



Niagara Frontier Transportation Authority  
Serving Buffalo Niagara

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May 23, 2013

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

**Re: NFTA Board Minutes**

Dear Mr. Graber:

Enclosed for your information and files, please find a copy of the Minutes from the Niagara Frontier Transportation Authority's Board Annual Meeting held on April 25, 2013.

Very truly yours,

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

David J. State  
General Counsel

DJS:lf

Enclosure



**NIAGARA FRONTIER TRANSPORTATION AUTHORITY  
 NIAGARA FRONTIER TRANSIT METRO SYSTEM, INC.  
 ANNUAL MEETING MINUTES  
 APRIL 25, 2013 12:30 PM**

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1. **CALL TO ORDER**

A. **Meeting Called to Order**

Chairman Zemsky called the meeting to order at approximately 12:32 p.m.

B. **Approval of Minutes of the NFTA Regular Board Meeting held on March 28, 2013**

It was moved by Commissioner Durand, seconded by Commissioner Sloma, that the Minutes of the March 28, 2013, Regular Board Meeting of the Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc., be accepted and approved.

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

**NOES: NONE**

**D. Executive Director's Report:**

Executive Director Kimberley Minkel extended an invitation to the Board to attend the annual Safety Service Awards Luncheon which will be held on Sunday, April 28. Aviation Director William Vanecek was elected Tourism Executive of the Year and will be honored at the 3<sup>rd</sup> Annual Travel & Tourism Beacon Awards. BNIA received the Honorable Mention Balchen Post Award at the 47<sup>th</sup> Annual International Aviation Snow Symposium. She updated the Board on her recent trip to Washington, D.C. with Chairman Howard Zemsky and Darren Kempner. They met with the WNY Delegation to discuss NFIA and the need to bring a category 2 landing system to NFIA and stressed the importance of the Niagara Falls Air Base. They also briefed the delegation on the Alternative Analysis Project and their anticipated combined support.

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

**Corporate Resolutions**

- i. Niagara Frontier Transportation Authority, Acceptance of Corporate Resolutions 2. C. (1) through 2. C. (11)
  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 NFTA Metro System, Inc.
  4. Approval of 2013/2014 NFTA Master Liability Management Policy
  5. Approval of 2013/2014 Guidelines for Dispositions and Transfers of Capital and Non-Capital Assets, NFTA and NFTA Metro System, Inc.
  6. Approval of Procurement Guidelines for NFTA and NFTA Metro System, Inc.
  7. Approval of 2013/2014 Travel Policy and Guidelines Policy for NFTA and NFTA Metro System, Inc.
  8. Authorization for Agreement, Hawkins Delafield and Wood, LLP, Bond Counsel Services, NFTA
  9. Authorization for Agreement, Infor, Inc., Provision of Payroll Support Services
  10. Authorization to Award Contract for Natural Gas
  11. Authorization for Agreement, SunTrust Equipment Finance & Leasing Corporation, Financing of Energy Conservation Measures, NFTA

**CORPORATE:**

2. D. (i) **Niagara Frontier Transportation Authority, Acceptance of Corporate Resolutions 2. C. (1) through 2. C. (11)**

The Executive Director advised that Items 2. C. (1) through 2. C. (11) have been discussed with the Board of Commissioners of the NFTA, and the Board is unanimously in favor of all subject Resolutions.

Whereupon, it was moved by Commissioner Hughes, seconded by Commissioner Gurney, 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. (11) and dated April 25, 2013 as set forth herein, be and hereby are accepted and approved in their entirety.”

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

**NOES: NONE**

**ADOPTED**

**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 Hughes, seconded by Commissioner Gurney, that Commissioner Sloma be nominated as Vice Chair, that Commissioner Lewin be nominated as Secretary, and that Commissioner Demakos be nominated as Treasurer.

Whereupon, it was moved by Commissioner Hughes, seconded by Commissioner Gurney, 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, 2014, be and hereby are:

Vice Chair .....Commissioner Sloma.  
Secretary .....Commissioner Lewin.  
Treasurer .....Commissioner Demakos.

**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 Hughes, seconded by Commissioner Gurney, that Commissioner Sloma be nominated as Vice Chair, that Commissioner Lewin be nominated as Secretary, and that Commissioner Demakos be nominated as Treasurer.

Whereupon, it was moved by Commissioner Hughes, seconded by Commissioner Gurney, 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, 2014, be and hereby are:

Vice Chair .....Commissioner Sloma.  
Secretary .....Commissioner Lewin.  
Treasurer .....Commissioner Demakos.

**CORPORATE:**

2. C. (3) **Approval of 2013/2014 Investment Guidelines Policy for NFTA and NFT Metro System, Inc.**

**RECOMMENDATION:** Staff recommends that the Board approve the Investment Guidelines Policy for 2013/2014 for the Niagara Frontier Transportation Authority and its subsidiary.

**INFORMATION:** The investment guidelines were originally established in the early 1980s 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 23, 2012. There are no changes since that time.

**FUNDING:** No funding is required.

**“RESOLVED,** that the Board hereby approves the 2013/2014 Guidelines for Investments for the Niagara Frontier Transportation Authority and its subsidiaries, as generally described hereinabove and as set forth in the attachment hereto.”

**2013/2014 - 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 25, 2013.

EXAMPLE

**NIAGARA FRONTIER TRANSPORTATION AUTHORITY**  
 Quarterly Investment Analysis for December 31, 2012

<u>Type of Investment Concentration</u>		
	<u>AMOUNT</u>	<u>% OF TOTAL</u>
Repurchase Agreement	\$0	0.00%
Certificate of Deposit	\$21,973,631	32.66%
Money Market	\$45,278,222	67.30%
Treasury Notes	\$25,000	0.04%
<b>TOTAL:</b>	<b><u>\$67,276,853</u></b>	<b><u>100%</u></b>

<u>Diversification of Investments</u>		
	<u>AMOUNT</u>	<u>% OF TOTAL</u>
Bank of America	\$0	0.00%
First Niagara Bank	\$29,146,475	43.32%
Five Star Bank	\$8,214,621	12.21%
JP Morgan Chase Bank	\$22,082,119	32.82%
Key Bank	\$0	0.00%
M & T Bank	\$3,124	0.00%
NYSWCBD	\$25,000	0.04%
US Bank	\$7,805,514	11.60%
<b>TOTAL:</b>	<b><u>\$67,276,853</u></b>	<b><u>100%</u></b>

**CORPORATE:**

2. C. (4) **Approval of 2013/2014 NFTA Master Liability Management Policy**

**RECOMMENDATION:** Staff recommends that the Board approve the 2013/2014 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 substantially unchanged from those approved by the Board on April 23, 2012.

**“RESOLVED,** that the Board hereby approves the 2013/2014 Niagara Frontier Transportation Authority Master Liability Management Policy, as generally described hereinabove and as set forth in the attachment hereto.”

# **Niagara Frontier Transportation Authority**

## **Master Liability Management Policy Guidelines**

April 25, 2013

### **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**

<i>Credit Rating</i>	<i>Maximum Collateralized Exposure</i>	<i>Maximum Uncollateralized Exposure</i>	<i>Maximum Total Termination Exposure</i>
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. (5) **Approval of 2013/2014 Guidelines for Dispositions and Transfers of Capital and Non-Capital Assets, NFTA and NFT Metro System, Inc.**

**RECOMMENDATION:** Staff 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 attached Guidelines remain substantially unchanged since the Board approved them last year.

**FUNDING:** No funding is required.

**“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.”

Reference: EXECUTIVE  
Title: DISPOSITIONS AND TRANSFERS OF CAPITAL AND NON-CAPITAL  
ASSETS  
Policy Number: 01-01-10  
Effective Date: 04-25-13

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 NFTA 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 through separate memorandum and completed disposition form. Further, FAA recommends life expired airport equipment be donated to reliever airports. Items will be listed for auction to determine fair market value. If auction bids are under \$15,000, they will be reviewed by the Director of Aviation and Chief Financial Officer for turnover to a reliever airport with a final memorandum approval from the Executive Director. Any such donations are at the discretion of the Authority 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.

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 \_\_\_\_\_  
 In Service \_\_\_\_\_  
 Out Service \_\_\_\_\_

NFTA% \_\_\_\_\_ Grant % \_\_\_\_\_

Historical Cost \_\_\_\_\_  
 Accum Depr. at Beg of Year \_\_\_\_\_  
 Depreciation during current year \_\_\_\_\_  
 Net Book Value (NBV) As of \_\_\_\_\_

	Contributions		Combined Cost
	Local Grant	Federal Grant	
Our Cost			
<b>Total</b>			

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

**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 / NFTA 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 \_\_\_\_\_

In Service \_\_\_\_\_

Out Service \_\_\_\_\_

NFTA% \_\_\_\_\_ Grant % \_\_\_\_\_

Historical Cost

Accum Depr. at Beg of Year

Depreciation during current year

Net Book Value (NBV) As of \_\_\_\_\_

Total

	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 Procurement Guidelines for NFTA and NFT Metro System, Inc.**

**RECOMMENDATION:** Staff recommends that the Board approve the Authority's Procurement Guidelines.

**INFORMATION:** The Public Authorities Law provides that the Board shall review and approve the Procurement Guidelines on an annual basis. The Procurement Guidelines were last approved by the Board on April 23, 2012. There are no changes requested at this time.

**FUNDING:** No funding is required.

**“RESOLVED,** that the Board hereby approves the 2013/2014 Procurement Guidelines for the Niagara Frontier Transportation Authority and its subsidiaries, as set forth in the attachment hereto.”

**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**

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Effective April 23, 2012  
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.,  
THE  
GREATER BUFFALO-NIAGARA REGIONAL TRANSPORTATION COUNCIL  
AND THE  
NIAGARA INTERNATIONAL TRANSPORTATION TECHNOLOGY COALITION**

**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;
- (v) 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.
- (iii) 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.
  - (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](http://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](http://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 solicitation 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 rationale 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

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

## ATTACHMENT "A"

- 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. (7) **Approval of 2013/2014 Travel Policy and Guidelines Policy for NFTA and NFT Metro System, Inc.**

**RECOMMENDATION:** Staff recommends that the Board approve the 2013/2014 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. The policy was completely revised to be more user friendly and to strengthen internal controls.

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 \$.56 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.

“**RESOLVED**, that the Board hereby approves the 2013/2014 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.”

## TRAVEL POLICY & GUIDELINES

For the

Niagara Frontier Transportation Authority and NFT Metro Systems, Inc.

### INTRODUCTION

This document defines the policy and guidelines to be followed when traveling on NFTA/Metro business. This policy applies to all NFTA/Metro employees and commissioners. It is intended that a consistent and equitable practice with respect to incidence and reimbursement of expenses be maintained throughout the NFTA. The Chief Financial Officer or designee has final responsibility for interpretation of this Travel Policy.

### BEFORE YOU TRAVEL – TRAVEL AUTHORIZATION IS MANDATORY

Trips within the local area involving overnight travel and **all non-local travel is to be requested on a Travel Request Form (Attachment A)** including a justification memorandum and any relevant documentation such as an agenda. The approval process is as follows:

- **The Executive Director will approve the propriety of ALL requests.**
- Directors/CFO/General Counsel – approve the travel requests for of all branch personnel within their respective branch.
- 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. No expenditures are allowed for any travel expenses until the final approvals are obtained.

Receipt of Travel Requests on or after the beginning date of travel will be summarily disapproved unless extenuating circumstances warrant a post-approval by the Executive Director. These circumstances must be thoroughly documented via a memorandum with the travel request.

### REIMBURSABLE EXPENSES

The following types of expenses, if incurred in compliance with this travel policy and while on NFTA/Metro business, may be submitted for reimbursement. It is expected that all transportation within the local seventy (70) mile area will be by automobile, bus or rail. Travelers are to utilize the most reasonably economical and practical means of ground transportation available between the transportation terminal, lodging or business meeting location.

- **Parking** – receipts are required for all parking expenses while on company business.
- **Tolls** – tolls are reimbursable if paid while on approved company business. Receipts are required for reimbursement. For those that utilize EZPass, a copy of your EZPass statement should be submitted to identify the charge for reimbursement.

- **Mileage** - is based on the rate established by the Authority pursuant to IRS regulations. (Effective 1-1-13 \$.56) *The mileage rate will be continually updated as amendments are promulgated by the I.R.S.* The Chief Financial Officer will distribute notice of changes in travel allowance limitation when received. Mileage reimbursement is applicable only to use of a personal vehicle while on company business. Mileage on your personal vehicle is allowed from residence or work location to/from the airport, train station or bus terminal while on travel status. All mileage must be documented in detail on the travel reimbursement form.
- **Taxicabs/Shuttle** - For use of common carriers such as taxicabs and hotel shuttles, reimbursement is allowed for actual charges up to \$15.00 without a receipt, or actual charges over \$15.00 supported by a receipt. 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.).
- **Air Travel** - Travelers must use less than first class accommodations except as approved by the Chairman of the Board. It is the policy of the company to use the lowest fare wherever possible. Travelers are required to schedule trips far enough in advance to permit utilization of special, lower fares, e.g. super-saver. Coach or economy class will be used on all flights. Frequent flyer benefits can be retained by the employee, but should not be the basis for switching air schedules, hotel accommodations or car rentals unless such choice is reasonably equal in cost to the lowest acceptable alternative. The company will not reimburse any associate/membership fees for frequent flyer clubs.

\*\*\*\*SAVE YOUR BOARDING PASSES FOR EXPENSE REIMBURSEMENT\*\*\*\*

Cancellations - All unused non-refundable airline tickets must be reported to your Director immediately. Unused non-refundable tickets will be noted and you are to use them for a future trip. There are service charges that will apply; however, it will reduce the cost of your next trip. Refundable tickets are to be submitted to the applicable airline for credit.

- **Public Transportation** - the cost of public transportation is a reimbursable expense. Receipts are necessary for reimbursement.
- **Automobile Rentals** - Automobile rentals are not allowed unless there is no other means of ground transportation, or it is the most cost-effective means of transportation. This must be documented when seeking reimbursement for these expenses. Travelers should procure insurance coverage. Reimbursement for auto rental expense should be for the amount actually paid for business use. Receipts are required to support car rental expenses.
- **Lodging** - The NFTA utilizes the U.S General Services Administration (GSA) per diem rates as a guideline for all lodging. The maximum daily amounts for lodging are designated by location at the following website address:

<http://www.gsa.gov/portal/content/104877>

Certain hotels will honor our request for government lodging rates. These rates should be requested at the time reservations are made. If rates are not available, please check an additional two (2) hotels within walking distance. If none of the hotels offer a government rate, or it is not available, documentation should be attached to the travel request listing the hotels contacted and rates offered. Original hotel receipts are required when submitting for your travel reimbursement.

### 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 to the lodging establishment. See **Attachment C**.

Hotels are not required to honor the exemption. In the event that the hotel does not honor the letter of exemption, documentation of the denial of tax exemption must be submitted with the travel expense reimbursement form.

- **Meals and Incidental Expenses** - The NFTA utilizes the U.S General Services Administration (GSA) per diem rates for all meals and incidental expenses (no receipts are required). Employees on travel status are entitled to the maximum daily amounts for meals and incidentals as designated by location at the following website address:

<http://www.gsa.gov/portal/content/104877>

Meals applicable to non-local travel are to be pro-rated, based on the applicable meal and incidental allowance amount. **No receipts are required for meals.**

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 allowance will be determined as follows when you are leaving to go on your trip and when you arrive back from it:

	<u>Leave Home or Office</u>	<u>Return Home or Office</u>
Breakfast	before 7:00 a.m.	after 8:00 a.m.
Lunch	before 12:00 p.m.	after 1:00 p.m.
Dinner	before 7:00 p.m.	after 7:00 p.m.

**A meal allowance is not allowed if a meal is provided at no cost to the employee (such as breakfast at a hotel). No additional reimbursement will be allowed if an employee exceeds their maximum allowance for any meal.**

### NON-REIMBURSABLE EXPENSES

Purely personal expenses while traveling are not reimbursable by the company. The following is a partial listing of items that are considered non-reimbursable:

- All costs pertaining to spouses or other non-Authority personnel accompanying the traveler on an Authority business trip
- Parking tickets, fines, and the like are deemed to be personal to the employee
- Telephone calls beyond 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.
- Gifts of any value
- Damages to an employee's vehicle while on company business
- Purchase of clothing and other personal items such as haircuts, shoe shines, newspapers, magazines, tobacco, alcohol, etc.
- Purchase of in-room movies and entertainment

- Loss of personal property while on company business
- Cost of personal credit cards
- Purchase of life or travel insurance during travel
- Loss of cash advance, company paid airline tickets, or personal funds
- Alcoholic beverages

### **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. Employees should ask for the government rate when booking the hotel room to determine availability. If the government rate is not available, as noted in the lodging section, obtain rates from two (2) other hotels within the same area. If they have a government rate, book your room there, and if not, document. The documentation must be attached to your travel request and travel reimbursement.

- Meals provided at a conference or seminar will not be reimbursed.
- 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, and the times of conference events. This information must be submitted with the Travel Request Form 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.

### **OPTIONAL PERSONAL USE OF 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 the round trip mileage reimbursement using a personal vehicle versus the cost of flying using the most economical airfare. It is the responsibility of the traveler to provide the approving manager the calculation of the requested amount due **prior** to the approval of the Travel Request Form.
- Excessive work hour time required to travel by auto (or bus or train) as compared to air flight time will not be compensated.
- Other Modes of Transportation - Reimbursement for other, more costly forms of transportation (e.g. taxicabs) will be limited to an amount that would have been incurred had the employee used his personal auto and as calculated in the manner noted above.

### **TRAVEL OUTSIDE THE CONTINENTAL UNITED STATES**

Travel allowance and guidelines set forth will also apply to trips out of the country. However, the traveler must convert payments from foreign funds to equivalent U.S. dollars at the current rate of exchange for your destination. First class travel is prohibited. It is extremely important for employees who are traveling internationally to notify the NFTA well in advance of the trip in order to verify requirements and set the entry application process in motion if necessary. When

traveling internationally please ensure that you have the necessary visa, immunizations, and passports. If a visa is required, the fee should be placed on your expense report for reimbursement. Also, be aware of any pertinent customs regulations fees for passports, visas and any necessary vaccinations or medications will be reimbursed. All international travelers should provide the NFTA with a copy of their passport so assistance can be provided in the event of theft or loss during travel abroad. Foreign Per Diem Rates are indicated on the GSA website as necessary.

### **TRAVEL EXPENSE REIMBURSEMENT**

**A Travel Expense Reimbursement Form (Attachment B) must be submitted within 30 days of travel.**

**Mileage reimbursements** must be submitted at least quarterly within 5 business days of the end of the quarter using the Travel Expense Reimbursement Form. Requests for reimbursement may occur more frequently. Details of the mileage request must be provided on the travel reimbursement form.

Any requests that are not submitted within the designated time frames may be denied reimbursement.

#### **IMPORTANT TIPS TO COMPLETE THE TRAVEL EXPENSE REIMBURSEMENT FORM:**

- Agenda
- Boarding Passes must be attached.
- Document the actual departure and return time.
- Meals will only be reimbursed based on the per diem. No receipts are required.
- Lodging will only be reimbursed based on original receipts.
- Original receipts for such things as taxis, airfare, bus, rail transportation, tolls or copy of toll calculator.
- For travel out of the country, the traveler must convert payments from foreign funds to equivalent U.S. dollars at the current rate of exchange.
- Cash advances must be deducted from the travel expense reimbursement form if received.
- Any deviations from this travel policy must be documented via a memorandum attached to the travel reimbursement form.

#### **Travel Expense Reimbursement form Approval Process:**

- Below Manager level - by the Manager or Director
- Department Managers - by their Director
- Directors – 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 Chief Financial Officer. Reimbursements will be made by company check, if the amount of expenses exceeds the amount of any cash advances or prepaid items.

### **TRAVEL EXPENSE REIMBURSEMENT FOR NFTA 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.

### **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 refunded to the Authority within 30 days of travel.

In the event excess cash advances are not refunded within 30 days, with the approval of the Chief Financial Officer, wages may be garnished.

### **AUTHORITY CREDIT CARDS**

Authority Credit Cards may not be used for meals while on travel status except with the prior approval of the Executive Director. Cash Advances may be requested for travel related expenses.

### **DISCRETIONARY EXPENSES**

Refreshments or Meals when Hosting Non-NFTA Transit or Public Officials:

There may be special circumstances when an employee is host to transit or public officials, including Authority Board members, where such hosting is essential to the business and interests of NFTA. Hosting activities and expenditures must be reasonable, prudent, and subject to the review and approval of the applicable Director and Executive Director, or Chairman of the Board as appropriate **prior** to incurring any costs.

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 would be required prior to reimbursement.



Niagara Frontier Transportation Authority  
*Serving Buffalo Niagara*

**TRAVEL REQUEST FORM**

NAME:
DEPARTMENT/DIVISION:
PURPOSE OF TRIP:

**TRAVEL JUSTIFICATION:**

TRAVEL FROM:	TRAVEL TO:
DEPARTURE DATE:	RETURN DATE:
TIME OF DEPARTURE:	TIME OF RETURN:

ESTIMATED EXPENSES	AMOUNT
REGISTRATION OR FEES: (ATTACH COPY OF AGENDA)	
AIRLINE/BUS/RAIL	
NUMBER OF DAYS OF LODGING _____ AMOUNT PER DAY _____	\$0.00
<i>IF LODGING IS ABOVE PER DIEM RATE ATTACH DOCUMENTATION SHOWING YOU HAVE CONTACTED 2 OTHER HOTELS IN THE AREA AND THIS IS THE LOWEST RATE.</i>	
NUMBER OF DAYS FOR MEALS _____ AMOUNT PER DAY _____	\$0.00
TAXI OR OTHER MODE OF TRANSPORTATION AT DESTINATION	
MILEAGE	
TOLLS	
<b>TOTAL ESTIMATED EXPENSES:</b>	<b>\$0.00</b>

GENERAL LEDGER ACCOUNT TO BE CHARGED: \_\_\_\_\_

<i>I certify that I have read and understand the Travel Guidelines:</i>	
_____	Date: _____
<i>Employee</i>	

APPROVED BY:	SIGNATURE:	DATE
IMMEDIATE SUPERVISOR:	_____	_____
DIRECTOR:	_____	_____
EXECUTIVE DIRECTOR:	_____	_____
CHAIRMAN OF THE BOARD (if applicable)	_____	_____
VICE CHAIRMAN OF THE BOARD (if applicable)	_____	_____





# Exemption Certificate

**ST-129**  
(10/00)

**Tax on occupancy of hotel rooms**  
**This form may only be used by government employees of the United States, New York State or political subdivisions of New York State.**

Name of hotel, motel, lodging house, etc.		Dates of occupancy From:    /    /    To:    /    /	
Number and street	City, village, or post office	State	ZIP code
<i>This is to certify that I, the undersigned, am a representative of the department, agency, or instrumentality of New York State, the United States government, or the political subdivision of New York State indicated below; that the charges for the occupancy at the above establishment on the dates listed have been or will be paid for by that governmental entity; and that these charges are incurred in the performance of my official duties as a representative or employee of that governmental entity.</i>			
Governmental entity (federal, state, or local)		Agency, department, or division	
Employee name (first or type)	Employee title	Employee signature	Date

### Instructions for the government representative or employee

If you are on official New York State or federal government business and staying in a hotel or motel:

1. Complete all information requested in the box above.
2. Sign and date this exemption certificate in the box above.
3. Show the operator of the hotel or motel your appropriate and satisfactory identification.
4. Give this completed Form ST-129 to the operator of the establishment.

You may pay your hotel bill with cash, with a personal check or personal credit card, with a government voucher, or with a government credit card.

**Please note:**

- If, while on official business, you stay at more than one location, you must complete an exemption certificate for each establishment.
- If you are in a group traveling on official business and staying in this particular hotel, each person must complete a separate exemption certificate and give it to the hotel operator.

**Caution:** Willfully issuing a false or fraudulent certificate with the intent to evade tax is a misdemeanor under section 1817(m) of the Tax Law and section 210.45 of the Penal Law, punishable by a fine of up to \$10,000.

### Instructions for the operator of the hotel or motel

Keep this completed Form ST-129, *Exemption Certificate*, as evidence of exempt occupancy by New York State and federal government employees who are on official business and staying at your establishment. You must keep this exemption certificate for at least three years after the later of: 1) the due date of the last sales tax return to which this exemption certificate applies; or 2) the date when you filed the return.

This exemption certificate is valid if the government employee is paying with:

- Cash.
- A personal check or personal credit card.
- A government voucher.
- A government credit card.

**Do not accept this certificate unless the representative or employee presenting it shows appropriate and satisfactory identification.**

**CORPORATE:**

2. C. (8) **Authorization for Agreement, Hawkins Delafield and Wood, LLP, Bond Counsel Services, NFTA**

**RECOMMENDATION:** Staff recommends that the Board authorize a contract with Hawkins Delafield and Wood, LLP (Hawkins) to provide bond counsel services to the NFTA in connection with the authorization, issuance and sale of bonds for the Aviation Division consisting of Buffalo Niagara International Airport and the Niagara Fall International Airport, legal advice on other financing structures and legal advice as requested. The term of the agreement will be for a three year period with two one-year additional periods at the discretion of the Authority at a blended hourly rate of \$350.00.

**INFORMATION:** Seven law firms submitted proposals that were reviewed by a team consisting of the Chief Financial Officer, representatives from the Aviation Division, Legal Department and Procurement. The firms that submitted proposals were Hawkins, Delafield & Wood; Nixon Peabody Drohan Lee; Squire & Sanders; Underburg & Kessler; Thompson & Thompson; Harris Beach; and Hodgson Russ. The firms were rated on:

- Qualifications and Experience including specific experience with airport issuers, first time issuers, other transportation issues and New York issuers
- Technical Criteria
- Cost

Hawkins has a national practice as airport bond counsel and extensive experience in all aspects of airport financing. In New York, Hawkins is the number one bond counsel and nationally, according to the Securities Data Company, Inc. Hawkins is ranked as the number two bond counsel firm for all long-term issues in the nation, based on the dollar value of transactions.

Hawkins' historical and in-depth knowledge of the structure of the outstanding bonds, the Authority's financial system and airport operations, participation in rating agency/bond insurance/underwriting meetings and the application of the Public Authorities Law to the Authority will result in an economy advantage to the Authority and thereby avoid duplication of costs.

**FUNDING:** Funding will be provided for out of the bond issuance costs.

**“RESOLVED,** that the Board hereby authorizes an Agreement with Hawkins Delafield and Wood, LLP for bond counsel services to the NFTA as described above at a blended rate of \$350.00 per hour; 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 Hawkins Delafield and Wood, LLP as described above; and

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

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

**CORPORATE:**

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

**RECOMMENDATION:** Staff recommends that the Board authorize the renewal of the Lawson Annual Maintenance Agreement in the amount of \$67,329.87 for the period of June 1, 2013 through May 31, 2014.

**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 NFTA 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 Infor, Inc., the company that purchased Lawson in 2012.

The Annual Maintenance includes the following support:

• Human Resource Management Group	\$44,951.41
• Lawson System Foundation	\$13,007.05
• Microsoft Office Add Ins	\$ 2,493.42
• MF Server Express	\$ 1,496.00
• MF Server Express App Runtime	\$ 972.39
• Process Flow Websphere	\$ 4,409.60
	<b><u>\$67,329.87</u></b>

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.

**“RESOLVED,** that the Board hereby authorize a one-year renewal of the Maintenance Agreement with Infor, Inc. in the amount of \$67,329.87; 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 \$67,329.87 with Infor, Inc. for the provision of payroll support services as described hereinabove for a one-year period commencing June 1, 2013 through May 31, 2014; 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.”

**CORPORATE:**

2. C. (10) **Authorization to Award Contract for Natural Gas**

**RECOMMENDATION:** The staff requests that the Board of Commissioners authorize an agreement with the highest-ranking proponent for the provision of approximately 145,200 Dths of natural gas to the NFTA and Metro for a one-year period commencing on June 1, 2013.

**INFORMATION:** Natural gas marketers are unable to hold the basis price (cost of transportation of natural gas) for more than a day or two without adding to the price to cover their risk. Therefore, staff requests authority to enter into an agreement with the highest ranking proponent based upon the analysis of proposals received. Proposals will be evaluated by the Chief Financial Officer, Procurement Manager, Senior Accountant, Manager FMD, and Metro Equipment Engineer based on the following criteria: qualifications and experience in the natural gas commodities market, financial stability, cost, and services provided. Proposals will be opened and evaluated on May 6, 2013.

NFTA and Metro use natural gas for seasonal heating of all facilities and fueling of compressed natural gas vehicles, when necessary. Formal competitive proposals are being solicited in accordance with the specifications set forth in NFTA RFP 4292.

NFTA's natural gas cost will be based on a pricing arrangement which includes a fixed basis and the cost of the commodity as published by the New York Mercantile Exchange (NYMEX). The agreement permits the Authority to lock in the cost of gas from time to time at its discretion.

**FUNDING:** Funding is provided in the annual operating budgets of NFTA and NFTA Metro.

**“RESOLVED,** that the Board hereby authorizes Staff to enter into an Agreement with the highest-ranking proponent for the provision of natural gas as described above; and

**BE IT FURTHER RESOLVED,** that the Executive Director, her designee and/or the Chairman, be and are hereby authorized to execute an Agreement with the highest-ranking proponent for services as described above; and

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

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

**CORPORATE:**

2. C. (11) **Authorization for Agreement, SunTrust Equipment Finance & Leasing Corporation, Financing of Energy Conservation Measures, NFTA**

**RECOMMENDATION:** Staff recommends that the Board authorize the financing of Energy Conservation Measures (ECMs) for the Authority, recommended by NORESKO, LLC, our Energy Performance Contractor, through SunTrust Equipment Finance & Leasing Corporation in an amount not to exceed \$3,000,000.

**INFORMATION:** The Board authorized an Energy Services Agreement with NORESKO, LLC on April 25, 2005. The projects proposed by NORESKO provide for an expected annual energy usage savings of 3%. These guaranteed energy savings, Operation and Maintenance (O&M) savings and credits for the elimination of O&M fees for services related to prior project phases between NORESKO and NFTA cover 100% of the financing plus an additional 37.6% savings, on average, over the not to exceed 15 year financing period. For savings achieved over 20%, NFTA will pay NORESKO 30% of these additional savings as a performance incentive.

For these projects, an estimated positive cash flow over the 15 year performance period is \$1,984,626. Once the payment of the financing is complete, an annual savings of \$377,273 is anticipated. These projects will be used toward Executive Compliance Order 88 requiring energy savings.

GUARANTEE YEAR	TOTAL SAVINGS	TOTAL NET CASH FLOW	
		TOTAL PAYMENTS	
1	\$ 358,064	\$ 222,569	\$ 135,495
2	\$ 350,588	\$ 218,063	\$ 132,525
3	\$ 361,104	\$ 224,611	\$ 136,493
4	\$ 371,939	\$ 231,358	\$ 140,581
5	\$ 383,095	\$ 238,304	\$ 144,791
6	\$ 394,590	\$ 245,462	\$ 149,128
7	\$ 406,426	\$ 252,833	\$ 153,593
8	\$ 297,822	\$ 186,234	\$ 111,588
9	\$ 306,758	\$ 191,830	\$ 114,928
10	\$ 315,960	\$ 197,593	\$ 118,367
11	\$ 325,439	\$ 203,530	\$ 121,909
12	\$ 335,203	\$ 209,645	\$ 125,558
13	\$ 345,259	\$ 215,944	\$ 129,315
14	\$ 355,617	\$ 222,432	\$ 133,185
15	\$ 366,285	\$ 229,115	\$ 137,170
<b>TOTAL</b>	<b>\$ 5,274,149</b>	<b>\$ 3,289,523</b>	<b>\$ 1,984,626</b>
<b><i>After Term Complete, all savings accrued to the Authority</i></b>			
Year 16	\$ 377,273	\$ 0	\$ 377,273

A summary of the ECMs identified is provided in the table below:

ECM #	ECM Description	Locations Affected	Cost	Simple Payback (SPB)
1	Lighting	FMD, Document Storage, Operations Control center, 1404 Main street, BNIA, Fuel Farm, Rail Shops, 247 Cayuga	\$ 989,412	7.3 Yrs
2	Energy Management Systems (EMS)	MTC, NFIA	\$ 34,408	0.6 Yrs
3	Air Handling Unit (AHU) Replacements	MTC	\$1,226,175	35.6 Yrs
4	Garage Lighting	Babcock, Cold Springs, Frontier Garages	\$ 208,261	12.9 Yrs
5	Walkway Lighting Allowance	Babcock, Cold Springs, Frontier Garages	\$ 84,000	-
	<b>TOTAL</b>		<b>\$2,542,256</b>	<b>10.5 Yrs</b>

DETERMINATION OF THE ESTIMATED AMOUNT TO BE FINANCED FOR THE PROJECTS

<i>Total NORESKO Project Price</i>	\$2,542,256
<i>NFTA Construction Period Financing</i>	\$78,516
Total Project Price	\$2,620,772
Less Rebates/Grant/Incentives Included (1)	\$0
<b>TOTAL AMOUNT FINANCED</b>	<b>\$2,620,772</b>

(1) Timing of Utility Rebates will likely take place either in the late stages of construction or post-construction. To date \$104,272 in National Grid incentives have been awarded.

It is anticipated that we will have at least \$104,272 in Rebates/Grant incentives. Any accrued savings during construction will also be a direct benefit to the NFTA to reduce the amount financed.

Based on a competitive bid process, the ECMs will be financed by SunTrust Equipment Finance & Leasing Corporation through a master lease financing agreement. An amount up to \$3,000,000 may be financed at an estimated rate of 2.61%. The total project costs are 100% tax exempt and the financing period is not to exceed 15 years.

SunTrust Equipment Finance & Leasing Corporation ranked the highest out of two proposers that were evaluated on cost, qualifications and experience. The other proposer was Lehigh Capital Access, Inc at an interest rate of 4.367%.

**FUNDING:** Funding will be provided through the energy cost savings from the budgets for Metro and NFTA.

**“RESOLVED**, that the Board hereby authorizes an Agreement with SunTrust Equipment Finance & Leasing Corporation for financing of the installation of Energy Conservation Measures as described hereinabove; and

**BE IT FURTHER RESOLVED**, that the Executive Director or his designee, and/or the Chairman be and hereby are authorized to execute an Agreement with SunTrust Equipment Finance & Leasing Corporation for financing 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 payment under said Agreement upon certification by the Manager, Procurement, that such payments are in order.”

<b>RFP DOCUMENTS REQUIRED</b> (Completed by Procurement)	<b>SunTrust Equipment Finance &amp; Leasing Corp.</b> Towson, MD	<b>Lehigh Capital Access, Inc</b> Allentown, PA
Non-Collusive Cert	x	x
Disclosure of Prior Non-rep Determinations	x	x
Cover Letter	x	x
Description of services	x	x
Mgmt & Staff Qualifications	x	x
Resumes	x	x
References	x	x
Cost Proposal	x	x
<b>SELECTION CRITERIA</b> (Completed by Team)	<b>(Rate on a scale of 1 - 10, with 10 being the highest)</b> Team Consensus	
Interest Rate 50%	10.00	5.97
Compliance with Requirements 30%	8.00	8.00
Qualifications and Experience 20%	8.00	8.00
<b>RATING</b>	<b>8.80</b>	<b>7.19</b>
<b>Cost Proposals</b>		
	2.61% tax exempt	4.37%
	4.28% taxable	
	\$250 escrow admin fee	Fees included interest rate
	Recording fee \$100	
	Doc Preparation \$500	

**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. (3)
1. Authorization for Change Order No. 2, Metro Environmental & Contracting, Inc., Long Term Lot "B" Parking Expansion, Building Demolition, BNIA
2. Authorization for Agreements, Accadia Site Contracting, Inc. and Urban Engineers of New York, Long Term Lot "B" Parking Expansion Construction, Construction Monitoring and Construction Design Support Services, BNIA
3. Authorization for Agreement, Union Concrete and Construction Company, Airside Pavement Maintenance, BNIA

**AVIATION:**

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

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

Whereupon, it was moved by Commissioner Sloma, seconded by Commissioner Hughes, 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. (3) and dated April 25, 2013 as set forth herein, be and hereby are accepted and approved in their entirety.”

**AYES: ZEMSKY, SLOMA, LEWIN, CROCE, DURAND, GURNEY, HUGHES**

**NOES: NONE**

**ADOPTED**

**AVIATION:**

3. D. (1) **Authorization for Change Order No. 2, Metro Environmental & Contracting, Inc., Long Term Lot "B" Parking Expansion, Building Demolition, BNIA**

**RECOMMENDATION:** Staff recommends that the Board approve Change Order No. 2 as a \$141,164.82 increase to Metro Environmental & Contracting Incorporated's Contract No. 19BL1205, Long Term Lot 'B' Expansion – Building Demolition at the Buffalo Niagara International Airport. This will result in a revised contract value of \$658,750.03.

**INFORMATION:** Change Order No. 2 provides for the recommended Contract modifications listed below. The costs for these modifications are in accordance with Article 18 – Extra Work, and Article 21 - Payment for Force Account Work of the General Conditions. The costs for these change proposals incorporate New York State Prevailing Wage Rates and standard material and equipment costs as verified by the Authority's Engineer.

**PCO No. 05-Removal/Disposal of Oil Tank and Contaminated Soils**      **ADD \$61,973.01**

During demolition of the existing foundation and floor slab for Building "B", an abandoned fuel oil tank was discovered under the slab that was not indicated in the contract documents. Subsequent testing determined the tank contained fuel oil that had also leaked into the soil and the stone subbase under the adjacent parking area and road. The tank, soil, and subbase stone required removal and disposal off-site in accordance with NYSDEC and US EPA requirements.

In order to avoid delays to the project, the Contractor was directed to proceed with removal and disposal on a Force Account (time-and-material) basis. The Contractor immediately filed a notification with the NYSDEC to obtain a spill reporting number and proceeded with the required excavation, removal, disposal of the tank, tank contents, and the surrounding soil and stone. Daily records were kept by the Authority's Engineer to document the work as it progressed.

Upon completion of the work, the Contractor submitted a breakdown of the cost determined from the daily Force Account Reports signed by the Engineer, requesting \$68,731.53 in additional compensation. The Contractor's cost proposal was reviewed by the Authority's Engineer and returned for revision. Subsequent negotiations with the Contractor resulted in agreement upon \$61,793.01 as total fair and equitable compensation for all work required to complete the removal and disposal of the tank and all contaminated materials.

**PCO No 06-Embankment Material Rev. and Excess Topsoil Removal**      **ADD \$79,191.81**

The Contract Bid Documents anticipated approximately 6" of existing topsoil to be in the area of the stone parking surface that was to be constructed after demolition of the existing buildings. The stone parking surface constructed in this portion of the project will become the subbase for a permanent paved parking lot under a subsequent contract.

Upon start of construction, the Contractor notified the Engineer that the actual depth of the existing topsoil was approximately 22", requiring additional excavation and embankment when compared to the bid documents. In addition, due to the current weather conditions, suitable earth embankment material for specified compaction was unavailable. The Engineer investigated the existing conditions and directed the Contractor to furnish a substitute embankment material that

could be placed and compacted to meet the requirements of the specification and provide a permanent, sound subbase for the future paved parking lot.

The Contractor submitted a cost proposal to substitute 2” graded stone for the embankment material at a net cost of \$17.89 per ton. Subsequent negotiations resulted in agreement upon \$12.71 per ton for the material substitution. The Contractor proceeded on a Force Account (time-and-material) to remove all topsoil. The 2” graded stone was placed and compacted for the parking surface. Daily records were kept by the Authority’s Engineer to document the work as it progressed. Upon completion of the work, the Contractor submitted a breakdown of the cost determined from the daily Force Account Reports signed by the Engineer, requesting \$82,005.92 in additional compensation. The Contractor’s cost proposal was reviewed by the Authority’s Engineer and returned for revision. Subsequent negotiations with the Contractor resulted in agreement upon \$79,191.81 as total fair and equitable compensation for all substitute material and the work required to complete the additional excavation and embankment.

**FUNDING:** The total amount of this Change Order No. 2 will be a \$141,164.82 add, thereby increasing the total amount of the Contract from the previously amended amount of \$517,585.21 to an amended Contract value of \$658,750.03.

Funds for PCO Nos. 005 and 006 are in the BNIA Capital Budget indicated below. Funding is distributed between the New York State Consolidated Fund (NYSDOT), Empire State Development Fund (ESD), and the Airport Development Fund (ADF) as follows:

<b>Construction</b>		
Account Code 120000000-3188-2-3403		
NYSDOT & ESD	85%	\$119,990.10
ADF	15%	\$21,174.72
	TOTAL	\$141,164.82

**“RESOLVED**, that the Board hereby authorizes Change Order No. 2 as described hereinabove; and

**BE IT FURTHER RESOLVED**, that the Executive Director, her designee and/or the Chairman, be and hereby authorized to execute Change Order No. 2 as described hereinabove; and

**BE IT FURTHER RESOLVED**, that said Change Order No. 2 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 No. 2 upon certification by the Director, Engineering, that such payments are in order.”

**AVIATION:**

3. D. (2) **Authorization for Agreements, Accadia Site Contracting, Inc. and Urban Engineers of New York, Long Term Lot "B" Parking Expansion Construction, Construction Monitoring and Construction Design Support Services, BNIA**

**RECOMMENDATION:** Staff recommends that the Board award the subject construction contract to Accadia Site Contracting, Inc. for the total bid amount of \$2,658,989.00; the construction monitoring contract to Urban Engineers of New York for a cost plus fixed fee not-to-exceed amount of \$246,559.72, and the construction design support services to Urban Engineers of New York for a cost plus fixed fee not-to-exceed amount of \$55,683.93.

**INFORMATION:** The project provides 999 additional parking spaces at the existing Holtz Road Economy Parking Lot B at Buffalo Niagara International Airport. The project includes drainage, asphalt paving, lighting, pavement markings, signs, fencing, and security.

**Construction:** The construction contract provides for erosion control measures, earthwork, drainage, pole mounted area lighting, security surveillance equipment, underground cabling for power and communications, bus shelters, fencing, signs, paving, pavement markings, and adherence to the project Stormwater Water Pollution Prevention Plan.

The project was publically advertised in accordance with NFTA Procurement Guidelines. Seventeen sets (17) of contract documents were distributed to potential prime bidders with eleven (11) responding as follows:

Bidder	Total Bid Amount
Accadia Site Contracting, Inc. Depew, New York Paul Marinaccio, President	\$2,658,989.00
Millherst Construction, Inc. Clarence Center, New York James L. Collins, Jr., Vice President	\$2,719,914.50
Zoladz Construction Co., Inc. Alden, NY Thomas D. Dougherty, Vice President	\$2,779,762.69
Edbauer Construction West Seneca, New York William J. Bauer, President	\$2,869,000.00
Northeast Diversification, Inc. Lancaster, New York 14086 Lee Cadby, President	\$3,052,471.00
Keeler Construction Co., Inc. Albion, New York Mark D. Keeler, President	\$3,129,574.00

Louis Del Prince & Sons, Inc. Cheektowaga, New York Kenneth A. Del Prince, Secretary/Treasurer	\$3,246,250.00
Dipizio Construction Co. Cheektowaga, New York Bernard Dipizio, President	\$3,438,900.00
Yarussi Construction, Inc. Niagara Falls, New York Nicolas Yarussi, President	\$3,482,749.00
Mark Cerrone, Inc. Niagara Falls, New York George Churakos, Vice President & Secretary	\$3,842,271.00
Concrete Applied Technologies Corp. Alden, New York Michael Salvatore, President	\$4,412,673.04

Analysis of the bids confirm that the low bidder, Accadia Site Contracting Inc. demonstrated the knowledge, understanding, and ability to successfully complete the construction work.

Accadia has acknowledged their intent to attain the 23% MWBE goal. NFTA Affirmative Action/EEO office has been briefed on the bid results.

Consultant Construction Monitoring and Construction Design Support: The project consultant selection was through the RFP process that culminated with the November 25, 2012 Board authorization of an agreement with Urban Engineers of New York (Urban) for design services. The RFP process included the option for the NFTA to negotiate with Urban for construction monitoring and construction design support services.

Construction monitoring scope of services includes the following items:

- Full time inspection
- Measurement and verification of the quantity of materials installed
- Material Testing

Construction Monitoring	
Engineer's Estimate	\$259,507.80
Consultant's Proposal	\$344,939.69
Negotiated Cost	\$246,559.72

Construction design support scope of services includes the following items:

- Review and approval of submittals
- Respond to contractor requests for information
- Preparation of "as built" record drawings
- Professional services requiring an Engineer licensed to practice in the State of New York

- Consultation and project coordination

Construction Design Support	
Engineer's Estimate	\$60,872.20
Consultant's Proposal	\$80,911.78
Negotiated Cost	\$55,683.93

Urban's subconsultants include; Parsons Brinckerhoff, Watts Engineering and Architects, Arora Engineers, and SJB Services.

**FUNDING:** Funding is distributed between the New York State Consolidated Fund (NYSDOT), Empire State Development Fund (ESD), and the Airport Development Fund (ADF) as follows:

Construction		Construction Monitoring & Design Support	
Account Code 120000000-3188-2-3403		Account Code 120000000- 3113-3-3403	
NYSDOT & ESD (85%)	\$2,260,140.65	NYSDOT (83%)	\$250,862.23
ADF (15%)	\$398,848.35	ADF (17%)	\$51,381.42
TOTAL	\$2,658,989.00	TOTAL	\$302,243.65

**“RESOLVED**, that the Board hereby authorizes Agreements with Accadia Site Contracting, Inc. and Urban Engineers of New York for the construction, construction monitoring and construction design support services at the Buffalo Niagara International Airport at the costs set forth above; and

**BE IT FURTHER RESOLVED**, that the Executive Director, her designee and/or the Chairman, be and are hereby authorized to execute Agreements with Accadia Site Contracting, Inc. and Urban Engineers of New York, as described above; and

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

**AVIATION:**

3. D. (3) **Authorization for Agreement, Union Concrete and Construction Company, Airside Pavement Maintenance, BNIA**

**RECOMMENDATION:** Staff recommends that the Board award the subject construction contract to Union Concrete and Construction Company for the total bid amount of \$192,850.00.

**INFORMATION:** Foreign Object Debris (FOD) poses a safety hazard to aircraft. This project corrects pavement deterioration areas that produce FOD. The scope of work provides for repairs for two Runway 5-23 pavement deterioration areas as follows:

- A pavement upheaval located between Taxiway Charlie and the perimeter road underpass tunnel
- A 2500 feet long longitudinal pavement joint crack along the runway centerline between Taxiway Gulf and Delta.

Work will be performed during night time windows as these work hours minimize impacts to Aircraft Operations.

The project was publicly advertised in accordance with NFTA Procurement Guidelines. Five sets of contract documents were distributed to potential prime bidders with one bid received as follows:

<b>Company</b>	<b>Total Bid Amount</b>
Engineer Estimate	\$295,996.00
Union Concrete and Construction Company West Seneca, New York Robert Hill, President	\$192,850.00

A detailed bid evaluation was performed. The evaluation included documentation of the numerous contacts made to prospective bidders. Three of the five potential bidders responded to inquiries to determine why they did not bid. They indicated project work constraints, insurance requirements, and other concurrent bidding opportunities as reasons for not providing a bid.

A single bid audit was performed. A detail price analysis concluded that the Union Concrete and Construction Company bid falls within the anticipated range of prices with consideration for the current favorable bidding climate and proposed construction means and methods.

It was concluded that Union Concrete and Construction Company has the knowledge, understanding, and ability to successfully accomplish the project work.

The NFTA Affirmative Action/EEO office has been briefed on the bid results.

**FUNDING:** The funding source for this construction project is found in the BNIA Operating Budget, Account No. 02-0219-520-5600.

**“RESOLVED**, that the Board accepts the bid submitted by Union Concrete and Construction Company for the lump sum amount of \$192,850.00, 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 Union Concrete and Construction Company for the lump sum amount of \$192,850.00, 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.”

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

**Surface Transportation Resolutions**

- i. Niagara Frontier Transportation Authority, Acceptance of Surface Resolutions 4. D. (1) through 4. D. (4)
1. Authorization for Agreement, Mark Cerrone, Inc., Rail Mall Trackbed Replacement-600 Block, LRRT
2. Authorization for Agreement, City of Niagara Falls, Seasonal Metro Trolley Service, Metro
3. Authorization for Agreement, City of Buffalo, Construction of the Return of Traffic to Main Street Project
4. Authorization for Extension of Permit Agreement, State University of New York, Park and Ride Facilities, University at Buffalo's Main Street Campus, Buffalo

**SURFACE:**

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

The Executive Director advised that Items 4. D. (1) through 4. 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 Lewin, seconded by Commissioner Gurney, 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. (4) and dated April 25, 2013 as set forth herein, be and hereby are accepted and approved in their entirety.”

**AYES: ZEMSKY, SLOMA, LEWIN\*, CROCE, DURAND\*, GURNEY, HUGHES**

**ABSTENTION: LEWIN [\*Item 4. D. 4 only], DURAND [\*Item 4. D. 4 only]**

**NOES: NONE**

**ADOPTED**

**SURFACE:**

**4. D. (1) Authorization for Agreement, Mark Cerrone, Inc., Rail Mall Trackbed Replacement-600 Block, LRRT**

**RECOMMENDATION:** Staff recommends that the Board award the subject construction contract to Mark Cerrone, Inc. for the total bid amount of \$1,666,666.00.

**INFORMATION:** This project provides for the installation of the precast panels in the 600 Block of Main Street as part of the mall rail and trackbed replacement. The Board approved the procurement of the precast panels in March.

The City of Buffalo is currently proceeding with construction of the Traffic on Main Street Project in the 600 Block. The track rails in this area have reached the end of their useful life because the height of the rail head is now at the minimum allowable thickness. In addition, the existing concrete trackbed has areas exhibiting severe cracks. Consequently, the rails and trackbed require replacement.

In order to maintain the City's project schedule, it is required that this work proceed. Coordination with this project will provide savings to the NFTA project. The concurrent work will also minimize single tracking and shutdown requirements, as well as disruption of the LRRT service to passengers.

The project scope of work provides new subsurface drainage, installation of the precast concrete panel system, and replacement of the rails. The new precast concrete panel system will serve as the trackbed in this section of Main Street.

The project was publicly advertised in accordance with NFTA Procurement Guidelines. Five sets of contract documents were distributed to potential bidders with the two bids received as follows:

<b>Bidder</b>	<b>Total Amount Bid</b>
Engineer Estimate	\$1,812,354.00
Mark Cerrone, Inc. Niagara Falls, NY Stephanie Churakos, President & Treasurer	\$1,666,666.00
Atlas Railroad Construction, LLC Bridgeville, PA Gregory Susko, President/CEO	\$1,795,559.00

Subsequent to the bid opening, potential bidders were contacted to determine why they did not bid. One responded they did not have sufficient time to put their bid together, another elected to provide subcontract work to the general contractor, and the third, after reviewing the documents and contacting subcontractors, elected not to bid.

Analysis of the bids confirmed that the low bidder; Mark Cerrone, Inc. has demonstrated the knowledge, understanding, and ability to successfully complete the construction work.

Mark Cerrone, Inc. has acknowledged their intent to attain the 17% DBE participation goal. NFTA Affirmative Action/EEO office has been briefed on the bid results.

**FUNDING:** Funding for this project is pending re-programming of existing FTA grant funds. Funding is found in capital account code 120000000-3188-2-9329 distributed as follows:

Construction		
FTA	80%	\$1,333,332.80
NYSDOT	10%	\$166,666.60
88c	10%	\$166,666.60
	TOTAL	\$1,666,666.00

**“RESOLVED,** that the Board hereby authorizes an Agreement with Mark Cerrone, Inc., for the installation of the precast panels in the 600 block of Main Street as part of the mall rail and trackbed replacement as described above for a cost of \$1,666,666.00; and

**BE IT FURTHER RESOLVED,** that the Executive Director, her designee and/or the Chairman, be and are hereby authorized to execute an Agreement with Mark Cerrone, Inc., for the total amount of \$1,666,666.00; and

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

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

**SURFACE:**

4. D. (2) **Authorization for Agreement, City of Niagara Falls, Seasonal Metro Trolley Service, Metro**

**RECOMMENDATION:** Staff recommends that the Board authorize an agreement with the City of Niagara Falls for Metro to provide seasonal trolley service in Niagara Falls.

**INFORMATION:** For the past several years, Metro under agreement with the City of Niagara Falls, has provided additional seasonal fixed route, open door trolley service from the Niagara Falls International Airport to downtown Niagara Falls using replica trolley vehicles whenever possible. There were approximately 54,700 boardings on the Niagara Falls trolley in 2012. Funding is provided by the City of Niagara Falls through receipts from a 1% increase in the bed tax on each room in Niagara Falls hotels.

This year, Metro will provide a similar level of service as last year under the same funding arrangement. The City will pay Metro the sum of \$85,382.33 per month for six months for the operation of this service for a total payment of \$512,294.

The term of the agreement shall commence on May 17, 2013 and terminate on December 31, 2013, but may be terminated by Metro on thirty days notice if the City fails to make a payment when due.

Metro will provide Niagara Falls hotels with passes for their customers to be used as proof of fare. The pass will entitle customers to unlimited access on the trolley service, as well as on Metro's bus and rail service on the day and month for which they are validated upon boarding by the Metro operator. For audit purposes, if a customer is provided with a pass or passes, the hotel shall cause a statement to be placed on that customers bill noting the date and number of passes provided.

**FUNDING:** No funding is required.

**“RESOLVED**, that the Board hereby authorizes an Agreement with the City of Niagara Falls for Metro to provide seasonal trolley service from the Niagara Falls International Airport to Downtown Niagara Falls as described above; and

**BE IT FURTHER RESOLVED**, that the Executive Director, her designee and/or the Chairman, be and are hereby authorized to execute an Agreement with the City of Niagara Falls, as described above; and

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

**SURFACE:**

4. D. (3) **Authorization for Agreement, City of Buffalo, Construction of the Return of Traffic to Main Street Project**

**RECOMMENDATION:** Staff recommends that the Board authorize an agreement between Metro and the City of Buffalo to allow construction of the Return of Traffic to the 500 Block of Main Street Project on Metro's transit easement.

**INFORMATION:** The City is scheduled to bid construction of the Return of Traffic to the 500 Block of Main Street Project in May 2013 for which the construction agreement is a prerequisite. Construction is scheduled to begin on Metro's transit easement in the Spring of 2014, with completion by the end of 2014.

Construction will also include improvements to the existing infrastructure including but not limited to drainage, electrical and communication cabling and traffic control devices. Improvements to the existing trackbed include replacement of the trackbed, track or any associated infrastructure as a bid alternative for funding evaluation. Enhancement of the existing Fountain Plaza Station is also included in this scope.

This agreement provides that all of the City's contractors working on Metro's trackbed will have insurance naming Metro and the NFTA as additional insureds at coverage levels specified by the NFTA's Risk Management Department. The City has, in addition, agreed to indemnify Metro for any negligence on the part of the City. The Agreement further provides for coordination of the work to ensure the continuity of Metro's rail service.

The parties are currently negotiating another agreement to specify what the roles and responsibilities are for operations and maintenance of the LRRT improvements at the conclusion of construction.

**FUNDING:** No funding is required.

**“RESOLVED,** that the Board hereby authorizes an Agreement with the City of Buffalo for to allow construction of the Return to Traffic to Main Street project 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 the City of Buffalo as described hereinabove; 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.”

**SURFACE:**

4. D. (4) **Authorization for Extension of Permit Agreement, State University of New York, Park and Ride Facilities, University at Buffalo's Main Street Campus, Buffalo**

**RECOMMENDATION:** Staff recommends that the Board authorize an extension to the Revocable Permit Agreement with the State University of New York for park and ride facilities at the University of Buffalo's Main Street Campus which expired on August 31, 2012.

**INFORMATION:** Metro has utilized parking facilities at UB's Main Street Campus for use by Metro's rail and bus customers since 2004. The area covered by the Permit is designated as NFTA lot and provides parking for approximately 312 vehicles. Rent consists of \$14,385.07 per year, adjusted annually for inflation, and 200 single zone Metro flash passes per month for students in the University's EOP program that provides support for disadvantaged students. Utility payments are \$3,500 per year, adjusted annually for inflation. Metro remains responsible for maintenance and security of the parking facilities.

The new revocable permit covers the time period September 1, 2012 through April 30, 2013, and month-to-month thereafter upon mutual agreement of the parties, not to extend beyond August 31, 2013. Rental payments made during this agreement will be credited against any new revocable permit that is in development where the new revocable permit commences during the period May 1, 2013 to August 31, 2013.

Discussions with UB for a long-term lease are continuing, and UB has agreed to provide Metro with an additional extension until August 31, 2013.

**FUNDING:** Funding will be provided in Metro Rail's annual operating budgets.

**“RESOLVED,** that the Board hereby authorizes an extension to the Revocable Permit Agreement with the State University of New York for parking facilities at the University of Buffalo's South Campus; and

**BE IT FURTHER RESOLVED,** that the Executive Director, her designee and or the Chairman be and hereby are authorized to execute an extension to the Revocable Permit Agreement with the State University of New York for parking facilities at the University of Buffalo's South Campus upon the terms as set forth above, and upon other terms and conditions as negotiated; and

**BE IT FURTHER RESOLVED,** the said Agreement shall include such additional terms, conditions, provisions 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.”

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

**Property/Risk Management Resolutions**

- i. Niagara Frontier Transportation Authority, Acceptance of Property/Risk Management Resolutions 5. D. (1) through 5. D. (8)
1. Approval of Guidelines for Acquisitions and Dispositions of Real Property, NFTA and NFT Metro System, Inc.
2. Authorization for Agreement, Hunt Commercial Real Estate Corporation, Brokerage Services, 485 Cayuga Road
3. Authorization for Agreement, Cazenovia Community Resource Center: Sail Buffalo, NFTA Boat Harbor
4. Authorization for Lease Amendment Agreement, Cabrera Services, Inc., 247 Cayuga Road
5. Authorization for Lease Agreement, Gray Manufacturing Industries, LLC, Port Terminal B
6. Authorization for License Agreement, Engineering Society of Buffalo, Inc., Boat Harbor/Gallagher Beach
7. Authorization for License Agreement, National Multiple Sclerosis Society, Boat Harbor
8. Authorization for License Agreement, Cystic Fibrosis Foundation of Western New York Boat Harbor

**PROPERTY:**

**5. D. (i) Niagara Frontier Transportation Authority, Acceptance of Property Resolutions 5. D. (1) through 5. D. (8)**

The Executive Director advised that Items 5. D. (1) through 5. D. (8) 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 Durand, 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. (8) and dated April 25, 2013 as set forth herein, be and hereby are accepted and approved in their entirety.”

**AYES: ZEMSKY, SLOMA, LEWIN, CROCE, DURAND, GURNEY, HUGHES**

**NOES: NONE**

**ADOPTED**

**PROPERTY:**

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

**RECOMMENDATION:** Staff recommends that the Board approve the attached Guidelines for Acquisitions and Disposition of Real Property for the NFTA and NFTA 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 been revised in accordance with the Public Authorities Law since the Board reviewed and approved them last year. The guidelines with changes are attached.

**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: 04-27-10

**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 as required by Section 2897 of the Public Authorities Law ~~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 Director ~~Manager~~, Risk Management and Special Projects, 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 on an annual basis ~~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 price received for 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 Agreement, Hunt Commercial Real Estate Corporation, Brokerage Services, 485 Cayuga Road**

**RECOMMENDATION:** Staff recommends that the Board authorize an Agreement with Hunt Commercial Real Estate Corporation to provide real estate brokerage services for the NFTA's facility at 485 Cayuga Road, Buffalo, New York.

**INFORMATION:** The NFTA's facility at 485 Cayuga Road consists of 330,000 square feet and is located adjacent to the BNIA airfield. Real estate brokerage services have been provided for this property by Hunt Commercial Real Estate Corporation since October of 2007. Services include analyzing and assessing the competitive real estate market, recommending lease parameters and transaction structures, developing and implementing a leasing plan, creating and implementing a marketing and advertising campaign, tenant and broker outreach and conducting negotiations.

A Request for Proposals from interested brokerage firms was advertised and five local firms responded:

CB Richard Ellis-Buffalo  
Hunt Commercial Real Estate Corporation  
J.R. Militello Realty, Inc.  
McGuire Development Company  
Pyramid Brokerage Company.

The Consultant Selection Committee comprised of the Manager, Real Property, Facilities Manager and Manager, Procurement reviewed the proposals based upon the advertised criteria of (1) experience and qualification of staff, (2) quality of similar services provided to others, (3) technical approach and visions and (4) compensation. The Committee ranked Hunt Commercial Real Estate Corporation the highest based upon these factors.

The Agreement will be for a term of three years with two one-year options exercisable by the NFTA. Hunt will receive a 5% commission for new leases and a 3% commission for renewals or space expansions. Commissions for co-broker arrangements will be 7.5%. Commissions will be based on the total aggregate base rent and will be paid on a monthly basis over a thirty-six month period.

**FUNDING:** Funding will be provided through rentals received.

**“RESOLVED,** that the Board hereby authorizes an Agreement with Hunt Real Estate Corporation to provide real estate brokerage services for the NFTA's facility at 485 Cayuga Road; 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 Hunt Real Estate Corporation for real estate brokerage services for the NFTA's facility at 485 Cayuga Road upon the 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 under said Agreement upon certification by the Manager, Real Property, that such payments are in order."

**PROPERTY:**

5. D. (3) **Authorization for Agreement, Cazenovia Community Resource Center: Sail Buffalo, NFTA Boat Harbor**

**RECOMMENDATION:** Staff recommends that the Board authorize an Agreement with the Cazenovia Community Resource Center: Sail Buffalo to enable them to have the use of two slips at the Boat Harbor at no cost.

**INFORMATION:** Cazenovia Community Resource Center: Sail Buffalo is a not for profit organization that is collaborating with WNY Maritime Charter School (WNYMCS) to train cadets and staff for safe boating and practical seamanship on the water. They currently have an agreement with the U.S. Coast Guard to operate out of a portion of the Coast Guard's waterfront property, but they need more room.

WNYMCS has a water-dependent program which follows the curriculum of the Navy Junior Reserve Officer Training Corps (NJROTC) and the American Sailing Association. It is performed with two seaworthy keel boats approximately 25 feet in length. The students will not have access to the boats without WNYMCS supervision.

The NFTA historically has tried to accommodate requests from reputable and responsible organizations to use the Boat Harbor for community projects. The program offered by WNYMCS is well run and has a broad range of community support. Over the past several years, as well as the upcoming season, there has been excess capacity for 30 and 40 foot slips, so allowing WNYMCS free use of two slips will not likely impact revenues to the NFTA. The Agreement with WNYMCS will provide the NFTA with the appropriate insurance and indemnification protection, and will be for a one-year term with two one-year renewals at WNYMCS option.

**FUNDING:** No funding is necessary.

**“RESOLVED,** that the Board hereby authorizes an Agreement with the Cazenovia Community Resource Center: Sail Buffalo to enable them to have the use of two slips at the Boat Harbor at no cost; and

**BE IT FURTHER RESOLVED,** that the Executive Director, his designee and/or the Chairman, be and hereby are authorized to execute an Agreement with Cazenovia Community Resource Center: Sail Buffalo for a one-year year term with two one-year renewals and all other terms and conditions as set forth hereinabove and as negotiated; and

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

PROPERTY 5. D. (3)

**PROPERTY:**

5. D. (4) **Authorization for Lease Amendment Agreement, Cabrera Services, Inc., 247 Cayuga Road**

**RECOMMENDATION:** Staff recommends that the Board authorize a lease amendment with Cabrera Services, Inc. for additional office space at 247 Cayuga Road.

**INFORMATION:** Cabrera Services is an environmental consulting firm based in Connecticut that currently leases 944 square feet of office space at 247 Cayuga Road. This amendment will add 491 square feet to their lease for six months. The rental rate will be the same as the rate for their current space, or \$11 per square foot. The term will be from April 25, 2013 through October 24, 2013.

**FUNDING:** No funding is necessary.

**“RESOLVED,** that the Board hereby authorizes a Lease Amendment Agreement with Cabrera Services, Inc., for additional 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 Amendment Agreement with Cabrera Services, Inc., with terms and conditions as set forth above and as negotiated; and

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

**PROPERTY:**

5. D. (5) **Authorization for Lease Agreement, Gray Manufacturing Industries, LLC, Port Terminal B**

**RECOMMENDATION:** Staff recommends that the Board authorize a lease agreement with Gray Manufacturing Industries, LLC (GMI), (Dave Gray, President) for the lease of warehouse space at Port Terminal B.

**INFORMATION:** GMI has been leasing cold storage space at Port Terminal A since September 2012. Since the NFTA may be utilizing Terminal A for a different tenant, GMI will be giving up that space and leasing all of Terminal B (95,000 sq. ft.). The lease would be for six months, commencing June 1, 2013 and ending November 30, 2013, with the Tenant having the right to renew for one additional six-month period beginning December 1, 2013. The rent would be at a rate of \$2.50 per square foot per year or \$19,791.66 per month.

GMI will also have the right to temporarily store rail cars on approximately 40,000 square feet of the parking lot while moving the cars from Terminal A to Terminal B at a rental rate of \$500 per week.

**FUNDING:** No funding is necessary.

**“RESOLVED,** that the Board hereby authorizes a Lease Agreement with Gray Manufacturing Industries, LLC, for use of space at Port Terminal 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 Lease Agreement with Gray Manufacturing Industries, LLC, 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. (6) **Authorization for License Agreement, Engineering Society of Buffalo, Inc., Boat Harbor/Gallagher Beach**

**RECOMMENDATION:** Staff 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, July 24, 2013. 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 in scholarships have been distributed annually by the Engineering Society of Buffalo.

This is the fifth 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 their annual scholarship run, 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. 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. (7) **Authorization for License Agreement, National Multiple Sclerosis Society, Boat Harbor**

**RECOMMENDATION:** Staff recommends that the Board authorize a License Agreement with the National Multiple Sclerosis Society for use of Boat Harbor facilities.

**INFORMATION:** The National MS Society is sponsoring the 1st Annual MS Walleye Fishing Tournament on June 20, 2013 at NFTA's Boat Harbor. They anticipate approximately 100 participants on 25 boats.

The National MS Society will be required to provide all appropriate insurance coverages. No additional operating costs will be incurred by the NFTA. The NFTA will receive the benefit of additional boat launch fees and gasoline sales.

**FUNDING:** No funding is necessary.

**“RESOLVED,** that the Board hereby authorizes a License Agreement with the National Multiple Sclerosis Society for their 1<sup>st</sup> annual Walleye Fishing Tournament, 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 National Multiple Sclerosis Society 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. (8) **Authorization for License Agreement, Cystic Fibrosis Foundation of Western New York, Boat Harbor**

**RECOMMENDATION:** Staff recommends that the Board authorize a License Agreement with the Cystic Fibrosis Foundation of Western New York for use of Boat Harbor facilities.

**INFORMATION:** The Cystic Fibrosis Foundation is sponsoring their 12th Annual Mercury Redbone @ Large Fishing Tournament in conjunction with the Greater Niagara BassEye Celebrity Challenge on June 27 and 28, 2013 at NFTA's Boat Harbor with a catch and release fishing tournament. This event is presented by Rich Products and the Buffalo Bisons. This is the eighth year that this event will be held at the Boat Harbor.

Rich Products will be providing all necessary equipment for the event. The Cystic Fibrosis Foundation will be required to provide all appropriate insurance coverages. No additional operating costs will be incurred by the NFTA. The NFTA will receive the benefit of additional boat launch fees and gasoline sales.

**FUNDING:** No funding is necessary.

**“RESOLVED,** that the Board hereby authorizes a License Agreement with Cystic Fibrosis Foundation of Western New York for use of the 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 Cystic Fibrosis Foundation of Western New York with terms and conditions as set forth above and as negotiated; and

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

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

At approximately 12:56 p.m., the Chairman indicated that there was no further business coming before the Board, whereupon it was moved by Commissioner Sloma, seconded by Commissioner Lewin, and unanimously approved that the Annual Meeting of the Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc. be adjourned.

**AYES: ZEMSKY, SLOMA, LEWIN, CROCE, DURAND, GURNEY,  
HUGHES**

**NOES: NONE**

