



Niagara Frontier Transportation Authority
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June 2, 2015

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 Annual Board Meeting held on April 23, 2015.

Very truly yours,

A handwritten signature in black ink, appearing to read "David J. 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 BOARD MEETING
 APRIL 23, 2015 12:30 PM
 MINUTES**

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1. **CALL TO ORDER**

A. **Meeting Called to Order**

Chairman Zemsky called the meeting to order at approximately 12:35 p.m.

B. **Approval of Minutes of the NFTA Regular Board Meeting held on March 26, 2015**

It was moved by Commissioner Sloma, seconded by Commissioner Hughes, that the Minutes of the March 26, 2015 Regular Meeting of the Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc., be accepted and approved.

**AYES: ZEMSKY, SLOMA, DEMAKOS, DURAND, ANSARI,
BAYNES, GURNEY, HICKS, HUGHES, PERRY**

NOES: NONE

C. Executive Director Report

Executive Director Kimberley Minkel advised the Board that the 49th Annual International Snow Symposium was held in Buffalo and the NFTA was the recipient of four awards. Buffalo and Niagara Falls International Airports won the Balchen/Post award. The Balchen/Post nominations come from airlines, pilots, general aviation officials, hotel owners and ground transportation operators. Assistant Supervisor Peter Robbins and mechanic John Krasniewski, who developed a housing unit to keep the hydraulic hoses from ice buildup, were also honored. Buffalo Niagara International Airport airfield operator Christopher McBride was nominated this year's Operator of the Year.

The Executive Director also recognized Dave Rugg and all the mechanics for doing such an outstanding job this past winter. She noted that even with an aging bus fleet there was a 5% improvement in system miles between interruptions despite the extremely harsh winter.

- 2. NFTA CORPORATE REPORT**
 - A. Audit and Governance Committee Report
 - B. Consolidated Financial
 - C. Corporate Resolutions

Corporate Resolutions

- i. Niagara Frontier Transportation Authority, Acceptance of Corporate Resolutions 2. C. (1) through 2. C. (9)
- ii. Acceptance of Audit and Governance Committee Charter
 1. Election of Officers, Niagara Frontier Transportation Authority
 2. Election of Officers, Niagara Frontier Transit Metro System, Inc.
 3. Approval of 2015/2016 Investment Guidelines Policy for NFTA and NFT Metro System, Inc.
 4. Approval of 2015/2016 NFTA Master Liability Management Policy
 5. Approval of 2015/2016 Guidelines for Dispositions and Transfers of Capital and Non-Capital Assets, NFTA and NFT Metro System, Inc.
 6. Approval of Procurement Guidelines for NFTA and NFT Metro System, Inc.
 7. Approval of 2015/2016 Travel Policy and Guidelines Policy for NFTA and NFT Metro System, Inc.
 8. Authorization for Amendment to the Board of Commissioners' Code of Ethics
 9. Mission Statement

CORPORATE:

2. C. (i) Niagara Frontier Transportation Authority, Acceptance of Corporate Resolutions 2. C. (1) through 2. C. (9)

The Executive Director advised that Items 2. C. (1) through 2. C. (9) 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 Perry, 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. (9) and dated April 23, 2015 as set forth herein, be and hereby are accepted and approved in their entirety.”

AYES: ZEMSKY, SLOMA, DEMAKOS, DURAND, ANSARI, BAYNES, GURNEY, HICKS, HUGHES, PERRY

NOES: NONE

ADOPTED

CORPORATE:

2. C. (ii) Acceptance of Audit and Governance Committee Charter

The Audit and Governance Committee provided the Board with the attached revised Committee Charter during their Committee Meeting, which was held prior to this Board Meeting. The revisions to the Charter were made in order to comply with Section 2825 of the Public Authorities Law.

Whereupon, it was moved by Commissioner Perry, seconded by Commissioner Gurney, that the Audit and Governance Committee Charter, be approved.

**AYES: ZEMSKY, SLOMA, DEMAKOS, DURAND, ANSARI, BAYNES,
GURNEY, HICKS, HUGHES, PERRY**

NOES: NONE

ADOPTED

Audit and Governance Committee Charter

Revised: April 23, 2015

The Audit and Governance Committee is a committee of the Board of Commissioners of the Niagara Frontier Transportation Authority established pursuant to its bylaws. The membership, operations, authority, purpose and responsibilities of specific duties of the committee are described below:

Membership and Operations

The membership of the Committee shall consist of at least three independent members of the Board of Commissioners, who shall constitute a majority on the Committee and who shall possess the necessary skills to understand the duties and functions of the Committee, including familiarity with corporate financial and accounting practices. A member is deemed independent if he or she is “(a) is not, and in the past two years has not been, employed by the public authority or an affiliate in an executive capacity; (b) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than fifteen thousand dollars for goods and services provided to the public authority or received any other form of financial assistance valued at more than fifteen thousand dollars from the public authority; (c) is not a relative of an executive officer or employee in an executive position of the public authority or an affiliate; and (d) is not, and in the past two years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the public authority or an affiliate.” The Chair of the Board shall be chair of the Audit and Governance Committee, and shall appoint a vice chair and a minimum of four members to this committee.

Insofar as practicable, at least one member of the Committee should be a "financial expert" and this shall be disclosed in the annual report of the Authority.

The Committee, as a whole, also serves as the Authority's finance committee pursuant to the Public Authorities Accountability Act of 2009.

Committee members shall serve until the successors shall be duly designated and qualified. Any vacancy in the committee occurring for any cause may be filled by any qualified member of the Board by designation the Chairman of the Board.

Authority

~~The committee shall be granted unrestricted access to all information and all employees have been, and shall be, directed to cooperate as requested by members of the committee. The board shall ensure that the Committee has sufficient resources to carry out its duties. The committee has the authority to retain, at the NFTA's expense, persons having special competencies (including, without limitation, legal, accounting or other consultants and experts) to assist the committee in fulfilling its responsibilities.~~

The committee may delegate authority to subcommittees when appropriate.

Purpose and Responsibilities

The purpose and responsibilities of the Committee shall include:

- establishing policies to promote honest and ethical conduct by Authority commissioners, officers and employees and enhance public confidence in the Authority.
 - reviewing and regularly updating the Authority's code of conduct and written policies regarding conflicts of interest. Such code of conduct and policies shall be at least as stringent as the laws, rules, regulations and policies applicable to state officers and employees.
 - examining ethical and conflict of interest issues.
 - performing board self evaluations.
 - recommend bylaws, which include rules and procedures for the conduct of board business.
 - reviewing and regularly updating the Authority's written policies regarding procurement of goods and services and the acquisition of real property or interests therein, and the disclosure of persons who attempt to influence the Authority's procurement process.
 - reviewing and regularly updating the Authority's written policies regarding the disposition of real and personal property.
 - reviewing and regularly updating the Authority's written policies regarding the protection of whistleblowers from retaliation.
 - consider questions of independence and possible conflicts of interest of members of the board and executive management.
 - review, monitor and make recommendations regarding the orientation and continuing education of the Board of Commissioners.
 - periodically review the Authority's mission, vision, and goals.
 - review and approve the Authority's Investment Guidelines.
 - review and approve the Authority's Liability Management policies.
 - review proposals for the issuance of Authority debt and make recommendations.
-
- reviewing and approving the Authority's financial statements.
 - overseeing the Authority's internal controls and compliance systems.
 - appointing, compensating, and overseeing the outside auditors retained by the Authority.
 - resolving disagreements with respect to, and overseeing compliance with, accounting policies and principles.

- reviewing management reports on internal controls and the attestation of such reports by the Authority's outside auditors.
 - investigating compliance with the Authority's policies and/or refer instances of non-compliance to the State Inspector General for investigation.
 - establishing procedures for the receipt, retention, investigation, and/or referral to the State Inspector General of complaints received by the Authority regarding accounting, internal controls, and auditing.
 - establishing policies and procedures to ensure that every director, officer and employee of the Authority shall report promptly to the State Inspector General any information concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse by the directors, officers or employees of the Authority or any persons having business dealings with the Authority. The Committee shall review all reports and draft reports delivered by the State Inspector General to the Authority and shall serve as a point of contact with such Inspector General.
 - reviewing legal and regulatory matters that may have a material impact on the financial statements, related company compliance policies, and programs and reports received from regulators.
 - meeting with the Director of Internal Audit, the independent accountant, and management in separate audit sessions as appropriate to discuss any matters that the committee or these groups believe should be discussed privately with the Committee.
 - confirming and assuring the independence of the independent accountant, and prohibit the independent accountant from providing non-audit services to the Authority.
 - providing an open avenue of communication between the internal auditor, the independent accountant, and the Board of Commissioners.
 - reviewing and concurring in the appointment, replacement, reassignment, or dismissal of the Director of Internal Auditing. The Director of Internal Audit shall serve at the pleasure of the Committee.
 - review with the Director of Internal Audit and the independent accountant the coordination of audit effort to assure completeness of coverage, reduction of redundant efforts, and the effective use of audit resources.
-
- review with management and the independent accountant at the completion of the annual examination:
 - the company's compliance report with the N.Y.S. investment guidelines.
 - any significant changes required in the independent accountant's audit plan.

- other matters related to the conduct of the audit which is to be communicated to the committee under generally accepted auditing standards.
- review with management the following reports:
 - Performance
 - Cash Management
 - Safety
 - Self Insurance (Quarterly)
 - Investment Report (Quarterly)
 - Capital Plan (Quarterly)
 - Government Relations
 - Public Relations
 - Human Resources
 - Annual Operating and Capital Budget
 - Five Year Annual and Capital Plan and Cash Flows
 - Board Action Requests
- consider and review with management and the Director of Internal Audit:
 - significant findings during the year and management's responses thereto;
 - any difficulties encountered in the course of their audits, including any restrictions on the scope of their work or access to required information;
 - any changes required in the planned scope of their audit plan;
 - the internal auditing department budget and staffing;
 - the internal auditing department charter; and

 - Internal auditing's compliance with The IIA's Standards for the Professional Practice of Internal Auditing (Standards) and Generally Accepted Government Auditing Standards.
- review and update the committee's charter annually.

The committee will perform such other functions as assigned by law, the company's charter or bylaws, or the board of commissioners.

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 Perry, seconded by Commissioner Gurney, that Commissioner Sloma be nominated as Vice Chair, that Commissioner Demakos be nominated as Secretary, and that Commissioner Durand be nominated as Treasurer.

Whereupon, it was moved by Commissioner Perry, 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, 2016, be and hereby are:

Vice Chair Commissioner Sloma
Secretary Commissioner Demakos
Treasurer Commissioner Durand

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 Perry, seconded by Commissioner Gurney, that Commissioner Sloma be nominated as Vice Chair, that Commissioner Demakos be nominated as Secretary, and that Commissioner Durand be nominated as Treasurer.

Whereupon, it was moved by Commissioner Perry, 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, 2016, be and hereby are:

- Vice Chair Commissioner Sloma
- Secretary Commissioner Demakos
- Treasurer Commissioner Durand

CORPORATE:

2. C. (3) **Approval of 2015/2016 Investment Guidelines Policy for NFTA and NFT Metro System, Inc.**

RECOMMENDATION: Staff recommends that the Board approve the Investment Guidelines Policy for 2015/2016 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 24, 2014. There are no changes recommended at this time.

FUNDING: No funding is required.

“**RESOLVED**, that the Board hereby approves the 2015/2016 Guidelines for Investments for the Niagara Frontier Transportation Authority and its subsidiaries, as generally described hereinabove and as set forth in the attachment hereto.”

**2015/2016 - INVESTMENT GUIDELINES FOR
NIAGARA FRONTIER TRANSPORTATION AUTHORITY
AND ITS SUBSIDIARIES**

Section 1. Title

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

Section 2. Purpose and Objectives

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

The prime investment objectives are to:

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

Section 3. Definitions

- 1). "Authority" shall be defined to include the Niagara Frontier Transportation Authority as enacted by Section 1299 of the Public Authorities Law, and each subsidiary corporation thereof.
- 2). "Funds" shall be defined to include all monies and other financial resources available for investment by the Authority, on its own behalf, or on behalf of any other entity or individual. Funds shall not be defined to include Pension Funds which are separately administered pursuant to New York State and Federal Law.

Section 4. Annual Review and Approval

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

Section 5. Permitted Investments

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

- 1). Certificates of Deposit issued by a bank or trust company authorized to do business in New York State;
- 2). Time Deposit, Demand Deposit, and Money Market Accounts in a bank or trust company authorized to do business in New York State;
- 3). Obligations of the United States Government;
- 4). Obligations of New York State or any municipality or municipal corporation located therein;

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

Section 6. Diversification of Investments

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

Section 7. Collateral.

- 1). Certificates of Deposit, Time Deposit, Demand Deposit, and Money Market Accounts shall be fully secured by insurance of the Federal Deposit Insurance Corporation (FDIC) and, when applicable, by obligations of the United States, or obligations of federal agencies, the principal and interest of which are guaranteed by the United States, or obligations of New York State or any municipality or municipal corporation located therein. Collateral shall be delivered to the Authority or a Custodial Bank with which the Authority has entered into a Security/Custodial Agreement, in accordance with General Municipal Law, §10.
- 2). Collateral shall not be required with respect to the direct purchase of obligations of New York State or any municipality or municipal corporation located therein, obligations of the United States, and obligations of federal agencies, the principal and interest of which are guaranteed by the United States Government.
- 3). The securities purchased under a Repurchase Agreement must be direct United States Government obligations. The purchase price should be the present market value of the securities and not the face value.
- 4). Securities purchased through a Repurchase Agreement shall be valued to market at least weekly.
- 5). The market value of the collateral shall equal the value of the investment and its accrued interest at all times. The recorded value of the collateral backing any investment shall be adjusted to market at the time of the initial investment, and thereafter at least monthly to be certain that the principal amount of the market value of collateral is at least 100% of the investment.
- 6). The security/custodial agreement shall provide that eligible securities (in compliance with Section 7, Paragraph 1), are being pledged to secure Authority deposits together with agreed upon interest, if any, and any costs or expenses arising out of the collection of such deposits upon default. It shall also provide the conditions under which the securities may be sold, presented for payment, substituted or released and the events which will enable the Authority to exercise its rights against the pledged securities. In the event that the securities are not registered or inscribed in the name of the Authority, such securities shall be delivered in a form suitable for transfer or with an assignment in blank to the Authority or its custodial bank.

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

- securities and for the substitution of securities when a change in the rating of a security may cause ineligibility. Such agreement shall include all provisions necessary to provide the Authority a perfected interest in the securities.
- 7). In the event the market value of the collateral is less than 99% of the value of the original investment and accrued interest, the financial institution at which the investment was placed will be required to immediately move additional collateral to the custodian in order to be in compliance with Section 7, Paragraph 4 of these guidelines.
 - 8). Failure of the financial institution to correct this situation within one (1) business day upon notice by the Authority or its custodian, will result in the financial institution being held in default. Further, all investment activity with that financial institution will be suspended until the default is resolved.

Section 8. Delivery of Securities

- 1). Every Repurchase Agreement shall provide for payment to the seller only upon the seller's delivery of obligations of the United States to the Custodial Bank designated by the Authority, or in the case of a book-entry transaction, when the obligations of the United States are credited to the Custodian's Federal Reserve Bank account. The seller shall not be entitled to substitute securities without written approval of the Authority's Chief Financial Officer or his designee. The Custodial Bank shall confirm all transactions in writing to insure that the Authority's ownership of the securities is properly reflected on the records of the Custodial Bank.
- 2). Payment shall be made by or on behalf of the Authority for obligations of New York State, obligations the principal and interest of which are guaranteed by the United States, direct United States Obligations, certificates of deposit, and other purchased securities upon the delivery thereof to the custodial bank, or in the case of a book-entry transaction, when the purchased securities are credited to the Custodial Bank's Federal Reserve System account. All transactions shall be confirmed in writing.

Section 9. Written Contracts

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

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

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

Section 10. Financial Strength of Institutions

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

Section 11. Operations

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

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

- 1). No single staff person shall both execute and authorize an investment transaction.
- 2). All transactions must be approved in writing, prior to execution of the transaction, by either the Chief Financial Officer, or qualified representatives.
- 3). All authorized investment transactions must be compiled, recorded and reviewed by the Chief Financial Officer, or qualified representatives by the end of each business day.

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

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

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

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

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

- 1). Brokers, agents, dealers, any bank or trust company organized under the laws of any state of the United States of America or any national banking association or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York (included in the then current "List of the Government Securities Dealers Reporting to the Market Reports Division of the Federal Reserve Bank of New York").
- 2). Investment Advisers - any bank or trust company organized under the laws of any state of the United States of America or any national banking association, and any firm or person which is:
 - a). registered with the Securities and Exchange Commission under the Investment Adviser of 1940, and
 - b). registered with the New York State Secretary of State as an Investment Adviser, and

- c). is a member in good standing with the Investment Counsel Association of America.
- 3). Custodian - any bank or trust company organized under the laws of any state of the United States of America or any national banking association.

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

Section 13. Amendments

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

Section 14. Quarterly Reporting

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

The quarterly report will include Investment Benchmark as follows:

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

Section 15. Annual Report

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

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

Section 16. Effective Date

The Investment Guidelines shall be effective as of April 23, 2015.

NIAGARA FRONTIER TRANSPORTATION AUTHORITY

Quarterly Investment Analysis for December 31, 2014

<u>Type of Investment Concentration</u>		
	<u>AMOUNT</u>	<u>% OF TOTAL</u>
Certificate of Deposit	\$21,938,261	29.60%
Money Market	\$52,140,805	70.36%
Treasury Notes	\$25,000	0.03%
TOTAL:	<u>\$74,104,066</u>	<u>100.00%</u>

<u>Diversification of Investments</u>		
	<u>AMOUNT</u>	<u>% OF TOTAL</u>
First Niagara Bank	\$14,035,713	18.94%
Five Star Bank	\$22,452,163	30.30%
JP Morgan Chase Bank	\$31,389,998	42.36%
NYSWCBD	\$25,000	0.03%
US Bank	\$6,201,191	8.37%
TOTAL:	<u>\$74,104,066</u>	<u>100.00%</u>

EXAMPLE

CORPORATE:

2. C. (4) **Approval of 2015/2016 NFTA Master Liability Management Policy**

RECOMMENDATION: Staff recommends that the Board approve the 2015/2016 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 were revised on October 23, 2014 in order to solicit or receive proposals, enter into, terminate or take any other action involving a swap dealer or major swap participant on proposed or existing NFTA swaps.

The proposed guidelines are unchanged from those approved by the Board on October 23, 2014. There are no changes recommended at this time.

“RESOLVED, that the Board hereby approves the 2015/2016 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 23, 2015

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 NFTA shall not solicit or receive communications or proposals, enter into, terminate or take any other action involving a swap dealer or major swap participant in connection with a proposed or existing NFTA swap (including executions, novations, amendments, and negotiated terminations of swaps) unless NFTA shall retain an independent swap advisor (the "Financial Advisor") in accordance with, among other things, the requirements of Section 12 of these Master Liability Management Policy Guidelines.

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 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 Counter parties

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

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

Swap Collateralization

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

- Each counterparty to the NFTA may be required to post collateral if the credit rating of the counterparty or parent falls below the "AA" category. Additional collateral for further decreases in credit ratings of each counterparty shall be posted by each counterparty in accordance with the provisions contained in the collateral support agreement to each counterparty with the NFTA.
- Threshold amounts shall be determined by the NFTA on a case-by-case basis. The NFTA will determine the reasonable threshold limits for the initial deposit and for increments of collateral posting thereafter.

- Collateral shall be deposited with a third party trustee, or as mutually agreed upon between the NFTA and the counterparty.
- A list of acceptable securities that may be posted as collateral and the valuation of such collateral will be determined and mutually agreed upon during negotiation of the swap agreement with each swap counterparty.
- The market value of the collateral shall be determined on a monthly basis, or more frequently if the NFTA determines it is in NFTA's best interest given the specific collateral security.

8. Contingency Reserve

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

9. Reporting

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

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

determination of the cumulative actual savings versus the projected savings at the time a swap is executed.

10. Amount of Debt to be Issued

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

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

11. Liability Management Policy Review

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

12. Compliance with 17 C.F.R. § 23.450

Financial Advisor. NFTA shall select and retain a Financial Advisor that satisfies the applicable requirements of 17 C.F.R. § 23.450(b) in order to solicit or receive communications or proposals, enter into, terminate or take any other action involving a swap dealer or major swap participant in connection with a proposed or existing NFTA swap (including executions, novations, amendments, and negotiated terminations of swaps). NFTA shall not retain a Financial Advisor that a swap dealer or major swap participant has referred, recommended, or introduced to NFTA within one year prior to the Financial Advisor's representation of NFTA in connection with a swap transaction.

Compliance Letter. NFTA's Financial Advisor shall provide to NFTA a letter demonstrating compliance with 17 C.F.R. § 23.450(b) (the "Compliance Letter"). The Compliance Letter shall include:

- (A) Representations of the Financial Advisor to the effect that the Financial Advisor:
 - (i) has sufficient knowledge to evaluate the transaction and risks;
 - (ii) is not subject to a statutory disqualification as defined in 17 C.F.R. § 23.450(a)(2);
 - (iii) is not, and within one year prior to executing the Compliance Letter was not, an associated person of the swap dealer or major swap participant within the meaning of Section 1a(4) of the Act;

- (iv) has no principal relationship with any swap dealer or major swap participant;
 - (v) is not directly or indirectly, through one or more persons, controlled by, in control of, or under common control with the swap dealer or major swap participant;
 - (vi) has policies and procedures reasonably designed to ensure that it satisfies the applicable requirements of 17 C.F.R. § 23.450(b);
 - (vii) meets the independence test in 17 C.F.R. § 23.450(b); and
 - (viii) is subject to restrictions on certain political contributions imposed by the CFTC, the SEC, or a self-regulatory organization subject to the jurisdiction of the CFTC or the SEC.
- (B) The legal obligation of the Financial Advisor to comply with the applicable requirements of 17 C.F.R. § 23.450(b), including the obligation to:
- (i) act in the best interests of NFTA;
 - (ii) provide timely and effective disclosures to NFTA of all material conflicts of interest that could reasonably affect the judgment or decision making of the Financial Advisor with respect to its obligations to NFTA;
 - (iii) implement and comply with policies and procedures reasonably designed to manage and mitigate any material conflicts of interest that could reasonably affect the judgment or decision making of the Financial Advisor with respect to its obligations to NFTA; and
 - (iv) evaluate the fair pricing and the appropriateness of any swap (including executions, novations, amendments, and negotiated terminations of swaps).

In the alternative NFTA may amend its retainer agreement with the Financial Advisor to include the obligation referred to in (B) above. The Chief Financial Officer shall have the authority to, upon the advice of counsel, agree to all of the terms and provisions (including fees) of, and execute, any letter or retainer amendment entered into in connection with this Section 12.

Monitoring. NFTA shall monitor the performance of the Financial Advisor consistent with the requirements of 17 C.F.R. § 23.450(b), including, but not limited to, as follows:

(a) Upon being ask to make any representation to any swap dealer or major swap participant in connection with a potential or an existing swap transaction, NFTA shall obtain from the Financial Advisor a letter, e-mail or other written communication to the effect that the Compliance Letter is true and correct in al material respects.

(b) The Chief Financial Officer of NFTA shall undertake such other shall monitoring activities with respect to the Financial Advisor as may be required to comply with 17 C.F.R. § 23.450(b).

Safe Harbor. The Chief Financial Officer of NFTA is authorized to execute written agreements with a swap dealer or major swap participant or enter into ISDA protocols which are intended to satisfy “safe harbor” of 17 C.F.R. § 23.450(d).

Defined Terms. The terms “swap dealer” or “major swap participant” and “Act” shall have the meanings as set forth in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and applicable regulations of the Commodity Futures Trading Commission (“CFTC”) and the Securities and Exchange Commission (“SEC”).

CORPORATE:

2. C. (5) **Approval of 2015/2016 Guidelines for Dispositions and Transfers of Capital and Non-Capital Assets, NFTA and NFTA 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. Due to organizational changes within the Authority, Staff recommends that the Guidelines be changed to reflect the title change from Manager, Real Property to Manager, Facilities and Property and the title change from Manager, Accounting Services to Controller, Accounting Services.

FUNDING: No funding is required.

“**RESOLVED**, that the Guidelines for Dispositions and Transfers of Capital and Non-Capital Assets for the Niagara Frontier Transportation Authority and the Niagara Frontier Transit Metro System, Inc. are hereby approved as revised in the attached document.”

Reference: EXECUTIVE
Title: DISPOSITIONS AND TRANSFERS OF CAPITAL AND NON-CAPITAL
ASSETS
Policy Number: 01-01-10
Effective Date: 04-23-15

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

The Controller, 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 Controller, Accounting Services, 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 Controller, Accounting Services 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.

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
- Controller, 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 Controller, 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 Controller, 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 Controller, 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 Controller, 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 Controller, 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, Facilities and 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 Controller - 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 _____

Total

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

Circulate to:

Reviewed and Approved by Controller - 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 Controller - Accounting Services for Completion

Signers Please Add Additional Notes (as needed)

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)

Completed Copy to:

Department Manager

Grants Manager

**NFTA / NFT Metro
Request To Transfer A Capital Asset**

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

Asset Description _____
 Serial # or Model # _____
 Date Which Vehicle Title / License Plates Were Provided to Risk Management _____

"Original Department" Owner Information

NFTA or Metro? _____
 Division / Department Name _____
 Department Manager Approval _____ Date _____
 General Manager Approval _____ Date _____

"New Recipient Department" Owner Information

NFTA or Metro? _____
 Division / Department Name _____
 Department Manager Approval _____ Date _____
 General Manager Approval _____ Date _____

To Be Completed by Accounting Department

Grant Funding Description: _____

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

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

Manager of Grants Approval _____ Date _____

Completed Copy to:
 Department Manager
 Grants Manager
 Risk Management Manager

CORPORATE:

2. C. (6) **Approval of 2015/2016 Procurement Guidelines for NFTA and NFTA 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 24, 2014. There are no changes requested at this time.

FUNDING: No funding is required.

“**RESOLVED**, that the Board hereby approves the 2015/2016 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**

Effective April 23, 2015
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 One Hundred Thousand Dollars (\$100,000). See Article 15.

32. **SMALL PURCHASE FORMAL BIDDING:**

A "small purchases" method of procuring goods or services under \$100,000.00, 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 15.

33. **SMALL PURCHASE INFORMAL BIDDING:**

A small purchases method of procuring goods or services under \$50,000, 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 15(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 One Hundred Thousand Dollars (\$ 100,000) 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 Fifty Thousand Dollars (\$50,000) 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 \$50,000 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 Fifty Thousand Dollars (\$50,000) 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 \$50,000 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 Fifty Thousand Dollars (\$50,000) 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:

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- (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 One Hundred Thousand Dollars (\$100,000) 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 Fifty Thousand Dollars (\$50,000), but less than One Hundred Thousand Dollars (\$100,000) may be awarded by the Executive Director or her 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 Fifty Thousand Dollars (\$50,000) may be awarded by the Executive Director, her 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 Fifty Thousand Dollars (\$50,000). 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 \$50,000, 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 One Hundred Thousand Dollars (\$100,000) and will not involve services to be rendered in excess of one (1) year may be awarded following either the Formal Bidding or Informal Bidding Small Purchase guidelines set forth under Article 14, as is appropriate.
- (C) The selection of professional service contractors shall be on a competitive basis, except that the Board may waive competition by a two-thirds vote of the Members in attendance at a Meeting of the Board, if it is in the Best Interests of the Authority to do so. The standard of "Best Interest of the Authority" may, but need not be based upon one or more of the following criteria for the selection of professional service contractors:

 - (i) Confidentiality;
 - (ii) Specialized expertise or unusual qualifications or services are obtainable from one source only;
 - (iii) Historical relationship with the Authority, the continuation of which will result in some economy advantage to the Authority and will avoid duplication of costs;
 - (iv) Specialized knowledge;
 - (v) Lack of responsible competition, as validated pursuant to Article 11, supra;

- (vi) Nature, magnitude or complexity of services required;
- (vii) Lack of resources, support staff, specialized facilities or equipment;
- (viii) Short term or infrequent need for services; and
- (ix) Selection which is necessary as a result of emergency or exigency conditions.

ARTICLE 19. DISADVANTAGED BUSINESS ENTERPRISES/MINORITY WOMEN BUSINESS ENTERPRISES

- (A) It is the desire of the Board to promote and assist participation by DBEs, MBEs, WBEs and to facilitate a fair share of the awarding of contracts thereto.
- (B) An updated list of all DBE certified firms in New York State may be obtained from the New York State Unified Certification Program website at www.biznet.nysucp.net. A directory of MWBE certified firms may be obtained from the New York State MWBE website at www.nylovesmwbe.ny.gov. The Procurement Department shall be responsible for referencing such lists prior to the publication of a notice of procurement opportunity or informal solicitation to determine the availability of certified DBE, MBE and WBE entities.
- (C) The Director, EEO/Diversity Development shall ensure that the Authority establishes appropriate goals for participation by minority or women-owned business enterprises in procurement contracts awarded by the Authority and for the utilization of minority and women-owned enterprises as subcontractors and suppliers by entities having procurement contracts with the Authority. Statewide numerical participation target goals shall be established by the Authority based on the findings of the 2010 disparity study.
- (D) Every effort will be made to achieve the MWBE goals assigned to projects. The Authority's procurement 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 One Hundred Thousand Dollars (\$100,000), 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 One Hundred Thousand Dollars (\$100,000).~~
- (D) In the event the final contract amount owed is equal to or greater than One Hundred Thousand Dollars (\$100,000), 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 One Hundred Thousand Dollars (\$100,000), 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 Fifty Thousand Dollars (\$50,000), 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 Fifty Thousand Dollars (\$50,000), the requisitions shall be submitted to the Procurement Department ten (10) days in advance. The requisition shall serve as the mechanism by which the User Department communicates its specific procurement need to the Procurement Department and it represents the beginning of the procurement process.
- (iii) The requisition shall include the following elements:
 - (a) Properly completed form per the NFTA's Requisition Procedures; and
 - (b) Budget; including proposed funding source by designation of the account funding code, estimated cost and basis for estimated cost; and
 - (c) Specifications; completed in accordance with Article 13.
- (iv) The User Department is responsible for managing the final contract and/or purchase order in accordance with NFTA Procedure 2-01-01.

(C) Engineering Department:

- (i) The Engineering Department shall serve as the User Department for major public work projects.
- (ii) The preparation and submittal of a requisition shall be required for public work projects which have been developed or identified under Board authorization or which have received state or federal funding approval.

(D) Internal Audit:

The Internal Audit Department shall have responsibility for evaluating the adequacy and effectiveness of internal controls governing the procurement process, for providing cost

analysis services upon the request of the Procurement Department and for conducting any necessary audits, such as those required by the federal Buy America Act.

(E) Office of General Counsel:

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

(F) EEO/Diversity Development Department

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

ARTICLE 29. EVALUATING RESPONSIVENESS AND RESPONSIBILITY

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

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

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

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

- (i) Being listed on a federal or state debarred contractors list.
- (ii) Poor prior performance on an Authority contract.
- (iii) Lack of: adequate expertise; prior experience with comparable projects; or financial resources necessary to perform the work outlined in the contract in timely, competent and acceptable manner. Evidence of such factors may include failure to submit satisfactory evidence of insurance, surety bonds, or financial responsibility; or a history of terminations for cause.
- (iv) Engagement in criminal conduct in connection with any other government contracts or the conduct of business activity that involves such crimes as extortion, racketeering, bribery, fraud, bid-rigging and embezzlement.
- (v) Grave disregard for the safety of employees, State personnel, or members of the public. Consideration will be given to whether employees who will be assigned to

work on the project are properly trained and whether the equipment to be used is safe and functioning properly.

- (vi) Willful noncompliance with the State's Labor Laws regarding prevailing wage and supplement payment requirements, including consideration of any pending violations.
- (vii) Disregard for other State Labor Laws, including child labor, proper and timely wage payments and unemployment insurance laws.
- (viii) Violations of the State Workers' Compensation Law including failure to provide proof of proper workers' compensation or disability coverage.
- (ix) Violations of the State's Environmental Conservation Law or violations of any other federal or State environmental statutes.
- (x) The failure to abide by State and federal statutes and regulations regarding efforts to solicit and utilize disadvantaged, minority and women-owned business enterprises as potential sub-contractors.
- (xi) The submission of a bid which is mathematically or materially unbalanced.
- (xii) The submission of a bid which is so much lower than the Authority's confidential engineer's estimate that it appears unlikely that the contractor will be able to complete the project satisfactorily at the price bid.
- (xiii) The presentation of false or misleading statements or any other issue that raises serious questions about the responsibility of the bidder or proposed subcontractor.

ARTICLE 30. SPLIT PROCUREMENTS

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

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

- (A) The Procurement Department and the Office of General Counsel shall ensure that the Procurement Guidelines and Procedures are submitted to the Board for review, updating (if deemed necessary), and re-authorization, on an annual basis.
- (B) The Department of Internal Audit shall develop and implement a program to monitor the Authority's compliance with the Procurement Guidelines and Procedures.
- (C) The Procurement Department shall develop and implement a control system to ensure that the Guidelines and procedures are being followed.

ARTICLE 32. UTILITIES, SURPLUS AND SECOND-HAND SUPPLIES

- (A) Utilities and utility services such as telephone, water, electric power and natural gas (except for those utilities and utility services which are competitively procured), may be purchased upon the authorization of the CFO or her designee without Board approval, provided that the cumulative dollar amount for such purchases for the year is within the amounts budgeted for such utilities or services, as approved by the Board.
- (B) The Authority may purchase surplus and second-hand supplies, materials or equipment from the Federal Government, the State of New York or any political subdivision, municipality, or district without advertising or the solicitation of bids, proposals or quotations, however, purchases involving an expenditure of Fifty Thousand Dollars (\$50,000) or more shall require Board Approval.

ATTACHMENT "A"

CODE OF ETHICS

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

1. No employee, officer, commissioner, or agent of the Authority shall participate in the selection, or in the award or administration of a contract, if a conflict of interest real or apparent would be involved. Such a conflict would arise when:
 - a) The commissioner, officer, employee, or agent,
 - b) Any member of his * immediate family,
 - c) His partner, or
 - d) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.
2. The NFTA's, commissioners, officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub agreements.
3. Rule with respect to conflicts of interest. No commissioner, officer or employee of the Authority should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.
4. **Standards:**
 - a) No commissioner, officer or employee of the Authority should:
 - (i) Accept other employment which will impair his independence of judgment in the exercise of his official duties.
 - (ii) Accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.
 - (iii) Disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.
 - (iv) Use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.
 - (v) Engage in any transaction as representative or agent of the NFTA with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.
 - (vi) By his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

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

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

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

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.

ATTACHMENT "C"

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.
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.

ATTACHMENT "C"

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 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 2015/2016 Travel Policy and Guidelines Policy for NFTA and NFT Metro System, Inc.**

RECOMMENDATION: Staff recommends that the Board approve the 2015/2016 Travel Policy and Guidelines for the Niagara Frontier Transportation Authority and its subsidiary as revised in the attached document.

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 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 \$.575 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 2015/2016 Travel Policy and Guidelines for Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc. as revised and 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 1-1-15 \$.575) *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	_____
TOTAL ESTIMATED EXPENSES:	\$ 0.00

GENERAL LEDGER ACCOUNT TO BE CHARGED: _____

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

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



New York State Department of Taxation and Finance
New York State and Local Sales and Use Tax
Exemption Certificate
 Tax on occupancy of hotel or motel rooms

ST-129
 (4/12)

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 or motel		Dates of occupancy		
		From:	To:	
Address (number and street)	City	State	ZIP code	Country

Certification: I certify that I am an employee 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 of the above business 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 an employee of that governmental entity. I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document, and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that the vendor is a trustee for, and on account of, New York State and any locality with respect to any state or local sales or use tax the vendor is required to collect from me; that the vendor is required to collect such taxes from me unless I properly furnish this certificate to the vendor; and that the vendor must retain this certificate and make it available to the Tax Department upon request. I also understand that the Tax Department is authorized to investigate the validity of tax exemptions claimed and the accuracy of any information entered on this document.

Governmental entity (federal, state, or local)		Agency, department, or division		
Employee name (print or type)	Employee title	Employee signature	Date prepared	

Instructions

Who may use this certificate

If you are an employee of an entity of New York State or the United States government and you are on official New York State or federal government business and staying in a hotel or motel, you may use this form to certify the exemption from paying state-administered New York State and local sales taxes (including the \$1.50 hotel unit fee in New York City). This **does not** include locally imposed and administered hotel occupancy taxes, also known as *local bed taxes*.

New York State governmental entities include any of its agencies, instrumentalities, public corporations, or political subdivisions.

Agencies and instrumentalities include any authority, commission, or independent board created by an act of the New York State Legislature for a public purpose. Examples include:

- New York State Department of Taxation and Finance
- New York State Department of Education

Public corporations include municipal, district, or public benefit corporations chartered by the New York State Legislature for a public purpose or in accordance with an agreement or compact with another state. Examples include:

- Empire State Development Corporation
- New York State Canal Corporation
- Industrial Development Agencies and Authorities

Political subdivisions include counties, cities, towns, villages, and school districts.

The United States of America and its agencies and instrumentalities are also exempt from paying New York State sales tax. Examples include:

- United States Department of State
- Internal Revenue Service

Other states of the United States and their agencies and political subdivisions **do not** qualify for sales tax exemption. Examples include:

- the city of Boston
- the state of Vermont

To the government representative or employee renting the room

Complete all information requested on the form. Give the completed Form ST-129 to the operator of the hotel or motel upon check in or when you are checking out. You must also provide the operator with proper identification. Sign and date the exemption certificate. You may pay your bill with cash, with a personal check or personal credit card, with a government voucher, or with a government credit card.

Note: If, while on official business, you stay at more than one location, you must complete an exemption certificate for each location. If you are in a group traveling on official business, each person must complete a separate exemption certificate and give it to the hotel or motel operator.

To the hotel or motel operator

Keep the completed Form ST-129 as evidence of exempt occupancy by New York State and federal government employees who are on official business and staying at your place of business. The certificate should be presented to you when the occupant checks in or upon checkout. The certificate must be presented no later than 90 days after the last day of the first period of occupancy. If you accept this certificate after 90 days, you have the burden of proving the occupancy was exempt. You must keep this certificate for at least three years after the later of:

- the due date of the last sales tax return to which this exemption certificate applies; or
- the date when you filed the return

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

- cash
- personal check or credit/debit card
- government voucher
- government credit card

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

Substantial penalties will result from misuse of this certificate.

DISCRETIONARY EXPENSE APPROVAL FORM

Employee Name Dept./Div

Description Date Requested

Justification

Type and Amount of expenses:

	Category	Description	Estimated Cost
<input type="checkbox"/>	Snacks		
<input type="checkbox"/>	Refreshments		
<input type="checkbox"/>	Sandwiches		
<input type="checkbox"/>	Other		

Total Est. Cost : 0.00

Employee Signature

Date

Director Approval

Date

Executive Director Approval

Date

CORPORATE:

2. C. (8) **Authorization for Amendment of the Board of Commissioners' Code of Ethics**

RECOMMENDATION. Staff recommends that the Board amend its Code of Ethics to reflect changes in State ethics law, and to implement certain best practices recommended by the New York State Authorities Budget Office (ABO) regarding conflicts of interest.

INFORMATION. Ethics rules applicable to the Board of Commissioners are contained in New York State laws, rules and regulations, the NFTA's Policies and Procedures, and the Boards' Code of Ethics. New York State law requires the Board to adopt its own Board Member Code of Ethics which, at a minimum, includes the standards established in Public Officers Law §74. In or around 1990, the Board adopted a Code of Ethics in order to comply with this requirement. There have been subsequent changes in State ethics laws that should be incorporated into the Boards' Code of Ethics. In addition, the ABO recently issued a Best Practices Guide for Public Authorities which recommended that an authority's code of ethics includes procedures for disclosing a conflict of interest, a requirement that the Member with the conflict of interest cannot participate in the deliberations or vote on the matter giving rise to the conflict, and a prohibition against any attempt by the Member with the conflict to improperly influence the deliberation or vote giving rise to such conflict. The attached document indicates the recommended revisions to the Boards' Code of Ethics.

FUNDING. No funding is required.

“**RESOLVED**, that, effective April 23, 2015 the Board of Commissioners Code of Ethics is hereby adopted as amended in the attached document.”

NIAGARA FRONTIER TRANSPORTATION AUTHORITY
BOARD OF COMMISSIONERS
CODE OF ETHICS

Section 1. Business and Professional Activities by NFTA Commissioners.

a. As used in this Code of Ethics: The term "NFTA Commissioner" shall mean any Commissioner of the NFTA or any Commissioner of a subsidiary corporation of the NFTA.

The term "compensation" shall mean any money, thing of value or financial benefit conferred in return for services rendered or to be rendered. With regard to matters undertaken by a firm, corporation or association, compensation shall mean net revenues, as defined in accordance with generally accepted accounting principles as defined by the joint commission on public ethics.

b. No NFTA Commissioner shall receive, or enter into any agreement express or implied for, compensation for services to be rendered in relation to any case, proceeding, application, or other matter before any state agency, or any executive order, or any legislation or resolution before the state legislature, whereby the Commissioner's compensation is to be dependent or contingent upon any action by the NFTA with respect to any license, contract, certificate, ruling, decision, executive order, opinion, rate schedule, franchise, legislation, resolution or other benefit; provided, however, that nothing in this paragraph shall be deemed to prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

c. No NFTA Commissioner shall receive, directly or indirectly, or enter into any agreement express or implied, for any compensation, in whatever form, for the appearance or rendition of services by the Commissioner or another against the interest of the NFTA in relation to any case, proceeding, application or other matter before, or the transaction of business by the Commissioner or another, with any court.

d. No NFTA Commissioner or firm or association of which such Commissioner is a member, or corporation, ten per centum or more of the stock of which is owned or controlled directly or indirectly by such Commissioner, shall sell any goods or services having a value in excess of twenty-five dollars to the NFTA, or contract for or provide such goods or services with or to any private entity where the power to contract, appoint or retain on behalf of such private entity is exercised, directly or indirectly, by the NFTA unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding. ~~This paragraph shall not apply to the publication of resolutions, advertisements or other legal propositions or notices in newspapers designated by law for such purpose and for which the rates are fixed pursuant to law. For the purposes of this paragraph, the term "services" shall not include employment as an employee.~~

e. No NFTA Commissioner shall, directly or indirectly, solicit, accept or receive any gift more than a nominal value, whether in the form of money, service, loan, travel,

lodging, meals, refreshment, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence, or could reasonably be expected to influence, the performance of the Commissioners official duties or was intended as a reward for any official action on the Commissioner's part.

f. No NFTA Commissioner shall receive, directly or indirectly, or enter into any agreement express or implied for, any compensation, in whatever form, for the appearance or rendition of services by the Commissioner or another in relation to any case, proceeding, application or other matter before the NFTA where such appearance or rendition of services is in connection with the purchase, sale, rental or lease of real property, goods or services, or a contract therefor, from, to or with the NFTA or the obtaining of grants of moneys or loans.

g. No person who has served as an NFTA Commissioner shall within a period of two years after the termination of such service appear before the NFTA or receive compensation for any services rendered by such former Commissioner on behalf of any person, firm, corporation or association in relation to any case, proceeding or application or other matter before the NFTA. No person who has served an NFTA Commissioner shall after the termination of such service appear, practice, communicate or otherwise render services before the NFTA or receive compensation for any such services rendered by the commission such former Commissioner on behalf of any person, firm, corporation or other transaction with respect to which the Commissioner was directly concerned and in which the Commissioner personally participated during the Commissioner's period of service, or which was under the Commissioner's active consideration. This paragraph shall not apply to any appearance, practice, communication or rendition of services before the NFTA rendered by a former Commissioner which is made while carrying out official duties for a federal, state or local government or agency.

h. Nothing contained herein shall be construed or applied to prohibit any firm, association or corporation, in which any present or former Commissioner is a member, associate, retired member, of counsel or shareholder, from appearing, practicing, communicating or otherwise rendering services in relation to any matter before, or transacting business with the NFTA, where such Commissioner does not share in the net revenues resulting therefrom, or, acting in good faith, reasonably believed that such Commissioner would not share in the net revenues.

i. An NFTA Commissioner who is a member, associate, retired member, of counsel to, or shareholder of any firm, association or corporation which is appearing or rendering services in connection with any matter before, or transacting any business with the NFTA, shall not orally communicate, with or without compensation, as to the merits of such cause with an officer or employee of the NFTA.

j. No NFTA Commissioner shall serve as an officer of any political party or political organization or serve as a member of any political party committee including political party district leader (however designated) or member of the national committee of a political party.

k. No NFTA Commissioner shall participate in any decision to hire, promote, discipline or discharge a relative (defined as any person living in the same household as the individual and any person who is a direct descendant of that individual's grandparents or the spouse of such descendant) for any compensated position at, for or within the NFTA.

l. No NFTA Commissioner shall participate in any contracting decision involving the payment of more than one thousand dollars to that individual, any relative of the Commissioner, or any entity in which the Commissioner or any relative has a financial interest; or participate in any decision to invest public funds in any security of any entity in which the Commissioner or any relative of the Commissioner has a financial interest, is an underwriter, or receives any brokerage, origination or servicing fees.

m. No NFTA Commissioner involved in the awarding of grants or contracts may ask a current or prospective grantee or contractor, or any officer, director or employee thereof, to disclose: (i) the party affiliation of such grantee or contractor, or any officer, director or employee thereof; (ii) whether such grantee or contractor, or any officer, director or employee thereof, has made campaign contributions to any party, elected official, or candidate for elective office; or (iii) whether such grantee or contractor, or any officer, director or employee thereof, cast a vote for or against any elected official, candidate or political party. No NFTA Commissioner may award or decline to award any grant or contract, or recommend, promise or threaten to do so, in whole or in part, because of a current or prospective grantee's or contractor's refusal to answer any inquiry prohibited by the previous of this subdivision, or giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

Section 2. Conflicts of Interest.

a. Rule with respect to conflicts of interest. No NFTA Commissioner 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 the Commissioner's duties in the public interest.

b. Standards.

1. No NFTA Commissioner should accept other employment or service which will impair the Commissioner's independence of judgment in the exercise of official duties.

2. No NFTA Commissioner should accept employment or engage in ~~any business or professional activity which will require the Commissioner to disclose~~ confidential information which the Commissioner gained by reason of the Commissioner's official position or authority.

3. No NFTA Commissioner should disclose confidential information acquired in the course of official duties nor use such information to further personal interests.

4. No NFTA Commissioner should use or attempt to use the Commissioner's official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the NFTA for private business or other compensated non-governmental purposes.

5. No NFTA Commissioner should engage in any transaction as representative of the NFTA with any business entity in which the Commissioner has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of official duties.

6. An NFTA Commissioner's conduct should not give reasonable basis for the impression that any person can improperly influence the Commissioner or unduly enjoy the Commissioner's favor in the performance of the Commissioner's official duties, or that the Commissioner is affected by the kinship, rank, position or influence of any party or person.

7. An NFTA Commissioner should abstain from making personal investments in enterprises which the Commissioner has reason to believe may be directly involved in decisions to be made by the Commissioner or which will otherwise create substantial conflict between the Commissioner's public and private interests.

8. An NFTA Commissioner should 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 the Commissioner's trust.

c. Procedures for Disclosing a Conflict of Interest.

1. Disclosure. NFTA Commissioners must not only avoid actual conflicts of interest but also even the appearance of a conflict. If a Commissioner believes he or she has an actual or potential conflict of interest on a particular matter, or if a Commissioner becomes aware that he or she has an actual or potential conflict of interest on a particular matter during a Committee or Board meeting, the Commissioner shall promptly notify the Chairperson of the Board or the Chairperson of the Committee and shall immediately recuse themselves from consideration of or action on such matter. Such disclosure shall be recorded in the minutes of the meeting and be made part of the public record.

2. Recusal. The Commissioner with the conflict of interest shall refrain from participating in discussions, decisions or deliberations on the matter creating the conflict and shall recuse him or herself from any discussion, decision, deliberation or vote by the Board or the Committee on the matter creating the conflict. Whenever practicable, the Commissioner should leave the Board room until any discussion about the matter that gives rise to the conflict of interest has concluded.

3. Improper Influence. The Commissioner with the conflict of interest shall refrain from directly or indirectly attempting to influence the discussions, decisions, deliberations or vote on the matter giving rise to such conflict.

CORPORATE:

2. C. (9) **Mission Statement**

RECOMMENDATION: Staff recommends that the Board formally adopt the mission statement that was developed as part of the NFTA's Strategic Plan.

INFORMATION: Public Authorities Law section 2824-a requires public authorities to develop and adopt a mission statement, and maintain the mission statement on their website. Our mission statement has been unchanged since its formal adoption on March 22, 2010. Our Mission Statement was last approved by the Board on March 27, 2014 and is as follows:

MISSION STATEMENT

The Niagara Frontier Transportation Authority is a multi-modal entity encompassing a skilled and dedicated workforce. We are firmly committed to providing safe, efficient and professional transportation services that enhance the quality of life in the Buffalo Niagara region in a manner consistent with the needs of our customers.

Aviation: serves as a catalyst for economic growth by maintaining cost effective, customer oriented, efficient airports to attract and retain comprehensive and competitive air transportation services.

Surface: enhance the quality of life of residents and visitors by providing the highest level of safe, clean, affordable, responsive, and reliable transportation through a coordinated and convenient bus and rail system.

Property: manage and develop the NFTA owned real property to optimize the generation of self-supporting discretionary revenue to support our transportation businesses while fostering economic growth.

Support services: proactively provide high quality, coordinated, innovative, technological, cost-effective support service solutions for our internal and external stakeholders.

FUNDING: No funding is required.

"RESOLVED, that the Board hereby adopts the Mission Statement of the Niagara Frontier Transportation Authority as described hereinabove."

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. (2)
1. Authorization for Agreement, Union Concrete and Construction Company, Airside Pavement Maintenance, BNIA
2. Authorization for Exhibition Agreement, Albright-Knox Art Gallery and Kaarina Kaikkonen, Artwork Display, BNIA

AVIATION:

3. D. (i) Niagara Frontier Transportation Authority, Acceptance of Aviation Resolutions 3. D. (1) through 3. D. (2)

The Executive Director advised that Items 3. D. (1) through 3. D. (2) have been discussed with the Board of Commissioners of the NFTA, and the Board is unanimously in favor of all subject Resolutions.

Whereupon, it was moved by Commissioner Sloma, seconded by Commissioner Demakos, 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. (2) and dated April 23, 2015 as set forth herein, be and hereby are accepted and approved in their entirety.”

AYES: ZEMSKY, SLOMA, DEMAKOS, DURAND, ANSARI, BAYNES, GURNEY, HICKS, HUGHES, PERRY*

ABSTENTION: PERRY [*Item 3. D. 2 only]

NOES: NONE

ADOPTED

AVIATION:

3. D. (1) 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 \$248,325.00.

INFORMATION: Foreign Object Debris (FOD) poses a safety hazard to aircraft. This project corrects pavement deterioration areas that produce FOD. The repairs will include Runway 5-23 centerline longitudinal pavement deterioration, a transverse Runway 5-23 pavement bump near Taxiway Hotel, and pavement surrounding three Taxiway Alpha drainage structures near the intersection with Taxiway Gulf.

Work will be performed during night time work windows. Night work will minimize impacts to Airport Operations.

The project was publicly advertised in accordance with NFTA Procurement Guidelines. Three sets of contract documents were distributed to potential prime bidders with one bid received. The corresponding engineers estimate is listed below.

Company	Total Bid Amount
Engineer Estimate	\$224,458.00
Union Concrete and Construction Company West Seneca, New York Robert Hill, President	\$248,325.00

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

A single bid audit was performed. A detail price analysis determined that Union Concrete and Construction Company bid is within the anticipated price.

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: Funding is provided in BNIA Operating Account 02-0219-520-5600.

“RESOLVED, that the Board hereby authorizes an Agreement with Union Concrete and Construction Company for the airside pavement maintenance at the Buffalo Niagara International Airport at a cost of \$248,325.00 as described above; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and/or the Chairman, be and are hereby authorized to execute an Agreement with Union Concrete and Construction Company for the total amount of \$248,325.00; 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 he is hereby authorized to make payments under said Agreement upon certification by the Director, Engineering, that such payments are in order.”

AVIATION:

3. D. (2) **Authorization for Exhibition Agreement, Albright-Knox Art Gallery and Kaarina Kaikkonen, Artwork Display, BNIA**

RECOMMENDATION: Staff recommends the Board approve an Exhibition Agreement with the Albright-Knox Art Gallery and Kaarina Kaikkonen for the display of an artwork exhibition at the Buffalo Niagara International Airport.

INFORMATION: The exhibition is a joint project between the Albright-Knox Art Gallery (Albright-Knox) through the Albright-Knox Public Art Initiative and Kaarina Kaikkonen (Artist). The Artist is an internationally renowned Finnish installation artist who works with masses of clothing. The Albright-Knox and the Artist are proposing a large wall installation above the main ticketing area in the publically accessible ticket lobby. The installation will commence this summer to facilitate a planned opening of the Exhibition in the fall of 2015. The Agreement will run through April of 2016. The Albright-Knox and the Artist will be responsible for the installation and will jointly execute an exhibition agreement. The exhibition agreement will contain standard terms and conditions requiring the Albright-Knox and Artist to procure insurance and indemnify the NFTA. The installation will be reviewed by the NFTA's Engineering Department and the Albright-Knox and Artist will responsible for the removal of the exhibition and the restoration of the property.

FUNDING: No funding is required.

“RESOLVED, that the Board hereby authorizes an Exhibition Agreement with Albright-Knox Art Gallery and Kaarina Kaikkonen for a public art display at BNIA; and

BE IT FURTHER RESOLVED, that the Executive Director, and/or the Chairman or their designee is hereby authorized to execute an Exhibition Agreement with Albright-Knox Art Gallery and Kaarina Kaikkonen as described hereinabove; and

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

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

Surface Transportation Resolutions

- i. Niagara Frontier Transportation Authority, Acceptance of Surface Transportation 4. DC. (1) through 4. D. (5)
1. Authorization for Agreement, Mark Cerrone, Inc., Construction of Compact Transit Center, Niagara Street Corridor, Metro
2. Authorization for Agreement, DCB Elevator Co., Inc., Maintenance and Service for Elevators and Escalators, Metro
3. Authorization for Procurement, Gillig; Diesel Radiator; Dukane; Muncie; Nabi; Prevost Car (US), Inc.; New Flyer Industries Canada, LLC; and Cancore, Radiator Parts, Metro
4. Authorization for Revised Paratransit Missed Trip Policy, Metro
5. Authorization for Antenna Site License Agreement, M&T Bank, Installation and Operation of Public Wi-Fi, LRRT

SURFACE:

4. D. (i) **Niagara Frontier Transportation Authority, Acceptance of Surface Transportation Resolutions 4. D. (1) through 4. D. (5)**

The Executive Director advised that Items 4. D. (1) through 4. D. (5) have been discussed with the Board of Commissioners of the NFTA, and the Board is unanimously in favor of all subject Resolutions.

Whereupon, it was moved by Commissioner Hicks, seconded by Commissioner Baynes, 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. (5) and dated April 23, 2015 as set forth herein, be and hereby are accepted and approved in their entirety.”

AYES: ZEMSKY, SLOMA, DEMAKOS, DURAND, ANSARI, BAYNES, GURNEY, HICKS, HUGHES, PERRY*

ABSTENTION: PERRY [*Item 4. D. (5) only]

NOES: NONE

ADOPTED

SURFACE:

4. D. (1) Authorization for Agreement, Mark Cerrone, Inc., Construction of Compact Transit Center, Niagara Street Corridor, Metro

RECOMMENDATION: Staff recommends that the Board award the subject construction contract to Mark Cerrone, Inc. for the lump sum amount of \$1,387,240.00.

INFORMATION: The purpose of this project is to create a comprehensive urban transit corridor in the City of Buffalo that will improve NFTA’s bus service delivery; advance the FTA’s livability standards; and act as a model for future corridors in the NFTA service area and throughout the United States. The project will focus on a high demand urban transit corridor which presents real opportunity for neighborhood revitalization, transit oriented development, and improved livability for local citizens. The NFTA, in conjunction with the City of Buffalo (COB), plans to create the Urban Bus Corridor along Niagara Street on existing Metro Bus Route No. 5. The COB is responsible for the re-alignment of traffic lanes and traffic signal controller upgrade on Niagara Street.

The project scope of work is for the construction of new compact transit center, located at 2259 Niagara Street, with a 25 car park and ride lot. The center includes a heated shelter for passenger waiting, bus operator restroom, and a communications room. Also located in the shelter are a real time bus arrival sign and an electronic community message board.

The center also includes the construction of a bus loop, concrete curbs, bike rack, sidewalks, lighting, landscaping, a community art feature, and security cameras. The project will include the installation of a new traffic signal, pedestrian signals, pavement markings, and signage on Niagara Street and within the bus loop.

The project was publicly advertised in accordance with the NFTA Procurement Guidelines. Six sets of contract documents were distributed to potential bidders. Bids were received on March 31, 2015 from three contractors. The bid results are shown below:

Bidder	Bid Amount
Mark Cerrone Inc. Niagara Falls, NY George Churakos, Vice President	\$1,387,240.00
Pinto Construction Services, Inc. Buffalo, NY James J. Panepinto, President	\$1,583,020.60
Nichols Long & Moore Construction Lancaster, NY David A. Hohl, President	\$1,837,734.00

A detailed bid evaluation was performed and it was concluded that Mark Cerrone Inc. has the knowledge, understanding, ability, and resources to successfully accomplish the project work.

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

FUNDING: Funding is provided in Account No. 12-0000000 3188-2-3409 and is as follows:

FTA NY-04-0099	\$ 557,032.00
NYS PIN 5823.79	\$ 69,629.00
NFTA Match	\$ 69,629.00
Metro Replacement Fund	\$ 473,197.00
NFTA	\$ 217,753.00
Total	\$1,387,240.00

“RESOLVED, that the Board authorizes an Agreement with Mark Cerrone, Inc. for the construction of the compact transit center in the City of Buffalo for the lump sum amount of \$1,387,240.00, 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 Mark Cerrone, Inc. for the lump sum amount of \$1,387,240.00, 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 he is hereby authorized to make payments upon the terms of the Agreement upon certification by the Director, Engineering, that such payments are in order.”

SURFACE:

4. D. (2) **Authorization for Agreement, DCB Elevator Co., Inc., Maintenance and Service for Elevators and Escalators, Metro**

RECOMMENDATION: Staff recommends that the Board award the subject maintenance and service contract to DCB Elevator Co., Inc. for the lump sum amount of \$834,251.40.

INFORMATION: The purpose of this project is to contract the maintenance and service for elevators and escalators throughout the NFTA Light Rail Rapid Transit (LRRT) system and Metro Facilities. Previously, the contract provided for onsite staffing with one mechanic and one apprentice from 6:00 am until 2:30 pm. However, to improve customer service and minimize down time associated with call in service the contract will provide onsite staffing with two mechanics and one apprentice. Service coverage will extend an additional 3½ hours each weekday and be provided from 6:00 am to 6:00 pm. This coverage will perform routine inspections, maintenance, minor repairs, as well as, provide minor repair replacement parts. Major repairs and vandalism are excluded from this contract.

The term of this agreement will be one year with the option to renew for four additional one year terms at a 4% escalation per year at the sole discretion of NFTA/Metro.

The project was publicly advertised in accordance with the NFTA Procurement Guidelines. Four sets of contract documents were distributed to potential proposers. A proposal was received on March 23, 2015 from one contractor. Other contractors indicated that they did not propose due to the age of the system and the persistent media attention.

DCB Elevator's initial proposal of \$1,438,080.00 included two teams of two to perform maintenance, minor repairs, provide minor repair parts, weekly, monthly, quarterly, semi-annual and annual inspections. In an effort to reduce the contract cost and better monitor the elevators and escalators at the stations, the NFTA has elected to perform weekly visual inspections with in-house staff and contract the semi-annual inspections to an independent QEI inspector. The NFTA issued a best and final offer request and DCB Elevator responded with a revised proposal of \$834,251.40. The Engineer's estimate for the work was \$832,819.60. Their proposal includes one team for the hours of 6:00 am to 2:30 pm, consisting of one IUEC Elevator Constructor Mechanics and one IUEC Elevator Apprentice. The hours of work from 9:30 am to 6:00 pm will be covered by one IUEC Elevator Constructor Mechanic. Additionally, a floating serviceman located in the Buffalo downtown area will be available for service calls.

NFTA Engineering compared DCB Elevator's hourly rates to other Elevator/Escalator service companies' rates and found DCB Elevator's hourly rates to be consistent with the industry norm.

A detailed proposal evaluation was performed and concluded that DCB Elevator Co., Inc. has the knowledge, understanding, ability, and resources to successfully accomplish the contract work.

The NFTA Affirmative Action/EEO office has been briefed on the proposal results and concurs with the recommendation for Board approval. DCB Elevator Co., Inc. is a WBE firm.

FUNDING: Funding is provided in the 2015 Operating Budget.

“RESOLVED, that the Board hereby authorizes an Agreement with DCB Elevator, Inc. for the maintenance and service of elevators and escalators as described above and for a cost of \$834,251.40; 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 DCB Elevator, Inc. as described above, for the total amount of \$834,251.40; 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 he is hereby authorized to make payments under said Agreement upon certification by the Director, Engineering, that such payments are in order.”

SURFACE:

4. D. (3) **Authorization for Procurement, Gillig; Diesel Radiator; Dukane; Muncie; Nabi; Prevost Car (US), Inc.; New Flyer Industries Canada, LLC; and Cancore, Radiator Parts, Metro**

RECOMMENDATION: Staff recommends the Board approve the lowest responsive bids submitted for the procurement of radiator parts by the suppliers listed below. The estimated total cost is \$495,240.80 for the period of April 1, 2015 through April 30, 2018.

Gillig	\$92,847.34
Diesel Radiator	\$2,570.40
Dukane	\$70,987.90
Muncie	\$3,840.91
Nabi	\$15,856.37
Prevost Car (US) Inc.	\$200,318.10
New Flyer Industries Canada, LLC	\$15,279.25
Cancore	\$93,540.53

INFORMATION: Bus Maintenance requires replacement radiator parts for the maintenance and repair of the heavy-duty transit bus fleet. Invitation to Bid No. 4459 was advertised and posted to our website. Nine responses were received for consideration. See attached bid analysis.

FUNDING: Funding is provided in Inventory Account Number 2-00-0000-184-0010.

“RESOLVED, that the Board hereby acceptance of the lowest responsive bids for the procurement of inventory radiator parts from the above listed vendors for an estimated cost of \$495,240.80 as described hereinabove; and

BE IT FURTHER RESOLVED, that the Manager, Procurement, be and she is hereby authorized to issue Purchase Orders to the above vendors for the procurement of steering repair parts to be used as described hereinabove; and

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

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

BID 4459 RADIATOR PARTS

Item	Stock Code	Description	Gillig	Diesel Radiator	Dukane	Muncie	Nabi	Prevost	New Flyer	Cancore	Grayson
52	000076406	CORE,RADIATOR	\$44,219.18	\$24,008.25	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$11,791.07	\$0.00
53	000076414	SHIELD,RADIATOR FRONT	\$1,261.85	\$0.00	\$424.20	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
54	000076422	SHIELD,RADIATOR BOTTOM	\$1,927.84	\$0.00	\$369.60	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
55	000076430	SHIELD,RADIATOR TOP	\$804.47	\$0.00	\$369.60	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
56	000076448	TANK,RADIATOR TOP E	\$949.22	\$763.35	\$618.45	\$0.00	\$0.00	\$0.00	\$0.00	\$310.71	\$0.00
57	000076455	TANK,BOTTOM RADIATOR E	\$2,847.66	\$2,290.05	\$1,855.35	\$0.00	\$0.00	\$0.00	\$0.00	\$992.14	\$0.00
58	000076521	GASKET,RADIATOR, LONG ONE	\$332.30	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
59	000076547	EQUALIZER,BATTERY	\$2,329.13	\$0.00	\$0.00	\$2,157.10	\$2,271.83	\$0.00	\$2,588.53	\$0.00	\$0.00
60	000077032	ASSEMBLY, CHARGE AIR	\$12,705.90	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
61	000077040	COOLER, HYDRAULIC OIL	\$5,208.27	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
62	000077941	CAP,RADIATOR, 16 LBS.	\$106.12	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$68.51	\$0.00	\$0.00
63	000078055	ASSEMBLY, CHANNEL, C.A.C.	\$340.77	\$0.00	\$454.65	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
64	000078063	ASSEMBLY, CHANNEL, BOTTOM	\$462.55	\$0.00	\$454.65	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
65	000078071	ASSEMBLY, CHANNEL OIL	\$421.91	\$0.00	\$413.70	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
66	000078089	ASSEMBLY, CHANNEL	\$515.43	\$0.00	\$488.25	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
67	000078097	CHANNEL,RADIATOR SIDE E	\$1,665.95	\$0.00	\$976.50	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
68	000078832	RADIATOR,	\$15,099.08	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
69	000078931	ASSEMBLY,RADIATOR/CAC,	\$45,831.27	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
72	001015604	PIPE,RADIATOR, COOLING	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,117.92	\$0.00	\$0.00	\$0.00
73	006300052	HOSE,SILICONE, COOLANT, 1"	\$0.00	\$0.00	\$0.00	\$0.00	\$3,284.91	\$0.00	\$1,914.62	\$0.00	\$0.00
74	006300053	HOSE,SILICONE, COOLANT, 1-	\$0.00	\$0.00	\$0.00	\$0.00	\$729.08	\$0.00	\$748.72	\$0.00	\$0.00
75	006300055	HOSE,SILICONE, COOLANT, 2-	\$0.00	\$0.00	\$0.00	\$0.00	\$5,026.06	\$0.00	\$4,333.65	\$0.00	\$0.00
76	006300056	HOSE,SILICONE, COOLANT, 1-	\$0.00	\$0.00	\$0.00	\$0.00	\$2,629.44	\$0.00	\$1,771.44	\$0.00	\$0.00
77	006300057	HOSE,SILICONE, COOLANT, 2"	\$0.00	\$0.00	\$0.00	\$0.00	\$1,836.43	\$1,405.11	\$1,718.31	\$0.00	\$0.00
78	006300059	HOSE,SILICONE, COOLANT, 2-	\$0.00	\$0.00	\$0.00	\$0.00	\$7,620.36	\$4,473.40	\$4,474.41	\$0.00	\$0.00
79	006300062	HOSE,SILICONE, COOLANT,	\$0.00	\$0.00	\$0.00	\$0.00	\$2,834.86	\$1,957.93	\$1,581.54	\$0.00	\$0.00
80	006300063	HOSE,SILICONE, COOLANT, 1-	\$0.00	\$0.00	\$0.00	\$0.00	\$680.93	\$406.13	\$632.84	\$0.00	\$0.00
81	006300064	HOSE,SILICONE, COOLANT, 1-	\$0.00	\$0.00	\$0.00	\$0.00	\$2,307.36	\$1,434.35	\$1,593.47	\$0.00	\$0.00
82	006300066	HOSE,SILICONE, COOLANT,	\$0.00	\$0.00	\$0.00	\$0.00	\$597.90	\$365.50	\$408.44	\$0.00	\$0.00
83	006300067	HOSE,SILICONE, COOLANT,	\$0.00	\$0.00	\$0.00	\$0.00	\$1,194.66	\$0.00	\$1,111.40	\$0.00	\$0.00
84	006300077	HOSE,SILICONE, COOLANT, 2-	\$0.00	\$0.00	\$0.00	\$0.00	\$2,125.58	\$0.00	\$1,610.50	\$0.00	\$0.00
85	006300078	HOSE,SILICONE, COOLANT, 1-	\$0.00	\$0.00	\$0.00	\$0.00	\$900.87	\$0.00	\$606.94	\$0.00	\$0.00
86	008900004	MOUNT,RADIATOR	\$0.00	\$0.00	\$0.00	\$377.78	\$0.00	\$379.48	\$0.00	\$0.00	\$0.00

SURFACE:

4. D. (4) **Authorization for Revised Paratransit Missed Trip Policy, Metro**

RECOMMENDATION: Staff recommends that the Board authorize a revised Paratransit Missed Trip Policy.

INFORMATION: During the last Triennial Review, the Federal Transit Administration (FTA) determined that the Missed Trip Policy did not equally apply suspensions between frequent and occasional riders and asked that we review our policy.

The current policy applies a suspension if a rider accumulates 6 or more missed trips/late cancels, regardless of how frequently a rider uses the service. In an effort to apply the policy uniformly, the Missed Trip Policy needs to be revised. The revised policy will assess a violation based on the missed trips/late cancels a rider accumulates per month *and* the amount of trips scheduled for that month.

Revisions to our policy was developed with input and feedback from the NFTA Disabled Advisory Committee. The revisions were presented to and reviewed by the Advisory Committee and they felt the revised policy was fair and equitable to all riders.

FUNDING: No funding is required.

“RESOLVED, that effective April 23, 2015 the Board hereby adopts the revised Paratransit Missed Trip Policy as reflected in the attached document.”

REVISED MISSED TRIP POLICY EFFECTIVE - 11/01/984/23/15

~~The MISSED TRIP POLICY instituted by the NFTA has been expanded to include trips, which are canceled less than two (2) hours prior to the trip being taken. Missed Trip Policy will be exercised and will assess riders with a violation for accumulating a specific amount of no shows and/or late cancellations. Transportation could be suspended for an extended amount of time as a result.~~

~~Individuals with a history of missing and/or canceling their scheduled trips prior to the 2 hour time limit during a rotating six (6) month period, will receive a letter stating that the NFTA will be suspending eligibility rights for thirty (30) calendar days. This letter will state with specificity the dates of the missed and/or late canceled trips. Trips canceled more than two (2) hours in advance will not be considered as missed trips.~~

~~Eligibility may be suspended in the following instances:~~

- ~~➤ Six (6) missed trips, or~~
- ~~➤ Six (6) late cancels, or~~
- ~~➤ Six (6) combination of missed trips and/or late cancels~~

~~The individual will be given an opportunity to be heard and to present information and arguments supporting continuation of service. Individuals shall contact the NFTA Metro PAL Customer Service Office, in writing, within ten (10) calendar days of receipt of the letter by contacting:~~

~~**No show:** If the vehicle arrives at the requested origin within the given pick up window and the rider fails to board the vehicle within five minutes. For example, the vehicle arrives at the requested origin at 7:00 a.m. and the rider fails to board by 7:05 a.m.~~

~~**Late cancellation:** If the rider fails to cancel a trip at least two hours prior to the start of the pick-up window. For example, a trip with a pick up window of 7:00 a.m.-7:30 a.m. must be canceled by 5:00 a.m. to avoid receiving a late cancel.~~

Violation:

1 to 20 scheduled trips per month

A violation is accrued if there is a total of 2 no shows and/or late cancels during a calendar month.

21 to 30 scheduled trips per month

A violation is accrued if there is a total of 3 no shows and/or late cancels during a calendar month.

31 or more scheduled trips per month

A violation is accrued if there is a total of 10 % no shows and/or late cancels during a calendar month.

A rider's travel history with paratransit for the previous 6 months will be reviewed. A rider who accumulates a violation will have the following progression apply. Violations are assessed on the first of every month for the previous month.

<u>. 1st violation</u>	<u>written notification of violation</u>
<u>. 2nd violation</u>	<u>3-day suspension*</u>
<u>. 3rd violation</u>	<u>7-day suspension*</u>
<u>. 4th violation</u>	<u>15-day suspension*</u>
<u>. 5th and 6th violation</u>	<u>30-day suspension*</u>

NFTA will not penalize the rider for any no show and/or late cancel that was beyond the riders control. Therefore, when this occurs the rider must contact PAL customer service within 10 days, in writing, with supporting documentation. NFTA will then advise the rider in writing, if the no show and/or late cancel will remain on the rider's record.

NFTA has established an administrative appeals process, which provides the rider an opportunity to present information and arguments supporting continuation of transportation. To request an administrative appeal the rider must notify PAL Customer service in writing within 10 days of receiving notification that transportation will be suspended. Requests for an administrative appeal are sent to:

NFT Metro PAL Customer Service Office
Niagara Frontier Transportation Authority
181 Ellicott Street
Buffalo, New York 14203
(716) 855-7268
(716) 855-6694

~~The customer service office representative shall advise the individual in writing within seven (7) calendar days of the receipt of the letter of his/her decision, and the reason for it.~~

~~The decision made by the customer service office representative to sanction an individual and suspend service may be appealed through the Administrative Appeals process. The individual requesting an appeal shall notify the METRO PAL Office in writing at 181 Ellicott Street, Buffalo, New York 14203 within seven (7) calendar days of the receipt of the representative's decision.~~

~~Suspension from the PAL system will not occur prior to the outcome of the appeals hearing, if such an appeal is requested.~~

~~*If the customer is appealing the suspension, the suspension from PAL will not occur until the outcome of the appeals hearing.~~

SURFACE:

4. D. (5) **Authorization for Antenna Site License Agreement, M&T Bank, Installation and Operation of Public Wi-Fi, LRRT**

RECOMMENDATION: Staff recommends the Board approve an Antenna Site License Agreement with M&T Bank for the installation of antennas/routers and related equipment on the LRRT electrical cabinets located at the LRRT stations on Main Street for an initial term of three years with two one-year renewal options subject to mutual agreement of the NFTA and M&T Bank.

INFORMATION: M&T Bank (M&T) is sponsoring, as a community service, the installation and operation of free public Wi-Fi in certain portions of the City of Buffalo. The area of the Wi-Fi coverage is specific to outside access. The anticipated geographic area includes Main Street from North Street to Scott Street, as well as areas of Canalside and Erie Basin Marina. M&T is leading the development which includes participation from the City of Buffalo, the University of Buffalo and the NFTA. M&T's contribution consists of funding the purchase and installation of the equipment and the annual maintenance and operation for the first generation of the network. Initial support for the system will be arranged and funded by M&T through an experienced third party vendor who will provide 24/7 monitoring of the system. The City of Buffalo will provide for the use of its lighting poles for the installation of equipment. The University of Buffalo will allow M&T to utilize strands of University fiber that currently exist within the NFTA's right of way.

The NFTA's contribution to the project consists of allowing M&T to install antenna/routers on NFTA's LRRT inbound and outbound electrical cabinets located at the transit stations from the Erie Canal Harbor Station to the Fountain Plaza Station. The installation of the equipment will not interfere with the operations of the LRRT. The NFTA will have the future right to link to the Wi-Fi to communicate with passenger information systems within the stations to provide real time network communications with passengers and display the information on station signs. The Antenna Site License Agreement will contain standard terms and conditions requiring the M&T and its contractors to procure insurance. The plans and specification for the equipment and installation is subject to the review and approval of the NFTA. M&T will be responsible for the removal of the antenna and restoration at the expiration of the term of the agreement.

FUNDING: No funding is required.

“RESOLVED, that the Board hereby authorizes an Antenna Site License Agreement with M&T Bank, for the installation and operation of free public Wi-Fi 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 Antenna Site Lease Agreement with M&T Bank 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; and

BE IT FURTHER RESOLVED, that the Chief Financial Officer, be and he is hereby authorized to make payments under said Agreement upon certification by the Director, Public Transit, 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. (3)
1. Approval of Guidelines for Acquisitions and Dispositions of Real Property, NFTA and NFT Metro System, Inc.
2. Authorization for Lease Agreement, 2D Imaging, Inc., 247 Cayuga Road
3. Authorization for Lease Agreement, Get Lucky, Inc., 247 Cayuga Road

PROPERTY:

5. D. (i) **Niagara Frontier Transportation Authority, Acceptance of Property Resolutions 5. D. (1) through 5. D. (3)**

The Executive Director advised that Items 5. D. (1) through 5. D. (3) have been discussed with the Board of Commissioners of the NFTA, and the Board is unanimously in favor of all subject Resolutions.

Whereupon, it was moved by Commissioner Hughes, seconded by Commissioner Baynes, 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. (3) and dated April 23, 2015 as set forth herein, be and hereby are accepted and approved in their entirety.”

AYES: ZEMSKY, SLOMA, DEMAKOS, DURAND, ANSARI, BAYNES, GURNEY, HICKS, HUGHES, PERRY

NOES: NONE

ADOPTED

PROPERTY:

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

RECOMMENDATION: Staff recommends that the Board approve the attached Guidelines for Acquisitions and Disposition of Real Property for the NFTA and NFT Metro System, Inc.

INFORMATION: The Public Authorities Law provides that the Board shall review and approve the NFTA/Metro Guidelines for the Acquisition and Disposition of Real Property on an annual basis. Due to organizational changes within the Authority, Staff recommends that the Guidelines be changed to reflect the title change from Manager, Real Property to Manager, Facilities and Property and the title of Director, Surface Transportation to Director, Public Transit.

FUNDING: No funding is necessary.

“**RESOLVED**, that the 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 as revised in the attached document.”

Reference: EXECUTIVE
Title: ACQUISITION AND DISPOSITION OF REAL PROPERTY
Policy Number: 01-01-09
Revision Date: 04-23-15

**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, Facilities and 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, Public Transit or Manager, Facilities and 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, Facilities and 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 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, Facilities and 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, 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, Facilities and 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, Facilities and 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 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, Facilities and Property, is responsible for preparing an annual report listing all real property of the NFTA, all real property 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 all real property that the NFTA disposed of during such period, and the name of the purchaser. The report shall be delivered to the New York State Comptroller, the Authorities Budget Office, Director of Budget, Commissioner of General Services and the Legislature within 90 days after the end of the NFTA's fiscal year.

PROPERTY:

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

RECOMMENDATION: Staff recommends that the Board authorize a lease agreement with 2D Imaging, Inc. (Mark K. Roth, President) for office space at 247 Cayuga Road, Cheektowaga.

INFORMATION: 2D Imaging is a direct mail print broker and has been leasing space at 247 Cayuga Road since 2008. This lease is for 1,200 square feet of C+ office space at 247 Cayuga Road at a rental rate of \$9.84 per square foot per year or \$984 per month with a 3% annual escalator. The term is one-year beginning May 1, 2015 and ending April 30, 2016, with the tenant having the right to renew for two additional one-year terms.

FUNDING: No funding is necessary.

“RESOLVED, that the Board hereby authorizes a Lease Agreement with the 2D Imaging, Inc. for use of space at 247 Cayuga Road, as described hereinabove; and

BE IT FURTHER RESOLVED, that the Executive Director, her designee and/or the Chairman, be and hereby are authorized to execute a Lease Agreement with 2D Imaging, Inc., as set forth above and as negotiated; and

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

PROPERTY:

5. D. (3) **Authorization for Lease Agreement, Get Lucky, Inc., 247 Cayuga Road**

RECOMMENDATION: Staff recommends that the Board authorize a Lease Agreement with Get Lucky, Inc. (Joseph Mintz, Principle) for office space at 247 Cayuga Road, Cheektowaga.

INFORMATION: Get Lucky, Inc. is a group of retirees looking for a space to meet and play cards. They will be leasing 431 square feet of class C office space at an annual rental rate of \$11 per square foot. They will be leasing the space for seven months each year for a term of one-year with two one-year renewals at the tenant's option. The initial term will be from May 1, 2015 thru November 30, 2015. The rental rate is \$395 per month or \$2,765 for the seven-month period in 2015. The rent will increase by 3% each year.

FUNDING: No funding is necessary.

“RESOLVED, that the Board hereby authorizes a Lease Agreement with Get Lucky, Inc. for use of space at 247 Cayuga Road as described hereinabove; and

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

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

6. General Counsel Report - Written

7. Executive Session

At approximately 1:02 p.m., it was moved by Commissioner Perry, seconded by Commissioner Durand, that the Commissioners convene in Executive Session to discuss personnel issues.

Following discussion, at approximately 1:22 p.m., it was moved by Commissioner Perry, seconded by Commissioner Durand, that the Executive Session be adjourned and that the Board resume the Regular Session.

**AYES: ZEMSKY, SLOMA, DEMAKOS, DURAND, ANSARI,
BAYNES, GURNEY, HICKS, HUGHES, PERRY**

NOES: NONE

8. Adjournment

At approximately 1:23 p.m., the Chairman indicated that there was no further business coming before the Board, whereupon it was moved by Commissioner Durand, seconded by Commissioner Baynes, 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, DEMAKOS, DURAND, ANSARI,
BAYNES, GURNEY, HICKS, HUGHES, PERRY**

NOES: NONE