



Niagara Frontier Transportation Authority
Serving Buffalo Niagara

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181 Ellicott Street
Buffalo, New York 14203
716-855-7300
Fax: 716-855-7657
TDD: 855-7650
www.nfta.com

ED

March 30, 2011

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, is a copy of the Minutes from the Niagara Frontier Transportation Authority's Board Meeting held on February 28, 2011.

Very truly yours,

Vicky-Marie J. Brunette
Acting General Counsel

VJB/mm
Enc.

8M-6

**NIAGARA FRONTIER TRANSPORTATION AUTHORITY
NIAGARA FRONTIER TRANSIT METRO SYSTEM, INC.
REGULAR BOARD MEETING
FEBRUARY 28, 2011
MINUTES**

1.
 - A. **CALL TO ORDER**
 - B. **APPROVAL OF MINUTES (January 24, 2011)**
 - C. **EXECUTIVE DIRECTOR'S REPORT**

2. **NFTA CORPORATE REPORT**
 - A. **Committee Reports**
 - (1) **Audit and Governance Committee (Henry Sloma)**
 - (2) **Human Resources Committee (Adam Perry)**
 - B. **Consolidated Financial (Debbie Leous)**
 - C. **Corporate Resolutions (Kim Minkel)**
 - i. **Niagara Frontier Transportation Authority, Acceptance of Corporate Resolutions 2. C. (1) through 2. C. (5)**
 1. **Authorization for Agreement, EBS-RMSCO, Incorporated, GASB 27 Actuarial Services**
 2. **Authorization for Agreement, Durham Staffing, Inc., Temporary Seasonal Employment**
 3. **Authorization for Agreement, Willis of New York, Inc., Workplace Safety and Industrial Hygiene Consulting Services**
 4. **Authorization for Site Lease Amendment Agreement, American Tower Corporation, Radio Tower Lease**
 5. **Authorization for Agreement, CIBER, Inc., Lawson Absence Management Implementation**

3. **AVIATION BUSINESS GROUP REPORT**
 - A. **Aviation Committee Report (Carmen Grant)**
 - B. **Financial Update (Bill Vanecek)**
 - C. **Business Update (Bill Vanecek)**
 - D. **Aviation Resolutions (Kim Minkel)**
 - i. **Niagara Frontier Transportation Authority, Acceptance of Aviation Resolutions 3. D. (1) through 3. D. (4)**
 1. **Acceptance of Bid, Porter Building & Supply, LLC, Construction Services, BNIA Residential Noise Compatibility Program FFY 2009-3**
 2. **Procurement of Replacement Phone System, Advance 2000, Inc., Finger Lakes Technology Group, BNIA**
 3. **Authorization for Agreement, Westover Car Rental LLC d/b/a Dollar/Thrifty Car Rental Concession, NFIA**
 4. **Authorization for Concession Agreement, Smarte Carte, Inc., BNIA**

4. **SURFACE TRANSPORTATION BUSINESS GROUP REPORT**

- A. Surface Transportation Committee Report (Eunice Lewin)
- B. Financial Update (Rich McDermott)
- C. Business Update (Rich McDermott)
- D. Surface Transportation Resolutions (Kim Minkel)
 - i. Niagara Frontier Transportation Authority, Acceptance of Surface Transportation Resolutions 4. D. (1) through 4. D. (6)
 - 1. Procurement of Replacement Vault Truck, Navistar Inc.
 - 2. Acceptance of Bid, Eldon Battery Post, Replacement Batteries, Transit Buses
 - 3. Acceptance of Bid, Ward Clean Air Products, Six Spare Diesel Particulate Traps
 - 4. Acceptance of Bid, Brasco International, Inc., Replacement Bus Shelters
 - 5. Authorization for Supplemental Agreement No. 4, Booz Allen Transportation, LRV Midlife Rebuild
 - 6. Authorization for Agreement, Trocaire College, Metro Bus Service

5. **PROPERTY RISK/MANAGEMENT GROUP REPORT**

- A. Property/Risk Management Committee Report (Peter Demakos)
- B. Financial Update (Vicky Brunette)
- C. Business Update (Vicky Brunette)
- D. Property Development Resolutions (Kim Minkel)
 - i. Niagara Frontier Transportation Authority, Acceptance of Property/Risk Management Resolutions 5. D. (1) and 5. D. (2)
 - 1. Authorization for License Agreement, Engineering Society of Buffalo, Inc., NFTA Boat Harbor
 - 2. Authorization for Lease Agreement, Feel-Rite Health Food Shoppes, Inc., 247 Cayuga Road

6. **GENERAL COUNSEL'S REPORT (Vicky Brunette)**

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 January 24, 2011

It was moved by Commissioner Grant, seconded by Commissioner Demakos, that the Minutes of the January 24, 2011, Regular Meeting of the Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc., be accepted and approved.

AYES: SLOMA, DEMAKOS, LEWIN, GRANT, HELFER, PERRY

NOES: NONE

2. **NFTA CORPORATE REPORT**
 - A. Committee Reports
 - (1) Audit and Governance Committee
 - (2) Human Resources Committee
 - B. Consolidated Financial Report
 - C. Resolutions

Corporate Resolutions

- i. Niagara Frontier Transportation Authority, Acceptance of Corporate Resolutions 2. C. (1) through 2. C. (5)
1. Authorization for Agreement, EBS-RMSCO, Incorporated, GASB-27 Actuarial Services
2. Authorization for Agreement, Durham Staffing, Inc., Temporary Seasonal Employment
3. Authorization for Agreement, Willis of New York, Inc., Workplace Safety and Industrial Hygiene Consulting Services
4. Authorization for Site Lease Amendment Agreement, American Tower Corporation, Radio Tower Lease
5. Authorization for Agreement, CIBER, Lawson Absence Management Implementation

CORPORATE:

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

The Executive Director advised that Items 2. C. (1) through 2. C. (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 Helfer, that the following Resolution be adopted:

“**RESOLVED**, that the Resolutions of the Niagara Frontier Transportation Authority, identified as numbers 2. C. (1) through 2. C. (5) and dated February 28, 2011 as set forth herein, be and hereby are accepted and approved in their entirety.”

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

NOES: NONE

ADOPTED

CORPORATE:

2. C. (1) **Authorization for Agreement, EBS-RMSCO, Incorporated,
GASB 27 Actuarial Services**

RECOMMENDATION: The Audit and Governance Committee has reviewed this item and recommends that the Board authorize an Agreement with EBS-RMSCO, Incorporated, to perform GASB 27 actuarial services for the Niagara Frontier Transit Metro System Pension Fund Post Retirement Medical Premium Stipend Plan. The proposed Agreement term is for three years with two one-year renewals at the approval of the Board of Commissioners. The total cost for the five years is \$17,000.00.

INFORMATION: Government Accounting Standards Board Statement No. 27 (GASB 27) requires employers who participate in single-employer and agent multiple-employer defined benefit plans to measure and disclose an amount for annual pension costs on the accrual basis of accounting. For financial reporting purposes, a full actuarial valuation should be performed at least biannually and updated on the off years.

The Niagara Frontier Transit Metro System Pension Fund Post Retirement Medical Premium Stipend Plan consists of retirees who were members of the collective bargaining unit represented by the Amalgamated Transit Union (ATU) who retired prior to January 1, 2004. Since this group is limited to members who retired prior to January 1, 2004, there will be no additional future members. These ATU retirees receive a monthly stipend which can be used to purchase medical insurance.

The opportunity was publicly advertised in accordance with the NFTA Procurement Guidelines and a Request for Proposal was developed and placed on the NFTA Internet site. The NFTA review team consisted of representatives from Procurement and both NFTA and NFTM Accounting Departments. The proposals were evaluated based on qualifications, experience, approach and cost. The team ranked the proposal submitted by EBS-RMSCO, Inc. the highest. The team felt that EBS can offer more value due to their experience and affiliations at a lower cost than the current provider.

FUNDING: Funding for this project is included in the NFTM budget.

“RESOLVED, that the Board hereby authorizes an Agreement with EBS-RMSCO, Incorporated, to perform GASB 27 actuarial services for the Niagara Frontier Transit Metro System Pension Fund Post Retirement Medical Premium Stipend Plan as set forth above; 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 EBS-RMSCO, Incorporated, to perform GASB 27 actuarial services for the Niagara Frontier Transit Metro System Pension Fund Retirement Medical Premium

Stipend Plan for a total cost of \$17,000.00 as set forth hereinabove 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 under said Agreement, upon certification by the Director, Internal Audit, that such payments are in order.”

RFP 4062
Actuarial Consultant

3/2/2011

RFP DOCUMENTS REQUIRED (Completed by Procurement)	Actuarial Consulting Services Inc.	EBS-RMSCO, Inc	United Health Actuarial Services Inc.
Non-Collusive Cert	x	x	x
Disclosure of Prior Non-rep Determinations	x	x	x
Cover Letter	x	x	x
Description of services	x	x	x
Firm, Mgmt & Staff Qualifications	x	x	x
Resumes	x	x	x
References	x	x	x
Itemized Cost Proposal	x	x	x
SELECTION CRITERIA (Completed by Team)			
Qualifications and Experience 30%	3.00	4.00	1.00
Performance/References 30%	3.50	3.50	3.00
Methodology/Approach 20%	4.00	4.00	3.00
Cost 20%	2.00	4.00	5.00
Total	3.15	3.85	2.80
COST			
Annual Report Year 1	\$6,500	\$4,500	\$2,700
Annual Report Year 2	\$6,500	\$1,750	\$2,700
Annual Report Year 3	\$6,825	\$4,500	\$2,700
Annual Report Year 4	\$6,825	\$1,750	\$2,700
Annual Report Year 5	\$7,166	\$4,500	\$2,700
Total for Five Years	\$33,816	\$17,000	\$13,500
Travel Expenses	none	none	not included
Hourly Rate	\$200 - \$220		

CORPORATE:

2. C. (2) Authorization for Agreement, Durham Staffing, Inc.,
Temporary Seasonal Employment

RECOMMENDATION: The Audit and Governance Committee has reviewed this item and recommends that the Board authorize a one-year renewal option to the Agreement with Durham Staffing, Inc. to provide laborers for temporary seasonal work for the period between April 15, 2011 through April 15, 2012, with the greatest number working between May 15, 2011 and October 15, 2011 at BNIA, NFIA, MTC and the Boat Harbor.

INFORMATION: For the 2010 season, the NFTA issued a Request for Proposals for Temporary Seasonal Workers for one year, with an option to extend for two additional one-year periods at the discretion of the NFTA. Durham Staffing, Inc. has agreed to service the NFTA at the same rates as the NFTA paid in 2010. The amount paid to Durham Staffing, Inc. for the 2011 season is not expected to exceed \$430,000.00, and is included in the operating budgets for the cost centers where these workers will be utilized.

FUNDING: Funding for this Agreement is included in the Authority's FYE 12 budget.

"RESOLVED, that the Board hereby authorizes an Agreement with Durham Staffing, Inc. to provide laborers for temporary seasonal work at BNIA, NFIA, MTC and the Boat Harbor for 2011; 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 Durham Staffing, Inc. in the estimated amounts set forth above for the provision of such laborers for temporary seasonal work; and

BE IT FURTHER RESOLVED, that the 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 of the Director, Human Resources, that such payments are in order."

CORPORATE:

2. C. (3) **Authorization for Agreement, Willis of New York, Inc.,
Workplace Safety and Industrial Hygiene Consulting
Services**

RECOMMENDATION: The Audit and Governance Committee has reviewed this item and recommends that the Board authorize a three-year agreement with Willis of New York, Inc. for the provision of Workplace Safety and Industrial Hygiene Consulting Services. The contract is renewable at the discretion of the Authority for two additional one-year terms with an annual cost not to exceed \$50,000.00 for each of the five years.

INFORMATION: The purpose of the contract is to provide safety training to meet all regulatory compliance issues as mandated by the Occupational Safety & Health Administration (OSHA). The consultant will provide general industry, construction, industrial hygiene and safety training services as directed by the NFTA Safety Department to supplement established services already conducted by the department.

Facility safety audits, to identify safety hazards, are also included in the contract. Detailed written reports will be provided that identify areas of deficiencies or noncompliance with federal and state laws. Recommendations shall be made regarding the steps necessary in order to achieve compliance.

The NFTA developed and issued a Request for Proposals (RFP) 4049 in accordance with Procurement Guidelines. Responses were received from:

Dival Safety and Supplies – Buffalo, New York
Great Lakes Environmental & Safety Consultants, Inc. – Buffalo, New York
Health System Safety – East Concord, New York
O'Brien and Gere Engineers, Inc. – Buffalo, New York
OSEA Associates Inc. – Buffalo, New York
Shaw Environmental, Inc. – Latham, New York
Willis of New York, Inc. – Buffalo, New York

Presentations and interviews were conducted with the four highest ranked consultants: Willis of New York, Inc., Shaw Environmental, Inc., O'Brien and Gere Engineers, Inc., Dival Safety and Supplies.

The selection team consisted of personnel from the Health, Safety, and Environmental Department, Risk Management Department, ARFF Group and the Purchasing Department. The team evaluated and ranked Willis as the highest based their highly technical training staff, experience in transit and law enforcement, technical tools, availability and quick report turnaround. (See the attached spreadsheet).

All services provided by the consultant will be approved, directed, and coordinated with the Health, Safety, and Environmental Quality Department. The hourly rate for all five years is \$150.00.

FUNDING: Funding is provided as follows:

FTA	NY-90-X643	80%	\$40,000
NYSDOT	PIN 5823.09	10%	\$5,000
NFTA	12-0000000-3242-2-3378	10%	\$5,000

“RESOLVED, that the Board hereby authorizes an Agreement with Willis of New York, Inc. for workplace safety and industrial hygiene consulting service to NFTA and NFTA Metro System, Inc. as described hereinabove; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and /or Chairman be and hereby are authorized to execute an Agreement with Willis of New York, Inc., in an amount not-to-exceed \$50,000.00; and

BE IT FURTHER RESOLVED, that said Agreement contain the option for two one-year renewals at the sole option of the Authority and based on terms and conditions as stated hereinabove and as negotiated; and

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

BE IT FURTHER RESOLVED, that the Chief Financial Officer be authorized to make payments under said Agreement, upon certification by the Director HSEQ or her designee, that such payments are in order”.

RFP 4049
Safety Consultant

RFP DOCUMENTS REQUIRED (Completed by Procurement)	Dival	Shaw	OSEA	O'Brien & Gere	Health Systems Safety	Willis	Great Lakes
Non-Collusive Cert	X	X	X	X	X	X	X
Disclosure of Prior Non-rep Determinations	X	X	X	X	X	X	X
Lobbying Cert	X	X	X	X	X	X	X
Cover Letter	X	X	X	X	X	X	X
ST-220-TD	X	X	X	X	X	X	X
Description of services	X	X	X	X	X	X	X
Firm, Mgmt & Staff Qualifications	X	X	X	X	X	X	X
Resumes	X	X	X	X	X	X	X
References	X	X	X	X	X	X	X
Itemized Cost Proposal	X	X	X	X	X	X	X
	X	X	X	X	X	X	X
SELECTION CRITERIA (Completed by Team)	(Rate on a scale of 1 - 5, with 5 being the highest) Team Consensus						
Company qualifications, experience, demonstrated ability in the industry 30%	3.00	4.00	2.00	3.00	2.00	4.50	2.00
Implementation of curriculum 25%	2.00	3.50	2.00	3.00	2.00	4.00	2.00
Staff qualifications, experience, commitment 25%	2.00	3.75	2.00	3.00	2.00	4.00	2.00
Cost 20%	3.66	4.28	5.00	4.33	4.60	3.34	3.92
Total	2.63	3.87	2.60	3.27	2.52	4.02	2.38
COST							
Average Hourly Rate							
Year 1	\$136.66	\$112.50	\$98.50	\$108.75	\$105.00	\$150.00	\$125.00
Year 2	\$136.66	\$114.75	\$98.50	\$112.27	\$105.00	\$150.00	\$125.00
Year 3	\$136.66	\$117.00	\$98.50	\$115.63	\$110.00	\$150.00	\$128.50
Year 4	\$136.66	\$119.38	\$101.45	\$119.10	\$110.00	\$150.00	\$128.75
Year 5	\$136.66	\$121.77	\$104.49	\$122.68	\$115.00	\$150.00	\$132.50
Average Rate for all 5 years	\$136.66	\$117.08	\$100.29	\$115.69	\$109.00	\$150.00	\$127.95
Expenses/mileage	training materials, expenses	training materials CIH expenses	expenses and mileage	expenses and mileage	none	none	none

CORPORATE:

2. C. (4) **Authorization for Site Lease Amendment Agreement,
American Tower Corporation, Radio Tower Lease**

RECOMMENDATION: The Audit and Governance Committee has reviewed this item and recommends that the Board authorize a Site Lease Amendment Agreement with American Tower Corporation in the amount of \$50,280.00 per year with a 3% annual escalator for the period of May 1, 2011 through April 30, 2016, with an option exercisable for the NFTA for two additional five-year terms.

INFORMATION: The NFTA has leased space on a radio tower located on the HSBC building and owned by American Tower Corporation since 1996. This site is one of three sites utilized by a system that provides two-way radio coverage of Erie and Niagara counties. Three sites are necessary due to size of the coverage area, the way voice transmissions are managed and the types and quantities of data moved. The system is used authority-wide for daily operations by Metro Bus, Metro Rail, BNIA, NFIA, TAPD and smaller business units. The renewal terms keep the rental amount the same as what the NFTA is currently paying.

FUNDING: Funding is provided for in the FYE'12 operating budget.

“RESOLVED, that the Board hereby authorize a Site Lease Amendment Agreement with American Tower Corporation in the amount of \$50,280.00 per year with a 3% escalator for a term commencing May 1, 2011 and terminating April 30, 2016 with two five-year renewal options; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and/or the Chairman be and hereby are authorized to execute the Site Lease Amendment Agreement in an amount of \$50,280.00 per year with American Tower Corporation for a radio tower lease as described hereinabove for a five-year period commencing May 1, 2011 through April 30, 2016 with two five-year renewal options; 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 Director, Surface Transportation, that such payments are in order.”

CORPORATE:

2. C. (5) **Authorization for Agreement, CIBER, Inc., Lawson
Absence Management Implementation**

RECOMMENDATION: The Audit and Governance Committee has reviewed this item and recommends that the Board of Commissioners authorize the NFTA to accept the proposal submitted by CIBER, Inc. located at 236 Country Lane, South Glastonbury, Connecticut to provide implementation services to replace the Lawson Time Accrual software with the Lawson successor product, Absence Management; and upgrade Lawson Application 9.0.0.6 and Lawson Environment 9.0.0.4 to Lawson Application 9.0.1 and Lawson System Foundation 9.0, and technical training, for an amount not-to-exceed \$180,048.00.

INFORMATION: The Lawson Software Corporation is no longer supporting the operations of our Lawson time Accrual and Lawson Application 9.0.0.6 and Lawson Environment 9.0.0.4 Human Resources Payroll System software application. The project team prepared Request for Proposal No. 4058 to solicit the services of an experienced consultant with both Lawson application and technical expertise to lead and manage the NFTA through the upgrade of the Lawson application.

The NFTA publicly advertised and solicited Request for Proposals for the upgrade and received three responsive proposals. The Evaluation Team comprised of the following: the Procurement Manager, Human Resources Benefits Manager, Manager MIS, Manager, Accounting Services, Manager, Metro Accounting, MIS Application Support Specialist and a Senior Analyst Programmer evaluated proposals from Lawson Software Corporation, CIBER, Inc. and Absolute. The following criteria was used in the evaluation of the proposal.

1. 35% - Technical requirements
2. 35% - Project Approach
3. 15% - References/availability
4. 15% - Implementation cost of migration and upgrade services

CIBER Inc., was selected as the best vendor to implement the Lawson Human Resources System Application upgrade for the following reasons:

1. CIBER was the only vendor that had successfully implemented the Lawson Absence Manager for a Transit Agency.
2. CIBER had a better approach for analyzing our current business processes which would provide the Authority with better knowledge for future Time Accrual plan creations and modifications.
3. Provided a better methodology for documenting current business processes and knowledge transfer for the new module being implemented
4. Have excellent technical and applications resources
5. CIBER has performed over 14,000 implementations related to Lawson upgrades

The deliverables of Request for Proposal No. 4058 are as follows:

1. Implementation of the Lawson Absence Management Module
2. An upgrade to the most current version of Lawson Application 9.0.1
3. An upgrade to the current Lawson System Foundation 9.0.1
4. The data migration/upgrade of Lawson system data.
5. Lawson Administrator, Application Support and End User Training.

The estimated cost breakdown is as follows:

Project Planning & Management	\$43,040
Solutions Design	\$52,248
Configuration & Development	\$37,880
Testing & Quality Assurance	\$32,640
Project Activation	\$14,240
	<hr/>
	\$180,048

This cost does not include expenses, estimated at \$25,000.00. The final cost will be negotiated once the development of an Implementation Plan has been finalized for this project.

Funding for this project is included in the NFTA Capital Budget for FY 2010-11 under Project No. 2-1051.

“RESOLVED, that the Board hereby authorizes an Agreement with CIBER, Inc. to provide implementation services to replace the Lawson Time Accrual software successor product; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and/or the Chairman be and hereby are authorized to enter into an Agreement with CIBER, Inc. in the not-to-exceed amount of \$180,048.00 plus expenses; and

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

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

RFP DOCUMENTS REQUIRED (Completed by Procurement)		Lawson	Absolute	Ciber
Non-Collusive Cert		X	X	X
Disclosure of Prior Non-rep Determinations		X	X	X
Lobbying Cert		X	X	X
Cover Letter		X	X	X
IT-220-TD		X	X	
Description of services		X	X	X
Firm, Mgmt & Staff Qualifications		X	X	X
Resumes		X	X	X
References		X	X	X
Itemized Cost Proposal		X	X	X
		X	X	X
SELECTION CRITERIA (Completed by Team)				
Technical Requirements	35%	4.00	4.00	5.00
Project Approach	35%	3.00	5.00	5.00
Cost	15%	5.00	4.15	3.78
References/availability	15%	3.00	2.00	4.00
	Total	3.65	4.07	4.67
COST				
Services		\$129,360	\$107,250	\$180,048
Hours		596	650	1,040
Expenses		\$19,500	TBD	TBD
0.1 Migration		\$31,400	\$48,280	included in above
Hours		280	284	
Subtotal w/o expenses		\$160,760	\$155,530	\$180,048
		plus expenses	plus expenses	plus expenses
Total Hours		876	934	1,040
Total		\$180,260	\$155,530.00	\$180,048.00

3. AVIATION BUSINESS GROUP REPORT

- A. Aviation Committee Report
- B. Financial Update
- C. Business Update
- D. Resolutions

Aviation Resolutions

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

1. Acceptance of Bid, Porter Building & Supply, LLC, Construction Services, BNIA Residential Noise Compatibility Program FFY 2009-3
2. Procurement of Replacement Phone System, Advance 2000, Inc., Finger Lakes Technology Group, BNIA
3. Authorization for Agreement, Westover Car Rental LLC d/b/a Dollar/Thrifty Car Rental Concession, NFIA
4. Authorization for Concession Agreement, Smarte Carte, Inc., 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 Helfer, seconded by Commissioner Perry, 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 February 28, 2011 as set forth herein, be and hereby are accepted and approved in their entirety.”

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

NOES: NONE

ADOPTED

AVIATION:

**3. D. (1) Acceptance of Bid, Porter Building & Supply, LLC,
Construction Services, Authorization for Supplemental Agreement,
C&S Engineers, BNIA Residential Noise Compatibility
Program FFY 2009-3**

RECOMMENDATION: The Aviation Committee has reviewed this item and recommends that the Board award the subject construction contract to Porter Building & Supply, LLC for the total bid amount of \$603,000.00, and Supplement 4A to C&S Engineer's consulting services contract for a cost plus fixed fee not-to-exceed amount for construction monitoring of \$97,734.00 and a lump sum amount for design of \$108,830.00.

INFORMATION: The Noise Compatibility Program (NCP) has been established based upon the recommendations documented in the Part 150 Noise Compatibility Study as approved by the FAA on April 7, 2006. The overall objective of the Residential Sound Installation Program is to achieve quantitative noise reductions in selected homes most affected by aircraft operations. The NCP includes home noise attenuation construction and associated design, administration and construction monitoring services.

The construction contract provides for alterations and modifications to twenty existing privately owned and occupied residences of various types and sizes. The work includes, but is not limited to; replacement of existing windows and doors, door weather-stripping, mechanical and electrical modifications, and related items for achieving interior protection against aircraft noise intrusion. The project was advertised in accordance with NFTA procurement guidelines. Four sets of contract documents were distributed to potential bidders with three submitting bids as follows:

Contractor	Amount Bid
Porter Building & Supply, LLC Wayne, MI James Porter, President	\$603,000.00
Superior Insulation, Inc. Wayne, MI Jed A. Corp, President	\$751,723.00
NewCal Construction, Inc. Darien, NY Leo Sitarek, Jr., President	\$786,030.74

It has been determined that the low bidder, Porter Building & Supply, LLC has the knowledge, understanding, and ability to successfully accomplish the project work.

Progressive Electrical Services, Inc. of Wayne, Michigan provides for 18% DBE participation. The NFTA Affirmative Action/EEO office has been briefed on the bid results and concurs with the recommendation for Board approval.

In August 2006 the Board approved contract 31BG0210 through an RFP process to C&S Engineers as the Noise Mitigation Program Managers to provide for design, administration, and construction monitoring. Supplement 4A adds noise attenuation consultant design services for twenty parcels and consultant construction monitoring services for the above construction contract for twenty parcels to their base contract. Cost negotiations are summarized as follows:

	Engineers Estimate	Final Negotiated Costs
Design	\$150,194	\$108,830
Construction Monitoring	\$116,935	\$97,734

FUNDING: Funding will be provided through an existing FAA grant distributed in account 22483 as follows:

	Construction	Design	Construction Monitoring
FAA	\$482,400	\$87,064	\$78,188
NYSDOT	\$60,300	\$10,883	\$9,773
PFC	\$60,300	\$10,883	\$9,773
Total	\$603,000	\$108,830	\$97,734

“RESOLVED, that the Board hereby authorizes an Agreement with Porter Building & Supply, LLC, for construction services and a Supplement to C&S Engineers’ Consulting Services Contract associated with the residential noise compatibility program at Buffalo Niagara 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 Porter Building & Supply, LLC, for construction services and a Supplement to C&S Engineers’ Consulting Services Contract associated with the residential noise compatibility program at Buffalo Niagara International Airport for the amounts as described hereinabove; and

BE IT FURTHER RESOLVED, that the said Agreement and Supplement 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 Supplement upon certification by the Director,
Engineering, that such payments are in order.”



AVIATION:**3. D. (2) Procurement of Replacement Phone System,
Advance 2000, Inc., BNIA**

RECOMMENDATION: The Aviation Committee has reviewed this item and recommends that the Board authorize the procurement of a replacement phone system for the operating locations of the Buffalo Niagara International Airport. The replacement system will consist of an Alcatel telephone system totaling \$118,000.00 from Advance 2000, Inc., Amherst, New York.

INFORMATION: On April 27, 2009 the Board awarded a five-year agreement to Advance 2000, Inc. for the provision of Alcatel Lucent telephone equipment on an as needed basis for a cost not to exceed \$500,000.00 for BNIA and other NFTA locations. The resolution requires staff to obtain Board approval when required pursuant to Procurement Guidelines for replacement equipment.

The current Nortel phone system in use at BNIA is over 15 years old and is no longer being manufactured. It has been supported on a "best-effort" basis with replacement parts becoming difficult to find. The existing PBX and voicemail system has had significant downtime over the last two years due to equipment, software, and battery back-up issues. This scope of the BNIA project includes replacement of the phone system and phone sets for the BNIA terminal, Facilities Maintenance building, Fuel Farm, and the parking operation sites.

Advance 2000 installed the Alcatel IP Telephone System at Niagara Falls International Airport terminal, BNIA Airfield Operations Center, BNIA Air Rescue Fire facility, the Transit Police (175 Aero Drive location), and core communication systems at the OCC data center. The system has been reliable and stable during the first 1.5 years of use. It has features that can make sites survivable in case of a loss of network connection or head-end outage.

A NFTA Telecommunications Team, representing Engineering, Finance, Procurement, MIS, Bus/Rail Engineering and Maintenance, HSEQ, FMD and AARF, evaluated the proposed design based on technical merit, migration plan for phased installation, cost, and support services.

FUNDING: Funding will be provided from NFTA and BNIA Airport Development funds.

"RESOLVED, that the Board hereby authorizes the procurement of a replacement phone system as described hereinabove from Advance 2000, Inc. at Buffalo Niagara International Airport; and

BE IT FURTHER RESOLVED, that the Manager, Procurement, be and she is hereby authorized to issue Purchase Orders to Advance 2000, Inc. in the amount of \$118,000.00 for the procurement of a replacement phone system at the Buffalo Niagara International Airport as described hereinabove; and

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

AVIATION:

3. D. (3) Authorization for Agreement, Westover Car Rental LLC
d/b/a Dollar/Thrifty Car Rental Concession, NFIA

RECOMMENDATION: The Aviation Committee has reviewed this item and recommends that the Board authorize an agreement with Westover Car Rental LLC d/b/a Dollar/Thrifty Car Rental for the operation of a rental car concession at the Niagara Falls International Airport for an initial term of one-year term effective March 1, 2011.

INFORMATION: Budget Rent A Car and Enterprise Rent A Car have been providing car rental services at NFIA since the opening of the new terminal building. Budget Rent A Car is going to cease operating its on-airport operations. Dollar/Thrifty Car Rental expressed a desire to commence operations at the NFIA terminal and will take over the position vacated by Budget Rent A Car. The terms of the contract would be the same as those in the Enterprise Rent A Car agreement. The car rental concessionaires pay 10% of gross revenue generated at NFIA. Each provider will be allowed six spaces in the new lot, which will be adjusted should demand warrant it. The agreement will provide passengers with another choice for rental car. The term of the agreement is for one year, with two one-year renewals.

FUNDING: No funding required.

“RESOLVED, that the Board hereby authorizes an Agreement with Westover Car Rental LLC d/b/a Dollar/Thrifty Car Rental for a Rental Car Concession at Niagara Falls International Airport as described hereinabove; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and/or the Chairman be and are hereby authorized to execute an Agreement with Westover Car Rental LLC d/b/a Dollar/Thrifty Car Rental for a Rental Car Concession at Niagara Falls International Airport with terms and conditions set forth hereinabove and as negotiated; and

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

AVIATION:

3. D. (4) **Authorization for Concession Agreement,
Smarte Carte, Inc., BNIA and NFIA**

RECOMMENDATION: The Aviation Committee has reviewed this item and recommends that the Board authorize an agreement with Smarte Carte, Inc., White Bear Lake, Minnesota for the operation and management of baggage carts and charge carts at the Buffalo Niagara International Airport (BNIA) and the Niagara Falls International Airport (NFIA). The term of the proposed agreement is five years.

INFORMATION: Smarte Carte, Inc. is the largest provider of baggage cart services across the United States and Canada. The fee per cart is \$3.00. This is lower than the national average price of \$3.48 per cart based upon 114 airports surveyed. Smarte Carte, Inc. will pay the NFTA 15% of gross revenues derived from cart usage.

Smarte Carte, Inc. also provides Charge Carte which allows travelers to re-charge their cell phones at a high speed. Charging is provided at two self service kiosks with multiple connections for numerous phone models. The price is \$3.00 per charge. Smarte Carte, Inc. will pay the NFTA 10% of gross revenues derived from charge cart operations.

Annual commissions are estimated at \$18,000.00. Smarte Carte, Inc. is the current provider of these services at BNIA and NFIA.

FUNDING: No funding required.

“RESOLVED, that the Board hereby authorizes a Concession Agreement with Smarte Carte, Inc., for operating rights at Buffalo Niagara International Airport and Niagara Falls International Airport; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and/or the Chairman be and hereby are authorized to enter into a Concession Agreement with Smarte Carte, Inc., at Buffalo Niagara International Airport and Niagara Falls International Airport with terms and conditions as set forth hereinabove; and

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

4. **SURFACE TRANSPORTATION BUSINESS GROUP REPORT**

- A. Surface Transportation Committee Report
- B. Financial Update
- C. Business Update
- D. Resolutions

Surface Transportation Resolutions

1. Niagara Frontier Transportation Authority, Acceptance of Surface Transportation Resolutions 4. D. (1) through 4. D. (6)
1. Procurement of Replacement Vault Truck, Navistar Inc.
2. Acceptance of Bid, Eldon Battery Post, Replacement Batteries, Transit Buses
3. Acceptance of Bid, Ward Clean Air Products, Six Spare Diesel Particulate Traps
4. Acceptance of Bid, Brasco International, Inc., Replacement Bus Shelters
5. Authorization for Supplemental Agreement No. 4, Booz Allen Transportation, LRV Midlife Rebuild
6. Authorization for Agreement, Trocaire College, Metro Bus Service

SURFACE:

4. D. (i) Niagara Frontier Transportation Authority, Acceptance of
Surface Transportation Resolutions 4. D. (1) through 4. D. (6)

The Executive Director advised that Items 4. D. (1) through 4. D. (6) have been discussed with the Board of Commissioners of the NFTA, and the Board is unanimously in favor of all subject Resolutions.

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

“**RESOLVED**, that the Resolutions of the Niagara Frontier Transportation Authority, identified as numbers 4. D. (1) through 4. D. (6) and dated February 28, 2011 as set forth herein, be and hereby are accepted and approved in their entirety.”

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

NOES: NONE

ADOPTED

SURFACE:

4. D. (1) **Procurement of Replacement Vault Truck, Navistar Inc.**

RECOMMENDATION: The Surface Transportation Committee has reviewed this item and recommends that the Board approve the purchase of a replacement vault truck from Navistar Inc. of Albany, New York for \$89,088.61.

INFORMATION: Metro Buses use fare boxes to accept cash. The cash is removed from buses and stored in vaults at each garage. Currently, a similar model year 2000 truck that has exceeded its useful life of seven years, is used to move vaults between each garage and the coin room at the MTC. The requested truck will replace the existing truck which will be reassigned as a back up or spare vault truck. The existing model year 1988 spare vault truck will be scheduled for disposal.

This procurement will utilize a NYS OGS contract and does not require competitive bids.

FUNDING: Funding for this procurement is included in the capital budget and will be shared on an 80-10-10 basis.

<u>Cost</u>	<u>Source</u>
\$ 71,272.01	FTA
\$ 8,908.80	NYSDOT
\$ 8,908.80	NFTA
\$ 89,088.61	Total

“RESOLVED, that the Board hereby authorizes the procurement of a replacement vault truck from Navistar Inc. as described hereinabove; and

BE IT FURTHER RESOLVED, that the Manager, Procurement, be and she is hereby authorized to issue a Purchase Order to Navistar Inc. for the purchase of a replacement vault truck in the amount of \$89,088.61 to be used as described hereinabove; 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 Director, Surface Transportation, that such payments are in order.”

SURFACE:

4. D. (2) Acceptance of Bid, Eldon Battery Post, Replacement Batteries, Transit Buses

RECOMMENDATION: The Surface Transportation Committee has reviewed this item and recommends that the Board approve the purchase of up to four hundred replacement batteries at a cost of \$51,748.00 from Eldon Battery Post of Hamburg, New York for the period 3/1/11 to 2/28/12.

INFORMATION: Each transit bus uses two batteries. Such batteries periodically require replacement.

The bid documents were downloaded twenty seven times and four responsive bids were received:

Bidder	Amount
Eldon Battery Post	\$51,748.00
NAPA Auto Parts	\$72,468.00
Allied Building Products	\$86,960.00
Roraima Consulting	\$94,000.00

FUNDING: Funding for this procurement is included in the Metro's Operating Budget.

“RESOLVED, that the Board hereby accepts the bid from Eldon Battery Post for the procurement of four hundred battery replacements as described hereinabove; and

BE IT FURTHER RESOLVED, that the Manager, Procurement, be and she is hereby authorized to issue Purchase Orders to Eldon Battery Post for a total amount of \$51,748.00 as described hereinabove; and

BE IT FURTHER RESOLVED, that the Chief Financial Officer be and she is hereby authorized to make payments under said Purchase Orders, upon certification by the Director, Surface Transportation, or his designee, that such payments are in order.”

SURFACE:

4. **D. (3) Acceptance of Bid, Ward Clean Air Products,
Six Spare Diesel Particulate Traps**

RECOMMENDATION: The Surface Transportation Committee has reviewed this item and recommends that the Board approve the purchase of six, spare diesel particulate traps at a cost of \$52,850.40 from Ward Clean Air Products of Elmira, New York.

INFORMATION: As required by the NYS Diesel Emissions Reduction Act of 2006, Metro has retrofitted thirty-six buses with diesel particulate traps of the same type as the subject of this procurement. Such traps periodically require cleaning which involves the removal of the trap from the bus in order to be cleaned. In order to minimize down time, clean, spare or swing units are required to be on hand to replace a dirty filter as the cleaning process and transportation time can take from two to seven days. The original grant used to fund the retrofit program did not permit the purchase of spare units.

This procurement was bid in accordance with the NFTA Procurement Guidelines and only one responsive bid was received. The NFTA Internal Audit Department has determined that the price bid is fair and reasonable thus establishing this as a validated single source procurement.

FUNDING: Funding for this procurement is included EPA Engine Rebuild Kits, Account Code 1200000003209, Project # 23365 and is shared on an 80% FTA, 10% NYS and 10% NFTA basis.

FTA	\$42,280.32
NYSDOT	\$ 5,285.04
NFTA	<u>\$ 5,285.04</u>
Total	\$52,850.40

“RESOLVED, that the Board hereby accepts the bid from Ward Clean Air Products for the procurement of six, spare diesel particulate traps as described hereinabove; and

BE IT FURTHER RESOLVED, that the Manager, Procurement, be and she is hereby authorized to issue Purchase Orders to Ward Clean Air Products for a total amount of \$52,850.40 as described hereinabove; and

BE IT FURTHER RESOLVED, that the Chief Financial Officer be and she is hereby authorized to make payments under said Purchase Orders, upon certification by the Director, Surface Transportation, or his designee, that such payments are in order.”

SURFACE:

4. D. (4) Acceptance of Bid, Brasco International, Inc.,
Procurement of Replacement Bus Shelters

RECOMMENDATION: The Surface Transportation Committee has reviewed this item and recommends that the Board approve the purchase of prefabricated bus shelter replacements and enhancements from Brasco International, Inc., Detroit, Michigan for a term of three years commencing March 1, 2011. The estimated replacement cost during this term will not exceed \$633,150.00.

INFORMATION: Surface Transportation operations provides bus shelters to protect patrons from the weather elements while waiting for bus service. Staff anticipates to add or replace 10 to 30 shelters annually during each of the next three years depending on the availability of federal grant funds during each year.

Bid No. 4063 was advertised in accordance with NFTA procurement guidelines. There was only one respondent, Brasco International, Inc. from Detroit, Michigan. The Internal Audit Department conducted a review for the proposed cost and determined the cost was reasonable in comparison to other vendor quotes.

A summary of bid prices follows:

<u>Description</u>	<u>Unit Price</u>
Bus shelters:	
With advertising	\$4,985
Without advertising	\$2,250
Solar retrofit kits	\$2,250
Two person bench	\$ 275

FUNDING: Funding is 80% FTA, 10% NYSDOT, and 10% NFTA.

RESOLVED, that the Board hereby accepts the bid from Brasco International, Inc. for the procurement of replacement bus shelters as described hereinabove; and

BE IT FURTHER RESOLVED, that the Manager, Procurement, be and she is hereby authorized to issue Purchase Orders to Brasco International, Inc. for a total estimated amount not-to-exceed \$633,150.00 as described hereinabove; and

BE IT FURTHER RESOLVED, that the Chief Financial Officer be and she is hereby authorized to make payments under said Purchase Orders, upon certification by the Director, Surface Transportation, or his designee, that such payments are in order."

SURFACE:

4. D. (5) Authorization for Supplemental Agreement No. 4,
Booz Allen Transportation, LRV Midlife Rebuild

RECOMMENDATION: The Surface Transportation Committee has reviewed this item and recommends that Supplemental Agreement No. 4 be approved as a \$587,005.00 increase to Booz Allen Transportation's Contract No. 32LZ0401, Construction Monitoring Services for the LRV Midlife Rebuild Project. The increase is cost plus fixed fee not-to-exceed the total amended contract amount will increase from \$2,377,885.00 to \$2,964,890.00.

INFORMATION: Due to the delay in the delivery of vehicles, Booz Allen Transportation, the construction monitoring consultant, has incurred additional costs by providing project support beyond the original delivery date. In addition, the level of project support was increased beyond the anticipated level due to contract compliance issues.

The first vehicle was delivered on February 3, 2011 and the second vehicle is anticipated during late February, 2011. Both vehicles will be returned to revenue service no later than July, 2011, pending completion of testing and commissioning.

Staff will pursue reimbursement of this supplement from the contractor by assessing liquidated damages for delays in the delivery schedule as specified in the contract documents and change orders. This supplement is for construction monitoring services up to the return of the first two vehicles to revenue service in July, 2011.

FUNDING: Supplemental Agreement No. 4 to Booz Allen Transportation in the amount of \$587,005.00 is funded by account number 120000000-3113-2-9773 and is provided by the following grants: NY-90-X595, NY-05-0110, NY-90-X571, NY-90-X544, NY-90-X529, NY-03-0433, NY-03-0378, NY-03-0390, NY-90-X339, NY-03-0399, NY-03-0409, FTA, NYSDOT Match, NFTA Match, NYSDTF, DTF PIN 5822.27, and future FTA formula and FTA Rail Modernization Funding.

“RESOLVED, that the Board hereby authorizes Supplemental Agreement No. 4 with Booz Allen Transportation for the LRV Midlife Rebuild Project 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 Supplemental Agreement No. 4 with Booz Allen Transportation, to increase the total contract amount from \$2,377,885.00 to \$2,964,890.00 with terms and conditions as set forth above and as negotiated; and

BE IT FURTHER RESOLVED, that the said Supplemental Agreement No. 4 shall include such terms, conditions and

safeguards to the Authority as deemed appropriate by the General Counsel; and

~~procurement of Bid #11001 Battery Post Replacement~~

BE IT FURTHER RESOLVED, that the Chief Financial Officer be and she is hereby authorized to make payments under said Supplemental Agreement No. 4 upon certification by the Director, Surface Transportation, or his designee, that such payments are in order."

SURFACE:

4. D. (6) Authorization for Agreement, Trocaire College,
Metro Bus Service

RECOMMENDATION: The Surface Transportation Committee has reviewed this item and recommends that the Board authorize an Agreement with Trocaire College for the provision of open door Metro Bus Service to the College's Hospitality Management Program facility located at 6681 Transit Road.

INFORMATION: Trocaire College has requested Metro to provide service to their Hospitality Management Program facility. Metro will provide two trips each weekday on Route 27 "BNIA/Erie County Home" to serve the Trocaire College Metro Bus Service facility. One trip will depart BNIA at 7:30 a.m. and the one trip will leave the facility at 1:40 p.m. and the service will be open to the public. Trocaire College will pay Metro the sum of \$800.00 per month for the operation of this service for a total payment of \$10,400.00. The total payment represents thirteen months of service. The service will operate beginning March 20, 2011 through June 24, 2011 for the 2010/2011 school year and continue between September 2011 through June 2012 for the 2011/2012 school year. Any farebox revenue collected on the added portion of the route will be credited to Trocaire College.

The term of the agreement shall commence on March 20, 2011 through June 24, 2011, and continue between September 5, 2011 through June 22, 2012 but may be terminated by Metro on thirty days notice if Trocaire College fails to make a payment when due.

FUNDING: No funding is required.

"RESOLVED, that the Board hereby authorizes an Agreement with Trocaire College for the provision of open door Metro Bus Service as described hereinabove; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and/or the Chairman be and are hereby authorized to execute an Agreement with Trocaire College for the provision of open door Metro Bus Service with terms and conditions set forth hereinabove and as negotiated; and

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

5. **PROPERTY/RISK MANAGEMENT GROUP REPORT**

- A. Property/Risk Management Committee Report
- B. Financial Update
- C. ~~Business Update~~ Business International, Inc.
- D. ~~Resolutions~~ Replacement Bus Shelters

RECOMMENDATION: The Surface Transportation Committee has reviewed this item and recommends that the Board approve the purchase of prefabricated bus shelter replacements and...
...from International, Inc. Michigan Michigan for a total of three units.
...for the year 2011. The total cost of the project is \$100,000.00.

The Board is advised that the project is being funded through the...
...of the year 2011. The total cost of the project is \$100,000.00.
...of the year 2011. The total cost of the project is \$100,000.00.

The Board is advised that the project is being funded through the...
...of the year 2011. The total cost of the project is \$100,000.00.
...of the year 2011. The total cost of the project is \$100,000.00.

Property/Risk Management Resolutions

- i. Niagara Frontier Transportation Authority, Acceptance of Property/Risk Management Resolutions 5. D. (1) and 5. D. (2)
1. Authorization for License Agreement, Engineering Society of Buffalo, inc., NFTA Boat Harbor
2. Authorization for Lease Agreement, Feel-Rite Health Food Shoppes, Inc., 247 Cayuga Road

PROPERTY:

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

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

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

“RESOLVED, that the Resolutions of the Niagara Frontier Transportation Authority, identified as numbers 5. D. (1) and 5. D. (2) and dated February 28, 2011 as set forth herein, be and hereby are accepted and approved in their entirety.”

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

NOES: NONE

ADOPTED

PROPERTY:

5. D. (1) **Authorization for License Agreement, Engineering Society of Buffalo, Inc., NFTA Boat Harbor**

RECOMMENDATION: The Property Risk Management Committee has reviewed this item and recommends that the Board authorize a Permit for Temporary Access to NFTA Property with the Engineering Society of Buffalo, Inc., (Michael Bracci, President) for use of Boat Harbor facilities for their annual Scholarship Run.

INFORMATION: The Engineering Society of Buffalo, Inc. is sponsoring a Scholarship Run on Wednesday, August 10, 2011. This is a 5 kilometer run that attracts about 400 runners. This scholarship fund supports engineering students at UB, ECC and NCCC. Over \$10,000.00 in scholarships have been distributed annually by the Engineering Society of Buffalo.

This is the third year this event will be held at the Boat Harbor. The Engineering Society of Buffalo will be required to provide all appropriate insurance coverages. No additional operating costs will be incurred by the NFTA.

FUNDING: No funding is necessary.

“RESOLVED, that the Board hereby authorizes a License Agreement with the Engineering Society of Buffalo, Inc. for use of Boat Harbor facilities as described hereinabove; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and/or the Chairman, be and hereby are authorized to execute a License Agreement with the Engineering Society of Buffalo, Inc. with terms and conditions as set forth above and as negotiated; and

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

PROPERTY:

5. **D. (2) Authorization for Lease Agreement, Feel-Rite Health Food Shoppes, Inc., 247 Cayuga Road**

RECOMMENDATION: The Property Risk Management Committee has reviewed this item and recommends that the Board authorize a lease agreement with Feel-Rite Health Food Shoppes, Inc. (Michael Bellomo, President) to lease office and warehouse space at 247 Cayuga Road.

INFORMATION: Feel-Rite has been leasing space at 247 Cayuga Road since 1996. Under this new lease Feel-Rite will continue leasing 3,500 square feet of office and warehouse space. The term of the agreement is two years with the tenant having the option to renew for one additional three-year term. The original term will commence on April 1, 2011 and end on March 31, 2013. The rental rate will be \$7.30 per square foot with an annual escalator of 3%.

FUNDING: No funding is necessary.

“RESOLVED, that the Board hereby authorizes a Lease Agreement with Feel-Rite Health Food Shoppes, Inc., for 3,500 square feet 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 Feel-Rite Health Food Shoppes, Inc. for a two year term commencing April 1, 2011 and ending March 31, 2013, 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.”

6. General Counsel Report – Written
7. Executive Session -
8. Adjournment

At approximately 12:50 p.m., the Chairman indicated that there was no further business coming before the Board, whereupon it was moved by Commissioner Grant, seconded by Commissioner Lewin, and unanimously approved that the Regular Meeting of the Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc. be adjourned.

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

NOES: NONE



Niagara Frontier Transportation Authority
Serving the Niagara Region

REGULAR LICENSING
February 18, 2011

INTER-DEPARTMENTAL CORRESPONDENCE

To: Board of Commissioners

Date: February 22, 2011

From: Vicky-Marie J. Brunette
Acting General Counsel

Subject: General Counsel
2/11 Board Report

1. ESTATE OF JEREMY HENDERSON v. NFT METRO, et al.

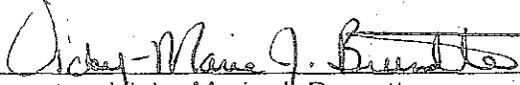
I am pleased to inform the Board that the favorable jury verdict in this case was unanimously affirmed by the Fourth Department, Appellate Division on February 18, 2011. As you will recall, the Board was previously briefed on this case at the January 2010 and December 2010 meetings.

This wrongful death action stemmed from an accident that occurred on September 29, 2007. The decedent, 28-year-old Jeremy Henderson, was struck by a Metro bus traveling south on Bailey Avenue as he walked into the street, mid-block, without looking for traffic.

The case was originally tried in front of a jury in New York State Supreme Court with Justice Paula Feroletto presiding. The jury deliberated for two hours before rendering a unanimous decision finding that no cause of action existed against the Authority or the bus operator. Following the trial, Plaintiff's counsel made a motion to set aside the jury verdict. Justice Feroletto denied the motion.

Plaintiff's counsel filed two appeals, the first relative to the trial verdict and the second relative to the Order denying the post-trial motion to set aside the jury verdict. The Fourth Department agreed with our position that, based upon the entirety of the record adduced at the trial of this matter, there was fair and credible evidence to support the jury's unanimous determination that the bus operator was not negligent and, further, that there was a valid line of reasoning for the jury to follow and permissible inferences for the jury to make which led them to the conclusion they reached.

A copy of the Court's written opinion is attached for your review.


Vicky-Marie J. Brunette

vjb
attachment

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

44

CA 10-01207

PRESENT: SCUDDER, P.J., SMITH, LINDLEY, GREEN, AND MARTOCHE, JJ.

LAURIE LONG, AS ADMINISTRATRIX OF THE
ESTATE OF JEREMY HENDERSON, DECEASED,
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

NIAGARA FRONTIER TRANSPORTATION AUTHORITY,
NIAGARA FRONTIER TRANSIT METRO SYSTEM, INC.,
AND DARON T. CODY, DEFENDANTS-RESPONDENTS.
(APPEAL NO. 1.)

GIBSON, MCASKILL & CROSBY, LLP, BUFFALO (KRISTIN A. TISCI OF COUNSEL),
FOR PLAINTIFF-APPELLANT.

DAVID M. GREGORY, BUFFALO (VICKY-MARIE J. BRUNETTE OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS.

Appeal from a judgment of the Supreme Court, Erie County (Paula M. Feroletto, J.), entered April 13, 2010 in a wrongful death action. The judgment granted defendants a judgment of no cause of action upon a jury verdict.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff, as administratrix of the estate of her adult son (decedent), contends that Supreme Court erred in denying her motion to set aside the jury verdict of no cause of action as against the weight of the evidence. We affirm. Decedent was killed when he was struck by a bus while attempting to cross the street. The bus was owned by defendant Niagara Frontier Transportation Authority (NFTA), and operated by defendant DaRon T. Cody, who was employed by NFTA. In support of her motion to set aside the verdict finding that defendants were not negligent, plaintiff contended that the evidence at trial clearly established that Cody was speeding, in violation of Vehicle and Traffic Law § 1180, and that he failed to sound his horn in a timely manner, in violation of Vehicle and Traffic Law § 1146. Although plaintiff is correct that an unexcused violation of the Vehicle and Traffic Law, if proven, constitutes negligence per se (see *Stalikas v United Materials*, 306 AD2d 810, 811, *affd* 100 NY2d 626), we cannot agree with plaintiff that the evidence, when viewed in the light most favorable to defendants (see *Greene v Frontier Cent. School Dist.*, 214 AD2d 947, 948), establishes that Cody violated the Vehicle and Traffic Law.

With respect to the alleged violation of section 1180, plaintiff presented no evidence that the bus driver was speeding. Indeed, the only witness to testify regarding the speed of the bus was a certified accident reconstructionist who testified for defendants on direct examination that the bus was traveling at approximately 27 miles per hour when it struck decedent. The parties agree that the speed limit on the street in question was 30 miles per hour. The speed estimate of defendants' expert was based, *inter alia*, on a time and distance calculation derived from videotapes taken from cameras that were on the bus. The estimate of the expert concerning the length of time, *i.e.*, 1.5 seconds, in which decedent was in the street before being hit by the bus is supported not only by the videos, which were played for the jury, but also by the average pedestrian walking speed, as explained by the expert at trial. We note that plaintiff is correct that defendants' expert testified on cross-examination that, based upon the location of the bus as depicted on the accident survey prepared by a land surveyor retained by plaintiff, the bus must have been traveling at approximately 40 miles per hour when it struck decedent. We conclude, however, that such testimony created an issue of fact for the jury to resolve and did not render the expert's testimony on direct examination incredible as a matter of law. In light of the expert's conflicting testimony regarding the speed of the bus, it cannot be said that the evidence so preponderated in favor of plaintiff that the jury's verdict "could not have been reached on any fair interpretation of the evidence." (*Lifson v City of Syracuse* [appeal No. 2], 72 AD3d 1523, 1524).

We similarly reject plaintiff's contention with respect to Cody's alleged violation of Vehicle and Traffic Law § 1146, which provides in relevant part that "every driver of a vehicle shall exercise due care to avoid colliding with any bicyclist, pedestrian, or domestic animal upon any roadway and shall give warning by sounding the horn when necessary" (§ 1146 [a]). Cody admittedly did not sound the horn on the bus until he saw decedent at or about the time of impact. As noted, however, defendants' expert testified that decedent was in the street for only 1.5 seconds before impact. Considering the totality of the circumstances, including the fact that decedent was not in a crosswalk and did not have the right-of-way, as well as the fact that Cody testified that he had his eyes on the road and the oncoming traffic, we conclude the jury's determination that Cody was not negligent is supported by a fair interpretation of the evidence (see *Lifson*, 72 AD3d at 1524).

Finally, we reject plaintiff's contention that the court erred in giving an emergency instruction, as requested by defendants. "A party requesting the emergency instruction is entitled to have the jury so charged if some evidence of a qualifying emergency is presented. If, under some reasonable view of the evidence, an actor was confronted by a sudden and unforeseen occurrence not of the actor's own making, then the reasonableness of the conduct in the face of the emergency is for the jury, which should be appropriately instructed" (*Rivera v New York City Tr. Auth.*, 77 NY2d 322, 327, *rearg denied* 77 NY2d 990). Here, there is a reasonable view of the evidence that Cody was presented with an emergency situation, inasmuch as decedent suddenly walked into

the street, without looking for oncoming traffic. Additionally, the issues whether Cody was negligent in allegedly speeding or in failing to sound the horn of the bus in a timely manner were for the jury to resolve, and they did not preclude the court's emergency instruction (see *id.* at 328; *Feaster v New York City Tr. Auth.*, 172 AD2d 284, 284-285).

Entered: February 18, 2011

Patricia L. Morgan
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 10-01207

PRESENT: SCUDDER, P.J., SMITH, LINDLEY, GREEN, AND MARTOCHE, JJ.

Laurie Long, AS ADMINISTRATRIX OF THE ESTATE OF JEREMY HENDERSON, DECEASED,
PLAINTIFF-APPELLANT,

V

MEMORANDUM AND ORDER

NIAGARA FRONTIER TRANSPORTATION AUTHORITY,
NIAGARA FRONTIER TRANSIT METRO SYSTEM, INC.,
AND DARON T. CODY, DEFENDANTS-RESPONDENTS.
(APPEAL NO. 1.)

GIBSON, MCASKILL & CROSBY, LLP; BUFFALO (KRISTIN A. TISCI OF COUNSEL),
FOR PLAINTIFF-APPELLANT.

DAVID M. GREGORY, BUFFALO (VICKY-MARIE J. BRUNETTE OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS.

Appeal from a judgment of the Supreme Court, Erie County (Paula M. Feroletto, J.), entered April 13, 2010 in a wrongful death action. The judgment granted defendants a judgment of no cause of action upon a jury verdict.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed without costs.

Memorandum: Plaintiff, as administratrix of the estate of her adult son (decedent), contends that Supreme Court erred in denying her motion to set aside the jury verdict of no cause of action as against the weight of the evidence. We affirm. Decedent was killed when he was struck by a bus while attempting to cross the street. The bus was owned by defendant Niagara Frontier Transportation Authority (NFTA), and operated by defendant DaRon T. Cody, who was employed by NFTA. In support of her motion to set aside the verdict finding that defendants were not negligent, plaintiff contended that the evidence at trial clearly established that Cody was speeding, in violation of Vehicle and Traffic Law § 1180, and that he failed to sound his horn in a timely manner, in violation of Vehicle and Traffic Law § 1146. Although plaintiff is correct that an unexcused violation of the Vehicle and Traffic Law, if proven, constitutes negligence per se (see *Stalikas v United Materials*, 306 AD2d 810, 811, *affd* 100 NY2d 626), we cannot agree with plaintiff that the evidence, when viewed in the light most favorable to defendants (see *Greene v Frontier Cent. School Dist.*, 214 AD2d 947, 948), establishes that Cody violated the Vehicle and Traffic Law.

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 10-01208

PRESENT: SCUDDER, P.J., SMITH, LINDLEY, GREEN, AND MARTOCHE, JJ.

LAURIE LONG, AS ADMINISTRATRIX OF THE
ESTATE OF JEREMY HENDERSON, DECEASED,
PLAINTIFF-APPELLANT,

V

ORDER

NIAGARA FRONTIER TRANSPORTATION AUTHORITY,
NIAGARA FRONTIER TRANSIT METRO SYSTEM, INC.,
AND DARON T. CODY, DEFENDANTS-RESPONDENTS.
(APPEAL NO. 2.)

GIBSON, MCASKILL & CROSBY, LLP, BUFFALO (KRISTIN A. TISCI OF COUNSEL),
FOR PLAINTIFF-APPELLANT.

DAVID M. GREGORY, BUFFALO (VICKY-MARIE J. BRUNETTE OF COUNSEL), FOR
DEFENDANTS-RESPONDENTS.

Appeal from an order of the Supreme Court, Erie County (Paula M. Feroletto, J.), entered April 15, 2010 in a wrongful death action. The order denied the motion of plaintiff to set aside a jury verdict as against the weight of the evidence.

It is hereby ORDERED that said appeal is unanimously dismissed without costs (see *Smith v Catholic Med. Ctr. of Brooklyn & Queens*, 155 AD2d 435; see also CPLR 5501 [a] [1]).

Entered: February 18, 2011

Patricia L. Morgan
Clerk of the Court