 7. Collateral.

1). Certificates of Deposit, Time Deposit, Demand Deposit, and Money Market Accounts shall be fully secured by insurance of the Federal Deposit Insurance Corporation (FDIC) and, when applicable, by obligations of the United States, or obligations of federal agencies, the principal and interest of which are guaranteed by the United States, or obligations of New York State or any municipality or municipal corporation located therein. Collateral shall be delivered to the Authority or a Custodial Bank with which the Authority has entered into a Security/Custodial Agreement, in accordance with General Municipal Law, §10.

2). Collateral shall not be required with respect to the direct purchase of obligations of New York State or any municipality or municipal corporation located therein, obligations of the United States, and obligations of federal agencies, the principal and interest of which are guaranteed by the United States Government.

3). The securities purchased under a Repurchase Agreement must be direct United States Government obligations. The purchase price should be the present market value of the securities and not the face value.

4). Securities purchased through a Repurchase Agreement shall be valued to market at least weekly.

5). The market value of the collateral shall equal the value of the investment and its accrued interest at all times. The recorded value of the collateral backing any investment shall be adjusted to market at the time of the initial investment, and thereafter at least monthly to be certain that the principal amount of the market value of collateral is at least 100% of the investment.

6). The security/custodial agreement shall provide that eligible securities (in compliance with Section 7, Paragraph 1), are being pledged to secure Authority deposits together with agreed upon interest, if any, and any costs or expenses arising out of the collection of such deposits upon default. It shall also provide the conditions under which the securities may be sold, presented for payment, substituted or released and the events which will enable the Authority to exercise its rights against the pledged securities. In the event that the securities are not registered or inscribed in the name of the Authority, such securities shall be delivered in a form suitable for transfer or with an assignment in blank to the Authority or its custodial bank.

The custodial agreement shall provide that securities held by the bank or trust company, or agent of and custodian for, the Authority, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be commingled with or become part of the backing for any other deposit or other liabilities. The agreement should also describe that the custodian shall confirm the receipt, substitution or release of the securities. The agreement should also describe that the custodian shall confirm the receipt, substitution or release of the securities. The agreement shall provide for the frequency or revaluation of eligible

securities and for the substitution of securities when a change in the rating of a security may cause ineligibility. Such agreement shall include all provisions necessary to provide the Authority a perfected interest in the securities.

7). In the event the market value of the collateral is less than 99% of the value of the original investment and accrued interest, the financial institution at which the investment was placed will be required to immediately move additional collateral to the custodian in order to be in compliance with Section 7, Paragraph 4 of these guidelines.

8). Failure of the financial institution to correct this situation within one (1) business day upon notice by the Authority or its custodian, will result in the financial institution being held in default. Further, all investment activity with that financial institution will be suspended until the default is resolved.

Section 8. Delivery of Securities

1). Every Repurchase Agreement shall provide for payment to the seller only upon the seller's delivery of obligations of the United States to the Custodial Bank designated by the Authority, or in the case of a book-entry transaction, when the obligations of the United States are credited to the Custodian's Federal Reserve Bank account. The seller shall not be entitled to substitute securities without written approval of the Authority's Chief Financial Officer or his designee. The Custodial Bank shall confirm all transactions in writing to insure that the Authority's ownership of the securities is properly reflected on the records of the Custodial Bank.

2). Payment shall be made by or on behalf of the Authority for obligations of New York State, obligations the principal and interest of which are guaranteed by the United States, direct United States Obligations, certificates of deposit, and other purchased securities upon the delivery thereof to the custodial bank, or in the case of a book-entry transaction, when the purchased securities are credited to the Custodial Bank's Federal Reserve System account. All transactions shall be confirmed in writing.

Section 9. Written Contracts

Written contracts are required for Repurchase Agreements, Certificates of Deposit, and custodial undertakings. With respect to the purchase of obligations of United States, New York State, or other governmental entities, etc. in which monies may be invested, the interests of the Authority will be adequately protected by conditioning payment on the physical delivery of purchased securities to the Custodian's Federal Reserve System account. All purchases will be confirmed in writing to the Chief Financial Officer of the Authority, or her designee.

It is therefore, the policy of the Authority to require written contracts as follows:

1). Written contracts shall be required for all Repurchase Agreements. Only credit worthy banks and primary reporting dealers shall be qualified to enter into a Repurchase Agreement with the Authority. The written contract shall provide that only obligations of the United States may be purchased, and the Authority shall take delivery, through the Authority's custodian, of the purchased securities. No specific repurchase agreement shall be entered into unless a master repurchase agreement has been executed between the Authority and the trading partners.

2). Written contracts shall be required for the purchase of all Certificates of Deposit.

3). A written contract shall be required with the Custodial Bank.

Section 10. Financial Strength of Institutions

All financial institutions must be creditworthy. Prior to doing business with the Authority, credit rating agencies (Moody's Fitch or Standard and Poors) will be used to determine their creditworthiness. Credit ratings will be updated and reviewed quarterly. In addition to the quarterly review of the credit ratings, the financial institution's annual reports must be submitted each year to the Authority's Chief Financial Officer or her designee for review and analysis.

Section 11. Operations

The Chief Financial Officer is hereby authorized to make all investment decisions, invest all Authority surplus funds and execute repurchase agreements and certificates of deposit on behalf of the Authority in line with these guidelines.

The aforementioned authorization may be delegated by the Chief Financial Officer to qualified representatives, who shall assume the duties relative to investment of Authority surplus funds subject to established internal controls including, but not limited to the following:

1). No single staff person shall both execute and authorize an investment transaction.

2). All transactions must be approved in writing, prior to execution of the transaction, by either the Chief Financial Officer, or qualified representatives.

3). All authorized investment transactions must be compiled, recorded and reviewed by the Chief Financial Officer, or qualified representatives by the end of each business day.

Oral directions concerning the purchase or sale of securities shall be confirmed in writing. The Authority shall pay for purchased securities upon the delivery, or book-entry, thereof.

Competition in the placing of investments will be implemented. If a telephone quote is the standard method of placing a form of investment, a complete and continuous record of all such quotes, solicited and received, must be maintained. Timeliness of response is critical. A minimum of three (3) separate quotes will be required on each purchase or sale of security, and shall be awarded to the highest bidder, net of fund's transfer charges incurred and other account fees.

Section 12 Standards for the Qualification of Investment Bankers, Brokers, Agents, Dealers and Other Investment Advisers and Agents Transacting Business With the Authority

The Authority shall transact business only with qualified, certified or licensed investment bankers, brokers, agents, dealers and other investment advisers and agents. The Authority staff, on the advice and consent of the Authority Board, shall consider the quality, reliability, experience, financial strength, size and any other factors which in the judgment of the Authority make an individual or firm qualified to transact business with the Authority.

Specifically, but without limitation, the following are considered qualified:

1). Brokers, agents, dealers, any bank or trust company organized under the laws of any state of the United States of America or any national banking association or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York (included in the then current "List of the Government Securities Dealers Reporting to the Market Reports Division of the Federal Reserve Bank of New York").

2) Investment Advisers - any bank or trust company organized under the laws of any state of the United States of America or any national banking association, and any firm or person which is:

a). registered with the Securities and Exchange Commission under the Investment Adviser of 1940, and

b). registered with the New York State Secretary of State as an Investment Adviser, and

c). is a member in good standing with the Investment Counsel Association of America.

3). Custodian - any bank or trust company organized under the laws of any state of the United States of America or any national banking association.

The Authority's policy regarding conflicts of interest shall be followed regarding the investment of funds. No Authority board member, senior Authority official, any officer or employee, is authorized to participate in the selection of institutions where the individual is an officer, a director or substantial stockholder.

Section 13. Amendments

The Authority shall have the power, from time to time, to amend the Investment Guidelines in accordance with the provisions of Section 2925 of the Public Authorities Law.

Section 14. Quarterly Reporting

The quarterly report or reports covering such other period as may be approved by the Board of Commissioners, shall be presented to the Audit and Governance Committee of the Board.

The quarterly report will include Investment Benchmark as follows:

- Certificate of Deposit - Average Interest Rate Awarded, Average Interest Rate Quoted and Wall Street Average;
- Repurchase Agreement - Average Interest Rate Awarded and Average Interest Rate Quoted;
- Government Secured Money Markets – Average Interest Rate and State Average
- Type of Investment Concentration
- Diversification of Investments

Section 15. Annual Report

The Authority shall annually prepare and approve an Annual Investment Report which shall include:

- the Investment Guidelines as then currently amended;
- amendments to the Investment Guidelines since the last investment report;
- the investment income records of the Authority;
- a list of the total fees, commissions or other charges paid to each investment banker, broker, agent, dealer and adviser rendering investment associated services to the corporation since the last investment report.
- the results of the annual independent audit, pursuant to Section 2925 of the Public Authority Law and the New York State Comptroller's Regulations 2 NYCRR Part 201. Such Annual Investment Report may be a part of any other annual report that the Authority is required to make.
- The Annual Report shall be submitted to the Office of the State Comptroller, the New York State Senate and Finance Committee and the Ways and Means Committee of the New York state Assembly. Each report shall be made available to the public upon reasonable request thereof.

Section 16. Effective Date

The Investment Guidelines shall be effective as of April 23, 2012.

EXAMPLE

NIAGARA FRONTIER TRANSPORTATION AUTHORITY

Quarterly Investment Analysis for December 31, 2011

Type of Investment Concentration

	AMOUNT	% OF TOTAL
Repurchase Agreement	$0	0.00%
Certificate of Deposit	$10,000	0.02%
Money Market	$59,666,154	99.90%
Treasury Notes	$25,000	0.04%
BNIA Checking	$22,964	0.04%
TOTAL:	$59,724,118	100%

Diversification of Investments

	AMOUNT	% OF TOTAL
HSBC	$12,057,869	20.19%
Key	$0	0.00%
JPM Chase	$14,972,981	25.07%
Bank of America	$0	0.00%
M & T	$670,482	1.12%
First Niagara Bank	$10,207,064	17.09%
US Bank	$21,790,722	36.49%
NYSWCBD	$25,000	0.04%
TOTAL:	$59,724,118	100%

CORPORATE:

2. C. (4) Approval of 2012/2013 Travel Policy and Guidelines Policy for NFTA and NFT Metro System, Inc.

RECOMMENDATION: The Audit and Governance Committee has reviewed this item and recommends that the Board approve the 2012/2013 Travel Policy and Guidelines for the Niagara Frontier Transportation Authority and its subsidiary.

INFORMATION: The travel policy and guidelines were originally formulated by a Commissioner/Management Staff Travel Policy Committee and approved by the Board of Commissioners so as to provide reasonable reimbursement for necessary expenses incurred by Authority employees while on Authority/Metro business. This represents an annual update to those guidelines originally adopted May 28, 1983, with minor revisions.

The maximum per diem rates are taken from state and federal guidelines established by the federal office of General Services Administration (GSA). The mileage reimbursement rate for business use of one's car is the standard mileage rate of $.55 as determined by the Internal Revenue Service (IRS) and is posted on the Intranet. By adoption of these travel guidelines today, it is intended that per diem and mileage rates will be continually updated as amendments are promulgated by the GSA or IRS.

FUNDING: No funding is required.

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

> "**RESOLVED**, that the Board hereby approves the 2012/2013 Travel Policy and Guidelines for Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc. as generally described hereinabove and as set forth in the attachment hereto."

AYES: **SLOMA, LEWIN, DEMAKOS, CROCE, EAGAN, GRANTO, HELFER, HUGHES, PERRY, ZEMSKY**

NOES: **NONE**

ADOPTED

TRAVEL POLICY & GUIDELINES

for

Niagara Frontier Transportation Authority and NFT Metro Systems, Inc.

INTRODUCTION

The following travel policy and guidelines were originally formulated by a Commissioner/Management Staff Travel Policy Committee and approved by the Board of Commissioners so as to provide reasonable reimbursement for necessary expenses incurred by Authority employees while on Authority/Metro business. This represents an annual update to those guidelines originally adopted 5/28/83.

The maximum per diem rates are taken from state and federal guidelines established by the federal office of General Services Administration (GSA). The mileage reimbursement rate for business use of one's car is the standard mileage rate as determined by the Internal Revenue Service (IRS). By adoption of these travel guidelines today, it is intended that rates as set forth herein will be continually updated as amendments are promulgated by the GSA or IRS. The Chief Financial Officer will distribute notice of changes in travel allowance limitation when received.

Two areas of travel, **Local** and **Non-local**, are to be recognized for allowable expense determination. **Local** travel is considered the area within a seventy (70) mile radius of the employee's normal work station or reporting site while **Non-local** is beyond the seventy (70) mile radius.

Travel allowances set forth in collective bargaining agreements will be applied in lieu of the following guidelines, where different, for employees covered by such agreements.

SPECIFIC TRAVEL GUIDELINES

Travel Authorization

Trips within the local area, except in those instances involving overnight travel, are to be authorized by the Department or Branch head or their designee(s).

Trips within the local area involving overnight travel and all non-local travel is to be requested on a Travel Request form with attached justification and documentation, and processed for approval as follows:

General Managers - for propriety of Branch personnel requests.

The Executive Director will approve the propriety of General Manager requests.

The Chairman of the Board will approve the propriety of the Executive Director and Commissioners requests.

The Vice-Chairman will approve the propriety of the Chairman's requests.

Executive Director, or Chairman of the Board of Commissioners as appropriate, for approval of business purpose and necessity.

The approved travel request will then be returned to the traveler by the Executive Director's secretary or designee.

Travel Request forms must be processed far enough in advance to permit circulation for the approvals, purchase of tickets, and return of the approved copy to the Traveler. Receipt of Travel Requests on or after the beginning date of travel by any of the approvals will be summarily disapproved unless extenuating circumstances warrant a post-approval by the Executive Director.

Transportation Expenses

Local Transportation

It is expected that all transportation within the local seventy (70) mile area will be by automobile, bus or rail. Accordingly, reimbursable expenses will be limited to:

Authority-Owned Vehicles - Receipts are required for parking, tolls, emergency fuel purchases and repairs.

Personal Automobiles Used on Authority Business - Receipts are required for parking and tolls. ***Mileage allowance of $.55*** is based on the rate established by the Authority, pursuant to IRS regulations and reimbursement guidelines. ***The mileage rate will be continually updated as amendments are promulgated by the I.R.S. An explanation of the purpose of each trip must be noted on the expense reimbursement form.***

Other Modes of Transportation

Reimbursement for other, more costly forms of transportation (e.g. taxicabs, train) will be limited to an amount that would have been incurred had the employee used his personal auto.

Non-local Transportation

Business travel outside the local seventy mile radius will be reimbursed in accordance with the following guidelines:

- Travel to/from Residence or Department Work site to travel destination
- Reimbursement is allowed for receipted toll and parking charges during use of Authority vehicle.
- Reimbursement is allowed for actual mileage at the prevailing mileage rate plus receipted toll and parking charges during use of personal vehicle.
- For use of common carriers such as taxicabs, reimbursement is allowed for actual charges up to $15.00 without a receipt, or actual charges over $15.00 supported by a receipt.

Inter-city Travel by Air

Travelers must use less than first class accommodations except as approved by the Chairman of the Board. The Vice-Chairman will approve the Chairman's accommodation requests.

Travelers are required to schedule trips far enough in advance to permit utilization of special, lower fares, e.g. super-saver.

Frequent Flyer Miles

An individual employee may retain all NFTA business frequent flyer mileage credits for personal use.

Optional Use of Personal Automobile

Use of a personal automobile for business travel to a non-local city will be compensated for in the following manner:

- Reimbursement will be based on the lesser of the total cost of using a personal vehicle versus flying.
- Excessive work hour time required to travel by auto (or bus or train) as compared to air flight time will not be compensated.

Transportation at the Business Site

Travelers are to utilize the most reasonably economical and practical means of ground transportation available between the transportation terminal, lodging or business meeting location.

Upon request, the traveler must justify transportation costs that appear to be excessive. No reimbursement will be made for personal use transportation (e.g. travel from lodgings to a restaurant, etc.).

Automobile Rentals

Automobile rentals are not allowed unless there is no other means of ground transportation, or it the most cost-effective means of transportation.

Lodging -Non-local and Local Overnight

Maximum daily amounts for lodging, meals and incidentals are designated in the Per Diem rates found in the Intranet under Department Pages, Policy and Procedures Manual, 02 Central Administrative Services, 08 Travel, Per Diem rates.

Travel Outside the Continental United States

Refer to the **Foreign Per Diem Rates** located below Domestic Per Diem Rates in the Intranet.

Exemption from New York State Taxes

New York State Authority employees should request exemption from payment of occupancy taxes in New York State while on Authority business, by presentation of a letter of tax exemption (may be obtained from Accounting Services) to the innkeeper.

Documentation must be submitted with the travel expense reimbursement form in the event that the hotel does not honor the letter of exemption.

Governmental Lodging Rates

Certain hotels will honor our request for government lodging rates. These rates should be requested at the time reservations are made.

Meals

The maximum daily amount chargeable for meals and incidental expenses (M&IE) (such as baggage handling and tips for service) is limited to the amounts designated on the per diem rate list.

A detailed lodging receipt provided by the hotel or other hostelry must be attached to the expense report in support of such charges (copies of credit card charge slips or other evidence of payment alone are not acceptable).

Meals applicable to non-local travel for less than a twenty-four hour period are to be pro-rated, based on the applicable meal and incidental allowance.

Example:	Breakfast	- 20% of the M&IE allowance
	Lunch	- 30% of the M&IE allowance
	Dinner	- 50% of the M&IE allowance

Eligibility for each meal will be determined as follows:

	Leave Home or Office	Return Home or Office
Breakfast	before 7:00 a.m.	after 8:00 a.m.
Lunch	before 1:00 p.m.	after 1:00 p.m.
Dinner	before 8:00 p.m.	after 7:00 p.m.

Note: There is no allowance or reimbursement for alcoholic beverages.

Special Meals - Meal expenses incurred may be reimbursed in the following special circumstances according to the daily meal allowances if the employee is required to host transit or other public official where such hosting is essential to the business and interests of NFTA. Hosting activities and expenditures shall be subject to the following conditions:

a) Staff attendance shall be approved **in advance, and in writing**, by the Branch General Manager, Executive Director, or the Chairman of the Board, as appropriate.

b) The expenditures must be reasonable, prudent, and subject to the review of the General Manager, Executive Director, and Chief Financial Officer for their approval prior to reimbursement.

c) When special circumstances require an employee's presence beyond reasonable hours of employment, or if during normal work hours it is necessary and prudent that essential business be conducted at a meal. In such instances, the approval of the Executive Director, the Branch General Manager and the Chief Financial Officer would be required prior to reimbursement.

Conferences And Seminars

It is not uncommon for sponsors of conferences, seminars and similar events to arrange for blocks of rooms in order to ensure room availability and close proximity to the meeting site. Thus, an authorized attendee utilizing such lodgings could be required to pay a higher lodging rate for the particular area. Accordingly, the following guidelines will apply in such circumstances so as to avoid the inaccuracy of unallowable or excessive lodging costs beyond the traveler's control:

- A meal and incidental factor for the particular location would be calculated in the same manner as for normal out-of-town travel, based on the maximum daily rate for the location.

- Expenses incurred for attending a conference must be supported by an agenda or a conference brochure identifying the opening and closing dates of the conference, the times of conference events, listing of conference hotels, explanation of any registration fees and the name of the sponsoring organization. This information must be submitted with the Request for Travel and Travel Expense Reimbursement form.

- If a registration fee includes an extra charge for social activities, such as site-seeing tours, golf outings, etc., these charges are considered personal expenses and will not be reimbursed. To avoid the duplicate payment of meal expenses, if the registration fee includes meals, an appropriate reduction must be made on the Travel Expense Reimbursement form.

Travel Expense Reimbursement

The following are some items that should be considered when requesting reimbursement for travel expenses. The listing is not all-inclusive and items not listed will be reviewed on a case-by-case basis:

- Reimbursable telephone calls are limited to those made for business purposes and occasional calls home. Long distance telephone calls presented on expense reports must be referenced to the individual called and the business connection.
- Parking tickets, fines, and the like are deemed to be personal to the employee, and will not be reimbursed by the Authority.
- Travel allowance and guidelines previously set forth will also apply to Canadian trips. However, the traveler must convert payments from Canadian funds to equivalent U.S. dollars at the current rate of exchange.
- Reimbursement for foreign travel, other than to Canada, will be reviewed by the authorized signors of the Travel Request Form on a case-by-case basis to determine the apparent reasonableness of such expenses. The applicable foreign currency must be converted to equivalent U.S. dollars at the current rate of exchange, and receipts for expenditures, converted to U.S. dollars must accompany the expense report.
- All costs pertaining to spouses or other non-Authority personnel accompanying the traveler on an Authority business trip are not allowed.
- Expenditures of a strictly personal nature will not be considered for reimbursement.

Note: A Reimbursement of Traveling Expense Form will not be processed for payment without signature and the attachment of the following:

- The fully approved Travel Request Form,
- Justification and all required supporting documentation, including airfare and boarding passes or other receipts,
- A written summary or document, such as a conference brochure or notice, explaining the purpose of the trip.

Travel Expense Reimbursement for Commissioners

Authority Board members shall be entitled to reimbursement of actual and necessary expenses incurred, provided proper documentation is submitted with the Travel Expense Reimbursement Form.

The sequence for approval of the Travel Expense form is as follows:

- Below Manager level - by the Manager or General Manager
- Department Managers - by their General Manager
- General Managers – reviewed by the Chief Financial Officer and then approved by the Executive Director
- Executive Director - reviewed by the Chief Financial Officer and then approved by the Chairman of the Board
- Commissioners - reviewed by the Chief Financial Officer and then approved by the Chairman of the Board
- Chairman of the Board - reviewed by the Chief Financial Officer and then approved by the Vice Chairman.

Approved expense reports that are completed in accordance with the allowances set forth in the guidelines are to be routed directly to the Manager of Accounting Services.

Expense reports that vary from the guideline allowances, or represent foreign travel charges (except Canada), are to be directed to the Chief Financial Officer for review. All Travel Request Reimbursement forms should be completed in five (5) workdays following return of the traveler to his/her duty base.

Cash Advances

Cash advance requests to facilitate payment of costs incurred while traveling on Authority business will be honored only in those instances where hardship would result. Such requests are to be made in advance in the form of a request for check form to the Chief Financial Officer. Any excess of cash advances over allowable out-of-pocket costs must be promptly refunded to the Authority.

NIAGARA FRONTIER TRANSPORTATION AUTHORITY
TRAVEL REQUEST FORM

NAME _____TITLE _____

EMPLOYEE'S TELEPHONE NUMBER _____

EMPLOYEE'S DEPARTMENT/DIVISION _____

CHARGE G/L ACCOUNT NUMBER _____

EXPLANATION FOR WORK-RELATED TRAVEL _____

TRAVEL INFORMATION

TRAVEL FROM: _____ TRAVEL TO: _____

DATE(s) OF TRAVEL _____TO _____

(Approximate time) _____ (Approximate time) _____

METHOD OF TRANSPORTATION (Airline, Train, Bus, Car, Other) _____

ANTICIPATED EXPENSES

REGISTRATION OR FEES				$
LODGING FOR	DAYS AT	$	Per Day	$ 0.00
MEALS FOR	DAYS AT	$	Per Day	$ 0.00
			Airline/Rail	$
			Taxi/Subway	$
			Car Rental	$
			Mileage & Tolls	$
TOTAL ESTIMATED EXPENSES				$ 0.00

APPROVALS

GENERAL MANAGER _____ Date _____

EXECUTIVE DIRECTOR _____ Date _____

CHAIRMAN OF THE BOARD _____ Date _____
(If applicable)

VICE CHAIRMAN OF THE BOARD _____ Date _____
(If applicable)

Revised 7/08

NIAGARA FRONTIER TRANSPORTATION AUTHORITY
TRAVEL EXPENSE REIMBURSEMENT FORM

Employee Name:_____ Date:_____

Work Location:_____ Department/Division: _____

Purpose of Trip or Expenditures:_____

Date and Time of Departure:_____ Date and Time of Return:_____

General Ledger Account to be charged: _____ Date of Advance:_____

Details of Expenses:

Date	Description	Trans-portation	Breakfast	Lunch	Dinner	Lodging	Misc.	Total
								$0.00
								$0.00
								$0.00
								$0.00
								$0.00
								$0.00
								$0.00
								$0.00
								$0.00
								$0.00
								$0.00
								$0.00
								$0.00
								$0.00
								$0.00
								$0.00
								$0.00
								$0.00
								$0.00
		$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00

I hereby certify that the above statement of travel expenses and schedules annexed are just, true and correct and that the balance stated is actually due and owing.

Signature:_____ Date:_____

Approved for $_____ Authorized By:_____ Date:_____

Title:_____

CORPORATE:

2. C. (5) Approval of 2012/2013 Guidelines for Dispositions and Transfers of Capital and Non-Capital Assets, NFTA and NFT Metro System, Inc.

RECOMMENDATION: The Audit and Governance Committee has reviewed this item and recommends that the Board approve the attached Guidelines for Dispositions and Transfers of Capital and Non-Capital Assets for the NFTA and Metro.

INFORMATION: Public Authorities Law Section 2896 requires that the Board review and approve the Guidelines for Dispositions and Transfers of Capital and Non-Capital Assets on an annual basis. The Guidelines have been modified for several minor clarifications.

FUNDING: No funding is required.

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

> "**RESOLVED**, that the attached Guidelines for Dispositions and Transfers of Capital and Non-Capital Assets for the Niagara Frontier Transportation Authority and the Niagara Frontier Transit Metro System, Inc. are hereby approved as amended."

AYES: **SLOMA, LEWIN, DEMAKOS, CROCE, EAGAN, GRANTO, HELFER, HUGHES, PERRY, ZEMSKY**

NOES: **NONE**

ADOPTED

Reference: EXECUTIVE
Title: DISPOSITIONS AND TRANSFERS OF CAPITAL AND NON-CAPITAL ASSETS
Policy Number: 01-01-10
Effective Date: 04-2~~5~~3-1~~1~~2

NIAGARA FRONTIER TRANSPORTATION AUTHORITY
NIAGARA FRONTIER TRANSIT METRO SYSTEM, INC.

GUIDELINES FOR DISPOSITIONS AND TRANSFERS OF CAPITAL AND NON-CAPITAL ASSETS

I PURPOSE

These Guidelines set forth the policies and procedures to be followed for the disposition of capital and non-capital assets for the Niagara Frontier Transportation Authority and the Niagara Frontier Transit Metro System, Inc. (collectively referred to as "NFTA"). The NFTA has also enacted Guidelines for the Acquisition and Disposition of Real Property that must be followed in conjunction with these Guidelines.

Definitions

Capital Assets include **Real Property** (consisting of land or buildings) and **Personal Property** (all property other than real property, primarily consisting of equipment, vehicles, furniture and fixtures).

Disposition is any transfer of title or any other beneficial interest in personal property.
Non-Capital Assets primarily include obsolete inventory items, scrap metals or fluids, and other items (including items which did not meet company guidelines for asset capitalization whereby cost was below minimum capitalization thresholds or items which ownership was not claimed as "lost and found").

II COMPLIANCE

Any Disposition must be made in accordance with all applicable laws, including section 2896 of the Public Authorities Law and the NFTA's enabling legislation, rules, regulations and grant agreements, including associated grant application and management guidelines. Dispositions of Personal Property having a book value in excess of $50,000 require Board approval; Dispositions of Personal Property having a book value in excess of $10,000 require the approval of the Executive Director; all other Dispositions require the approval of the Department's Director.

III PROCEDURE

The Manager, Real Property, is the contracting officer responsible for Dispositions of Real Property in accordance with the Guidelines for Acquisitions and Dispositions of Real Property

The Manager, Accounting Services, is the contracting officer responsible for the compliance of the disposition of Personal Property and enforcement of these Guidelines

Dispositions of Capital and Non-Capital Assets will be managed in accordance with the following procedures:

Department Manager Guidelines

If a Department Manager possesses any obsolete or non-useful property, he/she should take action to dispose of such property as identified below.

A. Request to Dispose of a Capital Asset or Non-Capital Asset
The Department Manager must complete a form for "Request for Disposal of Capital and Non-Capital Assets" which is attached as Appendix A. The completed "Request for Disposal of Capital and Non-Capital Assets" form must be submitted to the Manager of Accounting located at 181 Ellicott Street, Buffalo, New York. The Capital Project Accountant will notify the Department Manager of the logistics of where and when to deliver any Personal Property for eventual disposal.

B. Request to Transfer a Capital Asset
If a Department Manager is in possession of an asset that will be transferred to another division or department, the Department Manager must complete a form to "Request To Transfer A Capital Asset" which is attached as Appendix B.

The recipient Department Manager / General Manager must sign this form to acknowledge their approval and receipt of the transferred asset.

The completed "Request To Transfer A Capital Asset" should be forwarded to the Manager of Accounting located at 181 Ellicott Street, Buffalo, New York.

C. Vehicle Title
The Niagara Frontier Transit Metro System, Inc. ("Metro") maintains vehicle title for all Metro buses and other vehicles. The Risk Management Department maintains vehicle title for all NFTA vehicles other than Metro vehicles.

Either Metro or the Risk Management Department will provide vehicle title for NFT Metro and Authority vehicles to the Capital Project Accountant. The Capital Project Accountant will coordinate release of titles to the appropriate party upon disposal

Methods of Disposal (Managed by Accounting Services)

No employees (either directly or through relation or friendships) are allowed to acquire, for their own personal use, any disposed assets or any component parts of any asset unless such employee independently becomes a purchaser via participation in a Public Auction. Failure to abide with this policy can result in termination of employment and / or criminal penalties.

The following methods of disposal are allowable and may only be completed through Accounting Services:

1. **Disposal by Bid** – In general, all Dispositions shall be by bid conducted by the Manager, Procurement, in accordance with section 2897 of the Public Authorities Law.

2. **Donation** – Any Capital Asset or Non-Capital Asset which is life expired and of no further use to the NFTA may be donated to a charitable organization with the approval of the Executive Director. Further, FAA recommends life expired airport equipment be donated to reliever airports. Any such donations are at our discretion and must be approved by the Executive Director.

3. **Lost / Stolen / Damaged or Destroyed** – The Department Manager must immediately report when any asset under their control is lost, stolen, damaged or destroyed to:

- the Manager of Risk Management;
- the Chief of the Transit Police, and
- Manager Accounting Services (see below)

The Department Manager must immediately complete the form for "Request for Disposal of Capital and Non-Capital Assets" attached on Appendix A and forward the completed form to the Manager of Accounting Services. Each employee is responsible for the care and safekeeping of any NFTA assets. Administrative action and / or pecuniary liability may result due to proven negligence or misconduct that causes the loss of NFTA assets.

4. Public Auction – All Personal Property that has a fair market value of less than $15,000 may be sold at a public auction. The contracted Auction services will be obtained through authorized procurement procedures whereby such award will be decided on a competitive basis.

5. Scrap Dealers – If the contracted Auctioneer declines to sell any Personal Property due to lack of value or marketability, the Capital Project Accountant must obtain a minimum of **three estimates** from reputable scrap dealers for the disposal of such Property if the value is estimated to be between $2,500 and $15,000. (The Manager of Procurement Services may provide assistance to the Capital Project Accountant in the solicitation of estimates). The three estimates should be attached to the form "Request for Disposal of Capital and Non-Capital Assets" attached on Appendix A. (If scrap proceeds are less than $2,500, only one estimate is required).

6. Trade-Ins – If Personal Property currently owned by the NFTA is contemplated as a trade-in towards the purchase of new Personal Property, the Department Manager must complete the form "Request for Disposal of Capital and Non-Capital Assets" which is attached in Appendix A. If the trade-in value to be provided by the merchant is less than the current fair market value, the Department Manager should obtain approval from the Manager, Procurement, to complete the trade-in. The Manager, Procurement, may suggest the disposal of the existing property using either Bid or Public Auction services to attain a higher value. Otherwise, if the trade-in value exceeds the current fair market value, then the Department Manager may proceed with the trade-in towards their new property without any additional approvals other than those required by the Procurement Guidelines.

7. None of the above – If Accounting Services intends to dispose of any Capital or Non-Capital Asset in a method other than any of the aforementioned circumstances, such disposal must be documented and approved by the Executive Director.

Proceeds from Disposal of Assets

All disposal proceeds should be provided to the Manager of Accounting Services. The Capital Project Accountant will remove the asset from current ledgers and record the appropriate gain or loss on disposal.

If any proceeds are for Capital Assets which were purchased using grant funds, the Capital Project Accountant will coordinate the return or refund of such proceeds to the proper grantor (Federal and/or New York State) agencies with the Grant Department. The Grants Department is required to provide notification to the original granting agency of the transaction.

Guidelines

The Guidelines shall be annually reviewed and approved by the Board. The Manager, Accounting Services, shall ensure that a copy of the Guidelines as reviewed and approved by the Board is filed with the New York State Comptroller, as part of the Public Authorities Data Request, pursuant to Section 2896 of the Public Authorities Law, and is posted on the NFTA website.

Inventory and Reporting

The Manager, Accounting Services, is responsible for ensuring that the NFTA maintains adequate inventory controls and accountability systems of all Personal Property under its control. Personal Property with a fair market value of $5,000 or more shall be inventoried periodically and recommendations made to the Department Manager for Disposition.

The Manager, Accounting Services, is responsible for preparing an annual report listing all Personal Property of the NFTA with a fair market value of $5,000 or more disposed of during the previous year, a list and full description of the Personal Property, the price received by the NFTA and the name of the purchaser. The report shall be delivered to the Manager, Real Property, for inclusion in the annual real property report within 15 business days following the completion of the NFTA's fiscal year.

Appendix A

NFTA / NFT Metro

Request for Disposal of Capital and Non-Capital Assets

Department Information

NFTA or Metro? _____

Division / Department Name _____

Asset Information (to be completed by Department Manager)

Asset Description _____

Serial # or Model # _____

Current Location of Asset _____

Reason for Disposal _____

Approved by Department Manager _____ Date _____

Approved by General Manager _____ Date _____

If the asset is a vehicle, date which Vehicle Title/License Plates Were Provided to Risk Management Date _____

Send to Manager of Accounting Services

Grant Funding Description: _____

Asset Number _____
Date of Purchase _____
Asset Life _____ NFTA% _____ Grant % _____
In Service _____
Out Service _____

	Our Cost	Contributions		Combined Cost
		Local Grant	Federal Grant	
Historical Cost				
Accum Depr. at Beg of Year				
Depreciation during current year				
Net Book Value (NBV) As of _____				
Total				

Circulate to:

Reviewed and Approved by Accounting Services _____ Date: _____

Grantor Notification Required ☐ Yes ☐ No

Reviewed and Approved by Risk Management Manager _____ Date: _____

Claim Submitted ☐ Yes ☐ No

Reviewed and Approved by CFO _____ Date: _____

Reviewed and Approved by Executive Director *(If over $10,000 BV) _____ Date: _____

*Attach Board Resolution if over $50,000 BV

Send to Manager of Accounting Services for Completion

Disposal Action _____

Proceeds from disposal as of _____ $ _____
Insurance Proceeds, if applicable as of _____ $ _____
Gain or loss on disposal as of _____ $ _____
If asset was sent to a scrap dealer, attach estimate(s)

Signers Please Add Additional Notes (as needed)

Completed Copy to:
Department Manager
Grants Manager

NFTA / NFT Metro
Request To Transfer A Capital Asset

Asset Information (to be completed by the "Original" Department Manager Owner

Asset Description _____

Serial # or Model # _____

Date Which Vehicle Title / License Plates Were Provided to Risk Management _____

"Original Department" Owner Information

NFTA or Metro? _____

Division / Department Name _____

Department Manager Approval _____ Date _____

General Manager Approval _____ Date _____

"New Recipient Department" Owner Information

NFTA or Metro? _____

Division / Department Name _____

Department Manager Approval _____ Date _____

General Manager Approval _____ Date _____

To Be Completed by Accounting Department

Grant Funding Description _____

Asset Number _____
Date of Purchase _____
Asset Life _____ NFTA% _____ Grant % _____
In Service _____
Out Service _____

	Our Cost	Contributions		Combined Cost
		Local Grant	Federal Grant	
Historical Cost				
Accum Depr. at Beg of Year				
Depreciation during current year				
Net Book Value (NBV) As of _____				
Total				

Manager of Grants Approval _____ Date _____

Completed Copy to
- Department Manager
- Grants Manager
- Risk Management Manager

CORPORATE:

2. C. (6) Approval of 2012/2013 NFTA Master Liability Management Policy

RECOMMENDATION: The Audit and Governance Committee has reviewed this item and recommends that the Board approve the 2012/2013 NFTA Master Liability Management Policy.

INFORMATION: The purpose of the Liability Management Policy is to establish the basis for the Authority's liability management program on sound financial principles. Our goal is to protect our revenues and investment earnings from adverse fluctuations in interest rates, as well as to manage the expense payments and cash flows. This document sets forth a liability management structure to facilitate the sound and efficient management of debt, addressing both the practical aspects of liability management as well as the philosophical aspects. This structure includes defining permissible hedging instruments and providing limitations to their use. The policy guidelines also provide for accountability through the monitoring and evaluations of performance results achieved by the liability management program.

The proposed guidelines remain unchanged from those approved by the Board on April 25, 2011.

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

> "**RESOLVED**, that the Board hereby approves the 2012/2013 Niagara Frontier Transportation Authority Master Liability Management Policy, as generally described hereinabove and as set forth in the attachment hereto."

AYES: **SLOMA, LEWIN, DEMAKOS, CROCE, EAGAN, GRANTO, HELFER, HUGHES, PERRY, ZEMSKY**

NOES: **NONE**

ADOPTED

Niagara Frontier Transportation Authority
Master Liability Management Policy Guidelines

April 23, 2012

1. Scope

This Liability Management Policy applies to all present and future debt of the Niagara Frontier Transportation Authority and its subsidiaries (NFTA).

All debt transactions, including hedging transactions or commitments will be subject to this policy and prior review and approval of the NFTA Board of Commissioners.

2. Liability Management Policy Objectives

- Establish a basis for the NFTA's Liability Management Program based on sound financial principles.
- Set forth a liability management structure to facilitate the sound and efficient management of debt and cash flows.
- To define permissible hedging instruments and limitations on their use.
- To comply with the due diligence requirements that prudent professionals utilize.
- To conform to all applicable federal, state, local and Authority legal requirements.
- To provide guidelines that control the overall process so that all liabilities are managed in accordance with the stated objectives.
- Develop formalized criteria to monitor, evaluate and establish the basis for comparing the performance results achieved by the liability management program, thereby establishing accountability.

3. Philosophy:

The NFTA takes an active role in managing exposures to fluctuations in cash outflows for various operating expenses as well as changes in interest rates. The active management of exposures involves an ongoing assessment of the risks facing the Authority and the most efficient methods for eliminating, reducing or transferring these risks of cash flow fluctuations and other external influences.

The NFTA, in its liability management, assesses risks and market conditions to determine:

- The most appropriate level of exposure to a particular cash flow or rate level, and

- The most effective vehicle for achieving that exposure.

The NFTA recognizes that the costs and benefits of different hedging instruments and the desirability of exposure to a particular cash flow or interest rate, or financial price, can vary over time depending on the market conditions and circumstances of the NFTA. We further recognize that our target exposure to cash flows and interest rates and the instruments used to achieve the stated targets, will also vary with market conditions and the NFTA's current credit rating, as well as other items known and unknown at this time, that change on a periodic basis.

The NFTA defines hedging as activities intended to achieve desired exposures to cash flows and interest rates consistent with our objective of protecting revenues and other assets from adverse changes in rates or prices. Hedging does not require the elimination of all exposure to a given risk; rather, hedging should be used to keep exposures within acceptable bounds, as defined by this policy.

The NFTA defines speculation as the creation of positions that are inconsistent with the NFTA's liability management objectives. One characteristic of speculation is that it distorts exposures beyond the range normally encountered.

The initiation of hedges shall be only for non-speculative purposes, to eliminate, reduce, or otherwise redistribute risks related to existing cash flows and debt positions, and in all cases only where it is economically justifiable to do so relative to other alternatives. The termination of hedges is a part of the management liability process and shall not be considered a speculative activity.

4. Authority

The NFTA is authorized by section 2.08 of the Master resolution dated May 12, 1994, to utilize hedge, support and other financial agreements. The NFTA Board of Commissioners establishes liability management policies and guidelines. Based on those policies and guidelines, independent liability management consultants and financial advisor(s) with demonstrated expertise may be chosen to help manage the liabilities of the NFTA.

The selection of underwriters, the financial advisor and bond counsel shall be made in accordance with the Authority's procurement guidelines through the evaluation of request for proposals.

In order to capitalize on fast-changing market conditions, the Executive Director and the Chief Financial Officer may enter into any transaction authorized by this policy, pursuant

to the prior approval of the Board of a resolution setting the general parameters of the transaction.

The Chief Financial Officer, in consultation with the financial advisor as needed, shall have the authority to determine if transactions shall be on a negotiated, competitive or on a private placement basis.

Terms and conditions of any swap transaction as negotiated by the Chief Financial Officer, in accordance with these guidelines, shall be subject to the provisions of the applicable New York State statutes and these guidelines.

The NFTA shall be authorized to enter into interest rate swap transactions only with qualified swap counterparties. The Chief Financial Officer, in consultation with the Executive Director and General Counsel, shall have the authority to select the counterparties, so long as the criteria are met. The composition of the approved swap counterparties will change from time to time.

5. Guidelines for the Use of Variable Rate Debt

Variable rate debt can be a valuable tool for the NFTA to use in the management of its assets and liabilities. However, the use of variable rate debt, though historically allowing lower borrowing costs, presents some risks that the NFTA must consider. The following guidelines shall be used in determining if variable rate debt is appropriate.

In general, the NFTA should maintain its flexibility and continuously review new products and opportunities to allow the Authority to take advantage of changing interest rate environments and new products or approaches as they become available. In low interest rate environments, the NFTA should lock in low fixed rates, through conversions, fixed rate debt issuance, and either traditional or synthetic refundings. In high interest rate environments, the NFTA should increase variable rate debt issuance, defer borrowing and evaluate other alternatives that will allow the Authority to reduce its overall cost of capital when interest rates decrease.

Due to the historical spread between long-term rates and short-term rates, the NFTA should consider maintaining a portion of its portfolio in variable rate debt. However, the NFTA shall attempt to constrain its unhedged variable rate exposure to no more than 20% of the Authority's outstanding indebtedness. The NFTA shall identify any short-term cash reserves or balances since the earnings from these funds will serve as a natural hedge offsetting the impact of higher variable rate debt costs. In addition, the Authority should also consider other strategies to allow assets and liabilities to move in tandem, such as entering into a "percentage of LIBOR" swap. Any synthetic fixed rate debt,

achieved through a swap transaction whereby the Authority swaps variable rate for fixed rate should not be counted toward this ceiling.

Variable Rate Debt Alternatives
Each mode of variable rate exposure has its unique advantages and disadvantages. Decisions about which mode NFTA should utilize at any point in time should be based on a number of factors including the relative cost benefit to the Authority. Variable Rate Demand Obligations (VRDOs) are the traditional means of achieving variable rate exposure and provide municipal issuers with access to a large, well-established liquid market. Auction rate products provide a smaller but growing market and offer the advantage of not requiring bank liquidity. Synthetic variable rate debt offers issuers access to the well established swap market, along with structuring flexibility and potentially lower borrowing costs.

The NFTA should determine allocations to each class of variable rate debt within caps and floors and manage the precise allocation based on market constraints in advance of issuing bonds. Factors impacting decisions will be the capacity of insurers to insure NFTA bonds, the cost of bond insurance, swap market levels, and the cost and availability of letters of credit, as well as any other related costs.

6. Authorized Hedging Instruments

Interest rate swaps and options and variable rate debt are appropriate financial management tools that can help the NFTA meet important financial objectives. Properly used, these instruments can increase NFTA's financial flexibility, provide opportunities for interest rate savings or enhanced investment yields, and help NFTA manage its balance sheet through better matching of assets and liabilities. However, as important as these techniques are, they should not be used for speculation.

Swaps are appropriate to use when they achieve a specific objective consistent with overall financial policy. Swaps may be used to lock-in a current market fixed rate or create additional variable rate exposure. Swaps may be used to produce interest rate savings, alter the pattern of debt service payments, or for asset/liability matching purposes. Swaps may be used to cap, limit or hedge variable rate payments.

Options granting the right to commence or cancel an underlying swap may be used to the extent the swap itself is otherwise consistent with these guidelines; however, the NFTA must determine if the use of any such option is appropriate and warranted given the potential benefit, risks, and objectives of the Authority.

Variable rate debt, either as variable rate demand obligations, auction rate securities or created synthetically through a swap, is an important municipal finance tool. However,

similar to swaps, variable rate debt has certain risks and benefits that must be analyzed and understood by the NFTA prior to entering into a variable rate transaction.

7. Guidelines for the Use of Swaps, Options and other Derivatives

In connection with the use of any swaps, NFTA's Board shall make a finding that, pursuant to Section 2.06 (Variable Rate Debt) and Section 2.08 (Hedge, Support and Other Financial Agreements) of the Master Resolution adopted by the NFTA Board on May 12, 1994 the authorized swaps contemplated herein are designed to reduce the amount or duration of the interest rate risk or result in a lower cost of borrowing when used in combination with the issuance of the Bonds or enhance the relationship between the risk and return with respect to NFTA's investments or program of investment.

Rationale
The NFTA may utilize financial instruments that:

- Optimize capital structure; including schedule of debt service payments and/or fixed vs. variable rate allocations
- Achieve appropriate asset/liability match
- Actively manage or reduce interest rate risk
- Provide greater financial flexibility
- Generate interest rate savings
- Enhance investment yields.

The use of derivative financial products may provide a higher level of savings benefit to the NFTA, or otherwise help the NFTA to meet the objectives outlined herein, as the NFTA may determine in its sole discretion.

The NFTA may expressly utilize the following financial products on a current or forward basis, after identifying the objective(s) to be realized and assessing the attendant risks:

- Interest rate swaps, including fixed, floating and/or basis swaps
- Interest rate caps/floors/collars
- Options, including swaptions, caps, floors, collars and/or cancellation or index-based features

Limitations
NFTA may not use financial instruments that in NFTA's sole discretion:

- Are speculative or create extraordinary leverage or risk
- Lack adequate liquidity to terminate at market
- Provide insufficient price transparency to allow reasonable valuation

In connection with any transaction, the Chief Financial Officer, the Executive Director, the General Counsel and NFTA's Financial Advisor and Bond Counsel shall review the proposed transaction and outline any considerations associated with the transaction to the Board of Commissioners, or a designated committee of the Board. Such a review shall include the identification of the proposed benefit and potential risks, which shall include, but not necessarily be limited to, those risks outlined herein. As part of this analysis, the NFTA shall present both the existing and any proposed transactions consistent with the Market Net Termination Exposure outlined herein.

Understanding the Risks

Among the items that the NFTA shall examine in determining whether to enter into a swap or other derivative transaction are the following:

Market or Interest Rate Risk

- The possibility that your debt service costs associated with variable rate debt increase and negatively affect coverage ratios and cash flow margins.

Tax Risk

- The possibility that the transaction is subject to a future change in federal income tax policy.

Liquidity Risk

- The possibility that a VRDO remarketing may fail.

Termination Risk

- The possibility that the transaction be terminated by either party. There may be a cost involved in termination.

Risk of Uncommitted Funding (Put Risk)

- The transaction may create additional financing dependent upon third party participation.

Legal Risk

- The possibility that the transaction is not expressly authorized.

Counterparty Risk

- This related to the creditworthiness of the counterparty.

Rating Agency Risk

- The proposed transaction may not be consistent with current ratings.

Basis Risk

- A potential mismatch between the interest rate received from the swap contract and the interest actually owed on the bonds.

Tax Exemption Risk

- The transaction puts the NFTA's bonds at the risk of being deemed taxable.

Accounting Risk

- The transaction creates any unanticipated accounting issues from a financial statement perspective.

Administrative Risk

- The potential the transaction can not be readily administered and monitored consistent with the policies outlined herein.

Amortization Risk

- The risk that there are potential costs of servicing debt or honoring swap transactions resulting from a mismatch between bonds and the notional amount of the swap outstanding.

Subsequent Business Conditions

- The transaction or its benefits depend upon the continuation, or realization, of specific industry or business conditions.

Savings Thresholds

A synthetic refunding, using swaps or other derivatives, should generate present value savings of at least 5%. Currently a common threshold in the municipal finance industry is that a refunding should generate 3% present value savings. Financial transactions, using swaps or other derivative products, should generate 2% greater savings than the benefit threshold then in effect for traditional bonds. This threshold will serve as a guideline and will be subject to amendment should the transaction, in NFTA's sole judgment, helps to meet any of the objectives outlined herein. The higher savings target reflects the greater complexity and higher risk of derivative financial instruments.

Terms and Notional Amount of Swap Agreement

The NFTA will use standard ISDA swap documentation including the Schedule to the Master Agreement and a Credit Support Annex. The NFTA may consider additional documentation if the product is proprietary or the NFTA deems such documentation is otherwise in its interest.

The NFTA shall determine the appropriate term for an interest rate swap agreement on a case-by-case basis. In connection with the issuance or carrying of bonds, the term of the swap agreement between the NFTA and a qualified swap counterparty shall not extend beyond the final maturity date of existing debt of NFTA on a specific project, or in the case of a refunding transaction, beyond the final maturity of the refunding bonds. At no time shall the total net notional amount of all swaps exceed the total amount of outstanding revenue bonds. For purposes of calculating net exposure, credit shall be given to any fixed versus variable rate swaps that offset for a specific project or bond transaction.

The swap agreement between the NFTA and each counterparty shall include payment, term, security, collateral, default, remedy, termination, and other terms, conditions, provisions and safeguards as the NFTA, in consultation with its legal counsel, deems necessary or desirable.

Subject to the provisions contained herein, NFTA swap documentation and terms shall include the following:

- Downgrade provisions triggering termination shall in no event be worse than those affecting the counterparty.
- Governing law for swaps will be New York
- The specified indebtedness related to credit events in any swap agreement should be narrowly drafted and refer only to indebtedness of the NFTA.
- Collateral thresholds should be set on a sliding scale reflective of credit ratings.
- Eligible collateral should be limited to Treasuries and obligations of Federal Agencies where the principal and interest are guaranteed by the United States.
- The right to optionally terminate a swap agreement at any time over the term of the agreement.
- Termination value should be set by "market quotation" methodology, when NFTA deems appropriate.

Qualified Swap Counterparties

The NFTA shall do business with highly rated counterparties. Qualified swap counterparties should be rated:

(i) at least "Aa3" or "AA-" by one of the nationally recognized rating agencies and not rated lower than A2 or A by any nationally recognized rating agency, or
(ii) have a "AAA" subsidiary as rated by at least one nationally recognized credit rating agency.

The nationally recognized rating agencies are Moody's Investors Services, Inc., Standard and Poor's Rating Services, and FitchRatings. In addition, a qualified swap counterparty must have a demonstrated record of successfully executing swap transactions as well as creating and implementing innovative ideas in the swap market. Each counterparty shall have minimum capitalization of at least $150 million.

However, the NFTA should not have an immutable credit standard. While, as noted above, the NFTA will make best efforts to do business with highly rated counterparties of AA- or better. However, for lower rated (below AA-) counterparties, the NFTA should seek credit enhancement in the form of:

- Contingent credit support or enhancement;
- Collateral consistent with the policies contained herein;
- Ratings downgrade triggers.

In order to diversify NFTA's counterparty credit risk, and to limit NFTA's credit exposure to any one counterparty, limits will be established for each counterparty based

upon both the credit rating of the counterparty as well as the relative level of risk associated with each existing and projected swap transaction.

The NFTA shall structure swap agreements to protect itself from credit deterioration, and shall consider using a credit support annex or other form of credit enhancement to secure counterparty performance. Such protection shall include any terms and conditions that, at NFTA's sole discretion, are necessary or in NFTA's best interest.

Maximum Net Termination Exposure

The guidelines below provide general termination exposure guidelines with respect to whether NFTA should enter into an additional transaction with an existing counterparty. Such guidelines will also not mandate or otherwise force automatic termination by NFTA or the counterparty. Such provisions will only act as guidelines in making a determination as to whether or not a transaction should be executed given certain levels of existing and projected net termination exposure to a specific counterparty. The calculation of net termination exposure per counterparty shall take in consideration multiple transactions, some of which may offset the overall exposure to NFTA.

Maximum Net Termination Exposure will be based on the sum of

(i) the market value of existing transactions as of the first day of the month prior to the execution of any new transaction, plus

(ii) the expected worse case termination value of the new transaction.

For purposes of this calculation, the NFTA shall include all existing and projected transactions of an individual counterparty and all transactions will be analyzed in aggregate such that the maximum exposure will be additive and netted.

The maximum termination exposure shall be tied to the credit rating of a counterparty and whether or not the counterparty has posted collateral against this exposure. Under this approach, NFTA will set limits on individual counterparty exposure based on existing as well as new or proposed transactions. For existing transactions, exposure shall be based on the market value as of the first day of the month prior to the execution of any new or proposed transaction. For a new or proposed transaction, exposure will be based on the estimated maximum exposure assuming two standard deviations.

The exposure thresholds shall be reviewed periodically to ensure that the thresholds are appropriate. If a counterparty has more than one rating, the lowest rating will govern for purposes of the calculating the level of exposure. The following chart summarizes the thresholds:

Maximum Net Termination Exposure for Counterparties

Credit Rating	*Maximum Collateralized Exposure*	*Maximum Uncollateralized Exposure*	*Maximum Total Termination Exposure*
AAA	Not applicable	$40 million	$40 million
AA	$30 million	$10 million	$40 million
Below AA	$30 million	None	$30 million

If the exposure limit is exceeded by a counterparty, the NFTA shall conduct a review of the exposure limit per counterparty. The NFTA, in consultation with its Bond Counsel and Financial Advisor, shall evaluate appropriate strategies to mitigate this exposure.

Swap Collateralization
As part of any swap agreement, the NFTA shall require collateralization or other forms of credit enhancements to secure any or all swap payment obligations. As appropriate, NFTA, in consultation with Counsel may require collateral or other credit enhancement to be posted by each swap counterparty under the following circumstances:

- Each counterparty to the NFTA may be required to post collateral if the credit rating of the counterparty or parent falls below the "AA" category. Additional collateral for further decreases in credit ratings of each counterparty shall be posted by each counterparty in accordance with the provisions contained in the collateral support agreement to each counterparty with the NFTA.
- Threshold amounts shall be determined by the NFTA on a case-by-case basis. The NFTA will determine the reasonable threshold limits for the initial deposit and for increments of collateral posting thereafter.
- Collateral shall be deposited with a third party trustee, or as mutually agreed upon between the NFTA and the counterparty.
- A list of acceptable securities that may be posted as collateral and the valuation of such collateral will be determined and mutually agreed upon during negotiation of the swap agreement with each swap counterparty.
- The market value of the collateral shall be determined on a monthly basis, or more frequently if the NFTA determines it is in NFTA's best interest given the specific collateral security.

8. Contingency Reserve

In the event that the NFTA receives a premium payment or other revenue stream from a counterparty as the result of entering into a transaction that may result in the future issuance of variable rate debt, the NFTA shall make every effort to segregate one

hundred percent of such payment or revenue stream in the NFTA's accounts. Such funds shall only be used to pay the shortfall that may occur if the amount of variable rate debt service paid by the NFTA exceeds the variable rate payments received by the NFTA from a counterparty, unless otherwise approved by the Board. In the event that such segregated funds shall exceed the amount that the NFTA expects to be the maximum aggregate shortfall that could reasonably occur as a result of the variable rate debt service payments made by the NFTA being in excess of the variable rate payments received by the NFTA from a counterparty, such excess funds may be used for any other authorized purpose.

9. Reporting

A written report providing the status of all interest rate swap agreements entered into by the NFTA will be provided to the Board at least on a quarterly basis and shall include the following:

- A description of all outstanding interest rate swap agreements, including project and bonds series, type of swap, rates paid and received by NFTA, total notional amount, average life of each swap agreement, remaining term of each swap agreement.
- Highlights of all material changes to swap agreements or new swap agreements entering into by NFTA since the last report.
- Market value of each of NFTA's interest rate swap agreements.
- The credit rating and each swap counterparty and credit enhancer insuring swap payments, if any.
- If applicable, information concerning any default by a swap counterparty to NFTA, including but not limited to the financial impact to NFTA, if any.
- A summary of swap agreements that were terminated.
- For swap transactions entered into to generate debt service savings, the NFTA will calculate on an annual basis the actual debt service requirements versus the projected debt service on the swap transaction. Such a calculation shall include the determination of the cumulative actual savings versus the projected savings at the time a swap is executed.

10. Amount of Debt to be Issued

The amount of bond debt that may be issued for the aviation system is governed by the Master resolutions Section 2.02 and debt for all other areas of the Authority must be justified on a cost benefit basis.

All debt must be reviewed and approved by the Audit and Governance Committee before full Board approval.

11. Liability Management Policy Review

This policy will be reviewed, by the NFTA Board of Commissioners, at least annually and any amendments, deletions, additions, improvements or clarification will be made if deemed appropriate.

CORPORATE:

2. C. (7) Adoption of Amended Procurement Guidelines for NFTA and NFT Metro System, Inc.

RECOMMENDATION: The Audit and Governance Committee has reviewed this item and recommends that the Board approve the Authority's Procurement Guidelines and authorize adoption of certain revisions to the Guidelines.

INFORMATION: The Public Authorities Law provides that the Board shall review and approve the Procurement Guidelines on an annual basis. In addition, staff has recommended one revision to the Guidelines. This revision provides in the section for Minimum Requirements for Negotiation that the criteria for Transit Buses of 20% qualifications and experience, 50% technical criteria and 30% cost now apply to Specialty Vehicles, Equipment and Technical Products. Fixed selection criteria were added to the Guidelines last year. Through the course of the year it has become evident that specialty vehicles, equipment and technical products should be included because of their technical nature and the necessity of holding discussions and negotiations prior to supplier selection.

FUNDING: No funding is required.

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

"**RESOLVED**, that the Board hereby approves the Procurement Guidelines; and

BE IT FURTHER RESOLVED, that the Board hereby authorizes the amendments to the Authority's Procurement Guidelines as described hereinabove, and authorizes staff to implement the revised Procurement Guidelines on an interim basis, superseding the Guidelines dated April 26, 2010, pending compliance with the state administrative procedures act; and

BE IT FURTHER RESOLVED, that the General Counsel, be and is hereby authorized to distribute the revised Procurement Guidelines to the CEOs and Legislatures of Erie and Niagara County for comment; and

BE IT FURTHER RESOLVED, that the General Counsel is authorized to undertake promulgation of the revised Procurement Guidelines in accordance with the agency rulemaking procedures set forth in the state administrative rulemaking procedures act."

AYES: **SLOMA, LEWIN, DEMAKOS, CROCE, EAGAN, GRANTO, HELFER, HUGHES, PERRY, ZEMSKY**

NOES: **NONE**

ADOPTED

PROCUREMENT GUIDELINES

OF THE

NIAGARA FRONTIER TRANSPORTATION AUTHORITY,

THE
NIAGARA FRONTIER TRANSIT METRO SYSTEM, INC.,

THE
GREATER BUFFALO-NIAGARA REGIONAL TRANSPORTATION COUNCIL

AND THE
NIAGARA INTERNATIONAL TRANSPORTATION TECHNOLOGY COALITION

Effective April 25, 2011
By Resolution of the Board
of Directors

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PROCUREMENT GUIDELINES
OF THE
NIAGARA FRONTIER TRANSPORTATION AUTHORITY,
THE
NIAGARA FRONTIER TRANSIT METRO SYSTEM, INC.,
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SCOPE

Set forth herein are comprehensive guidelines established for the purpose of governing the procurement of goods and services by the Niagara Frontier Transportation Authority, the Niagara Frontier Transit Metro System, Inc. (the "Authority"), the Greater Buffalo-Niagara Regional Transportation Council ("GBNRTC") and the Niagara International Transportation Technology Coalition ("NITTEC").

INTENT

It is the Authority's intent to implement and strictly enforce Procurement Guidelines that encourage and promote open competition; ensure fairness and equity in the procurement process; and result in the acquisition of goods and services at fair and reasonable prices.

DEFINITIONS

1. **ADVERTISEMENT:**

   A. The publication of a Notice of Procurement Opportunity in any of the following forums, as is appropriate: newspapers of general circulation in Erie and Niagara County; regional, state, national and international trade journals and magazines; newsletters, MBE/WBE/DBE publications and the Authority website.

   B. The dissemination of a Notice of Procurement Opportunity to three (3) or more potential bidders, proposers, or suppliers by telephone, in writing or by e-mail.

   C. Any or all methods of advertisement as are herein defined may be utilized as is necessary and appropriate to promote competition under the guidelines.

2. **ALLOWABLE INDIRECT COSTS:**

   Those costs generally associated with overhead that cannot be specifically identified with a single project or contract and are considered reasonable and allowable under specific State contract or allowability limits.

3. **BOARD:**

   The Authority Board of Commissioners.

4. **COMPETITIVE RANGE:**

All proposals that are determined to have a reasonable chance of being selected for award based upon price and other factors as stated in the Notice of Procurement Opportunity or Request for Proposals ("RFP").

5. **CONTRACT FOR GOODS OR SERVICES:**

Any authorized written agreement, including contracts, purchase orders, letter agreements or memoranda of understanding, which creates a mutually binding legal relationship, which obligates the seller to furnish products, services or public work, and the buyer to pay for same.

6. **CONTRACTOR:**

Any person, firm or entity obligated to sell, furnish, provide or render goods or services to the Authority pursuant to a contract including sellers, consultants, vendors, suppliers and construction contractors.

7. **COST-REIMBURSEMENT (CR) TYPE CONTRACT:**

A general compensation arrangement which requires the Authority to pay the Consultant a fixed fee plus all allowable actual costs (as established by predetermined cost principles and rates) provided such costs and fee do not exceed the final negotiated contract price, as incurred by the Consultant in performing the "agreed to" Scope of Work.

8. **DISADVANTAGED BUSINESS ENTERPRISE (DBE):**

Small business concern as defined pursuant to Section 3 of the Small Business Act: (a) which is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly-owned business, at least fifty-one percent (51%) of the capital stock of which is owned by one or more socially and economically disadvantaged individual; (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

9. **DISCRIMINATORY JURISDICTION**

Any other country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York state business enterprise in the procurement of goods and services by the same or a non-governmental entity influenced by the same, as defined in section 2879 of the Public Authorities Law.

10. **DISCUSSION:**

Discussion is defined as any oral or written communication between the Authority and an offeror, other than communication conducted for the purpose of minor clarification whether or not initiated by the Authority, that (1) involves information essential for determining the acceptability of a proposal, or (2) provides the offeror an opportunity to revise or modify its proposal.

11. **EMERGENCY:**

Danger or threat of harm to life, health, safety, environment or property which requires immediate preventative action. Emergency is a subcategory of "Sole Source".

12. **EXIGENCY:**

Prospect of interruption to or obstruction of the NFTA's efficient operation or adequate provision of service, arising from an unforeseen circumstance. Exigency is a subcategory of "Sole Source".

13. **FIRM-FIXED-PRICE (FFP) TYPE CONTRACT:**

A general compensation arrangement which places the risk of performance for a lump sum on the contractor, regardless of the actual costs incurred by the contractor. The only allowable adjustments to the lump sum contract price are those arising from authorized changes in scope of services or changes in specifications.

14. **FOREIGN BUSINESS ENTERPRISE:**

A business enterprise, including a sole proprietorship, partnership or corporation, which offers for sale, lease or other form of exchange, goods sought by the Authority and which are substantially produced outside New York State, or services, other than construction services, sought by the Authority which are substantially performed outside New York State. For purposes of construction services, foreign business enterprise shall mean a business enterprise which has its principal place of business outside New York state.

15. **LABOR SURPLUS AREA FIRM:**

A business entity which performs substantially in a labor surplus area (a geographical area as is defined by the U.S. Department of Labor as an area of concentrated unemployment, underemployment or labor surplus).

16. **MINORITY BUSINESS ENTERPRISE (MBE):**

Any business enterprise which is at least fifty-one percent (51%) owned by, or in the case of a publicly owned business, at least fifty-one percent (51%) of the common stock or other voting interests of which is owned by minority group members, and such ownership interest is real, substantial and continuing. The minority ownership must have and exercise the authority to independently control the business decisions of the entity. The enterprise must also be authorized to do business in New York State, be independently owned and operated, and not be dominant in its field. For the purposes of these guidelines "minority group member" shall have the meaning set forth in § 2879(3) of the Public Authorities Law.

17. **NEGOTIATION:**

Procurement by evaluation of proposals in the competitive range on the basis of pre-established and published selection criteria which criteria may be evaluated with price as a factor.

18. **NEW YORK STATE CONTRACT REPORTER:**

A publication of procurement opportunities printed for the New York State Economic Development Bureau pursuant to the New York State Economic Development Law.

19. **NOTICE OF PROCUREMENT OPPORTUNITY:**

A written or verbal communication which shall identify the proposed procurement action and the terms of pursuing the opportunity.

20. **PROCUREMENT:**

The acquisition by the Authority, of products, services, or public works by purchase, excepting:

A. the purchase of periodicals, reference materials, treatises or professional research tools;

B. the payment of fees or tuition associated with continuing education courses, training courses, conferences, seminars and symposiums;

C. expenditures governed by the NFTA's "Travel Policy and Guidelines";

D. the purchase of advertising space or advertising time in any medium; and

E. the purchase of catering services.

21. **PRODUCT:**

Equipment, materials and supplies.

22. **PUBLIC WORK:**

The construction, demolition, repair, rehabilitation, restoration or maintenance of any building, roadway, structure, fixture, facility or improvement owned by or leased to the Authority.

23. **PURCHASE:**

The receipt of products, services or public works by the Authority, in exchange for money, property or other valuable consideration including like-kind trades.

24. **QUALIFICATIONS BASED PROCUREMENT:**

A competitive procurement method under which competitors' qualifications are evaluated on the basis of pre-established and published selection criteria and negotiations are conducted with only the most qualified offeror. Price shall not be considered as a factor in determining the most qualified offeror.

25. **RESPONSIBLE:**

A potential contractor is responsible if it can demonstrate that it has the ability to perform successfully under the terms of the proposed contract, taking into account the offeror's technical and financial capability.

26. **RESPONSIVE:**

A bid is responsive if it complies with the terms of the solicitation in all material respects, and it is completed, executed and submitted in accordance with the instructions in the solicitation.

27. **SEALED BIDDING:**

A competitive procurement method under which a contract is awarded to the lowest priced responsive, responsible bidder.

28. **SERVICES:**

A professional, consulting, technical, or other service, including but not limited to legal, testing, accounting, bookkeeping, secretarial, management consulting, audit, investment banking, planning, training, statistical research, insurance, advertising, public relations, architectural, engineering, appraisal, janitorial, surveying, housekeeping and waste disposal, performed for a fee, commission or other compensation.

29. **SINGLE BID:**

Two or more competitive bids are solicited and only one bid is received. A Single Bid is a subcategory of "Sole Source".

30. **SINGLE SOURCE:**

The goods or services to be procured are available from only one responsible source; or no other goods or services will satisfy the NFTA's requirements; or prior state, federal or Board approval has been granted. Single Source is a subcategory of "Sole Source".

31. **SMALL PURCHASE:**

The acquisition of goods or services having an actual price less than Fifty Thousand Dollars ($50,000). See, Article 14.

32. **SMALL PURCHASE FORMAL BIDDING:**

A "small purchases" method of procuring goods or services under $50,000.00, based upon competitive selection following the publication of a notice of procurement opportunity in the New York State Contract Reporter and the acceptance of sealed bids or proposals. See, Article 14.

33. **SMALL PURCHASE INFORMAL BIDDING:**

A small purchases method of procuring goods or services under $15,000, based upon competitive selection which may be made on the basis of written or telephonic quotes and in accordance with the guidelines set forth in Article 14(C).

34. **SOLE SOURCE**

A general category of awards where competition is waivable, or is not feasible under the circumstances. The included subcategories are: single bid; exigency; expediency, and single source.

35. **SOLICITATION:**

The process by which the Authority contacts prospective vendors, suppliers or consultants to provide notice of a procurement opportunity and invite the submission of quotes, bids, proposals or statements of qualifications.

36. **TERM CONTRACT**:

A competitively procured contract based on qualifications, that allows the NFTA, at its discretion, to retain the services of the term consultant or term contractor, on a project-by-project basis, subject to pre-negotiated terms and conditions.

37. **TIED-BID**:

The receipt of two or more equally low, responsive bids from responsible bidders. See, Article 6 (D).

38. **TIME AND MATERIAL (T & M) CONTRACT**:

A general compensation arrangement which provides for a fixed rate including overhead and profit, and material paid for at cost plus handling charges.

39. **WOMEN-OWNED BUSINESS ENTERPRISE (WBE)**:

Any business enterprise which is at least fifty-one percent (51%) owned by, or in the case of a publicly-owned business, at least fifty-one percent (51%) of the common stock or other voting interests of which is owned by citizens or permanent resident aliens who are women, and such ownership interest is real, substantial and continuing. Women business owners must have and exercise the authority to independently control the business decisions of the entity. The enterprise must also be authorized to do business in New York State, be independently owned and operated, and not be dominant in its field.

GUIDELINES

ARTICLE 1. BOARD APPROVAL

Board approval is required for:

(A) All Contracts for Goods or Services in the actual or estimated value of Fifty Thousand Dollars ($ 50,000) or more; or

(B) Contracts where performance is to continue for a period in excess of one (1) year.

ARTICLE 2. BUY AMERICA

(A) **FEDERAL REQUIREMENTS:** Procurements which include federal funds are subject to federal "Buy America" requirements. Generally, this means that steel, iron, and/or manufactured products which are incorporated in public works or product purchases are to have been produced in the United States, unless a waiver has been granted by a federal agency or the project is subject to a general waiver (See, 49 CFR 661.7 App. A). General waivers have been established for microcomputer equipment, including software, and purchases for less than $100,000. Rolling stock must have a 60% domestic content and final assembly must take place in the United States.

(B) **STATE REQUIREMENTS:**

(i) Product purchase contracts involving an estimated expenditure in excess of $50,000.00 shall require that to the extent such products are made of, fabricated from, or contain steel components that such steel components are produced or made in whole or substantial part in the U.S., its territories or possessions, except in the procurement of motor vehicles and automobile equipment assembled in Canada in conformity with the "Automotive Products Trade Act of 1965" or any amendments thereto.

(ii) Public work projects in excess of $100,000.00 shall require that all structural steel, reinforcing steel or other major steel items to be incorporated in the project shall be produced or made in whole or substantial part in the U.S., its territories or possessions.

(iii) By resolution of the Board of Commissioners these state provisions may be waived if it is determined that such provisions would result in unreasonable costs or that such steel products or steel components cannot be produced or made in the U.S. in sufficient and reasonably available quantities or of satisfactory quality or design.

ARTICLE 3. FOREIGN BUSINESS ENTERPRISES

In the event of the award of a Contract for the Goods or Services from a Foreign Business Enterprise in an amount equal to or greater than one million dollars, simultaneously with notifying the successful bidder or proposer, the NFTA shall notify the NYS Commissioner of Economic Development of the pending award. The pending Contract for Goods or Services shall not be entered into until at least fifteen days have elapsed. However, this provision does not apply to Contracts for Goods or Services awarded on an emergency or exigency basis or where a waiver of this requirement has been obtained from the NYS Commissioner of Economic Development

The notification to the NYS Commissioner of Economic Development shall include the name, address and telephone and facsimile number of the Foreign Business Enterprise, a brief description of the goods or services to be obtained, the amount and term of the proposed Contract for Goods or Services, and the name of the individual at the Foreign Business Enterprise or acting on behalf of the same who is principally responsible for the proposed Contract for Goods or Services.

Pursuant to section 2879 of the Public Authorities Law, the Authority shall not enter into a Contract for Goods or Services with a Foreign Business Enterprise which has its principal place of business located in a Discriminatory Jurisdiction contained on the list prepared by the NYS Commissioner of Economic Development pursuant to subdivision 6 of section 165 of the State Finance Law. The provisions of this subparagraph may be waived by the Executive Director if the Executive Director determines in writing that it is in the best interests of the Authority to do so. The Executive Director shall deliver each such waiver to the NYS Commissioner of Economic Development.

ARTICLE 4. PERFORMANCE SECURITY AND BONDING REQUIREMENTS

(A) Bid Security

All Public Work contracts equal to or in excess of Fifty Thousand Dollars ($50,000) shall require bid security equal to ten percent (10%) of the bid price. Bid security may be in the form of a bid bond, certified check or other guaranteed negotiable instrument or letter of credit.

The bid security of the bidders submitting the three lowest bids will be retained until execution of the contract or until a maximum of 180 days after bid opening, whichever is sooner. Bid security of the remaining bidders will be returned within ten calendar days after the bid opening date.

In the event of neglect or refusal on the part of the successful bidder to execute the contract and furnish evidence of insurances within ten (10) days after written notification of notice of intent to award the contract, and furnish the Performance Security and Labor and Material Payment Bond within three (3) days after receipt of the executed contract, the entire bid security shall be forfeited to and retained by the Authority as liquidated damages for such neglect or refusal.

Bid security is not mandated for product contracts.

(B) Performance Security

All Public Work contracts of Ten Thousand ($10,000) Dollars or more, shall require a performance bond or certified check or other guaranteed negotiable instrument or letter of credit guaranteeing the contractor's faithful performance.

Performance security is not mandated for product contracts.

In instances where a performance bond is offered, the bond shall be in the amount of the contract and be issued by a duly incorporated entity authorized to guarantee the faithful performance of contracts and to do business in the State of New York as a surety.

(C) Letter of Credit

A letter of credit used as bid or performance security should be an irrevocable letter of credit issued by a bank or financial institution of B-rating or better, as determined by Moody's and Standard & Poors, signed by an authorized representative of the issuing institution and naming the Authority as beneficiary. The letter of credit must state that an amount representing at least ten percent (10%) of the bid price is available to be drawn on unconditionally by the Authority under the expressed terms and conditions. These terms and conditions including the location at which the Authority can draw the funds, an effective date, and expiration date should be clearly stated in the letter of credit.

(D) Labor And Material Payment Bonds

All Public Work contracts, regardless of amount, shall require Labor and Material Payment Bonds in an amount equal to the contract amount.

(E) Maintenance Bonds

All Public Work contracts, regardless of amount, shall require as a minimum, a one (1) year Maintenance Bond, which period shall commence as of the date of Final Acceptance. The Maintenance Bond shall be in the full contract amount.

(F) Waiver

(1) Bid and Maintenance Bond requirements may be waived prior to bid date by the Executive Director or his designee for cause. In instances where such bonds are not required payment shall be withheld until full and complete performance has been accomplished under the terms of the contract.

(2) Performance Security and Labor and Material Payment Bonds may be waived by the Executive Director or his designee, prior to the bid date, in accordance with State Finance Law § 137(1), provided that the aggregate amount of the Contract is under One Hundred Thousand Dollars ($100,000.00) and that the Authority retains twenty percent from each progress payment or estimate until the entire contract work has been completed and accepted, at which time the Executive Director or his designee may authorize, pending the payment of the final estimate, the release of up to seventy-five percent of the retained percentage.

ARTICLE 5. PREVAILING WAGE RATES

Certain Public Work contracts may be subject to the payment of prevailing wage rates, regardless of the dollar amount of the contract. It shall be the responsibility of the Procurement Department and/or the Engineering Department to obtain the applicable prevailing wage rates for the particular procurement and ensure that the rates are included in the bid solicitation.

The Procurement and Engineering Departments are encouraged to contact the Legal Department for assistance in the event they are uncertain as to the applicability of prevailing rates to a particular procurement.

ARTICLE 6. SEALED BIDDING

(A) Sealed bidding is the preferred procurement method for acquisitions of Fifteen Thousand Dollars ($15,000) or more where the following factors are present:

(i) The contract will be based upon a complete, adequate and realistic specification or purchase description and/or an itemized bid proposal;

(ii) Two (2) or more responsible bidders are willing and able to compete effectively for the award;
(iii) A fair and reasonable award can be made principally on the basis of price; and
(iv) The procurement lends itself to an FFP-type contract.

(B) **Sealed bidding is not required when:**

(i) The purchase is under $15,000 and an Informal, small purchase procurement procedure is being followed;
(ii) An emergency or exigency exists which renders delay impermissible;
(iii) A single source has been validated;
(iv) A single bid has been validated;
(v) Federal or state authorization for non-competitive negotiations has been obtained;
(vi) A modification or amendment to a contract is justified;
(vii) The procurement lends itself to a CR-type contract; or
(viii) A resolution adopted by a vote of at least two-thirds of the Members in attendance at a meeting of the Board states that the Board has determined that it is not in the best interest of the Authority to advertise for bids.

(C) **Minimum requirements for sealed bidding include:**

(i) the preparation of an independent estimate prior to bid opening;
(ii) the "advertisement" of an Invitation For Bids (IFB) or a synopsis of a procurement action;
(iii) the acceptance of sealed bids;
(iv) the public opening of sealed bids;
(v) the preparation of a written bid analysis; and
(vi) the award of a FFP type contract to the lowest priced responsive, responsible bidder.

(D) **In the event of a tied-bid,** the contract shall be awarded based upon the following descending order of priorities:

(i) Small businesses which are "labor surplus area firms".
(ii) Other small businesses.
(iii) Other businesses that are also "labor surplus area firms".
(iv) Other businesses (i.e., DBEs, WBEs & MBEs).
(v) If two or more bidders still remain equally eligible after application of the above order of priority, award shall be made by a drawing by lot limited to those bidders. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least three persons, and the contract file shall contain the names and addresses of the witnesses and the person supervising the drawing.

ARTICLE 7. SEALED BIDDING (Two-Step Variation)

(A) The two-step sealed bidding method may be appropriate in instances where the specification is "functional" or performance based and there may exist a variety of acceptable technical approaches.

(i) Step one consists of the request for, submittal, evaluation, and "discussion" (optional) of a technical proposal. For purposes of two-step sealed bidding, this

includes engineering approach, special manufacturing processes and special testing techniques. No pricing is considered in step one. Discussions may be conducted for clarification of questions relating to technical requirements.

(ii) Step two consists of the submission of sealed price bids by those who submitted acceptable technical proposals in step one. Each bidder's price shall be based on its own technical proposal. If an award is made, a FFP-type contract is awarded to the lowest priced responsive, responsible bidder.

ARTICLE 8. NEGOTIATION

(A) Procurement by Negotiation is the preferred procurement method for acquisitions of Fifteen Thousand Dollars ($15,000) or more where one (1) or more of the following factors are present:

(i) The desired goods or services cannot be precisely defined, described or standardized.
(ii) The desired end product is conceptual in nature.
(iii) A CR type contract is contemplated.
(iv) Discussions concerning the technical aspects and price negotiation are intended.
(v) Offerors are to be given the opportunity to revise the price or technical aspects of their proposal.
(vi) Price alone cannot be the determinative factor in award. Quality, qualifications, performance data, or other contractual factors are to be considered in selecting the most advantageous offering.
(vii) Artistic or aesthetic values supersede price as primary selection criteria.

(B) Procurement by Negotiation is not required when:

(i) The purchase is under $15,000 and an Informal; small purchase procurement procedure is being followed;
(ii) An emergency or exigency exists which renders delay impermissible;
(iii) A single source award or single bid award is validated;
(iv) Federal or state authorization for noncompetitive procurement has been obtained;
(vi) A resolution adopted by a vote of at least two-thirds of the Members in attendance at a Meeting of the Board states that the Board has determined that it is impractical to advertise for competitive proposals or it is not in the best interest of the Authority to do so; or
(vii) a modification or amendment to a contract is justified.

(C) Minimum requirements for Negotiation include:

(i) The solicitation of statements of qualifications (SOQ) and/or the advertisement of a Request for Proposals (RFP) a minimum of 21 days shall be allowed for the preparation of proposals and the setting of the proposal due date;
(ii) In the event that an SOQ is advertised, preparation of a preselection list of the best qualified consultants, based on the experience and qualification data supplied by the consultants. Generally, the preselection list may consist of 3 to 5 consultants. If technical proposals were solicited in conjunction with the advertisement, all consultants who submitted responsive proposals must be included for evaluation.
(iiii) The acceptance of sealed proposals;
(iv) The evaluation of the proposals on the basis of published selection criteria;
(v) The published selection criteria shall be as follows:

(a) Professional Services; 40% qualifications and experience, 30% technical criteria and 30% cost.

(b) Revenue Generating and Other Services; 20% qualifications and experience, 30% technical criteria and 50% cost.

(c) Technical/Operation Sensitive Services; 20% qualifications and experience; 40% technical criteria and 40% cost.

(d) Specialty Vehicles, Equipment and Technical Products; 20% qualifications and experience, 50% technical criteria and 30% cost.

Deleted: Transit Buses

(vi) The preparation of an independent estimate before opening the sealed proposal;

(vii) Proposals within the "competitive range" are identified and discussions are held with each proposer;

(viii) Best and final offers (BAFOs) may be requested of all proposers determined to be within the competitive range or on the short-list, and

(ix) The Authority evaluates BAFOs and awards either a FFP-type or a CR-type contract to the proposer whose BAFO is most advantageous to the Authority.

(D) If so stated in the RFP, selection may be based on the basis of the original proposals, without discussions with any offeror. However, in the event discussions are conducted with any one offeror, discussions **must** then be conducted with all offerors in the competitive range.

ARTICLE 9. QUALIFICATIONS-BASED PROCUREMENT

(A) This method is required in procuring architectural, engineering and certain related services whenever state or federal funds will or may be used. There are differences between the Federal Aviation Administration and Federal Transit Administration as to what services are required to be procured in this manner, so reference should be made to the most current version of FAA Advisory Circular 150/5100-14D, FTA Advisory Circular 4220.1F or New York State law for guidance.

(B) Minimum requirements for a qualifications based procurement include:

(i) Empanelling of the selection board, consisting of usually at least three qualified members. If the intended procurement is for a GBNRTC, or NITTEC study either a GBNRTC, or NITTEC, study manager or the GBNRTC, or NITTEC, Executive Director shall be included on the Selection Board, as is appropriate for the scope of the study. The selection board shall be prepared to evaluate qualifications, proposals, potential consultants (i.e., conduct interviews and inquiries as required), and make recommendations. Where a GBNRTC, or NITTEC, study may not be in the direct interest of the Authority, the Selection Board may include representatives from outside agencies which have an interest in the study.

(ii) Development by the selection board, of the selection criteria and the evaluation system to be used in preparing a preselection list of consultants, and in determining the final selection.

(iii) The solicitation of qualifications by either advertisement of a Request For Qualifications (RFQ) or by requiring qualifications as part of a Request For Proposals (RFP) advertisement. A minimum of 21 calendar days shall be allowed for the preparation of proposals and the setting of the proposal due date.

(iv) In the event that an RFQ is advertised, preparation of a preselection list of the best qualified consultants, by the selection board, based on the experience and qualification data supplied by the consultants. If technical proposals were solicited in conjunction with the advertisement, all consultants who submitted proposals must be included for evaluation. Generally, the preselection list may consist of 3 to 5 consultants.

(v) Notification to the unsuccessful consultants who expressed an interest.

(vi) Solicitation of sealed technical proposals from each of the consultants.

(vii) The selection board, at its option may conduct interviews, presentations, and/or discussions. If this option is elected, interviews, presentations, and/or discussions must be held with each consultant who has submitted a technical proposal if the initial solicitation was by way of RFQ. If not, interviews, presentations, and/or discussions must be held with each consultant in the competitive range in accordance with the evaluation of the technical proposals.

(viii) Evaluation of technical proposals and experience and qualification data based upon published selection criteria of which price shall not be a factor, rank and identify most qualified Consultant.

(ix) Initiate discussions with the most qualified, acceptable proposer to develop and agree upon the "Scope of Work." Thereafter, the Authority prepares its Engineer's Estimate and requests the cost proposal of the most qualified, acceptable proposer.

(x) Upon completion of the Engineer's Estimate the selection board shall open and review the cost proposal. Thereafter, negotiations are undertaken.

(xi) If a fair and reasonable price cannot be reached with the most qualified, acceptable proposer, negotiations are commenced with the next most qualified and acceptable proposer. The cost proposal of the next most qualified proposer may be requested **only after** negotiations with the most qualified proposer have been formally terminated. This process shall be repeated until the successful negotiation of a fair and reasonable contract price for an acceptable proposal from a qualified proposer is reached, or until the procurement is discontinued;

(xii) In accordance with the requirements of New York Public Authorities Law §2879(3)(b)(iv) the NFTA will not refuse to negotiate with a professional firm solely because the ratio of the "Allowable Indirect Costs" to direct labor costs of the professional firm or the hourly rate in any labor category of the professional firm exceeds a limitation generally set by the Authority in the determination of the reasonableness of the estimated cost of services to be rendered by the professional firm, but rather the Authority should also consider the reasonableness of cost based on the total estimated cost of the service of the professional firm which should include, among other things, all the direct labor costs of the professional firm for such services, plus all "allowable indirect costs," other direct costs, and negotiated profit of the professional firm. A professional firm is defined for the purpose of this subparagraph as any legal entity permitted by law to practice the professions of architecture, engineering or surveying.

(xiii) Submittal of written and documented recommendation for award by the selection board to the Board of Commissioners when required. In addition, the GBNRTC, or NITTEC, studies documentation of the Selection Board's recommendation for award will be maintained at the GBNRTC, or NITTEC, offices and will be available to interested parties.

ARTICLE 10. OPTIONS

An option is a unilateral right in a contract by which, for a specified time, the Authority may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract. An option must be evaluated as part of the original contract award. In addition, for procurements funded by the Federal Transit Administration, a cost and price analysis must be conducted at the time of exercise of the option in order to ensure that the option price is still fair and reasonable.

ARTICLE 11. NEW YORK STATE CONTRACT REPORTER

All procurements of goods or services having an actual or estimated value of Fifteen Thousand Dollars ($15,000) or more shall be published in **THE NEW YORK STATE CONTRACT REPORTER (NYSCR)**. The Notice of Procurement opportunity shall appear in the **NYSCR** at least fifteen (15) business days prior to the Bid or Proposal due date. However, advance publication shall not be required under emergency or exigency conditions, or when an expediency action has been adopted by the Board, or if the procurement is being resolicited within 45 business days after the date bids or proposals were originally due.

At the time a determination of intent to award a procurement contract is made, the following information shall be submitted for publication in NYSCR:
For procurement contracts obtained through the
Sealed Bidding process, the result of the bid opening including the names of bidding firms and the amounts bid by each;
For procurement contracts obtained through the Negotiation and/or Qualification-Based processes, the names of firms submitting proposals and the proposal selected as the best value offer; and
For all other procurement contracts, the name of the proposed awardee.

ARTICLE 12. SOLE-SOURCE AWARDS

(A) A sole source award shall not be justified on the basis of:

(i) A lack of advance planning by the initiating department; or
(ii) Concerns related to the amount of funds available (i.e., funds will expire) to the NFTA for the acquisition of supplies or services.

(B) A sole-source award is justified under circumstances limited to the following:

(i) A validated "Single Bid";
(ii) Emergency (Article 23);
(iii) Exigency (Article 23);
(iv) Expediency (waiver of competition, for cause, by a two-thirds vote of the Board of Commissioners) (Article 24); or
(v) A validated "Single Source" (Article 12[D]).

A cost or price analysis must be prepared for all sole source awards in accordance with FTA guidelines.

(C) A single bid is not validated for purposes of sole source award until NFTA staff:

(i) canvasses all, or in the alternative, three (3) or more prospective bidders from whom bids were solicited to learn the causes for the lack of bidding activity;
(ii) evaluates and documents the responses;
(iii) reconsiders its requirements and specifications;
(iv) makes findings supporting the need for the original requirements and the sufficiency of the specifications, and that the single bidder is responsive and responsible or that the proposer is qualified and the proposal is acceptable; and
(v) conducts a price or cost analysis to establish that the bid price is fair and reasonable. The cost analysis shall verify the proposed cost data, the projections of the data and the evaluation of specific elements of cost and profit.

(D) A single source is not validated for purposes of a sole source award until NFTA staff investigates and documents one (1) or more of the following circumstances:

(i) The proposed source is the original manufacturer and the terms and conditions of a viable warranty would be violated by the installation of unauthorized parts or components in existing equipment, machinery, vehicles, or systems, or "servicing" by uncertified or unauthorized personnel, and there are no other sources from which authorized parts or components or servicing from certified or authorized personnel may be obtained;

(ii) The proposed source possesses exclusive, limited rights in data, patent rights, copyrights, secret processes, or the control of basic raw material;

(iii) The proposed source is the provider under an existing "term contract" (see, Definitions) and the procurement constitutes a subaward thereunder.

(iv) Prior approval by a State or Federal funding Agency.

(v) The Executive Director has determined, in accordance with a standardization program adopted by the NFTA, that only specified makes and models of technical equipment and parts will satisfy the NFTA's needs for additional units or replacement items and only one (1) source is available;

(vi) The goods or services are available through an existing contract which had been awarded through a competitive procurement method and a price or cost analysis establishes that the price is fair and reasonable.

(E) All eligible contracts for the purchase of goods or services which are to be awarded on a single source basis, sole source basis or pursuant to any other method of procurement that is not a competitive procurement and where the aggregate consideration under the contract may reasonably be valued in excess of $1,000,000 and eligible amendments to contracts previously approved by the Comptroller where the value of the amendment is 10% or more of the contract amount previously approved by the Comptroller are subject to the prior review and approval of the New York State Comptroller. Please refer to section 2979-a of the Public Authorities Law and Part 206 to 2 N.Y.C.R.R. for relevant definitions and the process to be followed.

NOTE: With the exception of awards made under Articles 12(D)(i), (ii), (iii) the aggregate value of single source, unadvertised awards to any one firm or person shall not exceed Fifty Thousand Dollars ($50,000) per year, absent Board approval.

ARTICLE 13. CONTRACT TYPES

(A) A Firm Fixed Price (FFP) type contract should be used where there are no substantial uncertainties relating to cost, performance or schedule (Lump Sum and Unit Price contracts are examples of FFP-Type Contracts).

(B) Cost-Reimbursement (CR) type contracts are generally appropriate for qualifications-based procurements and Negotiated procurements based on a Scope of Services rather than detailed Specifications.

(C) Cost Plus Percentage of Cost type contracts, and Cost Plus Percentage of Construction Cost type contracts are prohibited.

(D) Time and Material (T&M) contracts are permitted only:

(i) After a determination that no other compensation arrangement is suitable; and

(ii) The contract or purchase order contains a price ceiling that the contractor exceeds at its own risk; and

(iii) All labor and equipment rates (including overhead and profit), are predetermined and set forth in the contract and materials are to be paid for at cost.

ARTICLE 14. SPECIFICATIONS

(A) To permit the preparation and evaluation of bids on a common basis, specifications shall present a clear and accurate description of the desired technical requirements for materials, products or services. Further, the specifications shall state the criteria by which the Authority shall determine whether the requirements have been satisfied.

(B) The specifications shall reflect the NFTA's actual needs and shall not contain features which unduly restrict competition.

(C) A "brand name or equal" description may be used when:

(i) It is impractical or uneconomical to make an accurate description of technical requirements; or

(ii) An adequate or more detailed description could not be provided, other than by inspection and analysis, in time for the procurement; and

(iii) The specification clearly sets forth the salient physical and functional characteristics of the brand name product which are essential to the Authority's minimum requirements and will be used to evaluate proposed or equal substitutions; and

(iv) The specification includes the complete common generic identification of the "brand name" product, together with applicable model, make or catalog number, and address of the company.

(D) Or equal substitutions should be considered for acceptance where the Authority determines that the proposed substitution is equal in all material respects to the brand-name product. Or equal substitutions should not be rejected on the basis of minor differences in design, construction or features which do not affect the suitability of the products for their intended use.

(E) Prior to developing acquisition specifications Authority staff shall conduct a study of the market place to determine market availability to satisfy the intended acquisition. If a specification is in any way restrictive, a needs analysis must be prepared establishing justification for the specifications. Also, a market analysis must be prepared to document the efforts made in identifying the available market place.

ARTICLE 15. SMALL PURCHASES

(A) Small purchase acquisitions do not require Board approval unless the term of such acquisition will continue in excess of one year.

(B) **Formal Bidding**

Contracts for goods or services equal to or in excess of Fifteen Thousand Dollars ($15,000), but less than Fifty Thousand Dollars ($50,000) may be awarded by the Executive Director or his designee, upon satisfaction of the following minimum requirements:

(i) Publication of a notice of procurement opportunity in the NEW YORK STATE CONTRACT REPORTER (NYSCR), and either advertisement of a notice of procurement opportunity in any other appropriate forum, or dissemination of a notice of procurement to at least three (3) potential offerors by telephone or in writing.

(ii) Dissemination of detailed information regarding the proposed procurement, including but not limited to, terms and conditions of the contractual relationship and the scope of services to all interested potential offerors.

(iii) Receipt of competitive bids or proposals pursuant to sealed bidding procedures or Negotiation procedures, as is applicable.

(iv) Examination of OGS NYS Commodity Index to determine whether the procurement may be obtained from that source on terms advantageous to the NFTA.

(v) Documentation of the procedures followed and report of same including identification of the budget line item, to the Executive Director or his designee.

(C) **Informal Bidding**.

Contracts for goods or services for less than Fifteen Thousand Dollars ($15,000) may be awarded by the Executive Director, his designee, or for less than Five Thousand Dollars ($5,000) may be awarded by the General Counsel, the Chief Financial Officer, any General Manager or Director, the Executive Director of the GBNRTC or the Executive Director of NITTEC, or their designee (note, that any such delegation must be in writing), upon satisfaction of the following minimum requirements:

(i) If appropriate, examination of OGS NYS Commodity Index to determine whether the procurement may be obtained from that source on terms advantageous to the Authority.

(ii) At least three (3) written or telephonic quotes must be solicited for purchases equal to or over Three Thousand Dollars ($3,000) and under Fifteen Thousand Dollars ($15,000). Purchases up to Three Thousand Dollars ($3,000) may be made without quotes, if the procurement manager or her designee considers the prices to be fair and reasonable.

(iii) For each, procurement records shall be maintained which set forth: the names and addresses of the contractors or vendors solicited; the terms and prices quoted; whether the goods or service may be procured under the OGS NYS Commodity Index, and if so, the price.

(iv) In the case of procurements of Three Thousand Dollars ($3,000) or more, if three (3) or more quotations cannot be obtained because there is not a sufficient number of suppliers able to meet the purchase requirements (including timely delivery), such facts shall be set forth in writing.

(v) Approval of a small purchase contract award shall not be granted unless and until the foregoing written information has been reviewed and found to be acceptable. Approval may be indicated by dated signature authorization by the Executive Director or the authorized individual.

(vi) Price Lists or catalogs may be used in obtaining three (3) or more quotes.

(D) A written confirmation of the successful contractor's quotation, including price and relevant contract terms shall be obtained in the case of verbal quotes or offers, prior to award.

(E) In the event a "Single Source" or "Single Bid" selection is the subject of a Small Purchase under $15,000, authorization for the purchase must come from the Executive Director.

ARTICLE 16. FEDERAL, STATE AND COUNTY CONTRACT LISTS

The State Office of General Services contract prices and County contract prices are deemed competitive prices. Contracts may be awarded based on the state or county contract price without additional competitive procedures. The United States General Services Administration (GSA) has identified specific contracts that the NFTA is authorized to use. Contracts may be awarded based on the federal contract price when allowed by the GSA. If the contract price available through the federal, state or county price lists is lower than the lowest bid price after sealed bidding, formal bidding, or informal bidding, the bids shall be rejected and a contract awarded based upon the federal, state or county contract price.

ARTICLE 17. FUNDING

(A) In all cases where contracts are being funded by state or federal funds, applicable regulations of the state or federal authorities governing the award of such contracts shall be observed.

(B) The Federal Aviation Administration and the Federal Transit Administration each have specific criteria for the procurement of Design-Bid-Build and Design-Build contracts. Please refer to the relevant Advisory Circular for specific requirements.

(C) The Federal Aviation Administration and the Federal Transit Administration each prohibit the use of in-State or local geographical preferences, with the exception of architectural and engineering services.

(D) The Federal Aviation Administration and the Federal Transit Administration require a cost analysis or a price analysis in connection with every procurement action.

(E) The Federal Transit Administration requires the use of Part 31 of the Federal Acquisition Regulations with respect to pricing issues.

(F) The Federal Transit Administration has specific rules governing advance payments and progress payments. Advance payment are prohibited. Progress payments are permitted provided that title has been obtained. Please refer to FTA Circular 4220.1F.

(G) No contract shall be awarded or obligation incurred for any purpose which involves the expenditure of money, in excess of the monies appropriated and available in the Authority's budgets for said purpose, except as otherwise authorized by the Board.

ARTICLE 18. PROFESSIONAL SERVICE CONTRACTS

(A) The following guidelines apply to the procurement of consulting or professional services such as legal, audit, planning, testing, accounting, architectural, engineering or surveying services, except to the extent that the procurement of such services are governed by state or federal regulations.

(B) Professional service contracts which do not exceed Fifty Thousand Dollars ($50,000) and will not involve services to be rendered in excess of one (1) year may be awarded following either the Formal Bidding or Informal Bidding Small Purchase guidelines set forth under Article 14, as is appropriate.

(C) The selection of professional service contractors shall be on a competitive basis, except that the Board may waive competition by a two-thirds vote of the Members in attendance at a Meeting of the Board, if it is in the Best Interests of the Authority to do so. The standard of "Best Interest of the Authority" may, but need not be based upon one or more of the following criteria for the selection of professional service contractors:

(i) Confidentiality;
(ii) Specialized expertise or unusual qualifications or services are obtainable from one source only;
(iii) Historical relationship with the Authority, the continuation of which will result in some economy advantage to the Authority and will avoid duplication of costs;
(iv) Specialized knowledge;
(v) Lack of responsible competition, as validated pursuant to Article 11, supra;
(vi) Nature, magnitude or complexity of services required;
(vii) Lack of resources, support staff, specialized facilities or equipment;
(viii) Short term or infrequent need for services; and
(ix) Selection which is necessary as a result of emergency or exigency conditions.

ARTICLE 19. DISADVANTAGED BUSINESS ENTERPRISES/MINORITY WOMEN BUSINESS ENTERPRISES

(A) It is the desire of the Board to promote and assist participation by DBEs, MBEs, WBEs and to facilitate a fair share of the awarding of contracts thereto.

(B) An updated list of all DBE certified firms in New York State may be obtained from the New York State Unified Certification Program website at www.biznet.nysucp.net. A directory of MWBE certified firms may be obtained from the New York State MWBE website at www.nylovesmwbe.ny.gov. The Procurement Department shall be responsible for referencing such lists prior to the publication of a notice of procurement opportunity or informal solicitation to determine the availability of certified DBE, MBE and WBE entities.

(C) The Director, EEO/Diversity Development shall ensure that the Authority establishes appropriate goals for participation by minority or women-owned business enterprises in procurement contracts awarded by the Authority and for the utilization of minority and women-owned enterprises as subcontractors and suppliers by entities having procurement contracts with the Authority. Statewide numerical participation target goals shall be established by the Authority based on the findings of the 2010 disparity study.

(D) Every effort will be made to achieve the MWBE goals assigned to projects. The Authority's procurement soliciation documents shall include MWBE goals as appropriate. These documents are advertised and posted on the Authority's website. MWBE utilization will be monitored and reported by the EEO/Diversity Development Department with assistance from the Engineering and Procurement Departments.

ARTICLE 20. CONFIDENTIALITY AND CONFLICTS OF INTEREST

(A) Authority staff engaged in the procurement process shall ensure that proprietary information submitted by bidders and proposers, and source selection information, including the number or identity of offerors is not disclosed to any unauthorized person.

In the event a request for such confidential information is made, the Office of General Counsel shall determine the appropriateness of disclosure.

(B) No procurement contracts shall be entered into with former commissioners, officers or employees of the Authority except to the extent permitted by Section 73 of the Public Officers Law and the NFTA Board of Commissioners' Code of Ethics.

(C) No procurement contracts shall be awarded to a firm to:

(i) Prepare the work statement/specifications for purchase of supplies or a proposed public work when the firm is affiliated with another company whose business is related to the pending procurement. (In order to ensure objective contractor performance and eliminate any unfair competitive advantage, a contractor that develops or drafts specifications for a particular procurement shall be excluded from competing for and performing work under the directly ensuing procurement, unless the initial design contract was awarded under a competitive selection process); or

(ii) Perform a study or work effort concerning a certain organization, technical field or geographic area when the firm has a business relationship or common interest with the organization, field or area to be studied.

(D) The files for procurement contracts covered by Section 139-k of the State Finance Law must include the required information regarding persons or organizations retained to attempt to influence the procurement process. Any contacts that reasonably appear to be an attempt to influence the procurement process by persons or organizations other than those identified in the bid or proposal documents shall be recorded as required by Section 139-k of the State Finance Law.

ARTICLE 21. MINIMUM CONTRACT REQUIREMENTS

(A) The following types of provisions shall be contained in all goods and services contracts, except that any of the provisions listed which are inapplicable or unnecessary because of the nature or duration of the services to be performed, or goods to be supplied, the location or locations where they are to be performed or supplied, or the type of the compensation being paid, therefore, need not be included:

(i) Description of services or goods or the scope and extent of contract work;
(ii) Compensation, delineating the contract price and method of payment or the rates and fees upon which compensation shall be based;
(iii) Time for performance or date of completion, including when appropriate, dates for completion of significant tasks; the Authority shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five years inclusive of options;
(iv) Liability of contractor; indemnification of Authority;
(v) Reports of contractor;
(vi) Ownership of plans, drawings or other products of the performance of the service;
(vii) No assignments or subcontracts without the express prior written consent of the Authority;
(viii) Maintenance of records, accounts;
(ix) Rights of inspection and audit of books and records;
(x) Insurance requirements;

(xi) Termination;
(xii) Monitoring of the performance of services;
(xiii) The extent of subcontracting and sub- consulting agreements;
(xiv) Contract modification or change order requirements;
(xv) Notice of Claim/Disputes;
(xvi) Use of Authority's supplies, facilities or property.
(xvii) Use of Authority's personnel, and certification of key personnel and facilities necessary to accomplish the work within the time required; and
(xviii) All provisions required to be included in the contracts of the Authority by federal, state or local laws, ordinances, codes, rules or regulations, including when appropriate, notice to the Contractor that the proposed procurement action will be subject to state and/or federal funding regulations and approval.

ARTICLE 22. CONTRACT MODIFICATIONS, CHANGE ORDERS AND SUPPLEMENTAL AGREEMENTS

(A) Change orders, supplemental agreements or other contract modifications which alter a procurement contract shall be approved by either the Board, the Executive Director, the General Counsel, the Chief Financial Officer, the Executive Directors of GBNRTC and NITTEC, a General Manager, or Director as is appropriate and as is limited by the levels of authorization outlined in Article 11, Small Purchases.

(B) The Authority shall perform a cost analysis unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

(C) Profit shall be negotiated as a separate element, taking into consideration:

(i) complexity of the work,
(ii) the risk borne by the contractor,
(iii) the contractor's investment,
(iv) the degree of subcontracting,
(v) the contractor's past performance, and
(vi) industry profit rates for similar work.

(D) Any change order, supplemental agreement or other contract modification shall contain a justification assuring that the proposed action is an appropriate alternative, under the circumstances, to a competitive procurement.

(E) The Federal Transit Administration prohibits cardinal changes, defined as significant changes in contract work that cause major deviations from the original purpose of the work or the intended method of achievement, or cause revisions of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract. Please refer to FTA Circular 4220.1F for further information.

ARTICLE 23. EMERGENCY OR EXIGENCY

(A) The General Counsel, Chief Financial Officer, Executive Directors of GBNRTC and NITTEC and General Managers and Directors, or their designee, are authorized to declare an emergency or exigency and to make awards not to exceed Four Thousand Nine Hundred Ninety-Nine Dollars ($4,999), per occurrence, and shall report same to the Executive Director at the earliest opportunity, as described in part (E), below. The delegation of this authority must be in writing and the designee must report directly to the authorized individual.

(B) In the event the authorization limit set forth in Paragraph 23(A) will be exceeded, the General Counsel, Chief Financial Officer, Executive Directors of the GBNRTC and NITTEC, Directors or General Managers shall contact the Executive Director or in his absence the Chairman of the Board. The Executive Director is authorized to declare an emergency or exigency and to make awards not to exceed Fifty Thousand Dollars ($50,000), per occurrence and shall report same to the Chairman at the earliest opportunity, as described in part (E), below.

(C) In the event the authorization limit set forth in Paragraph 23(B) will be exceeded, the Executive Director shall contact the Chairman of the Board, or in his absence, the Vice Chairman of the Board. The Chairman (or if applicable, the Vice Chairman), is authorized to declare an emergency or exigency and to make awards which may exceed Fifty Thousand Dollars ($50,000).

(D) In the event the final contract amount owed is equal to or greater than Fifty Thousand Dollars ($50,000), the individual responsible for declaring the emergency or exigency shall prepare and submit a "DECLARATION OF EMERGENCY/EXIGENCY REPORT" to the Executive Director for submittal to the Board at the earliest possible Board Meeting. At a minimum, the "DECLARATION REPORT" shall set forth the following information:

(i) A description of the emergency or exigent circumstances, or the unforeseen circumstance.
(ii) A description of the perceived damages or threat of harm or loss, or the perceived interruption to or obstruction of operation or provision of service.
(iii) A description of the preventative action taken.
(iv) A listing of all NFTA personnel involved in the response or the occurrence.
(v) An explanation of the steps taken to procure goods or services and the rationale for the award and procurement decisions made by the individual.
(vi) Identification of the source of funds used to pay for the response.
(vii) A request for Board ratification of the response to the Emergency or Exigency.

(E) In the event the final contract amount is less than Fifty Thousand Dollars ($50,000), the individual responsible for declaring the emergency or exigency shall prepare and submit a "DECLARATION OF EMERGENCY/EXIGENCY REPORT" to the Executive Director at the earliest possible time, documenting the information outlined in sections (D) (i) through (vi), above.

ARTICLE 24. EXPEDIENCY

(A) The provisions of this article shall be implemented under special and limited circumstances as determined by a two-third's vote of the Members in attendance at a Meeting of the Board, based on the best interests of the Authority upon request by staff seeking Board Waiver of one or more procurement guidelines. The criteria for

establishing best interests of the Authority for the purposes of this Article may be found at Article 18(C).

(B) The request shall include but not be limited to the following:

(i) Statement of objective and rationale for expediency;
(ii) Course of action outlining:
  a. step-by step procedure to accomplish the objective;
  b. specific guideline waiver request(s);
  c. Justification and anticipated benefit to the Authority.
(iii) Request for authorization to proceed.

ARTICLE 25. WAIVER OF COMPETITION PURSUANT TO SECTION 2879 OF THE PUBLIC AUTHORITIES LAW

Pursuant to section 2879 of the Public Authorities Law the Board may waive competition for the purchase of goods or services from small business concerns or those certified as minority or women-owned business enterprises, or goods or technology that are recycled or remanufactured, in an amount not-to-exceed $200,000.00. Such a waiver may only be granted for non-federally funded purchases and shall require a two-thirds vote of the Members in attendance at a Meeting of the Board.

ARTICLE 26. RECORDS RETENTION

Procurement records shall be retained in accordance with the New York State Records Retention Manual.

Every procurement file shall contain, at a minimum, records detailing:

(A) the rational for the method of procurement,

(B) the rationale for the selection of contract type,

(C) reasons for contractor selection or rejection, and

(D) the basis for the contract price.

ARTICLE 27. PROCUREMENT REPORTING

(A) The Procurement Department shall ensure that on an annual basis, the Authority shall prepare, approve and make publicly available, a report summarizing the Authority's procurement activity for the period of the report. The report shall include a listing of all contracts of Five Thousand Dollars ($5,000). or more. the selection process used to select such contractors, and the status of existing procurement contracts.

(B) On an annual basis the Office of General Counsel shall prepare and submit for Board approval a report on Procurement Contracts. This report shall include a copy of the existing guidelines, an explanation of the guidelines and any amendments thereto since the last annual report. This report may be made a part of any other reports that the Authority is required to make.

(C) This information shall be submitted annually through the New York State Public Authorities Data Report to the New York State Division of Budget, and copies thereof to the New York State Department of Audit and Control, the Senate Finance Committee, the Assembly Ways and Means Committee and the Executive Officers and Legislatures of Erie and Niagara Counties.

ARTICLE 28. PROCUREMENT PROTOCOL

The primary objective of procurement is to ensure and foster economy, efficiency and effectiveness in the acquisition of goods and services. To achieve these goals it is essential that all of the participants in the procurement process have a clear understanding of their roles and responsibilities. Set forth in this Article is a general outline of the various departmental functions to be fulfilled in the procurement process. The Procurement Department maintains a comprehensive written procurement systems manual based on these concepts.

(A) **Procurement Department**:

(i) The Procurement Department shall be responsible for conducting the following minimum pre-procurement planning activities on at least an annual basis:

(a) Forecasting the price and availability of items and materials for User Departments.
(b) Developing a purchasing schedule for IFBs and RFPs.
(c) Establishing purchasing goals and objectives.

(ii) The functions of the Procurement Department shall be to:

(a) Analyze the marketplace to determine the status of competition, technological developments, the impact of the economy on potential vendors, labor conditions, and changes in pricing or delivery methods.
(b) Communicate and coordinate with similarly situated procurement departments to explore joint purchasing arrangements and to share marketplace information.
(c) Analyze User Department procurement requisitions to ensure the proper authorizations are present, and that the procurement is tailored to meet the Authority's needs and is not unnecessary or duplicative. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.
(d) Prepare invitation for bids, requests for proposals, informal solicitations, and notices of procurement opportunity, as needed.
(e) Administer the acquisition process, including: ensuring adequate advertisement of the notice of procurement opportunity; surveying sources; serving as contact for potential contractors; and accepting, opening, evaluating, and tabulating bids;
(f) Remain current and in compliance with applicable federal and state laws.
(g) Maintain Vendors files.
(h) Maintain all support documentation including small purchases procurement authorization, small purchase tabulation and solicitation summary, single bid/proposal validation reports and single source validation report.

(B) **User Department** (The department in need of and requesting the procurement of goods or services):

(i) It shall be the responsibility of each User Department to evaluate its projected procurement needs on an annual basis, and to undertake and coordinate procurement planning activities with the Procurement Department, annually.

(ii) For the procurement of any product or service of Fifteen Thousand Dollars ($15,000), or more, the User Department shall prepare a written requisition and submit same to the Procurement Department a minimum of three (3) months prior to the desired delivery, bid opening, performance, or proposal due date. For purchases under Fifteen Thousand Dollars ($15,000), the requisitions shall be submitted to the Procurement Department ten (10) days in advance. The requisition shall serve as the mechanism by which the User Department communicates its specific procurement need to the Procurement Department and it represents the beginning of the procurement process.

(iii) The requisition shall include the following elements:

(a) Properly completed form per the NFTA's Requisition Procedures; and

(b) Budget; including proposed funding source by designation of the account funding code, estimated cost and basis for estimated cost; and

(c) Specifications; completed in accordance with Article 13.

(iv) The User Department is responsible for managing the final contract and/or purchase order in accordance with NFTA Procedure 2-01-01.

(C) **Engineering Department**:

(i) The Engineering Department shall serve as the User Department for major public work projects.

(ii) The preparation and submittal of a requisition shall be required for public work projects which have been developed or identified under Board authorization or which have received state or federal funding approval.

(D) **Internal Audit**:

The Internal Audit Department shall have responsibility for evaluating the adequacy and effectiveness of internal controls governing the procurement process, for providing cost analysis services upon the request of the Procurement Department and for conducting any necessary audits, such as those required by the federal Buy America Act.

(E) **Office of General Counsel**:

The Office of General Counsel shall provide interpretations of the procurement guidelines, advice to the User and Procurement Departments on statutory and regulatory compliance and assist in the Board Agenda process for awards requiring Board approval. All issues regarding disqualification and/or release of a low bidder must be reviewed by the Office of General Counsel prior to a decision being made.

(F) EEO/Diversity Development Department

The Office of EEO/Diversity Development shall develop DBE and MWBE goals. EEO/Diversity Development will monitor DBE and MWBE participation for federal and state funded projects. The EEO/Diversity Development Department will also report DBE and MWBE utilization to appropriate federal and state agencies.

ARTICLE 29. EVALUATING RESPONSIVENESS AND RESPONSIBILITY

(A) Factors which should be considered by the Authority in evaluating responsiveness should include the following considerations:

(i) Has all required information been provided?
(ii) Does the bid contain mistakes?
(iii) Has bidder failed to commit to a firm price?
(iv) Are there unacceptable qualifications or conditions tied to the bid?
(v) Has the bid been prepared in accordance with the bidding instructions?
(vi) Are unacceptable provisions included in the bid?
(vii) Has the bidder altered or limited any of the contract or solicitation provisions?
(viii) Has the bidder offered non-conforming products or services?
(ix) Has the bidder failed to acknowledge amendments to the IFB issued by the Authority?

Note that the foregoing list is not exhaustive. Minor deviations which are immaterial and do not effect quantity, quality or delivery, may be waived by the Authority if such waiver does not prejudice or affect the relative standing of the bidders.

(B) In evaluating the responsibility of an apparent low bidder or proposed subcontractor, the Authority may consider, among other factors, whether the subjects' record with the Authority or other owners includes or demonstrates:

(i) Being listed on a federal or state debarred contractors list.
(ii) Poor prior performance on an Authority contract.
(iii) Lack of: adequate expertise; prior experience with comparable projects; or financial resources necessary to perform the work outlined in the contract in timely, competent and acceptable manner. Evidence of such factors may include failure to submit satisfactory evidence of insurance, surety bonds, or financial responsibility; or a history of terminations for cause.
(iv) Engagement in criminal conduct in connection with any other government contracts or the conduct of business activity that involves such crimes as extortion, racketeering, bribery, fraud, bid-rigging and embezzlement.
(v) Grave disregard for the safety of employees, State personnel, or members of the public. Consideration will be given to whether employees who will be assigned to work on the project are properly trained and whether the equipment to be used is safe and functioning properly.
(vi) Willful noncompliance with the State's Labor Laws regarding prevailing wage and supplement payment requirements, including consideration of any pending violations.
(vii) Disregard for other State Labor Laws, including child labor, proper and timely wage payments and unemployment insurance laws.
(viii) Violations of the State Workers' Compensation Law including failure to provide proof of proper workers' compensation or disability coverage.
(ix) Violations of the State's Environmental Conservation Law or violations of any other federal or State environmental statutes.
(x) The failure to abide by State and federal statutes and regulations regarding efforts to solicit and utilize disadvantaged, minority and women-owned business enterprises as potential sub-contractors.
(xi) The submission of a bid which is mathematically or materially unbalanced.
(xii) The submission of a bid which is so much lower than the Authority's confidential engineer's estimate that it appears unlikely that the contractor will be able to complete the project satisfactorily at the price bid.

(xiii) The presentation of false or misleading statements or any other issue that raises serious questions about the responsibility of the bidder or proposed subcontractor.

ARTICLE 30. SPLIT PROCUREMENTS

The splitting of procurements for the purpose of circumventing the requirements of more complex procurement procedures or a higher level of authority or decision-making is prohibited.

ARTICLE 31. UPDATING, MONITORING AND CONTROL OF PROCUREMENT GUIDELINES AND PROCEDURES

(A) The Procurement Department and the Office of General Counsel shall ensure that the Procurement Guidelines and Procedures are submitted to the Board for review, updating (if deemed necessary), and re-authorization, on an annual basis.

(B) The Department of Internal Audit shall develop and implement a program to monitor the Authority's compliance with the Procurement Guidelines and Procedures.

(C) The Procurement Department shall develop and implement a control system to ensure that the Guidelines and procedures are being followed.

ARTICLE 32. UTILITIES, SURPLUS AND SECOND-HAND SUPPLIES

(A) Utilities and utility services such as telephone, water, electric power and natural gas (except for those utilities and utility services which are competitively procured), may be purchased upon the authorization of the CFO or her designee without Board approval, provided that the cumulative dollar amount for such purchases for the year is within the amounts budgeted for such utilities or services, as approved by the Board.

(B) The Authority may purchase surplus and second-hand supplies, materials or equipment from the Federal Government, the State of New York or any political subdivision, municipality, or district without advertising or the solicitation of bids, proposals or quotations, however, purchases involving an expenditure of Fifty Thousand Dollars ($50,000) or more shall require Board Approval.

ATTACHMENT "A"

CODE OF ETHICS

NFTA will assure that ethical conduct is maintained by adhering to the following requirements:

1. No employee, officer, commissioner, or agent of the Authority shall participate in the selection, or in the award or administration of a contract, if a conflict of interest real or apparent would be involved. Such a conflict would arise when:

   a) The commissioner, officer, employee, or agent,
   b) Any member of his* immediate family,
   c) His partner, or
   d) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

2. The NFTA's, commissioners, officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub agreements.

3. Rule with respect to conflicts of interest. No commissioner, officer or employee of the Authority should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

4. **Standards:**

   a) No commissioner, officer or employee of the Authority should:

      (i) Accept other employment which will impair his independence of judgment in the exercise of his official duties.
      (ii) Accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.
      (iii) Disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.
      (iv) Use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.
      (v) Engage in any transaction as representative or agent of the NFTA with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.
      (vi) By his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

   (b) A commissioner, officer or employee of the Authority should:

      (i) Abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will

* For editorial convenience, this use of the masculine personal pronoun is deemed gender neutral throughout this document

otherwise create substantial conflict between his duty in the public interest and his private interest.

(ii) Endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

(c) Anyone involved in the negotiation of contracts shall ensure that all statements, communications and representations to contractor representatives are accurate and truthful.

(d) Great care must be exercised to ensure the proper recording and charging of all costs to the appropriate account, regardless of the status of the budget for that account. The falsification of time reports or other cost records will not be tolerated. Every supervisor is responsible for assuring that the work time of employees is recorded promptly and charged accurately.

(e) No employee may submit or concur in the submission of any claims, bids, proposals or any other document that is false, fictitious or fraudulent.

(f) Great care must be exercised by supervisors to avoid placing, or seemingly to place, pressure on subordinates which might cause them to deviate from acceptable norms of conduct.

(g) The purchase of supplies, materials, and services from suppliers, vendors, contractors and subcontractors must be done in a manner that preserves the integrity of our procurement process based on the bid process.

(h) Laws and regulations regarding entertainment, gifts and payments may be somewhat complicated. For this reason, questions regarding specific policies should be referred to Authority's Ethics Officer.

(i) Employees should report any instance in which they are offered money, gifts, or anything else of value by a supplier or prospective supplier or contractor of the Authority to the Authority's Ethics Officer.

(j) Every employee is charged with the duty to preserve the Authority's assets, property, plant and equipment.

5. Violations:

In addition to any penalty contained in any other provision of law any such commissioner, officer or employee who shall knowingly and intentionally violate any of the provisions of this section may be subject to disciplinary action, suspended, or removed from office or employment in the manner provided by contract, law, or established employment policies.

ATTACHMENT "B"

PROTEST PROCEDURES

The Protest Procedures set-forth herein apply to both sealed bids and negotiated procurements.

1. **Pre-Bid/Proposal Opening Protests**. If a bidder/proponent can demonstrate that the Contract Documents issued by the Authority are unduly exclusionary and restrictive or that federal, state or local laws or regulations have been violated during the course of the procurement, then the bidder/proponent may seek a review by the Executive Director or his appointed representative, at 181 Ellicott Street, Buffalo, New York 14203. Protests shall be clearly identified as Protests and submitted in writing as early as possible but no later than five (5) business days before bid/proposal opening. Within four (4) business days after receipt of a pre-bid/proposal protest, the Executive Director shall make one of the determinations listed in paragraph (3).

2. **Post-Bid/Proposal Opening Protests.** A protest to the acceptance or rejection of any or of all offers or bids to a contract, or to the award thereof, or to any such action proposed or intended by the Authority must be received in writing by the Executive Director no later than five (5) business days after the protesting party first learned, or reasonably ought to have learned, of the action or the proposed or intended action to which he/she protests.

3. In the event the protestor alleges that the Executive Director or the representative appointed by the Executive Director to serve as Decision-Maker for the particular protest, engaged in improper conduct during the subject procurement, the General Counsel shall serve as the Decision-Maker. In the event it has been alleged that the General Counsel has engaged in improper conduct during the subject procurement, either the Executive Director or the Director of Engineering shall serve as the Decision-Maker.

4. **Rulings on Protests**. Within four (4) business days, the Executive Director shall render one of the following determinations:

(a) Protest is overruled.
(b) Protest is substantiated. Executive Director shall issue instructions to remedy issues relating to the protest.
(c) Procurement activity is suspended until written notification by the Executive Director.

The determination shall be in writing and shall provide at a minimum a general response to each material issue raised in the protest. All documents submitted by the Protestor and/or Authority Staff and reviewed by the Decision-Maker in the reaching of a determination shall form and be retained by the Authority as the formal record of the dispute resolution process.

The issuance of the foregoing determination is the Authority's final decision of the dispute.

All interested parties shall be notified of any protests that are filed. The Authority shall refrain from awarding a contract within five (5) business days of the date of a decision rendered by the Executive Director regarding a protest, unless the Authority determines that:

(i) The items to be procured are urgently required.
(ii) Delivery or performance will be unduly delayed by failure to make a prompt award.
(iii) Failure to make a prompt award will otherwise cause undue harm to the Authority or the federal government.

ATTACHMENT "B"

5. **Protestor's Appeal to Federal or State Agencies**. In the event federal or state funds are participating in the procurement, then the protestor may seek a review by the appropriate funding agency. The Federal Transit Administration will only consider a protest if the Authority (a) does not have protest procedures, (b) has not complied with its protest procedures, or (3) has not reviewed the protest when given the opportunity to do so. The Federal Transit Administration will exercise discretionary jurisdiction over those appeals involving issues important to the Federal Transit Administration's overall public transportation program.

Protestors shall file such a protest in accordance with the requirements set forth below, not later than five (5) business days after a final decision is rendered under the Authority's protest procedure. In instances where the protestor alleges that the Authority failed to make a final determination on the protest, protestors shall file a protest with the appropriate agency not later than five (5) business days after the protestor knew or should have known of Authority's failure to render a final determination on the protest.

CRITERIA and STANDARDS GOVERNING COMMERCIAL ADVERTISING

1. All advertising placed in the Metro system should reflect a high level of good taste, decency and community standards in copy and art. All advertising should harmonize with the environment of its placement.

2. All advertising should be truthful and comply with the spirit and letter of all applicable laws and regulations of the various jurisdictions into which it is introduced. All copy and art should avoid conveying derisive, exaggerated, distorted, deceptive or offensive impressions.

3. Advertising promoting contests should insure the contest is being conducted with fairness to all entrants and complies with all applicable laws and regulations.

4. Testimonials should be authentic and should honestly reflect the response of the person making them. The advertising sales contract provides for the indemnification of Metro against any action by any person quoted or referred to in any advertisement placed in the Metro system.

5. Medical products or treatments should be presented in a restrained and inoffensive manner to the general public.

6. Advertisers should take special care to avoid illustrations or references that disregard normal safety precautions.

7. Advertising offering premiums or gifts should avoid representations that would enlarge the value of the item in the minds of the viewers.

ATTACHMENT "C"

8. Use of Metro graphics or representations in advertising is subject to approval by the proper officials of Metro.

9. No implied or declared endorsement of any product or service by Metro is permitted.

10. Metro reserves the right to reject or remove any advertising that it deems to be not in good taste and decency and not in the public interest.

11. Items or references which might be objectionable to a substantial segment of the community should be avoided. For example, advertising depicting or referring to an undesirable social behavior or which might be offensive because of racial or religious references should be avoided. Copy which might be contrary to the best interest of the transit system and harmful to the users of the system will not be acceptable.

ATTACHMENT "C"

CRITERIA and STANDARDS GOVERNING PUBLIC SERVICE ADVERTISING

Public Service Advertising proposed to be posted in any of the equipment or facilities of Metro will be such:

1. The advertisement will be non-commercial, non-partisan politically and not designed to influence legislation. Advertising will be accepted only from not-for-profit organizations, corporations or government agencies, philanthropic or cultural organizations whose activities would be of interest or benefit to a majority of the area population.
2. That the advertisement must meet the same guidelines governing commercial advertising.
3. The purpose of the project be such that the advertising methodology can help achieve its objectives and goals.
4. That the action message shall have region-wide appeal, significance and applicability.
5. That the project be of sufficient seriousness and public importance to warrant the use of public service advertising space.
6. That the sponsoring organization be classified as a tax exempt organization by the Internal Revenue Services or that specific activity, or event, being promoted by the "for-profit" organization be in and of itself "non-profit" in nature.
7. That the name of the sponsoring organization, either as it appears on the document granting tax-exempt status, or by the name generally recognized by the public as determined by the Contracting Officer, may be required to be identified on the advertisement. If the name of the sponsoring organization is not a part of the message itself, a "sponsored by" line may be required that, in the judgment of the Contracting Officer, is of a type size and type style to be easily identifiable and readable by the public.
8. That public service space will not be granted to any organization that, in the last twelve months, has purchased, or is purchasing, commercial advertising space or time in any media for the general subject campaign or promotion.
9. That the advertisement involves monies (fund-raising, admission fees, donations and other methods of compensation) must clearly identify the nature of the appeal (e.g. if donations are to be sought, whether the collection will be voluntary or if the donation is a required admission fee must be explained).
10. That in advertisements where a phone number or an address is given a written explanation must be furnished to the Contracting Officer as a condition of the approval, which document will state exactly what is intended to happen to an individual when he or she either calls the number listed, writes to, or stops by the address given.
11. That the sponsoring organization shall pay the applicable labor cost for installation and removal of the subject message as charged by the Authority's advertising contractor and approved by the Contracting Officer. That, prior to installation, the camera-ready artwork, graphics, photographs be submitted to the Contracting Officer for approval.
12. The advertising is subject to approval by the Metro director of public relations and advertising and the advertising contractor. Public service advertising will be

ATTACHMENT "C"

accepted on a space-available basis only. The advertisement will be posted only for such period of time as the advertisement space remains available and is not required for commercial advertisement. The public service advertiser will indemnify and hold harmless Metro and the advertising contractor from any and all claims brought as a result of the display of the advertisement.

CORPORATE:

2. C. (8) Authorization for Term Consultant Agreements

RECOMMENDATION: The Audit and Governance Committee has reviewed this item and recommends that the Board authorize Term Consulting Agreements with the following consulting firms for discipline specific engineering consulting services for Architectural, Mechanical/Electrical/Plumbing, Civil/Structural, Environmental, and Information Technology. The Agreements will begin on May 1, 2012 and conclude on March 31, 2015 and may be renewed at the option of the Authority for two subsequent one year terms.

Architecture:

Architectural Resources (NFTA Project No. 3XAW1202)
Buffalo, NY
Peter Murad, Principal

DiDonato Associates Engineering and Architecture, P.C. (NFTA Project No. 3XAW1203)
Buffalo, NY
John DiDonato, Senior Vice President

URS Corporation (NFTA Project No. 3XAW1201)
Buffalo, NY
Thomas McPherson, Vice President

Wendel Duchscherer Architects & Engineers, P.C. (NFTA Project No. 3XAW1204)
Buffalo, NY
David C. Duchscherer, Principal-in-Charge

Mechanical/Electrical/Plumbing:

C&S Companies (NFTA Project No. 3XAW1206)
Buffalo, NY
Lowell Dewey, Regional Office Manager

M/E Engineering, P.C. (NFTA Project No. 3XAW1207)
Buffalo, NY
David M. Schlant Associate

Ram-Tech Engineers of Buffalo, P.C. (NFTA Project No. 3XAW1208)
Buffalo, NY
Michael D. Rogalski, Principal

Wendel Duchscherer Architects & Engineers, P.C. (NFTA Project No. 3XAW1205)
Buffalo, NY
David C. Duchscherer, Principal-in-Charge

Civil/Structural:

Bergmann Associates (NFTA Project No. 3XAW1212)
Buffalo, NY
Maria Lehman, Vice President

CHA Consulting, Inc.
Buffalo, NY
Frank DelSignore, Vice President

C&S Companies (NFTA Project No. 3XAW1213)
Buffalo, NY
Lowell Dewey, Regional Office Manager

DiDonato Associates Engineering and Architecture, P.C. (NFTA Project No. 3XAW1209)
Buffalo, NY
John DiDonato, Senior Vice President

Erdman Anthony (NFTA Project No. 3XAW1214)
Buffalo, NY
Daniel Ziemianski, Vice President

Hatch Mott MacDonald NY, Inc.
Buffalo, NY
James R. Walsh, Senior Vice President

PB Americas, Inc. (NFTA Project No. 3XAW1210)
Buffalo, NY
Mark Tytka, Buffalo Business Manager

Urban Engineers of New York, P.C. (NFTA Project No. 3XAW1211)
Buffalo, NY
Edward D'Alba, President

Environmental:

C&S Companies (NFTA Project No. 3XAW1217)
Buffalo, NY
Lowell Dewey, Regional Office Manager

LiRo Engineers, Inc. (NFTA Project No. 3XAW1215)
Buffalo, NY
Leonard DePrima, Vice President

McFarland-Johnson, Inc. (NFTA Project No. 3XAW1218)
Binghamton, NY
James Festa, Vice President

Panamerican Environmental, Inc. (NFTA Project No. 3XAW1216)
Buffalo, NY
Peter Gorton, President

Information Technology:

ECC Technologies (NFTA Project No. 3XAW1219)
Fairport, NY
Matthew Crider, Vice President

Finger Lakes Technology Group, Inc. (NFTA Project No. 3XAW1220)
North Tonanwanda, NY
Brian Hansen, Senior Account Executive

IBI Group (NFTA Project No. 3XAW1222)
Binghamton, NY
Carl-Henry Piel, Director

RCC Consultant, Inc. (NFTA Project No. 3XAW1221)
Woodbridge, NJ
Douglas Fishman, Managing Director

INFORMATION: The procurement of term consulting services has proven to be both time and cost effective in implementing smaller capital projects and assignments. The intent is to retain 24 Term Contract Consultants having specific technical expertise in one or more of the five engineering disciplines. Among the 24 Term Contract Consultants four will provide Architecture expertise, four will provide Mechanical/Electrical/Plumbing expertise, eight will provide Civil/Structural expertise, four will provide Environmental expertise, and four will provide Informational Technology expertise. The Selection Committees selected consultants based on the advertised criteria, that is, past experience, staff size, knowledge of standards and codes, project implementation and organization, workloads, quality control, and the technical expertise required to accomplish anticipated projects and assignments for various staff functions and all Business Centers.

The Authority publicly advertised the Term Consulting Services "Requests for Proposals" (RFPs). A total of 48 consultants submitted 84 responsive proposals. The breakdown of the 84 proposals between engineering disciplines is as follows:

- Architectural: 16 firms submitted proposals.
- Mechanical/Electrical/Plumbing: 16 firms submitted proposals.
- Civil/Structural: 27 firms submitted proposals.
- Environmental: 20 firms submitted proposals.
- Information Technology: 5 firms submitted proposals.

There were five discipline specific Selection Committees, each responsible for evaluating all proposals in that discipline. Each committee was comprised of various combinations of staff from Engineering, HSEQ, MIS, Aviation, and Metro.

The proposals were ranked based upon the advertised criteria and the highest ranked proposers were asked to make a presentation to the Selection Committee. After the presentations, the consultants were then re-ranked based on the initial proposal and the presentation. Those consultants within the competitive range are proposed as Term Consultants.
All recommended consultants are committed to the NFTA's DBE/MWBE requirements, which will be addressed on a per-assignment basis.

As the various engineering service assignments are identified, the staff will provide the most appropriate consultant (based upon expertise, experience, personnel, and availability) with a written description of the scope of work to be performed. The consultant will respond with a cost proposal based upon previously agreed terms, salary rates, overhead, and DBE/MWBE goals contained in the Term Agreement. Staff will pursue and recommend formal approval on a per assignment basis following successful negotiations.

These agreements do not obligate the Authority to contract with the consultants on any specific project, nor for any dollar value of consulting services. The consultant's performance will be reviewed throughout the term, and renewal of agreements will depend upon their performance.

FUNDING: Funding will be provided by the funding agencies identified in each of the project line items of the approved NFTA operating and capital budgets.

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

> "**RESOLVED**, that the Board hereby approves the selection and authorizes Term Consulting Agreements with the above-stated consulting firms, said Agreements will provide for design, study, construction monitoring and environmental support services, 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 Agreements with the consulting firms set forth above for design, study, construction monitoring and environmental support services commencing May 1, 2012 through March 31, 2015; and
>
> **BE IT FURTHER RESOLVED**, that said Agreements shall contain two subsequent one-year renewal options exercisable by the Authority and upon terms and conditions set forth hereinabove and as negotiated; and
>
> **BE IT FURTHER RESOLVED**, that said Agreements and any renewal Agreements shall include such additional terms, conditions, provisions and safeguards to the Authority as deemed appropriate by the General Counsel."

AYES: **SLOMA, LEWIN, DEMAKOS, CROCE, EAGAN, HELFER, HUGHES, ZEMSKY**

ABSTENTION: GRANTO, PERRY

NOES: **NONE**

ADOPTED

CORPORATE:

2. C. (9) **Authorization for Agreement, Lawson Software Americas, Inc., Provision of Payroll Support Services**

RECOMMENDATION: The Audit and Governance Committee has reviewed this item and recommends that the Board authorize the renewal of the Lawson Annual Maintenance Agreement in the amount of $63,518.74 for the period of June 1, 2012 through May 31, 2013, which represents a savings of $5,107 over the previous year.

INFORMATION: The NFTA currently uses the Lawson Payroll System to support our payroll, time and attendance, absence management, and benefit management activities for the NFTA and NFT Metro. In an effort to maintain an efficiently operating system and to be entitled to new version releases and fixes, the NFTA maintains a Maintenance Agreement with Lawson Software Americas, Inc.

The Annual Maintenance includes the following support:

• Human Resource Management Group	$42,406.99
• Lawson System Foundation	$12,270.80
• Microsoft Office Add Ins	$ 2,352.28
• MF Server Express	$ 1,411.32
• MF Server Express App Runtime	$ 917.35
• Process Flow Websphere	$ 4,160.00
	$63,518.74

This service provides vendor software support for all facets of payroll processing, payroll tax reporting, time and attendance, and benefits residing within the Lawson payroll database.

Lawson is a sole source provider to the Lawson Payroll Human Resource System. Lawson would be considered the 'original manufacturer' and any unauthorized personnel supporting their system could void warranties of the base component.

FUNDING: Funding is provided for in the FYE'13 operating budget.

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

> "**RESOLVED**, that the Board hereby authorize a one-year renewal of the Maintenance Agreement with Lawson Software Americas, Inc. in the amount of $63,518.74; and
>
> **BE IT FURTHER RESOLVED**, that the Executive Director, her designee and/or the Chairman be and hereby are authorized to execute the Maintenance Agreement in an amount of $63,518.74 with Lawson Software Americas, Inc. for the provision of payroll

support services as described hereinabove for a one-year period commencing June 1, 2012 through May 31, 2013; 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 under said Agreement, upon certification by the Manager, MIS, that such payments are in order."

AYES: **SLOMA, LEWIN, DEMAKOS, CROCE, EAGAN, GRANTO, HELFER, HUGHES, PERRY, ZEMSKY**

NOES: **NONE**

ADOPTED

CORPORATE:

2. C. (10) **Authorization for License Agreement Renewal and Procurement, Oracle Database, NFTA**

RECOMMENDATION The Audit and Governance Committee has reviewed this item and recommends that the Board of Commissioners authorize the NFTA to purchase two additional Oracle Database Enterprise Edition – Processor Perpetual licenses in the amount of $48,442.00 and Maintenance and Support for eight licenses in the amount of $25,097.76, for a total cost of $73,539.76.

INFORMATION: The NFTA is leasing a new Power7 server for the Ellipse and Lawson HR Payroll applications. As a result, we have gone from a 6 processor server to an 8 processor server requiring us to purchase two additional licenses. Oracle is required as the primary database for both the Ellipse and Lawson HR Payroll applications. Oracle Licensing and support is offered under NYS Contract No. PT64000.

FUNDING: Funding is provided for in the FYE 13 operating budget.

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

> "**RESOLVED**, that the Board hereby authorizes the procurement of two additional Oracle Database Enterprise Edition – Processor Perpetual licenses and the renewal of the current maintenance and support for the existing eight licenses with Oracle in the amount of $73,539.76, 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 the License Agreement with Oracle, with terms and conditions as set forth above and as negotiated; and
>
> **BE IT FURTHER RESOLVED,** that the Manager, Procurement, be and she is hereby authorized to issue a Purchase Order to Oracle for the procurement of the additional licenses to be used as described hereinabove; and
>
> **BE IT FURTHER RESOLVED,** that said Agreement and Purchase Orders 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 under said Agreement and Purchase Orders upon certification that such payments are in order."

AYES: **SLOMA, LEWIN, DEMAKOS, CROCE, EAGAN, GRANTO, HELFER, HUGHES, PERRY, ZEMSKY**

NOES: **NONE**

ADOPTED

CORPORATE:

2. C. (11) Authorization for Procurement, Corr Distributers and Hill & Markes, Paper Products, NFTA

RECOMMENDATION: The Audit and Governance Committee has reviewed this item and recommends the Board accept the lowest responsive bids submitted by Corr Distributors and Hill & Markes for the provision of restroom paper products.

INFORMATION: NFTA supplies its facilities with restroom paper products for the public and its employees. This procurement will provide for the required materials.

The bid specifications were publicly advertised in accordance with NFTA Procurement Guidelines. The following suppliers submitted the lowest bids for the products listed.

1. Corr Distributors, Tonawanda, N.Y.
   - Toilet Tissue
   - Towel Roll, Natural
   - Paper Towel, Multi-fold
   - Towel Roll, Hard Wound Bleached
   - Towel, Medium
   - Paper Towel, Multi-fold Bleached

2. Hill & Markes, Amsterdam, N.Y.
   - Heavy Duty Towel
   - Single Fold Towel Natural
   - Toilet Seat Covers

Tied bids were resolved by using the process prescribed in the Procurement Guidelines which requires that in the event of a tied-bid, the contract shall be awarded based upon the following descending order of priorities:

(i) Small businesses which are "labor surplus area firms".
(ii) Other small businesses.
(iii) Other businesses that are also "labor surplus area firms".
(iv) Other businesses (i.e., DBEs, WBEs & MBEs).

The term of the agreement will be for 3 years with the option to renew for two additional one-year periods at the sole discretion of the NFTA. The total cost of these products is estimated at $99,497.00 for the first one-year period of April 30, 2012 through May 1, 2013. Prices for subsequent years may increase or decrease, annually, based on the Producer Price Index for sanitary paper products as published by the U.S. Department of Labor, Bureau of Statistics.

Attached is a detailed bid analysis.

FUNDING: Funding for this procurement is budgeted in NFTA and Metro operating budgets.

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

> "**RESOLVED,** that the Board hereby authorizes the procurement of restroom paper products from Corr. Distributors and Hill & Markes at a total estimated cost of $99,497.00 for the first one-year period, as described above; and
>
> **BE IT FURTHER RESOLVED,** that the Manager, Procurement, be and she is hereby authorized to issue Purchase Orders to Corr Distributors and Hill & Markes for the procurement of restroom paper products, as described hereinabove; and
>
> **BE IT FURTHER RESOLVED,** that said Purchase Orders 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 Purchase Order upon certification by the Business Center Managers that such payments are in order."

AYES: **SLOMA, LEWIN, DEMAKOS, CROCE, EAGAN, GRANTO, HELFER, HUGHES, PERRY, ZEMSKY**

NOES: **NONE**

ADOPTED

D ANALYSIS

BIDDERS

NO.	4171							
FOR:	Restroom Paper Products	(1) Corr Distributors 89 Pearce Avenue Tonawanda, NY 14150 (labor surplus area, WBE)	(2) Hill & Markes 1997 St. Hwy.5S Amsterdam, NY 12010	(3) Dobmeier Janitor Sply 354 Englewood Avenue Buffalo, NY 14223 (labor surplus area)	(4) Chudy Paper Co. 930 Bailey Ave. Buffalo, NY 14206	(5) Central Poly 2400 Bedle Place Linden, NJ 07036	(6) Regional Distribution 1281 Mt. Read Blvd. Rochester, NY 14606	(7) Ultimate Strap & Pack 17 Bluefield Drive Spring Valley, NY 10977
PARTMENT	PURCHASING							
DATE:	February 28, 2012							
stimated nual Usage	Product Description	Case/SQ IN Price	Case/SQ IN Price	Case/SQ IN Price	Case/SQ IN Price	Case/SQ IN Price	Case/SQ IN Price	Case/SQ IN Price
755 Cases	Toilet Tissue	**$.00002/sq in**	$.00055/sq in	$.00426/sq in	Non-Responsive	$.00004/sq in	$.00004/sq in	$.00004/sq in
19 Cases	Heavy Duty Towel	Non-Responsive	**$.00057/sq in**	$.00087/sq in	Non-Responsive	No Bid	$.00083/sq in	No Bid
31 Cases	Paper Towel, Single Fold Natural	Non-Responsive	**$.00012/sq in**	$.00024/sq in	Non-Responsive	$.00080/sq in	Non-Responsive	No Bid
17 Cases	Towel Roll, Natural	**$.00004/sq in**	$.00047/sq in	$.00050/sq in	Non-Responsive	$.00280/sq in	$.00038/sq in	$.00004/sq in
61 Cases	Toilet Seat Cover	$27.95/CS	**$27.32/CS**	$28.30/CS	Non-Responsive	$29.99/CS	$28.83/CS	$38.45/CS
50 Cases	Paper Towel, Multi Fold	**$.00047/sq in**	$.00049/sq in	$.00047/sq in	Non-Responsive	$.00090/sq in	Non-Responsive	No Bid
000 Cases	Towel Roll, Hard Wound, Bleached	**$.00005/sq in**	No Bid	$.00005/sq in	Non-Responsive	$.00060/sq in	$.00048/sq in	$.00005/sq in
05 Cases	Towel, Medium	**$.00024/sq in**	$.00120/sq in	$.00120/sq in	Non-Responsive	Non-Responsive	$.00034/sq in	No Bid
20 Cases	Paper Towel, Multi Fold, Bleached	**$.00005/sq in**	No Bid	$.00047/sq in	Non-Responsive	$.00040/sq in	Non-Responsive	No Bid
TAL TIMATED NUAL ST		**$92,616.85**	**$6,879.72**					

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

Aviation Resolutions

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

1. Acceptance of Bid, John W. Danforth Company, HVAC Rehabilitation, TAPD Airport Office

2. Authorization for License Agreement, Sleep Inn-Buffalo Airport, Inc., BNIA

3. Authorization for Agreement, YWCA of Niagara, Concessions, NFIA

4. Authorization for Supplement No. 3 and Final, Urban Engineers of New York, P.C., Airside Pavement Maintenance 2011, BNIA

AVIATION:

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

The Executive Director advised that Items 3. D. (1) through 3. D. (4) 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 Eagan, seconded by Commissioner Zemsky, that the following Resolution be adopted:

> "**RESOLVED**, that the Resolutions of the Niagara Frontier Transportation Authority, identified as numbers 3. D. (1) through 3. D. (4) and dated April 23, 2012 as set forth herein, be and hereby are accepted and approved in their entirety."

AYES: **SLOMA, LEWIN, DEMAKOS, CROCE, EAGAN, GRANTO, HELFER, HUGHES, PERRY, ZEMSKY**

NOES: **NONE**

ADOPTED

AVIATION:

3. D. (1) Acceptance of Bid, John W. Danforth Company, HVAC Rehabilitation, TAPD Airport Office

RECOMMENDATION: The Aviation Committee has reviewed this item and recommends that the Board award the subject construction contract to John W. Danforth Company for the lump sum amount of $444,000.00.

INFORMATION: As a result of recent building reconfiguration and modifications, the existing heating, ventilation, and air conditioning (HVAC) system at 175 Aero Drive (Transit Police Airport Office) necessitates rehabilitation to address the current room use and requirements. The project design has recalculated the heating and cooling loads for all building spaces and modified the air distribution system to rebalance air flow throughout the entire facility.

The building is a 24/7 occupied facility. The scheduling of HVAC equipment in an on/off mode is not a viable solution. As a result, the project will incorporate the following energy saving solutions:

1. Occupancy sensors will be utilized to control individual office lights and room temperature.
2. Variable speed drives will be installed to regulate airflow based on occupancy demand.
3. Variable air volume equipment will be utilized to implement individual room control.
4. Existing 2 position radiation valves will be replaced with proportional control valves in order to better regulate energy consumption.
5. Return air carbon dioxide sensors will be installed to regulate the amount of unconditioned outside air to be bought into the facility.
6. Multi-stage direct expansion units will be installed to regulate cooling loads.
7. All equipment operation will be sequenced to minimize energy consumption.

The project was publicly advertised in accordance with the NFTA Procurement Guidelines. Eight sets of contract documents were distributed to potential bidders. Bids were received on March 20, 2012 from four contractors. The bid results are shown below:

Company	Total Bid
John W. Danforth Co. Tonawanda, NY 14150 Patrick J. Reilly, President	$444,000.00
Greater Niagara Mechanical, Inc. N. Tonawanda, NY 14120 Samuel V. Prezioso, Vice President	$456,637.00
Trason Development Corp. Hamburg, NY 14075 Tracy Hirsch, President	$506,337.49

RP Mechanical Springville, NY 14141 Patrice Ferguson, Partner	$507,705.00

A bid evaluation was performed and determined that John W. Danforth Company understands the scope of work and is well qualified to perform the work.

The NFTA Affirmative Action/EEO office has been briefed on the bid results and concurs with the recommendation for Board approval.

FUNDING: Funding for this project is 100% BNIA Capital Reserve from Account No. 3188-2-2523.

> "**RESOLVED**, that the Board awards the subject bid to John W. Danforth, Co., for a total lump sum amount of $444,000.00, 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 John W. Danforth, Co., for the lump sum amount of $444,000.00, 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 Director, Engineering, that such payments are in order."

AVIATION:

3. D. (2) Authorization for License Agreement, Sleep In-Buffalo Airport, Inc., BNIA

RECOMMENDATION: The Aviation Committee has reviewed this item and recommends that the Board authorize a License Agreement with the Sleep Inn-Buffalo Airport, Inc., (Sleep Inn), which allows Sleep Inn to park no more than 500 cars in designated areas within BNIA's Parking Lot B.

INFORMATION: The current License Agreement with Sleep Inn has been in effect since March 1, 2004. Sleep Inn markets a park and stay package in several adjacent markets which provides customers with up to two free weeks parking with the purchase of a one-night stay at their facility. The response to the program created a parking capacity shortage for Sleep Inn. As a result, the Sleep Inn entered into a license agreement with the NFTA to use BNIA's Parking Lot B for its overflow parking. During the past two years, BNIA received $117,000 in annual parking revenues from this agreement. There are 1,874 current parking spaces in Parking Lot B and the vehicles from Sleep Inn will not interfere with BNIA retail patrons. The term of the license agreement is for three years commencing on May 1, 2012 with two one-year extensions at the NFTA's sole discretion.

Staff recommends an increase of the weekly parking rate from $23 to $27 per vehicle effective August 1, 2012. Rates will be reviewed and further adjusted prior to any renewals. Sleep Inn will maintain the requisite insurance for its operations on BNIA, provide customers shuttle service to and from the BNIA, and perform the plowing services necessary in their designated area. Sleep Inn will only market the offering to guests staying at their hotel. BNIA reserves the right to disallow any parking under this agreement during "peak parking periods" (ie, spring break) to avoid parking shortages with BNIA retail patrons.

BNIA estimates annual parking revenues totaling $132,000 from this agreement.

FUNDING: No funding is necessary.

> "**RESOLVED**, that the Board hereby authorizes a License Agreement with Sleep Inn-Buffalo Airport, Inc., for use of parking spaces within the Buffalo Niagara International Airport Parking Lot B, 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 Sleep Inn-Buffalo Airport, Inc., 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."

AVIATION:

3. D. (3) Authorization for Agreement, YWCA of Niagara, Concessions, NFIA

RECOMMENDATION: The Aviation Committee has reviewed this item and recommends that the Board authorize an Agreement with the YWCA of Niagara d/b/a Catering Crew for the provision of the food/beverage and retail concessions at the terminal at Niagara Falls International Airport (NFIA) for a term of three years with two one-year renewal options at the NFTA's sole discretion at the concession fee percentage payments set forth herein.

INFORMATION: The NFTA issued a Request for Proposal for the food/beverage, vending and retail concession operations at NFIA. The NFTA received one proposal in response to its solicitation from the incumbent operator, the Catering Crew. The Catering Crew has invested over $32,000 to date for capital improvements and equipment. The Catering Crew has proven that it has the capacity to adapt to the expanding market at NFIA and has responded to the challenges associated with the NFIA's growth and scheduling requirements.

In the first year of the new agreement, the Catering Crew will update its menu offerings, provide magazines, introduce local souvenirs, increase vending offerings, and install an expanded custom made service counter. The Catering Crew will continue to operate a minimum of two hours and twenty minutes prior to scheduled departures and remain open for all flight delays offering a full food and beverage services. The Catering Crew's staffing structure and proximity of corporate headquarters and full kitchen facilities provides the needed flexibility to respond to fluctuating schedules and delays. The Catering Crew will pay the NFTA the following:

Year 1 – Vending (including sundries) - 2% of Gross Revenue
Retail Operations - 2% of Gross Revenue
Food and Beverage - 5% of Gross Revenue
Beer and Wine - 7% of Gross Revenue

Year 2 – Vending (including sundries) - 3% of Gross Revenue
Retail Operations - 5% of Gross Revenue
Food and Beverage - 7% of Gross Revenue
Beer and Wine - 10% of Gross Revenue

Year 3 – Vending (including sundries) - 5% of Gross Revenue
Retail Operations – 10% of Gross Revenue
Food and Beverage - 10% of Gross Revenue
Beer and Wine - 12% of Gross Revenue

Option Years
Year 4 – Vending (including sundries) - 6% of Gross Revenue
Retail Operations - 12% of Gross Revenue
Food and Beverage - 12% of Gross Revenue
Beer and Wine - 15% of Gross Revenue

Year 5 – Vending (including sundries) - 7% of Gross Revenue
Retail Operations - 15% of Gross Revenue
Food and Beverage - 14% of Gross Revenue
Beer and Wine - 17% of Gross Revenue

The NFTA received more than $9,000 in concession revenues from the Catering Crew during the past year.

FUNDING: No funding is necessary.

"**RESOLVED**, that the Board hereby authorizes an Agreement with the YWCA of Niagara d/b/a Catering Crew for the provision of concessions at the terminal at the Niagara Falls International Airport, 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 the YWCA of Niagara d/b/a Catering Crew, 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."

AVIATION:

3. D. (4) Authorization for Supplement No. 3 and Final, Urban Engineers of New York, P.C., Airside Pavement Maintenance 2011, BNIA

RECOMMENDATION: The Aviation Committee has reviewed this item and recommends that the Board approve Supplement No. 3 and Final with Urban Engineers of New York, P.C. as a $33,814.63 increase for Design Support and Construction Monitoring Services for the BNIA Airside Pavement Maintenance 2011, Project No. 12BA1101. This will result in an amended Final Contract Value of $90,604.13.

INFORMATION: The Design Support and Construction Monitoring Services provided under the Term Contract assignment included chairing all meetings and meeting minute preparation; review of the Contractor's schedules; shop drawings and product submittals; material testing services; review and processing of the Contractor's progress payments; Change Order review and preparation; full time on-site inspection on both day and night shifts; engineering consultation; and preparation of record drawing CADD files. The actual total project duration was 96 calendar days (bid documents duration 66 calendar days).

During performance of the contract scope of work, the Contractor encountered problems with material availability due to fabrication schedules for the new cast iron drainage structure frames and grates. As a result, the Contractor worked overtime on a scheduled basis during Phases 2 and 3 of the project to complete the work.

Despite the overtime worked, the Contractor failed to complete the project within the contractual time of performance for these phases. This delay in completing the work necessitated extending the Consultant's time of performance on the project. Therefore, in accordance with the contract's General Conditions, Article 59 – Delays, the Contractor was advised that he would be responsible for the additional engineering charges associated with his delay in completing the work. These costs will be recovered from the Contractor, North America Construction Company, Incorporated, through a reduction in the amount paid to the Contractor. This is reflected in their Change Order No. 1 and Final.

The original proposal submitted by Urban Engineer's of New York, P.C. for Construction Monitoring did not anticipate overtime for the on-site inspection staff and no costs for premium time were included in the original negotiated amount. It was based upon the anticipated costs to monitor the Contractor through the contract duration established in the bid documents.

Urban Engineers of New York, P.C. advised the Authority that they could not complete their scope of services within the cost-not-to-exceed amount previously established. They requested a final supplement to cover the additional costs to complete their tasks through completion of the project. After completion of all tasks in their scope of services, the actual cost plus fixed fee for their effort was determined from a review of time sheets in accordance with the Term Contract.

FUNDING: The total amount of this Supplement No. 3 and Final will be a $33,814.63 increase, thereby increasing the total amount of the contract from the previously amended amount of $56,789.50 to a Final Contract Value of $90,604.13.

Funds for this Supplement No. 3 and Final to the Term Contract assignment are contained in the BNIA Operating Budget account No. 02-02195-20-5600 and are provided 100% by the Authority as follows:

Original	$56,789.50
Supplement	$33,814.63
Total	$90,604.13

"**RESOLVED,** that the Board hereby authorizes Supplement No. 3 and Final with Urban Engineers of New York, P.C., for the Design Support and Construction Monitoring Services for the Buffalo Niagara International Airport Airside Pavement Maintenance 2011 as described above; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and/or the Chairman, be and hereby authorized to execute Supplement No. 3 and Final with Urban Engineers of New York, P.C., as stated hereinabove and as negotiated; and

BE IT FURTHER RESOLVED, that said Supplement No. 3 and Final 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 Change Order upon certification by the Director, Engineering, that such payments are in order."

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

Surface Transportation Resolutions

1. Authorization for Change Order, Shepard Bros., Paratransit Vehicles, NFT Metro

SURFACE:

4. D. (1) Authorization for Change Order, Shepard Bros., Paratransit Vehicles, NFT Metro

RECOMMENDATION: The Surface Transportation Committee has reviewed this item and recommends the Board authorize the listed change order with Shepard Bros. of Canandaigua, NY with a savings of $183,158.00.

INFORMATION: This change order will apply to 17 paratransit vehicles presently on order that was approved by the Board on 2/27/12. The change order includes these listed items:

Two-Way Communications Equipment — **Delete $14,690 per vehicle**
Due to space considerations in the operator's area and constraints on the fixed end of the CAD/AVL system, these vehicles will utilize existing instead of new two-way communications equipment.

Mobile Data Terminal (MDT) — **Add $3,981 per vehicle**
The decision to use existing two-way communications equipment requires a MDT be installed in these vehicles in order to provide a "paperless" manifest for paratransit use.

Fire Suppression System — **Delete $275 per vehicle**
A dry chemical fire suppression system was determined to be a better "fit" for compressed natural gas versus the "clean agent" fire suppression system originally specified for a gasoline powered vehicle.

Additional Wheelchair Tie Down Anchors — **Add $200 per vehicle**
Evaluation of the pilot vehicle by the special needs community revealed a need to provide additional tie down anchors to accommodate an oversize wheelchair or scooter at one wheelchair position.

Mud Flaps — **Delete $50 per vehicle**
Mud flaps are not required for this vehicle.

Passenger Compartment Heater — **Delete $15 per vehicle**
The installation of a heater with a smaller footprint will permit better maintenance access to the wheelchair lift.

Aisle Facing Seat with Armrests — **Add $75 per vehicle**
Evaluation of the pilot vehicle by the special needs community also revealed a need to provide an aisle facing seat with armrests to improve seating clearances next to the farebox.

FUNDING: Funding is as follows:

Cost	Source
$1,387,418.00	FTA
$ 173,427.00	NYSDOT
$ 173,427.00	NFTA
$1,734,272.00	

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

> "**RESOLVED,** that the Board hereby authorizes a Change Order to the Agreement with Shepard Bros., for the seventeen paratransit vehicles as described above; and
>
> **BE IT FURTHER RESOLVED,** that the Executive Director, her designee and/or the Chairman, be and hereby authorized to execute a Change Order to the Agreement with Shepard Bros., resulting in a decrease in the original contract amount; and
>
> **BE IT FURTHER RESOLVED,** that said Change Order shall include such additional terms, conditions and safeguards to the Authority as deemed appropriate by the General Counsel."

AYES: **SLOMA, LEWIN, DEMAKOS, CROCE, EAGAN, GRANTO, HELFER, HUGHES, PERRY, ZEMSKY**

NOES: **NONE**

ADOPTED

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 Resolutions 5. D. (1) through 5. D. (5)

1. Approval of Guidelines for Acquisitions and Dispositions of Real Property, NFTA and NFT Metro System, Inc.

2. Authorization for Lease Agreement, 2D Imaging, Inc., 247 Cayuga Road

3. Authorization for Lease Agreement, Split Second Courier, Inc., 247 Cayuga Road

4. Authorization for License Agreement, Carly's Club, a Subsidiary of the Rosewell Park Alliance Foundation, Inc., Boat Harbot/Gallagher Beach Area

5. Authorization for Permit, Buffalo Triathlon Club, Inc., NFTA

PROPERTY:

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

The Executive Director advised that Items 5. D. (1) through 5. D. (5) 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 Hughes, 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. (5) and dated April 23, 2012 as set forth herein, be and hereby are accepted and approved in their entirety."

AYES: **SLOMA, LEWIN, DEMAKOS, CROCE, EAGAN, GRANTO, HELFER, HUGHES, PERRY, ZEMSKY**

NOES: **NONE**

ADOPTED

PROPERTY:

5. D. (1) Approval of Guidelines for Acquisitions and Dispositions of Real Property, NFTA and NFT Metro System, Inc.

RECOMMENDATION: The Property/Risk Management Committee has reviewed this item and recommends that the Board approve the attached Guidelines for Acquisitions and Disposition of Real Property for the NFTA and NFT Metro System, Inc.

INFORMATION: The Public Authorities Law provides that the Board shall review and approve the NFTA/Metro Guidelines for the Acquisition and Disposition of Real Property on an annual basis. The Guidelines have not been revised since the Board reviewed and approved them last year.

FUNDING: No funding is necessary.

> "**RESOLVED**, that the attached Guidelines for Acquisitions and Dispositions of Real Property for the Niagara Frontier Transportation Authority and the Niagara Frontier Transit Metro System, Inc. are hereby approved."

Reference:	**EXECUTIVE**
Title:	**ACQUISITION AND DISPOSITION OF REAL PROPERTY**
Policy Number:	**01-01-09**
Revision Date:	**04-27-06**

NIAGARA FRONTIER TRANSPORTATION AUTHORITY
NIAGARA FRONTIER TRANSIT METRO SYSTEM, INC.

GUIDELINES FOR ACQUISITIONS AND DISPOSITIONS OF REAL PROPERTY

These Guidelines set forth the policies and procedures to be followed for the acquisition and/or disposition of real property for the Niagara Frontier Transportation Authority and the Niagara Frontier Transit Metro System, Inc. (collectively referred to as "NFTA").

Definitions

For the purpose of these Guidelines, an "Acquisition" is a conveyance of real property to the NFTA as title in fee simple, title subject to retention of a life estate or a life use, lease where the lease term including options is fifty years or more or permanent easement.

For the purpose of these Guidelines, a "Disposition" is a conveyance of real property from the NFTA as title in fee simple, title subject to retention of a life estate or a life use, leasehold or permanent easement.

I PURPOSE

The NFTA's enabling legislation provides that the NFTA may acquire, hold and dispose of real property in the exercise of the NFTA's powers. The purpose for any potential Acquisition or Disposition should be examined in the context of the NFTA's statutory powers to determine whether this standard has been met.

II COMPLIANCE

Any Acquisition or Disposition must be made in accordance with all applicable laws, including section 2896 of the Public Authorities Law and the NFTA's enabling legislation, rules, regulations and grant agreements, including associated grant application and management guidelines. All Acquisitions and Dispositions are subject to Board approval, except that the Executive Director has the authority to execute Agreements for easements over and under NFTA real property to provide utility services for the NFTA or tenants of the NFTA

III PROCEDURE

The Manager, Real Property, is the contracting officer responsible for the NFTA's compliance with and enforcement of these Guidelines. Acquisitions and Dispositions will be managed by the Real Property Department in accordance with the following procedures.

1. Requests for Acquisitions or Dispositions may be generated by Director, Aviation, Director, Surface Transportation or Manager, Real Property, depending on where the real property is located and which business unit is responsible for that area. Requests made by the Director, Aviation must be coordinated with, and generally consistent to, the current Airport Layout Plan and Master Plan. Requests must be documented in the form "Request for Disposal of Capital and Non-Capital Assets" and the relevant procedures followed as set forth in the Guidelines of Disposal of Capital and Non-Capital Assets.

2. The Real Property Department shall notify the Grants Department of the request. The Grants Department shall ascertain if any funding is available, whether any grant agreements need to be complied with, and/or determine whether the approval of a Grantor must be obtained. The Real Property Department shall provide sufficient information to the Grants Department to satisfy the request of any Grantor.

3. The Real Property Department shall provide for all sales of real property sixty days notice to the county, city, town and village in which the real property is located prior to offering the property for sale in accordance with section 1299-g of the Public Authorities Law.

4. The Real Property Department shall notify the Greater Buffalo-Niagara Regional Transportation Council ("GBNRTC") of all requests for Dispositions of real property located in former railroad right-of-way corridors that have been identified for potential transportation infrastructure development so that the GBNRTC can seek comments in order to maintain the objectives of the regional planning process.

5. The Real Property Department shall have the number of appraisals prepared that the Manager, Real Property, deems sufficient to establish the fair market value of the real property, unless the provisions of 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, or any grant agreement, if applicable, require a specific appraisal process, in which case that process will be followed. Real property may not be sold for less than its fair market value except as specified in paragraph 7 of this section.

6. All Dispositions shall be made by publicly advertising for bids, except as set forth in paragraph 7 of this section. The advertisement for bids shall be made at such time prior to the Disposition or contract for Disposition, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the real property. All bids shall be publicly disclosed at the time and place stated in the advertisement. The award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be the most advantageous to the NFTA, price and other factors considered. The NFTA retains the right to reject all bids when it is in the public interest to do so.

7. Dispositions may be negotiated or made by public auction without public advertising for bids but subject to obtaining such competition as is feasible under the circumstances, if:

   (a) the fair market value of the real property does not exceed $15,000;

   (b) bid prices after advertising are not reasonable, either as to all or some part of the real property, or have not been independently arrived at in open competition;

   (c) the Disposition will be to New York State or any political subdivision, and the estimated fair market value of the real property and other satisfactory terms of the Disposition are obtained by negotiation;

   (d) the Disposition is for an amount less than the estimated fair market value of the real property, under those circumstances permitted in section 2897 (7) of the Public Authorities Law; or

   (e) such action is otherwise authorized by law.

   An explanatory statement shall be prepared of the circumstances of each Disposition by negotiation of:

   (a) real property that has an estimated fair market value in excess of $100,000, except that any real property disposed of by lease or exchange shall only be subject to clauses (b) and (c) of this subparagraph; or

(b) any real property disposed of by lease, if the estimated annual rent over the term of the lease is in excess of $15,000; or

(c) any real property disposed of by exchange, regardless of value.

Each such statement shall be transmitted to the New York State Comptroller, Director of the Budget, Commissioner of General Services and Legislature not less than ninety days in advance of the disposition, and a copy thereof shall be preserved in the files of the NFTA.

8. The Real Property Department shall provide sufficient information to the Health, Safety and Environmental Quality ("HSEQ") Department to enable the HSEQ Department to issue a recommendation as to the level of environmental review necessary for any Acquisition or Disposition. The HSEQ Department shall be responsible for conducting the review and providing the results and recommendation to the Manager, Real Property, and the Manager, Grants, if necessary to comply with a Grantor's environmental review requirements.

9. The Real Property Department shall obtain Board approval for the Acquisition or Disposition.

10. The Real Property Department shall provide the Legal Department with sufficient information to prepare the documents necessary to effectuate the Acquisition or Disposition.

11. The Real Property Department shall coordinate payment for any Acquisitions with the Grants and Accounting Departments.

12. The Real Property Department shall advise the Property Accountant and Manager, Risk Management, of all Acquisitions and Dispositions and coordinate the appropriate accounts for the deposit of any payments with the Grants and Accounting Departments.

13. The Real Property Department shall coordinate any relocation activities required by 49 CFR Part 24.

Guidelines

The Guidelines shall be annually reviewed and approved by the Board. The Manager, Real Property, shall ensure that a copy of the Guidelines as reviewed and approved by the Board is filed with the New York State Comptroller no later than March 31 each year and is posted on the NFTA website.

Inventory and Reporting

The Manager, Real Property, is responsible for ensuring that the NFTA maintains adequate inventory controls and accountability systems of all real property under its control. The real property shall be inventoried periodically to determine which real property shall be disposed of. A written report of such real property shall be included with the annual report on real property.

The Manager, Real Property, is responsible for preparing an annual report listing all real property of the NFTA and all real property having an estimated fair market value in excess of $15,000 that the NFTA intends to dispose of and all such property disposed of during such period. The report must also include the fair market value of all real property having an estimated fair market value in excess of $15,000 that the NFTA acquired or disposed of during such period, the price received or paid by the NFTA and the name of the purchaser or seller. The report shall be delivered to the New York State Comptroller, the Authorities Budget Office, Director of Budget, Commissioner of General Services and the Legislature within 90 days after the end of the NFTA's fiscal year.

PROPERTY:

5. D. (2) Authorization for Lease Agreement, 2D Imaging, Inc., 247 Cayuga Road

RECOMMENDATION: The Property/Risk Management Committee has reviewed this item and recommends that the Board authorize a lease agreement with 2D Imaging, Inc. (Mark K. Roth, President) for office space at 247 Cayuga Road, Cheektowaga.

INFORMATION: 2D Imaging is a direct mail print broker and has been leasing space at 247 Cayuga Road since 2008. They currently lease 726 square feet of space at $9.29 per square foot. The current lease expires on June 30, 2012 and will be terminated two months early. 2D is expanding and moving into a new space recently vacated by another tenant. This lease is for 1,200 square feet at a rental rate of $9.00 per square foot fully gross with a 3% annual escalator. This space is classified C+. The term is three years beginning May 1, 2012 and expiring April 30, 2015.

FUNDING: No funding is necessary.

"**RESOLVED**, that the Board hereby authorizes a Lease Agreement with 2D Imaging, Inc., for use of space at 247 Cayuga Road 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 2D Imaging, Inc., with terms and conditions as set forth above and as negotiated; and

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

PROPERTY:

5. D. (3) Authorization for Lease Agreement, Split Second Courier, Inc., 247 Cayuga Road

RECOMMENDATION: The Property/Risk Management Committee has reviewed this item and recommends that the Board authorize a lease agreement with Split Second Courier, Inc. (Joel Mandelbaum, President and CEO) at 247 Cayuga Road.

INFORMATION: Split Second Courier's core business is local and intrastate rush delivery of small packages and they have been a tenant at 247 Cayuga Road since 2006. They will continue to lease 1,073 square feet of office space at a rental rate of $11.59 per square foot fully gross with an annual increase of 3%. The lease will commence on May 1, 2012 and expire on April 30, 2013 with the Tenant having the option to renew for two additional one-year periods. This space is classified B.

FUNDING: No funding is necessary.

"**RESOLVED**, that the Board hereby authorizes a Lease Agreement with Split Second Courier, Inc., for use of space at 247 Cayuga Road 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 Split Second Courier, Inc., with terms and conditions as set forth above and as negotiated; and

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

PROPERTY:

5. D. (4) Authorization for License Agreement, Carly's Club, Boat Harbor/Gallagher Beach Area

RECOMMENDATION: The Property/Risk Management Committee has reviewed this item and recommends that the Board authorize a License Agreement with Carly's Club, a subsidiary of the Roswell Park Alliance Foundation, (Robin Hace, Senior Special Events Coordinator) for use of Boat Harbor/Gallagher Beach area facilities for the 10th Annual Carly's Crossing and first Summer Splash.

INFORMATION: Carly's Club is sponsoring their 10th Annual open water swim event, Carly's Crossing, on Sunday, August 12, 2012 at NFTA's Boat Harbor/Gallagher Beach area. The event attracts swimmers of all ages who raise funds through pledges for their completing various stages of the swim course. In addition, this year to celebrate the 10th anniversary of Carly's Crossing and raise additional funds, Carly's Club is proposing a "Summer Splash" cocktail party on Friday, August 10, 2012 in the same area. This event will be a pre-sale ticketed adult (21 and over) event, not open to the general public.

The Roswell Park Alliance Foundation, as well as the caterer for Friday night's event, 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 Carly's Club, for use of the Boat Harbor/Gallagher Beach area facilities for their annual Carly's Crossing and Summer Splash, 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 Carly's Club, 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. (5) Authorization for Permit, Buffalo Triathlon Club, Inc., NFTA

RECOMMENDATION: The Property/Risk Management Committee has reviewed this item and recommends that the Board authorize a Permit with the Buffalo Triathlon Club, Inc. for the use of the Seaway Pier for open water swimming practices.

INFORMATION: Buffalo Triathlon Club, Inc. is a New York not-for-profit corporation established to help its members train for triathlons. The Club had been unofficially using the NFTA's Seaway Pier property to access Lake Erie for its weekly swim practices but approached the NFTA last year to obtain a Permit to access the NFTA's property, which the Board approved in August 2011 for a term that expired on September 30, 2011.

The Club meets for weekly group swims at the site on Wednesday evenings from 4-8 p.m. during the months of June through September. There are typically 30-50 members who attend. The Club has agreed to provide the appropriate insurance coverages and will indemnify and hold the NFTA harmless for the Club's use of the site. The permit will limit the Club's use of the site to Wednesday evenings from 4:00 p.m. to 8:00 p.m. from May 1 through September 30, 2012.

FUNDING: No funding is necessary.

> "**RESOLVED**, that the Board hereby authorizes a Permit with Buffalo Triathlon Club, Inc. for use of the NFTA's Seaway Pier 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 Permit with Buffalo Triathlon Club, Inc. with terms and conditions as set forth above and as negotiated; and
>
> **BE IT FURTHER RESOLVED,** that said Permit 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

At approximately 1:10 p.m., it was moved by Commissioner Granto, seconded by Commissioner Zemsky, that the Commissioners convene in Executive Session to discuss matters related to the BNMC negotiations.

Following discussion, at approximately 1:23 p.m., it was moved by Commissioner Granto, seconded by Commissioner Zemsky, that the Executive Session be adjourned and that the Board resume the Regular Session.

AYES: SLOMA, LEWIN, DEMAKOS, CROCE, EAGAN, GRANTO, HELFER, HUGHES, PERRY, ZEMSKY

NOES: NONE

8. Adjournment

At approximately 1:25 p.m., the Chairman indicated that there was no further business coming before the Board, whereupon it was moved by Commissioner Granto, seconded by Commissioner Zemsky, and unanimously approved that the Annual Meeting of the Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc. be adjourned.

AYES: SLOMA, LEWIN, DEMAKOS, CROCE, EAGAN, GRANTO, HELFER, PERRY, ZEMSKY

NOES: NONE