

PROJECT MANUAL
FOR
BUFFALO NIAGARA INTERNATIONAL AIRPORT
UPGRADE CATHODIC PROTECTION – FUEL FARM

NFTA PROJECT NO. 15BF0711
BID NO. E-432R
MAY 2011

VOLUME 1 of 1

NIAGARA FRONTIER TRANSPORTATION AUTHORITY

**PROJECT MANUAL
FOR THE CONSTRUCTION OF**

**BUFFALO NIAGARA INTERNATIONAL AIRPORT (BNIA)
UPGRADE CATHODIC PROTECTION – FUEL FARM**

**BUFFALO NIAGARA INTERNATIONAL AIRPORT (BNIA)
BUFFALO, NEW YORK**

**NFTA PROJECT NO. 15BF0711
BID NO. E-432R**

MAY 2011



**ENGINEERS
DESIGN BUILD
TECHNICAL RESOURCES
OPERATIONS**

C&S Engineers, Inc.
90 Broadway
Buffalo, New York 14203

Cathodic Protection Subconsultant:

Valenti Technological Innovations
5201 Dunhill Road
Fayetteville, New York 13066

NFTA CONSTRUCTION AIRSIDE BID PACKAGE

INVITATION TO BID	1
II. INSTRUCTIONS TO BIDDERS	2
ARTICLE 1. DEFINITIONS*	2
ARTICLE 2. EXAMINATION	3
ARTICLE 3. EXPLANATIONS	3
ARTICLE 4. PROTEST PROCEDURES	3
ARTICLE 5. REJECTION OR DISQUALIFICATION	4
ARTICLE 6. ITEMIZED PROPOSAL	4
ARTICLE 7. BID SECURITY	5
ARTICLE 8. MODIFICATION AND WITHDRAWAL	6
ARTICLE 9. PRE-AWARD SURVEY	6
ARTICLE 10. EVALUATION AND AWARD	6
ARTICLE 11. EXECUTION OF CONTRACTS/BONDS/INSURANCE	6
ARTICLE 12. SINGLE BID SITUATIONS	7
ARTICLE 13. TAXES	7
ARTICLE 14. CONTRACTOR'S PARTICIPATION	7
ARTICLE 15. ACCURACY OF SPECIFICATIONS	8
ARTICLE 16. COMPLIANCE WITH LAWS AND EXEMPTION	8
ARTICLE 17. SUBCONTRACTORS	8
ARTICLE 18. NEW YORK STATE BUSINESS ENTERPRISES	8
ARTICLE 19. MOBILIZATION	9
ARTICLE 20. DISADVANTAGED BUSINESS ENTERPRISE POLICY STATEMENT	10
ARTICLE 21. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS	10
ARTICLE 22. LOBBYING	11
III. BID FORMS	12
ITEMIZED PROPOSAL	12
JOINT VENTURE STATEMENT	16
NON-COLLUSIVE BIDDING CERTIFICATION	18
DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS	19
IV. SECURITY FORMS	20
PROPOSAL BOND	20
PERFORMANCE BOND	23
LABOR AND MATERIAL PAYMENT BOND	28
MAINTENANCE BOND	31
V. AGREEMENT	34
VI. GENERAL CONDITIONS	37
ARTICLE 1. INTERPRETATION OF CONTRACT DOCUMENTS	37
ARTICLE 2. ENGINEER	37
ARTICLE 3. JOINT AND SEVERAL LIABILITY	37

ARTICLE 4.	AGENT TO ACCEPT SERVICE	37
ARTICLE 5.	INDEMNIFICATION	37
ARTICLE 6.	CONTRACTUAL RELATIONSHIPS	38
ARTICLE 7.	COOPERATION BETWEEN CONTRACTORS	38
ARTICLE 8.	ENGINEERING AND ARCHITECTURAL SERVICES	39
ARTICLE 9.	SUBCONTRACTORS AND SUPPLIERS.....	39
ARTICLE 10.	WORKMANSHIP AND UNAUTHORIZED WORK.....	40
ARTICLE 11.	MATERIAL.....	40
ARTICLE 12.	STORAGE OF AND PAYMENT FOR MATERIALS ON HAND	41
ARTICLE 13.	CHANGES IN QUANTITIES	42
ARTICLE 14.	WARRANTIES	42
ARTICLE 15.	SUPERINTENDENT	43
ARTICLE 16.	INSPECTION	43
ARTICLE 17.	EXTRA WORK	45
ARTICLE 18.	DIFFERING SITE CONDITIONS	45
ARTICLE 19.	PAYMENT FOR AGREED PRICES.....	45
ARTICLE 20.	PAYMENT FOR FORCE ACCOUNT WORK.....	46
ARTICLE 21.	EXTRA WORK - AUDITING AND ACCOUNTING.....	49
ARTICLE 22.	CONTRACTOR PROPOSALS	49
ARTICLE 23.	VALUE ENGINEERING.....	50
ARTICLE 24.	NOTICE OF POTENTIAL CLAIM.....	51
ARTICLE 25.	SUBMITTAL OF CLAIM	52
ARTICLE 26.	DISPUTES	52
ARTICLE 27.	TERMINATION FOR CONVENIENCE OF THE NFTA.....	52
ARTICLE 28.	TERMINATION FOR DEFAULT.....	55
ARTICLE 29.	STATE FINANCE LAW SECTION 139-K.....	56
ARTICLE 30.	TIME IS OF THE ESSENCE	56
ARTICLE 31.	USE AND POSSESSION PRIOR TO COMPLETION	56
ARTICLE 32.	RIGHTS IN SHOP DRAWINGS AND WORKING DRAWINGS	56
ARTICLE 33.	USE OF NFTA’S NAME IN CONTRACTOR ADVERTISING OR PUBLIC RELATIONS.....	57
ARTICLE 34.	AUDIT AND INSPECTION	57
ARTICLE 35.	ASSIGNMENT.....	57
ARTICLE 36.	NEW YORK STATE BUY AMERICA.....	57
ARTICLE 37.	PROTECTION OF EXISTING VEGETATION, FACILITIES AND UTILITIES	58
ARTICLE 38.	RIGHTS IN LAND AND IMPROVEMENTS	58
ARTICLE 39.	DAMAGE TO THE WORK AND RESPONSIBILITY FOR MATERIALS.....	58
ARTICLE 40.	EMERGENCIES	59
ARTICLE 41.	SUSPENSION OF WORK	59
ARTICLE 42.	ACCIDENT PREVENTION	59
ARTICLE 43.	TOOLS AND EQUIPMENT	60
ARTICLE 44.	BARRICADES, WARNING SIGNS AND HAZARD MARKINGS	60
ARTICLE 45.	PROJECT RECORDS.....	60
ARTICLE 46.	PROGRESS SCHEDULES AND REQUIREMENTS FOR MAINTAINING PROGRESS	60
ARTICLE 47.	PROGRESS PAYMENTS - RETENTION.....	61
ARTICLE 48.	FINAL INSPECTION AND ACCEPTANCE.....	61

ARTICLE 49.	FINAL PAYMENT	61
ARTICLE 50.	PROMPT PAYMENT RULES AND REGULATIONS.....	62
ARTICLE 51.	NEW YORK STATE LABOR LAW	62
ARTICLE 52.	ALTERATIONS AND OMISSIONS	62
ARTICLE 53.	DELAYS.....	63
ARTICLE 54.	INSURANCE	66
ARTICLE 55.	NFTA PROMPT PAYMENT RULES AND REGULATIONS	67

VII. SUPPLEMENTARY CONDITIONS..... 70

NYS DEPARTMENT OF LABOR PREVAILING WAGE RATES

TECHNICAL SPECIFICATIONS

DIVISION 1 – GENERAL REQUIREMENTS

SECTION 011000	SUMMARY
SECTION 012900	PAYMENT PROCEDURES
SECTION 013100	PROJECT MANAGEMENT AND COORDINATION
SECTION 013200	CONSTRUCTION PROGRESS DOCUMENTATION
SECTION 013300	SUBMITTAL PROCEDURES
SECTION 014000	QUALITY REQUIREMENTS
SECTION 015000	TEMPORARY FACILITIES AND CONTROLS
SECTION 017300	EXECUTION REQUIREMENTS
SECTION 017700	CLOSEOUT PROCEDURES
SECTION 017839	PROJECT RECORD DOCUMENTS

DIVISION 26 - ELECTRICAL

SECTION 264200	CATHODIC PROTECTION
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DIVISION 31 – EARTHWORK

SECTION 312000	EARTH MOVING
----------------	--------------

DIVISION 33 – FUEL DISTRIBUTION UTILITIES

SECTION 335243	AVIATION FUEL DISTRIBUTION AND VALVES
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DRAWINGS (BOUND SEPARATELY, 11" x 17")

	TITLE SHEET
C-001	INDEX & PROJECT NOTES
C-101	GENERAL PLAN
C-102	PARTIAL PLAN #1
C-103	PARTIAL PLAN #2
C-501	DETAILS
C-502	DETAILS
C-503	DETAILS
M-101	VALVE REPLACEMENT GENERAL PLAN
M-102	VALVE REPLACEMENT ENLARGED PLAN AND DETAILS
M-103	DETAILS

Invitation to Bid

The Niagara Frontier Transportation Authority ("NFTA") will receive bids on a general contract for the **BNIA – Upgrade Cathodic Protection – Fuel Farm, Project No. 15BF0711**.

The Contract Documents will be available to bidders on May 2, 2011.

The contact person for this procurement is Dennis Lupp, P.E., LEED-AP, Project Manager, at (716) 855-7375 (telephone), (716) 855-7447 (fax) or Dennis_Lupp@nfta.com.

The Contract Documents may be examined in the 7th Floor Conference Room, 181 Ellicott Street, Buffalo, New York 14203 or on the NFTA's Engineering Branch website at www.nftaengineering.com. Online registration is required to become a Plan Holder and obtain Contract Documents. Copies of the Contract Documents are available for \$25.00 and may be requested from Judy Reeves at 716-855-7342 or fax 716-855-7447 or downloaded from the NFTA's Engineering Branch website. Requests may be accompanied by certified check, cashier's check or postal money order drawn in favor of the NFTA. This sum is non-refundable. The Contract Documents may be picked up or sent via courier billed to the requester.

Bids will be accepted either in offline (paper) or online (electronic) versions. Offline bids should be submitted in an opaque sealed envelope to the Engineering Branch on the 7th floor of the MTC. The lower left hand corner should be marked as follows: BID NO. E-432. Online bids should be submitted in accordance with the process outlined on the NFTA's Engineering Branch website. All bids will be opened and read aloud on May 31, 2011, at 2:00 PM at the Metropolitan Transportation Center ("MTC"), 7th Floor Conference Room, 181 Ellicott Street, Buffalo, New York 14203. Bids received after the date and time specified above for bid opening shall not be opened and/or considered for award.

A pre-bid Meeting will be held on May 12, 2011 at 10:00 AM at the BNIA Fuel Farm (275 Aero Drive, Buffalo, NY). Please meet at the parking lot. On-site parking is very limited.

The NFTA reserves the right to waive irregularities, to reject any or all bids and to extend the bidding period.

Bid security must accompany each bid and must be in an amount not less than ten percent of the total bid price if the base bid exceeds \$50,000.00. Bid security may be submitted prior to bid opening either electronically utilizing Surety2000 at www.surety2000.com, or delivered to the NFTA in an opaque sealed envelope. Details for electronic submission are provided on the NFTA's Engineering Branch website. In the event a bidder utilizes an offline bid but provides bid security electronically the electronic bid bond number must be submitted with the offline bid.

The Contractor shall perform not less than 50% of the work with its own forces. Contractor shall employ an individual or firm as his Corrosion Consultant to supervise the installation and test of the cathodic protection system upgrades. Refer to Technical Specifications for additional information.

The time of completion for the project is 150 calendar days after receipt of the Notice to Proceed.

Liquidated damages in the amount of \$500.00 per calendar day will be assessed against the Contractor for its failure to complete the project within the time specified.

The use of DBE participation is encouraged by the NFTA.

II. Instructions to Bidders

Article 1. Definitions*

Acceptance	The formal written acceptance by the NFTA that all the work or a specified portion thereof has been satisfactorily completed pursuant to the Agreement.
Agreement	The written agreement executed by the Contractor and the NFTA covering the performance of the Work, including the furnishing of labor, superintendence, materials, tools and equipment as indicated in the Contract Documents.
Addenda	Written revisions including deletions and/or additions to the Contract Documents issued by the NFTA prior to opening of the bids.
Change Order	A written order issued by the Contracting Officer to the Contractor, covering changes in the Work or an adjustment in the contract sum or the contract time.
Contract Documents	Includes the Instructions to Bidders, Bid Forms, Security Forms, Agreement, General Conditions, Supplementary Conditions, Technical Specifications, Contract Drawings, Addenda and Change Orders.
Contracting Officer	The Chairman and/or the Executive Director of the NFTA or their duly designated representative.
Contractor	The individual, partnership, joint venture, firm or corporation, engaged in a direct contractual relationship with the NFTA, primarily liable for the acceptable performance of the work contracted for and for the payment of all legal debts pertaining to the Work, who acts directly or through lawful agents or employees to complete the Work.
Days	Calendar days unless otherwise specified.
Engineer	The NFTA's Director, Engineering or a duly designated representative.
Final Acceptance	Formal written acceptance by the NFTA of the completed Work.
NFTA	Niagara Frontier Transportation Authority.
Notice of Award	Written notice from the NFTA to the Contractor notifying the Contractor that it has been selected as the successful bidder.
Notice of Intent to Award	Written notice from the NFTA to the Contractor notifying the Contractor that it is likely to be selected as the successful bidder, pending approval by the NFTA's Board of Commissioners or Executive Director, and instructing it to proceed with administrative work such as procurement of insurance.
Notice to Proceed	Written notice from the NFTA to the Contractor to proceed with the Work.

Subcontractor	Any person, firm, corporation, other than the Contractor or the employees of the Contractor, who contracts to furnish labor and/or materials in connection with the project.
Work	All the construction, labor, materials, equipment and contractual requirements as specified or indicated in the Contract Documents, including all alterations, amendments or extensions thereto made by change orders.

* Additional definitions may be found throughout the Contract Documents.

Article 2. Examination

Bidders should carefully examine the Contract Documents and have the right to examine the jobsite to obtain first hand knowledge of existing conditions. Bidders will be expected to be aware of local labor availability, means of transportation, laws and codes bearing upon the construction work, wage scales, licensing or permit requirements, availability of required insurance and other factors that could affect the Work. The Contractor will not be given extra moneys for conditions which are determinable by examining the Contract Documents or worksite. Bidders are responsible for consulting standards referenced in the Contract Documents.

Article 3. Explanations

Prospective bidders who wish explanations or clarifications of an item within the Contract Documents must submit their inquiries in writing to the Engineer, Niagara Frontier Transportation Authority, 181 Ellicott Street, Buffalo, New York 14203. Any response that the NFTA may choose to make will be by a written addendum to the Contract Documents or other written response sent to all listed holders of the Contract Documents. The NFTA will not be bound by any informal explanation, clarification or interpretation, oral or written, by whomsoever made, that is not incorporated into an addendum to the Contract Documents. To be given consideration a request for an explanation must be received at least five days prior to the date fixed for the opening of bids.

Article 4. Protest Procedures

Pre-Bid Opening Protests. If a bidder can demonstrate that the Contract Documents issued by the NFTA 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 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 business days before bid opening. Within four business days after receipt of a pre-bid protest, the Executive Director shall make one of the determinations listed in the paragraph entitled Rulings on Protests.

Post-Bid 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 NFTA must be received in writing by the Executive Director no later than five 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.

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 General Manager of Engineering shall serve as the Decision-Maker.

Rulings on Protests. Within four 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 NFTA staff and reviewed by the Decision-Maker in the reaching of a determination shall form and be retained by the NFTA as the formal record of the dispute resolution process.

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

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

- (a) The items to be procured are urgently required.
- (b) Delivery or performance will be unduly delayed by failure to make a prompt award.
- (c) Failure to make a prompt award will otherwise cause undue harm to the NFTA or the federal government.

Article 5. Rejection or Disqualification

Bidders are cautioned that failure to submit any of the required bid forms, the required bid security, or bid on all necessary items listed may result in rejection of the bid.

Article 6. Itemized Proposal

The Itemized Proposal must be completed as follows:

Prices. Unit, lump sum and other prices must be entered in the appropriate spaces provided. Unit prices should be multiplied by the amount or estimated quantity and the product inserted in the "Amount Bid" column shown on the Itemized Proposal.

"Estimated Quantities" when shown on the Itemized Proposal are approximate and are used solely for the purpose of evaluating the bids. The NFTA does not represent, expressly or by implication, that the actual amount of work will correspond to the "Estimated Quantities," and further reserves the right to increase or decrease the amount of any or all bid items and to omit portions of the Work.

In the case of any bid item for which a fixed amount predetermined by the NFTA has already been entered on the Itemized Proposal the amount so entered shall be conclusive on all bidders as the price for such item, and shall not be revised unless the NFTA directs a change in the scope of the work affecting the item to which such amount relates.

Only one proposal for the same work from an individual, firm, partnership or corporation shall be submitted under the same or different names.

If the prices contained in the Itemized Proposal are obviously unbalanced either in excess or below the reasonable cost analysis values, the bid will be rejected.

Bidders are requested to observe the following instructions in completing the Itemized Proposal. Failure to do so will not necessarily preclude consideration of a bid, but may result in irregularities serious enough that a bid cannot be considered:

- The Itemized Proposal must be signed by the bidder.
- The bidder should not delete, modify or supplement the printed matter on the Itemized Proposal, or make any substitutions therefore.
- The Itemized Proposal and the other forms accompanying it should be legibly completed in ink or typewritten.
- Receipt of addenda should be acknowledged in the spaces provided on the Itemized Proposal, by entering the number and date of issue of each.
- All identifying information, such as the bidder's name, address, principals and state of incorporation, for which spaces are provided, should be entered.
- Any corrections should be initialed by the person who signs the Itemized Proposal.
- If the bid is submitted by other than a person, or if the Itemized Proposal is signed for a person by another, evidence of the authority of the person signing the Itemized Proposal is required.

Article 7. *Bid Security*

Bidders are required to furnish bid security in an amount not less than ten percent of the total bid price and in favor of the NFTA if the base bid exceeds \$50,000.00. The bid security may be in the form of a guaranteed negotiable instrument, letter of credit, or a proposal bond. The letter of credit must be an irrevocable letter of credit issued by a financial institution of B-rating or better and in a form satisfactory to the NFTA. The proposal bond must be in a form satisfactory to the NFTA and in addition to the standard provisions shall provide that the Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extensions of the times within which the NFTA may receive or accept such proposal or within which the Principal(s) may furnish a Performance and Payment Bond or by any waiver by the NFTA of any of the requirements of said proposal; and said Surety does hereby waive notice of any such extensions or waivers. The Surety thereof must be a corporation or corporations acceptable to the NFTA and authorized to guarantee the performance of contracts in New York State. The bid securities of the bidders submitting the three lowest bids will be retained either until the successful bidder has signed the Agreement and has furnished Performance and Labor and Material Payment Bonds and Certificates of Insurance or until the 90th calendar day after the bid opening date, whichever is sooner. Other bid securities will be returned within ten calendar days after the bid opening date. Each bidder agrees that if it fails to execute the Agreement and to furnish the bonds and certificates of insurance required, the NFTA will retain 100% of the bid security as liquidated damages.

Article 8. *Modification and Withdrawal*

Bids may be modified after they have been submitted, but only before the bid opening date and time. Modifications must be signed and must be received by the NFTA not later than the bid opening time and date.

Envelopes containing modifications should be addressed as provided in the Invitation to Bid and should identify the bidder and should be identified in the lower left corner as follows:

MODIFICATION TO OUR BID FOR

BID NO. _____

Bids may be withdrawn after they have been submitted, but only before the bid opening date and time; withdrawn bids may be resubmitted, but only in the manner in which the bid was originally submitted. Withdrawals must be signed as stipulated above for modification. Bids may not be withdrawn after the bid opening time and date except as may be agreed upon in writing by the bidder and the NFTA.

Envelopes containing withdrawals should be addressed as provided in the Invitation to Bid and should identify the withdrawer in the lower left corner as follows:

WITHDRAWAL OF OUR BID FOR

BID NO. _____

Article 9. *Pre-Award Survey*

If required to do so, the bidder shall submit documentation that it has the technical, financial and construction capabilities to perform the Work.

Article 10. *Evaluation and Award*

Each bid timely received and in the NFTA's hands at the time and place set for the bid opening shall constitute an offer to perform the Work in strict accordance with the terms and conditions found in the Contract Documents. The NFTA may accept any bid by giving the bidder Notice of Award. Bids will be evaluated on the basis of determining the lowest total bid price of a bidder whose bid is responsive to the solicitation, and who is determined to be technically qualified and financially responsible to perform the Work satisfactorily and has submitted all necessary documents.

All extensions of the unit prices shown and the subsequent addition of extended amounts will be verified by the NFTA. In the event of a discrepancy between the sum of the extended amounts and the total bid price, the sum of the extended amounts shall govern. In the event of a discrepancy between the unit price bid and the extension, the unit price bid will be deemed intended by the bidder and the extension will be adjusted. In the event of a discrepancy between the unit price written in words and the unit price written in numerals, the unit price written in words shall govern. The NFTA reserves the right, nevertheless, to accept a bid other than the lowest, if it determines that the public interest will best be served by doing so.

Article 11. *Execution of Contracts/Bonds/Insurance*

The bidder shall furnish an acceptable Certificate of Insurance as set forth in the General Conditions within ten days after being given Notice of Intent to Award. The bidder shall execute the Agreement and forward same to the NFTA within three business days after receipt of the

Agreement from the NFTA. The bidder shall furnish the Performance Bond and Labor and Material Payment Bond to the NFTA within three business days after receipt of a fully executed contract from the NFTA. The NFTA may require appropriate evidence that the persons executing the Agreement and the Bonds for both the bidder and its surety or sureties are duly empowered to do so. Separate Performance and Labor and Material Payment Bonds are required, each in an amount at least equal to the total bid price. The Bonds shall be in the form as set forth herein. The Surety and Insurance Companies must be corporations acceptable to the NFTA and authorized to issue insurance policies in the State of New York. The Performance Bond and the Labor and Material Payment Bond shall remain in effect until Final Acceptance.

A Maintenance Bond in the amount of 100% of the total bid price shall be provided upon Final Acceptance. Such Maintenance Bond shall be in a form satisfactory to the NFTA. The Surety thereon must be a corporation or corporations authorized to issue insurance policies in the State of New York and acceptable to the NFTA.

Each of the above referenced bonds shall provide that alterations, extensions of the time of performance, extra and additional work and other changes authorized by the Agreement may be made without notice from the NFTA or consent of the Surety.

Article 12. Single Bid Situations

In the event a single bid is received, a price and/or cost analysis will be made and the NFTA may choose to proceed with a negotiated procurement with the bidder rather than accept the bid.

Article 13. Taxes

The NFTA is exempt from payment of New York State and local taxes. Neither the Itemized Proposal nor any requests for payment pursuant to this Agreement to the NFTA shall include any federal, state or local tax unless such a tax is specifically required to be imposed upon said Itemized Proposal or request for payment by the laws and/or regulations of the federal government or any state government. The Contractor is referred to 20 NYCRR 528.16 and 528.17 for examples of purchases which do or do not qualify for the New York State tax exemption for tax exempt organizations. The NFTA will furnish the necessary exemption certificates.

Article 14. Contractor's Participation

Except as otherwise provided, the Contractor shall perform the percentage of the work with its own forces as set forth in the Itemized Proposal. Where less than an entire item is subcontracted, the value of the work subcontracted will be based on the estimated cost of such portion of the bid item, determined from information submitted by the Contractor, subject to approval by the NFTA. If, during the progress of the work hereunder, the Contractor requests a reduction in such participation percentage and the Engineer determines that it would be to the NFTA's advantage, the percentage of the work required to be performed by the Contractor may be reduced provided written approval of such reduction is obtained by the Contractor from the NFTA.

Article 15. Accuracy of Specifications

The specifications have been prepared with care and are intended to show as clearly as is practicable the work anticipated to be done. The Contractor must realize, however that construction and/or installation details cannot always be accurately anticipated and that in executing the Work, undetermined conditions may require a variation. Work under all items in the contract must be carried out to meet the field conditions to the satisfaction of the Engineer and in accordance with the instructions and the Contract Documents. Bidders shall exercise their own judgment as to the nature and quantities of the work that will be required.

The Contractor must assume all risk of variance in any computation or statement of amounts or quantities necessary to complete the work required by the Agreement and fully complete said work in accordance with the plans and specifications for the price bid.

Article 16. Compliance with Laws and Exemption

The Contractor shall comply with all federal, state, county and municipal laws, codes and regulations in connection with the prosecution of the Work. The Contractor shall also secure and pay for all permits, fees and licenses necessary to comply with applicable federal and state laws. The Contractor shall also secure appropriate permission and permits before commencing sewer or water line connections.

The Public Authorities Law provides that no municipality or political subdivision shall have jurisdiction over any facilities of the NFTA. The Contractor therefore is not required to obtain a local building permit, but must obtain an NFTA building permit.

Article 17. Subcontractors

No part of the Agreement shall be sublet and no work shall be performed under any subcontract without the prior written approval of the proposed subcontractor by the Engineer.

Subcontractors shall conform with all the provisions set forth in the Agreement to which their work applies and which relate thereto.

Article 18. New York State Business Enterprises

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development

Procurement Assistance Unit

One Commerce Plaza

Albany, New York 12245

Phone: (518) 474-7756

Fax: (518) 486-7577

NOTE: Companies requesting lists of potential subcontractors and suppliers are encouraged to identify the SIC code, size and location of vendors.

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development

Minority and Women's Business Development Division

One Commerce Plaza
Albany, New York 12245
Phone: (518) 474-1979

Fax: (518) 473-0665

Bidders located in foreign countries are hereby notified that New York State may seek to obtain and assign or otherwise transfer offset credits created by this procurement contract to third parties located in New York State. The successful contractor shall agree to cooperate with the State in efforts to get foreign countries to recognize offset credits created by the procurement contract.

The Omnibus Procurement Act requires that by signing this bid proposal, contractors certify that whenever the total bid amount is greater than \$1 million:

1. The successful contractor shall document efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors on this project, and has retained the documentation of these efforts to be provided upon request to the State.
2. Documented efforts by a successful contractor shall consist of and be limited to showing that such contractor has:
 - a. Solicited bids, in a timely and adequate manner, from New York State business enterprises including certified minority and women-owned businesses, or
 - b. Contacted the New York State Department of Economic Development to obtain listings of New York State business enterprises, or
 - c. Placed notices for subcontractors and suppliers in newspapers, journals and other trade publications distributed in New York State, or
 - d. Participated in bidder outreach conferences.
 - e. If the Contractor determines that New York State business enterprises are not available to participate on the contract as subcontractors or suppliers, the Contractor shall provide a statement indicating the method by which such determination was made.
 - f. If the Contractor does not intend to use subcontractors on the contract, the Contractor shall provide a statement verifying such intent.
3. The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;
4. The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Community Services Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request.

Article 19. Mobilization

The Contractor shall furnish and mobilize all required plants and equipment necessary for the proper construction of the Work. Unless a pay item for mobilization is specifically included in the proposal, no separate payment will be made for furnishing and mobilizing said plants and equipment, but the cost thereof shall be deemed included in the various items of the Itemized Proposal.

Article 20. Disadvantaged Business Enterprise Policy Statement

In accordance with the requirements of 49 CFR, Part 26, dated March 4, 1999 entitled, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs," the Niagara Frontier Transportation Authority (NFTA), is committed to the development and implementation of an effective Disadvantaged Business Enterprise (DBE) Program.

The NFTA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the NFTA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the NFTA to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the policy of the NFTA:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE program.

The Director of Equal Opportunity/Diversity Development has been delegated as the DBE Liaison Officer. In that capacity, the Director of Equal Opportunity/Diversity Development is responsible for implementing all aspects of the DBE Program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the NFTA in its financial assistance agreements with the Department of Transportation.

The NFTA has disseminated this policy statement to the Board of Commissioners and all the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for the NFTA on DOT-assisted contracts by inclusion in bid specifications, Requests for Qualifications and Requests for Proposals.

Article 21. Disadvantaged Business Enterprise Requirements

The NFTA is committed to ensuring that Disadvantaged Business Enterprises (DBEs) have the maximum opportunity to participate on NFTA contracts. Before the award of this contract, the bidder must document that it has made every effort to ensure that DBEs have a practicable opportunity to participate on this contract.

Article 22. Lobbying

Permissible contacts during the procurement process are governed by section 139-j of the State Finance Law. Submission of a bid in response to this Invitation to Bid constitutes the bidder's written affirmation that the bidder understands and agrees to comply with section 139-j of the State Finance Law.

III. Bid Forms

Itemized Proposal

Project: **BNIA – Upgrade Cathodic Protection – Fuel Farm, Project No. 15BF0711**

NFTA Bid No. E-432R

We have received, carefully examined and are familiar with the Contract Documents for the above-noted contract and have received the following addenda:

Addendum No. ____, dated _____ Addendum No. ____, dated _____

Addendum No. ____, dated _____ Addendum No. ____, dated _____

Addendum No. ____, dated _____ Addendum No. ____, dated _____

Addendum No. ____, dated _____ Addendum No. ____, dated _____

and have included the cost of these provisions in our bid. We understand that it is our responsibility to satisfy ourselves that we have obtained a full set of Contract Documents including all addenda. We have carefully examined, are familiar with and do accept the conditions of the jobsite and other conditions affecting the Work and agree that this bid shall remain open for a period of 90 days.

We will furnish and deliver all Certificates of Insurance as required in the General Conditions within ten days after Notice of Intent to Award an agreement to perform the Work for the compensation stipulated hereinafter. We will execute the Agreement and forward same to the NFTA within three business days after receipt of the Agreement from the NFTA. We shall furnish the Performance Bond and Labor and Material Payment Bond each in a form and with a surety or sureties acceptable to the NFTA to the NFTA within three business days after receipt of a fully executed contract from the NFTA. Each bond will be in an amount equal to 100% of the Total Bid Price. We agree that we will not have any claim against the NFTA for costs incurred prior to Notice to Proceed or for any delay in issuing the Notice to Proceed. We reserve the option to either withdraw the bid without forfeiting the Bid Security Bond or perform the contract work without a monetary adjustment claim to the Contract if the Notice to Proceed is delayed due to funding availability.

We submit the attached documents and our Bid Security* in the amount of not less than 10% of the Total Bid Price and agree that these documents are part of our bid. Should we be awarded a contract on the basis of this bid, we will furnish and install all products, furnish all services, labor, construction tools, equipment, supplies and transportation, and do the Work all in accordance with the Contract Documents for the following prices:

* Bid Security is only required when the base bid exceeds \$50,000.00.

NIAGARA FRONTIER TRANSPORTATION AUTHORITY

BID FORM - ITEMIZED PROPOSAL

Bid No.: E-432R Project No.: 15BF0711

Project Title: BNIA - Upgrade Cathodic Protection - Fuel Farm

Contractor: _____

Item Categories

General						
	Item No.	Pay Item Description	Estimated Quantity	Unit	Unit Bid Price	Amount Bid
	1	Cathodic Protection Upgrades	1	LS		
	2	Fuel Line Valve Replacement Work	1	LS		
	3	Allowance	1	LS	\$10,000.00	\$10,000.00
SUBTOTAL General						

Total Bid Amount:

In witness whereof, the Bidder(s) hereto has (have) executed this Itemized Proposal this _____ day of _____, 20__.

Bidder(s) Name _____
(Print)

Bidder(s) Mailing Address _____

Name and Title of Bidder's _____

Chief Executive Officer _____

By: _____
(Signature of Authorized Representative of Bidder)

(Name and Title)

Corporate Seal:

ACKNOWLEDGMENT OF PRINCIPAL – CORPORATION

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me personally came and appeared _____, to me known, who, being duly sworn, did depose and say that he/she resides at _____

_____,
that he/she is the _____ of _____, the corporation described in and which executed the foregoing document, that he/she knows the seal of said corporation, that one of the impressions affixed to said instrument is an impression of such seal, that it was so affixed by order of the directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL - PARTNERSHIP

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me personally came and appeared _____, to me known, who, being duly sworn, did depose and say that he/she resides at _____

_____,
that he/she is a member of the firm of _____, the partnership described in and which executed the foregoing document, that he/she had authority to sign the same, and he/she acknowledged to me that he/she executed the same as the act and deed of said firm.

Notary Public

ACKNOWLEDGMENT OF INDIVIDUAL

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me came _____, to me known, who being duly sworn, did depose and say that he/she executed the foregoing document.

Notary Public

Joint Venture Statement

We, the undersigned, being duly sworn according to law, upon our respective oaths depose and say that:

1. The following named Contractors have entered into a Joint Venture for the purpose of carrying out all the provisions of Contract No. _____:

(a). _____
☐ Individual
☐ Partnership
☐ Corporation

(b). _____
☐ Individual
☐ Partnership
☐ Corporation

(c). _____
☐ Individual
☐ Partnership
☐ Corporation

2. The Contractors, under whose name we have affixed our respective signatures, have duly authorized and empowered us to execute this Joint Venture Statement in the name of and on behalf of such Contractors for the purpose hereinbefore stated.

3. Under the provisions of such Joint Venture, the assets of each of the Contractors named in Paragraph 1 hereof, and in case any Contractor so named above is a partnership, the assets of the individual members of such partnership, will be available for the performance of such Joint Venture and liable therefor and for all obligations incurred in connection therewith.

4. This Joint Venture Statement is executed so that the named Contractors, as one organization, may under such Joint Venture bid upon said Agreement and be awarded the Agreement if they should become the successful bidder thereof. Any bid bond and agreement relating to said Contractor shall be executed by any of the undersigned and when so executed, shall bind this Joint Venture and each and every Contractor named herein, severally and jointly. Simultaneous with the execution of the Agreement, the Contractors entering into this Joint Venture shall designate and appoint a Project Supervisor to act as their true and lawful agent with full power and authority to do and perform any and all acts or things necessary to carry out the work set forth in said Agreement.

5. We bind the Contractor for whom we respectively execute this Joint Venture Statement in firm agreement with the NFTA that each of the representations herein set forth is true.

Subscribed and sworn to
before me this ____ day
of _____, 20____
My commission expires _____.

(a) _____
(Name of Contractor)

By: _____
(Print Name)

Notary Public

Subscribed and sworn to
before me this ____ day
of _____, 20__
My commission expires _____.

Notary Public

Subscribed and sworn to
before me this ____ day
of _____, 20__
My commission expires _____.

Notary Public

(b) _____
(Name of Contractor)

By: _____
(Print Name)

(c) _____
(Name of Contractor)

By: _____
(Print Name)

Non-Collusive Bidding Certification

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

- (1) The prices in this bid have been arrived at independently, without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Signature

Printed Name and Title

Disclosure of Prior Non-Responsibility Determinations

Name of Contractor: _____

Address: _____

Name and Title of Person Submitting this Form: _____

Has any governmental entity* made a finding of non-responsibility regarding the Contractor in the last five years? (Please circle):

No

Yes

If yes, was the basis for the finding of the Consultant's non-responsibility due to the intentional provision of false or incomplete information (Please circle):

No

Yes

If yes, please provide details regarding the finding of non-responsibility below.

Governmental Entity: _____

Year of Finding of Non-responsibility: _____

Basis of Finding of Non-Responsibility: _____

* As defined in section 139-k of the New York State Finance Law.

IV. Security Forms

Proposal Bond

KNOW ALL MEN BY THESE PRESENTS, That we the undersigned

_____ as Principal, and

_____ as Surety, a corporation authorized to guarantee the performance of contracts and to do business in the State of New York, ARE HELD AND FIRMLY BOUND UNTO The Niagara Frontier Transportation Authority in the penal sum of _____ Dollars (\$ _____), to be paid to the said Niagara Frontier Transportation Authority, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal has presented a proposal in writing to the Niagara Frontier Transportation Authority for _____, in accordance with Bid Documents prepared under the direction of the Niagara Frontier Transportation Authority.

NOW, THEREFORE, if the Niagara Frontier Transportation Authority shall accept the bid of the Principal and the Principal shall enter into a Contract with the Niagara Frontier Transportation Authority in accordance with the terms of such bid, and give such bond or bonds as may be specified in the Contract Documents with good and sufficient surety for the faithful performance of such contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such contract and give such bond or bonds, if the Principal shall pay to the Niagara Frontier Transportation Authority the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Niagara Frontier Transportation Authority may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

SIGNED this _____ day of _____, 20__

Principal

By: _____

Surety

By: _____

ACKNOWLEDGMENT OF PRINCIPAL - CORPORATION

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me personally came and appeared _____, to me known, who, being duly sworn, did depose and say that he/she resides at _____

that he/she is the _____ of _____, the corporation described in and which executed the foregoing document, that he/she knows the seal of said corporation, that one of the impressions affixed to said instrument is an impression of such seal, that it was so affixed by order of the directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL - PARTNERSHIP

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me personally came and appeared _____, to me known, who, being duly sworn, did depose and say that he/she resides at _____

that he/she is a member of the firm of _____, the partnership described in and which executed the foregoing document, that he/she had authority to sign the same, and he/she acknowledged to me that he/she executed the same as the act and deed of said firm.

Notary Public

ACKNOWLEDGMENT OF INDIVIDUAL

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me came _____, to me known, who being duly sworn, did depose and say that he/she executed the foregoing document.

Notary Public

SURETY ACKNOWLEDGMENT

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me personally came and appeared
_____, to me known, who, being duly sworn, did
depose and say that he/she resides at

that he/she is the _____ of

_____, the
corporation described in and which executed the foregoing document, that he/she knows the
seal of said corporation, that one of the impressions affixed to said instrument is an impression
of such seal, that it was so affixed by order of the directors of said corporation, and that he/she
signed his/her name thereto by like order.

Notary Public

Performance Bond

1. Know all men by these presents, that

_____, as Contractor,
hereinafter called the "Principal"), and

_____, (hereinafter called the "Surety") are held and firmly bound unto the Niagara Frontier Transportation Authority in the full and just sum of

_____ Dollars (\$_____) good and lawful money of the United States of America, to the payment of which said sum of money, well and truly to be made and done the said Principal binds itself, its heirs, executors, administrators or assignees and the said Surety binds itself, its successors or assigns, jointly and severally, firmly by these presents.

2. Signed and dated this ____ day of _____, 20 .

3. Whereas, said Principal has entered into a certain written contract bearing the date of _____, 20 , with the Niagara Frontier Transportation Authority for the construction, improvement, maintenance or repair of a public work, a copy of which contract is made a part hereof by reference with the same effect as if set forth herein in full.

Now, therefore, THE CONDITION OF THIS OBLIGATION IS SUCH that if the said Principal shall well, truly and faithfully perform the work in accordance with the terms of the contract and as said contract may be modified or amended, and with the plans and specifications, and will commence and complete the work within the time prescribed in the contract, and shall protect the Niagara Frontier Transportation Authority against, and pay any excess of cost as provided in said contract, and all amounts, damages, costs and judgments which may be recovered against said Niagara Frontier Transportation Authority or its members, officers or agents of which the said Niagara Frontier Transportation Authority may be called upon to pay to any person or corporation by reason of any damages, direct or indirect, arising or growing out of the doing of said work, or from the negligence, nonfeasance, misfeasance or malfeasance of any officer, agent or employee of the Niagara Frontier Transportation Authority, or suffered or claimed on account of said construction, improvement, maintenance or repair of a public work during the time thereof and until the final completion and acceptance of the work, or the manner of doing the same, or the neglect of the said Principal, or its agents, or servants, or the improper performance of the said work by the said Principal, or its agents, or servants, or from any other cause, then this obligation shall be null and void, otherwise to remain in full force and virtue.

In the event of a failure of performance of the contract by the Principal, which shall include, but not be limited to, any breach or default of the contract by the Principal, or in case said contract is forfeited by the Principal in the manner provided for in the contract then the said Surety, for value received, hereby stipulates and agrees, if requested to do so by the Niagara Frontier Transportation Authority, has the option to either remedy the default or breach or forfeiture of the Principal or take charge and fully perform and complete the work, mentioned and described in said contract and specifications, pursuant to the terms, conditions and

covenants thereof and as may be amended, at its own expense. The procedure by which the Surety undertakes to discharge its obligations under the bond shall be subject to the advance written approval of the Niagara Frontier Transportation Authority. If the Surety completes the contract, it shall be paid for the actual items of work performed in accordance with the Principal's contract terms and prices. In this event the Surety assumes the rights and obligations of the Principal.

It shall be the duty of the Surety to give unequivocal notice in writing to the Niagara Frontier Transportation Authority, within thirty (30) days after receipt of written notice from the Niagara Frontier Transportation Authority, to the Surety, of the Surety's election to remedy default(s) or breach(es) or forfeiture(s) promptly or to perform and fully complete the contract promptly as provided herein, time being of the essence of this bond. In said notice of election, the Surety shall state the date on which the remedy or performance shall commence. During the period between the Niagara Frontier Transportation Authority's notice and Surety's performance of the contract or remedy of the default, breach or forfeiture, the Surety shall be liable for and agrees to pay any and all reasonable and necessary costs as determined by the Niagara Frontier Transportation Authority to maintain the project site safe and convenient to the public.

It shall also be the duty of the Surety to give prompt notice in writing to the Niagara Frontier Transportation Authority upon the completion of the remedy and/or correction of each breach or default or completion of the contract. The Surety shall not assert solvency of its Principal or its Principal's denial of default as justification for its failure to give notice of election or for its failure to promptly remedy the breach or default or to complete the contract.

In the event the Surety shall fail to exercise either option or to act promptly then the Niagara Frontier Transportation Authority shall give five (5) days notice of such failure, both to Principal and Surety, and after the expiration of the five (5) days the Niagara Frontier Transportation Authority may cause the work to be completed, and the Surety and the Principal shall be jointly and severally liable for the amount of excess cost of completing the contract work beyond the amounts remaining for this contract adjusted for the work actually performed. When the cost of completion of performance is estimated, the Principal and Surety shall pay, free from all liens and encumbrances, the Niagara Frontier Transportation Authority determined estimated completion costs above the funds remaining for this contract, to the Niagara Frontier Transportation Authority within 30 days of receipt of the estimate. Adjustment of the Niagara Frontier Transportation Authority's estimated completion cost will be made upon the Niagara Frontier Transportation Authority's final acceptance of the work and appropriate refunds, if any, will be promptly made to the Surety. Any actual costs in excess of the estimated price shall be paid to the Niagara Frontier Transportation Authority promptly on demand. Additionally, the Principal and Surety shall be liable for any applicable liquidated and/or engineering costs or damages.

In addition, the said Principal and Surety further agree, as part of this obligation, to pay all damages of any kind to person or property that may result from a failure in any respect to perform and complete said contract including, but not limited to costs necessary to protect the public or to avoid inconvenience to the public, liquidated damages as provided above, all repair and replacement costs necessary to rectify construction errors, architectural and engineering costs and fees, all consultant fees, all testing and laboratory fees, and all interest, legal fees and litigation costs incurred by the Niagara Frontier Transportation Authority.

And the said Surety thereby stipulates and agrees that no change, extension, alteration, deduction or addition in or to the terms of the said contract or the plans and specifications accompanying the same, shall in anyway affect the obligations of said Surety of its bond.

Principal

Surety

ACKNOWLEDGMENT OF PRINCIPAL - CORPORATION

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me personally came and appeared _____, to me known, who, being duly sworn, did depose and say that he/she resides at _____

that he/she is the _____ of _____, the corporation described in and which executed the foregoing document, that he/she knows the seal of said corporation, that one of the impressions affixed to said instrument is an impression of such seal, that it was so affixed by order of the directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL - PARTNERSHIP

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me personally came and appeared _____, to me known, who, being duly sworn, did depose and say that he/she resides at _____

that he/she is a member of the firm of _____, the partnership described in and which executed the foregoing document, that he/she had authority to sign the same, and he/she acknowledged to me that he/she executed the same as the act and deed of said firm.

Notary Public

ACKNOWLEDGMENT OF INDIVIDUAL

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me came _____, to me known, who being duly sworn, did depose and say that he/she executed the foregoing document.

Notary Public

SURETY ACKNOWLEDGMENT

STATE OF
COUNTY OF

On this ____ day of _____, 20____, before me personally came and appeared
_____, to me known, who, being duly sworn, did
depose and say that he/she resides at

that he/she is the _____ of

_____, the
corporation described in and which executed the foregoing document, that he/she knows the
seal of said corporation, that one of the impressions affixed to said instrument is an impression
of such seal, that it was so affixed by order of the directors of said corporation, and that he/she
signed his/her name thereto by like order.

Notary Public

Labor and Material Payment Bond

Know all men by these presents, That

hereinafter called the "Principal") and

hereinafter called the "Surety"), are held and firmly bound unto the Niagara Frontier
Transportation Authority in the full and just sum of

_____ Dollars (\$_____) good and lawful
money of the United States of America, for payment of which said sum of money, well and truly
to be made and done, the said Principal binds itself, its heirs, executors and administrators,
successors and assigns, and the said Surety binds itself, its successors and assigns jointly and
severally, firmly by these presents.

Signed and dated this _____, 20 .

WHEREAS, said Principal has entered into a certain written contract, bearing the date
of _____, 20 , with the Niagara Frontier Transportation Authority.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the
said Principal shall promptly pay all moneys due to all persons furnishing labor or materials to it
or its subcontractors in the prosecution of the work provided for in said contract, then this
obligation shall be void, otherwise to remain in full force and effect;

Provided, however, that the Chief Financial Officer of the Niagara Frontier
Transportation Authority having required the said Principal to furnish this bond in order to
comply with the provisions of section 137 of the State Finance Law, all rights and remedies on
this bond shall inure solely to such persons and shall be determined in accordance with the
provisions, conditions and limitations of said section to the same extent as if they were copied
at length herein; and

Further, provided, that the place of trial of any action on this bond shall be in the county
in which the said contract was to be performed, or if said contract was to be performed in more
than one county, then in any such county, and not elsewhere.

Principal

Surety

ACKNOWLEDGMENT OF PRINCIPAL - CORPORATION

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me personally came and appeared _____, to me known, who, being duly sworn, did depose and say that he/she resides at _____

that he/she is the _____ of _____, the corporation described in and which executed the foregoing document, that he/she knows the seal of said corporation, that one of the impressions affixed to said instrument is an impression of such seal, that it was so affixed by order of the directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL - PARTNERSHIP

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me personally came and appeared _____, to me known, who, being duly sworn, did depose and say that he/she resides at _____

that he/she is a member of the firm of _____, the partnership described in and which executed the foregoing document, that he/she had authority to sign the same, and he/she acknowledged to me that he/she executed the same as the act and deed of said firm.

Notary Public

ACKNOWLEDGMENT OF INDIVIDUAL

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me came _____, to me known, who being duly sworn, did depose and say that he/she executed the foregoing document.

Notary Public

SURETY ACKNOWLEDGMENT

STATE OF
COUNTY OF

On this ____ day of _____, 20____, before me personally came and appeared
_____, to me known, who, being duly sworn, did
depose and say that he/she resides at

that he/she is the _____ of

_____, the
corporation described in and which executed the foregoing document, that he/she knows the
seal of said corporation, that one of the impressions affixed to said instrument is an impression
of such seal, that it was so affixed by order of the directors of said corporation, and that he/she
signed his/her name thereto by like order.

Notary Public

Maintenance Bond

KNOW ALL MEN BY THESE PRESENTS that

_____ as Principal, and

_____ as Surety, a corporation
of the State of _____ legally authorized to guarantee the
performance of contracts and to do business in the State of New York, ARE HELD AND
FIRMLY BOUND to the Niagara Frontier Transportation Authority, in the sum of

_____ (\$ _____), to
be paid to the Niagara Frontier Transportation Authority for its use and benefit, for which
payment well and truly to be made, we do bind ourselves, our heirs, executors, administrators,
successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has represented that it has completed the Contract (identify)

in strict and entire conformity with the Contract Documents therefore on file at the offices of the
Niagara Frontier Transportation Authority, a copy of which is made a part hereof by reference
with the same effect as if set forth herein in full force and virtue.

If within the one year period faulty workmanship is disclosed, or it appears that defective
materials were furnished, or it appears that the work was not performed or the materials were
not furnished in strict and entire conformity with the terms of the Contract Documents, the
Niagara Frontier Transportation Authority shall notify the Principal in writing and the Principal
shall promptly repair, replace or make good all defective work or materials. In the event that
the Principal, after having been so notified, shall refuse or neglect to repair, replace or make
good such work or materials within five days from the receipt of such notice (or within such
other time as the Niagara Frontier Transportation Authority may direct), or shall fail to complete
such work within the time prescribed by the Niagara Frontier Transportation Authority then the
Niagara Frontier Transportation Authority will proceed to have the work done by others, and the
Principal and Surety hereunder shall jointly and severally be liable to pay the cost thereof,
subject to the monetary limitation first written above.

In case of emergency, as determined by the Niagara Frontier Transportation Authority, the
Niagara Frontier Transportation Authority reserves the right to immediately effect both
temporary and permanent repairs, or to arrange for others to effect such repairs, without
immediate notification to the Principal, and the Principal and Surety hereunder shall jointly and
severally be liable to pay the cost thereof.

SIGNED this _____ day of _____, 20__

Principal

By: _____

Surety

By: _____

ACKNOWLEDGMENT OF PRINCIPAL - CORPORATION

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me personally came and appeared _____, to me known, who, being duly sworn, did depose and say that he/she resides at _____

that he/she is the _____ of _____, the corporation described in and which executed the foregoing document, that he/she knows the seal of said corporation, that one of the impressions affixed to said instrument is an impression of such seal, that it was so affixed by order of the directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL - PARTNERSHIP

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me personally came and appeared _____, to me known, who, being duly sworn, did depose and say that he/she resides at _____

that he/she is a member of the firm of _____, the partnership described in and which executed the foregoing document, that he/she had authority to sign the same, and he/she acknowledged to me that he/she executed the same as the act and deed of said firm.

Notary Public

ACKNOWLEDGMENT OF INDIVIDUAL

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me came _____, to me known, who being duly sworn, did depose and say that he/she executed the foregoing document.

Notary Public

SURETY ACKNOWLEDGMENT

STATE OF
COUNTY OF

On this ____ day of _____, 20____, before me personally came and appeared
_____, to me known, who, being duly sworn, did
depose and say that he/she resides at

that he/she is the _____ of

_____, the
corporation described in and which executed the foregoing document, that he/she knows the
seal of said corporation, that one of the impressions affixed to said instrument is an impression
of such seal, that it was so affixed by order of the directors of said corporation, and that he/she
signed his/her name thereto by like order.

Notary Public

V. Agreement

AGREEMENT

between

THE NIAGARA FRONTIER TRANSPORTATION AUTHORITY

and

CONTRACT NO. _____

PROJECT _____

THIS AGREEMENT made and entered into the ____ day of _____, 20__, by and between the NIAGARA FRONTIER TRANSPORTATION AUTHORITY, a New York public benefit corporation with its principal office for the transaction of business at 181 Ellicott Street, Buffalo, New York 14203, and _____, a

_____ of the State of _____, having its principal office for the transaction of business at _____.

WITNESSETH:

For and in consideration of the mutual covenants and agreements contained herein, the parties hereto agree to perform this Agreement in strict accordance with the Contract Documents which are incorporated herein and made a part hereof by reference.

As consideration for the work performed under this Agreement, and pursuant to its bid, the Contractor shall receive the contract sum of _____ Dollars, \$_____.

This Agreement is executory only to the extent of moneys available and no liability shall be incurred by the NFTA beyond the moneys available for the purpose.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date entered above.

Signature of Contractor

Printed Name and Title of Person Signing on Behalf of Contractor
NIAGARA FRONTIER TRANSPORTATION AUTHORITY

Lawrence M. Meckler, Executive Director

ACKNOWLEDGMENT OF PRINCIPAL - CORPORATION

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me personally came and appeared _____, to me known, who, being duly sworn, did depose and say that he/she resides at _____

that he/she is the _____ of _____, the corporation described in and which executed the foregoing document, that he/she knows the seal of said corporation, that one of the impressions affixed to said instrument is an impression of such seal, that it was so affixed by order of the directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL - PARTNERSHIP

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me personally came and appeared _____, to me known, who, being duly sworn, did depose and say that he/she resides at _____

that he/she is a member of the firm of _____, the partnership described in and which executed the foregoing document, that he/she had authority to sign the same, and he/she acknowledged to me that he/she executed the same as the act and deed of said firm.

Notary Public

ACKNOWLEDGMENT OF INDIVIDUAL

STATE OF
COUNTY OF

On this ____ day of _____, 20__, before me came _____, to me known, who being duly sworn, did depose and say that he/she executed the foregoing document.

Notary Public

STATE OF NEW YORK
COUNTY OF ERIE
CITY OF BUFFALO

On this ____ day of _____, 20__, before me came Lawrence M. Meckler, to me personally known, who being duly sworn, did depose and say that he resides in East Amherst, New York; that he is the Executive Director of the Niagara Frontier Transportation Authority, that the members of the Niagara Frontier Transportation Authority authorized his signature of this Agreement pursuant to a duly adopted resolution, and he signed his name thereto pursuant to said resolution.

Notary Public

VI. General Conditions

Article 1. Interpretation of Contract Documents

The contents of the Contract Documents are intended to be complementary and to describe the performance and completion of the Work. Anything mentioned in the specifications and not shown on the contract drawings or shown on the contract drawings and not mentioned in the specifications shall be of like effect as if shown or mentioned in both.

If doubts or questions arise regarding the meaning of words or items within the Contract Documents, said questions should be presented to the Engineer.

Omissions from the drawings or specifications or the mis-description of details of work which are necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted work or mis-described details of the Work as if fully and correctly set forth and described in the drawings and specifications.

In the event any article, section, sub-article, paragraph, sentence, clause or phrase contained in the Contract Documents shall be determined, declared or adjudged invalid, illegal, unconstitutional or otherwise unenforceable, such determination, declaration or adjudication shall in no manner affect the other articles, sections, sub-articles, paragraphs, sentences, clauses or phrases of the Contract Documents, which shall remain of full force and effect as if the article, section, sub-article, paragraph, sentence, clause, or phrase declared, determined or adjudged invalid, illegal, unconstitutional or otherwise unenforceable and was not originally a part thereof.

Article 2. Engineer

The Engineer shall perform construction monitoring of the Work. The Engineer shall determine the quality, acceptability and fitness of the Work. In performance of the Work the Contractor shall conform to all orders, directives and requirements of the Engineer. The requirements of this Article shall not relieve the Contractor of its responsibility to perform pursuant to the terms of this Agreement.

Article 3. Joint and Several Liability

If the Contractor is composed of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

Article 4. Agent to Accept Service

The Contractor shall maintain within the County of Erie, New York, an agent to accept service of legal process on its behalf, and shall keep the NFTA advised of such agent's name and address during the term of the Agreement.

Article 5. Indemnification

Except to the extent caused by negligence on the part of the NFTA, the Contractor agrees to indemnify, defend and save harmless the NFTA from and against all loss and damage, claims and demands, costs and charges for injuries to person or property or other causes that may

arise or accrue out of the performance of the Work by the Contractor, or which may be caused by the negligence or default of the Contractor, its agents, employees or servants.

Article 6. *Contractual Relationships*

No contractual relationship shall exist under the Agreement other than the contractual relationship between the NFTA and the Contractor.

Article 7. *Cooperation Between Contractors*

The NFTA reserves the right at any time to contract for the performance of other work within or adjacent to the work site of this Agreement.

Each Contractor shall conduct its work so as not to interfere with or hinder the progress or completion of work being performed by other Contractors. Contractors working on the same project area shall cooperate with each other and, in case of dispute, the Engineer shall be the referee and his decision shall be binding upon all parties.

When contracts are awarded to Contractors for concurrent construction within a common area, the Contractors in conference with the Engineer shall establish a written joint schedule of operations based on the limitations of the individual contracts and the joining of the work of one contract with the other. The schedule shall set forth these considerations and the approximate dates and sequences for the several items of work to be performed and will ensure completion within the contract time. The schedule shall be submitted to the Engineer for review and approval prior to commencement of the concurrent construction. The schedule shall be mutually agreeable, signed by and binding upon each Contractor. The Engineer may allow modifications of the schedule when mutual benefit to the Contractors and the NFTA will result. Any modification of the schedule shall be in writing, mutually agreeable, signed by the Contractors and shall be binding upon the Contractors in the same manner as the original agreement. Should the Contractors fail to agree on a joint schedule of operations, the Engineer will prepare such schedule which will be binding upon each Contractor.

The joint schedule and any modification thereof shall become a part of each Contract involved and failure of any Contractor to abide by the terms of the joint schedule shall be justification for declaring the Contractor in default of the Contract.

Each Contractor shall assume all liability, financial or otherwise, in connection with its Agreement and shall protect and save harmless the NFTA from any and all damages and claims that may arise because of inconvenience, delay or loss experienced by the Contractor as a result of the presence and operations of other Contractors working in or near the work covered by its contract and shall assume all responsibility for any of its work not completed because of the presence and operations of other Contractors.

The NFTA will not be responsible for any inconvenience, delay or loss experienced by a Contractor as a result of its failure to gain access to the work at the time contemplated. An extension of contract time may be allowed on the basis of the amount of time delayed due to the Contractor's failure to gain access to the work only when such failure is due to no fault or negligence of the Contractor.

The NFTA will not assume any responsibility for the acts of one Contractor which delay the work of the other.

Article 8. *Engineering and Architectural Services*

Should any part of the Work require the practice of engineering, land surveying, architecture and/or landscape architecture, as defined in sections 7201, 7203, 7301 and 7321 respectively of the New York Education Law, the Contractor must retain a separate independent professional engineer, land surveyor, architect or landscape architect ("Professional"), licensed to practice in the State of New York, to perform that part of the Work. The contract between the Contractor and the Professional must refer to this Agreement and specifically state that the work is being performed for the benefit of the NFTA. The provisions of this Article, to the extent they may be found to be inconsistent with the provisions of the Article entitled Subcontractors and Suppliers, shall be deemed controlling.

Article 9. *Subcontractors and Suppliers*

The Contractor shall clearly and specifically set forth in all subcontracts the terms and conditions of the subcontract.

No subcontractor shall be permitted to perform work at the site until the Contractor has furnished the Engineer with the subcontractor's evidence of insurance as required by the Article entitled Insurance and the subcontractor has been approved by the Engineer.

Prior to entering into any subcontract for work to be performed at the site, the Contractor shall secure the approval of the NFTA regarding the prospective subcontractor's qualifications, employment data and affirmative action program. The forms used to provide the required information shall be supplied by the NFTA. The NFTA will review the submittal from each subcontractor, and will furnish written notification to the Contractor concerning approval of the award of the subcontract. If the NFTA objects to the proposed award, the Contractor may furnish written notice of another subcontractor for the NFTA's consideration.

Subcontractors shall be nominated and approved a minimum of twenty working days prior to the anticipated time they intend to commence work on the project.

Within fifteen calendar days of the receipt of any payment from the NFTA, the Contractor shall pay each of its subcontractors the proceeds from the payment representing the value of the work performed and/or materials furnished by the subcontractor and reflecting the percentage of the subcontractor's work completed or the material supplied in the requisition approved by the NFTA and based upon the actual value of the subcontract or purchase order less an amount necessary to satisfy any claims, liens or judgments against the subcontractor which have not been suitably discharged and less any retained amount as hereafter described.

Failure by the Contractor to pay any subcontractor within fifteen calendar days of the receipt of any payment from the NFTA shall result in the commencement and accrual of interest on amounts due to such subcontractor for the period beginning on the day immediately following the expiration of such fifteen calendar day period and ending on the date on which payment is made by the Contractor to such subcontractor. Such interest payment shall be the sole responsibility of the Contractor, and shall be paid at the rate of interest in effect on the date payment is made by the Contractor. Notwithstanding any other provision of law to the contrary, interest shall be computed at the rate equal to the overpayment rate set by the commissioner of taxation and finance pursuant to subsection (e) of section one thousand ninety-six of the tax law.

The Contractor shall retain not more than five percentum of each payment to the subcontractor except that the Contractor may retain in excess of five percentum but not more than ten percentum of each payment to the subcontractor provided that prior to entering into a subcontract with the Contractor, the subcontractor is unable or unwilling to provide a

performance bond and a labor and material bond, both in the full amount of the subcontract, at the request of the Contractor.

Within fifteen calendar days of the receipt of payment from the Contractor, the subcontractor shall pay each of its subcontractors in the same manner as the Contractor has paid the subcontractor, including interest as herein provided above. After the initial progress payment and before any further payments, the Contractor shall provide acknowledgments from all subcontractors included in the previous payment application that they have been paid. Further, payment shall be conditioned on the certification by the Contractor that the subcontractors have satisfactorily progressed the work and met other contractual and payment obligations. Monthly progress payments may be withheld in the event that the Contractor fails to supply the NFTA with all required certified payroll records.

The Contractor shall not, without the consent of the Engineer, either replace any subcontractor previously approved by the NFTA, or permit any such subcontract to be assigned or transferred, or allow the portion of the work to be performed by anyone other than the approved subcontractor, except it may perform the work itself upon written notice to the NFTA with qualified personnel in accordance with applicable law.

Nothing provided in this Article shall be construed as: creating privity of contract between the NFTA and any subcontractor; limiting or diminishing any rights or remedies which the NFTA may have against the Contractor arising out of this Agreement; or relieving the Contractor of any responsibility for performance of this contract because of any action taken by the NFTA or the failure to act by the NFTA. Nothing provided herein shall create any obligation on the part of the NFTA to pay or to see to the payment of any moneys to any subcontractor from any contractor nor shall anything provided herein serve to create any relationship in contract or otherwise, implied or expressed, between the subcontractor and the NFTA.

Article 10. Workmanship and Unauthorized Work

All work under this Agreement shall be performed in a skillful and workmanlike manner. The Contractor is required to remove any employee the Engineer deems incompetent, careless or otherwise objectionable.

Any work performed beyond the lines and grades shown on the contract drawings or established by the Engineer, or done without proper written authorization from the Engineer, will be considered as unauthorized work and the Contractor will receive no compensation therefore. If required by the Engineer, unauthorized work shall be remedied, removed or replaced by the Contractor at the Contractor's expense.

Article 11. Material

Unless otherwise specifically provided in this Agreement, all equipment, material, and articles incorporated in the work covered by the Contract Documents shall be new and of the most suitable grade for the purpose intended. Unless otherwise specifically indicated, reference to any equipment, material, article or patented process, by brand name, trade name, make or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition and the Contractor may, subject to the approval of the Engineer, use any equipment, material, article or process which is equivalent to that named.

The Engineer shall be the sole judge of the quality and suitability of any proposed alternative equipment, material, article or process. The burden of proving the quality and suitability of an alternative shall be upon the Contractor. Any information required by the Engineer in judging

an alternative will be supplied by the Contractor at no expense to the NFTA. Any costs incurred by the NFTA in evaluating an alternative will be reimbursed by the Contractor.

Where use of an alternative material involves redesign of or changes to other parts of the Work, the cost and the time required to affect such redesign or change will be considered in evaluating the suitability of the alternative material. The cost of redesign and changes in other parts of the Work shall be borne by the Contractor.

No tests nor action relating to the approval of alternative materials will be made until the request for substitution is made in writing by the Contractor accompanied by complete data as to the quality and suitability of the materials proposed. Such request shall be made in ample time to permit approval without delaying the Work. The time required for review of alternative materials shall not be considered as justification for a time extension.

Where classification, rating or other certification by a body such as UL, NEMA, or AREA is a part of the specification for any material, proposals for use of alternative materials shall be accompanied by reports from the listed body or equivalent independent testing laboratory, indicating compliance with specification requirements. The cost of all testing required to prove equality of the material proposed shall be borne by the Contractor.

Approval of an alternative material shall be only for the characteristics and use named in such approval, and shall not be used to change or modify any contract requirement or to establish approval for material.

Notwithstanding prior inspection and approval, only materials conforming to the requirements of the Contract Documents shall be incorporated into the Work.

Any material or assembly that does not conform to the requirements of the Agreement, plans or specifications shall be considered unacceptable and shall be rejected. The Contractor shall remove any rejected material or assembly from the site of the Work, unless otherwise instructed by the Engineer.

Contractor-furnished materials not conforming to the requirements of the Contract Documents will be rejected, whether in place or not. Rejected material shall be removed immediately from the site of the Work.

No rejected material or assembly, the defects of which have been corrected by the Contractor, shall be returned to the site of the Work until such time as the Engineer has approved its use in the Work.

Article 12. Storage of and Payment for Materials on Hand

Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the Work, provided that such materials meet the requirements of the Contract Documents and are delivered to acceptable sites on NFTA property or at other sites in the vicinity that are acceptable to the Engineer. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

The material has been stored or stockpiled in a manner acceptable to the Engineer at or on an approved site.

The Contractor has furnished the Engineer with acceptable evidence of the quantity and quality of such stored or stockpiled materials.

The Contractor has furnished the Engineer with satisfactory evidence that the material and transportation costs have been paid.

The Contractor has furnished the NFTA legal title (free of liens or encumbrances of any kind) to the material so stored or stockpiled.

The Contractor has furnished the Engineer evidence that the material so stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the Work.

It is understood and agreed that the transfer of title and the NFTA's payment for such stored or stockpiled materials shall in no way relieve the Contractor of its responsibility for furnishing and placing such materials in accordance with the requirements of the Contract Documents.

In no case will the amount of partial payments for materials on hand exceed the Contractor's price for such materials or the contract price for the contract item in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials. Materials shall be so stored as to assure the preservation of their quality and fitness for the Work. Stored materials, even though approved before storage, may again be inspected prior to their use in the Work. Stored materials shall be located so as to facilitate their prompt inspection.

Article 13. Changes in Quantities

The NFTA reserves and shall have the right to make such changes as may be necessary or desirable to complete the Work originally intended in an acceptable manner. The Engineer is authorized to direct such alterations in the Work as may increase or decrease the originally estimated contract quantities.

For bid items paid for on a unit price basis, payment for increases or decreases in quantities will be determined by comparing the actual quantity of the bid item with the estimated quantities in the Itemized Proposal.

If a bid item has a total cost of less than five percent of the contract sum, payment will be made at the contract unit price regardless of the amount of increased or decreased quantities.

If a bid item has a total cost of five percent or greater of the contract sum, payment will be made at the contract unit price if the amount of increased or decreased quantities varies by twenty-five percent or less from the estimated quantities on the Itemized Proposal.

If a bid item has a total cost of five percent or greater of the contract sum, and the amount of increased or decreased quantities varies by more than twenty-five percent from the estimated quantities on the Itemized Proposal, an adjustment will be made to the contract sum in accordance with the Article entitled Payment for Agreed Prices and a Change Order will be issued. A Change Order for altered work may also include an extension of the Contract Time pursuant to the Article entitled Delays. If the NFTA and the Contractor are unable to agree on an adjustment to the contract sum for any bid item, the NFTA reserves the right to delete the bid item, in whole or in part, and make other arrangements for its completion. Alternatively, the NFTA may direct the Contractor to complete the Work subject to the Contractor's rights pursuant to the Article entitled Disputes.

Article 14. Warranties

Except where longer periods of warranty are indicated for certain items, the Contractor warrants all work done under the Agreement to be free from faulty materials and workmanship for a period of one year from the date of Final Acceptance, which one year period shall apply to the

Maintenance Bond, except that in the case of defects or failure in a part of the Work which the NFTA takes possession of prior to final inspection, such period shall commence on the date the NFTA takes possession. Additional warranty periods may be set forth in the Contract Documents. Upon receiving notification from the NFTA, the Contractor shall immediately remedy, repair or replace without cost to the NFTA, to the entire satisfaction of the Engineer, all defects, damages or imperfections due to faulty materials or workmanship appearing in said Work within said period of one year. All remedial work shall carry the same warranty as the original work starting with the date of acceptable replacement or repair. Payment to the Contractor shall not relieve it of any obligation hereunder.

The Contractor, at no additional expense to the NFTA, shall also remedy damage to equipment, the site, the buildings or the contents thereof which is the result of any failure or defect and restore any work damaged in fulfilling the terms of this Article. Should the Contractor fail to remedy any such failure or defect within a reasonable time after receipt of notice thereof, the Engineer shall have the right to replace, repair or otherwise remedy such failure or defect at the Contractor's expense.

Before acceptance of the project, all subcontractors,' manufacturers,' and suppliers' warranties and guarantees respecting any part of the Work and any material used therein shall be obtained and shall be forwarded by the Contractor to the NFTA. Any additional required warranties shall not limit the Contractor's obligation under this Article.

The rights and remedies of the NFTA provided in this Article are in addition to and do not limit any rights afforded to the NFTA by any other Article of this Agreement.

Nothing in the above intends or implies that these warranties shall apply to work which has been abused or neglected by the NFTA, its agents or employees.

Article 15. Superintendent

A qualified superintendent, who is acceptable to the Engineer, shall be maintained on the Work and give efficient supervision to the Work until its completion. The superintendent shall have full authority to act on behalf of the Contractor, and all instruction given to the superintendent shall be considered as given to the Contractor. It shall be the responsibility of the superintendent to coordinate the work of all the subcontractors. The superintendent shall be present on the site at all times during the progress of the Work and required to perform adequate supervision and coordination.

Article 16. Inspection

All work (which term includes but is not restricted to materials, workmanship and manufacture and fabrication of components) shall be subject to inspection and test by the Engineer at all reasonable times and at all places prior to acceptance. Any such inspection and test is for the sole benefit of the NFTA and shall not relieve the Contractor of the responsibility of providing quality control measures to assure that the Work strictly complies with the contract requirements. Except to the extent specified by the NFTA, an inspection or test by the Engineer shall not be construed as constituting or implying acceptance. Inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the NFTA after acceptance of the completed Work.

The Contractor shall, without charge, replace any material or correct any workmanship found by the Engineer not to conform to a contract requirement, unless in the public interest the NFTA

consents to accept such material or workmanship with an appropriate adjustment in the contract sum. The Contractor shall promptly segregate and remove rejected material from the premises.

If the Contractor does not promptly replace rejected material or correct rejected workmanship, the NFTA may (1) by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, and/or (2) terminate the Contractor's right to proceed.

The Contractor shall furnish promptly, without additional charge, all facilities, equipment, labor and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the NFTA. All inspections and tests by the Engineer shall be performed in such manner so as not to unnecessarily delay the Work. Performance tests shall be performed as described in the Contract Documents. The NFTA reserves the right to charge to the Contractor any additional cost of inspection or test when material or workmanship is not ready at the time specified by the Contractor for inspection or test, when reinspection or retest is necessitated by prior rejection or when Contractor's quality control test data documentation is deemed insufficient by the Engineer.

Should it be considered necessary or advisable by the NFTA at any time before acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, equipment, labor and material. If such work is found to be defective or nonconforming in any respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If however, such work is found to meet the requirements of the Contract Documents, an equitable adjustment shall be made in the contract sum to compensate the Contractor for the work involved in such examination and reconstruction and if completion of the Work has been delayed thereby, the Contractor shall, in addition, be granted a suitable extension of time.

The Engineer shall at all times have access to the Work during construction. All work done and all materials provided shall be subject to the NFTA's on-site and off-site inspection and approval. When work is to be performed during hours other than its normal schedule, the Contractor shall so advise the Engineer not less than twenty-four hours in advance. The Contractor shall provide access to the Work for authorized representatives of the NFTA for the purpose of inspecting the Work.

The Engineer's inspection and approval of work or materials shall not relieve the Contractor of any of its obligations to fulfill the requirements of the Contract Documents. Work and materials not meeting the requirements indicated shall not be incorporated in the Work. Unsuitable work or materials may be rejected by the NFTA, notwithstanding that such work or materials may have been previously inspected by the NFTA or its Engineer, or that payment therefor has been included in a progress payment.

The Engineer may inspect the production of material and the manufacture of products at the source of supply. Plant inspection, however, will not be undertaken until the Engineer is assured of the cooperation and assistance of both the Contractor and the material producer or manufacturer. The Engineer shall have free entry at all times to such parts of the plant as concern the manufacture or production of materials.

Adequate facilities and equipment shall be furnished to make the necessary inspection; however, the Engineer assumes no obligation to inspect materials at the source of supply. However, the Engineer is to be notified in writing of the manufacturing schedule for all items being specifically manufactured for this project. Such notification must be received at least two

weeks prior to manufacture. The responsibility of incorporating satisfactory materials in the Work rests entirely with the Contractor, notwithstanding any prior inspections or tests.

Article 17. Extra Work

Should acceptable completion of the Agreement require the Contractor to perform an item of work for which no basis of payment has been provided in the original Agreement or previously issued Change Orders or supplemental agreements, the same shall be called Extra Work. Extra Work that is within the general scope of the Agreement shall be covered by written Change Order. Extra work that is necessary for acceptable completion of the project, but is not within the general scope of the work covered by the original Agreement, shall be covered by supplemental agreement.

Change orders or supplemental agreements for such Extra Work shall contain the prices for performing the Extra Work in accordance with the requirements specified in the Change Order or supplemental agreement, and shall contain any adjustment to the contract time that, in the Engineer's opinion, is necessary for completion of such Extra Work.

Extra work performed in accordance with this Article will be paid for at the contract prices, agreed prices or force account prices as specified in the Change Order or supplemental agreement authorizing such Extra Work. No Extra Work shall be paid for which is performed prior to written authorization by the Engineer or submission of a notice of claim pursuant to the Article entitled Notice of Potential Claim.

Any claim for payment of Extra Work that is not covered by written Change Order or supplemental agreement shall be rejected by the NFTA.

Article 18. Differing Site Conditions

The Contractor shall promptly and before such conditions are disturbed, notify the Engineer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents, or (2) unknown physical conditions at the site of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. The Engineer will promptly investigate the conditions and if it finds that such conditions do materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for performance of any part of the Work under the Agreement, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Agreement modified in writing accordingly. No claim of the Contractor under this Article shall be allowed unless the Contractor has given the notice of potential claim. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement. If the Engineer is not given written notice prior to the conditions being disturbed, the Contractor will be deemed to have waived its right to assert a claim for additional time and compensation arising out of such changed conditions.

Article 19. Payment for Agreed Prices

When the Change Order or supplemental agreement authorizing the Extra Work specifies that agreed upon prices is to be the method of payment, the following is required:

All Extra Work proposals will be supported by a complete price analysis.

For work performed by the Contractor, a ten percent factor for overhead will be applied on the labor and materials and equipment and a ten percent factor for profit will be applied to the base cost of labor, materials and equipment.

When an approved subcontractor is involved, the subcontractor may apply a fifteen percent factor for overhead and profit on base cost of labor, material and equipment. The Contractor may take a five percent combined overhead and profit on the subcontracted work without the subcontractor's mark up. The total percent factor for overhead and profit for the Contractor and all the subcontractors' work shall not exceed twenty-five percent.

When an approved subcontractor is involved, the subcontractor's price analysis shall be submitted on its company letterhead.

<u>SAMPLE</u>	<u>Work Performed by Contractor</u>	
	Labor (itemized, includes fringes and insurance)	\$1,000.00
	Material (itemized list)	\$1,000.00
	Equipment (itemized list)	\$1,000.00
	Overhead (10 % of \$3,000.00)	\$300.00
	Profit (10% of \$3,000.00)	<u>\$300.00</u>
	Total Amount	\$3,600.00

<u>SAMPLE</u>	<u>Work Performed by Subcontractor</u>	
	Labor (itemized, includes fringes and insurance)	\$1,000.00
	Material (itemized list)	\$1,000.00
	Equipment (itemized list)	\$1,000.00
	Subcontractor overhead and profit (15% of \$3,000.00)	\$450.00
	Contractor overhead and profit (5 % of \$3,000.00)	<u>\$150.00</u>
	Total Amount	\$3,600.00

Article 20. Payment for Force Account Work

When the Change Order or supplemental agreement authorizing the Extra Work requires that it be done by force account, such force account shall be measured and paid for as follows:

Labor - For all labor (skilled and unskilled) and foremen in direct charge of a specific force account item, the Contractor shall receive the rate of wage (or scale) for every hour that such labor or foremen is actually engaged in the specified force account work. Such wage (or scale) shall be agreed upon in writing before beginning the work.

The Contractor shall receive the actual costs paid to, or on behalf of workers by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work.

For work performed by the Contractor, a fifteen percent factor for overhead will be applied on labor, materials and equipment and a ten percent factor for profit will be applied to the base cost of labor, materials and equipment. If an approved subcontractor does the work, an amount equal to fifteen percent of the above cost will be paid to the subcontractor and the Contractor will be allowed ten percent of the cost of the work for overhead and profit on the subcontracted work without the subcontractor's mark up. The total percent factor for overhead and profit for the Contractor and all of the subcontractors' work shall not exceed twenty-five percent. No further overhead shall be permitted.

Insurance and Taxes - For property damage, liability and workers' compensation insurance premiums, unemployment insurance contributions and social security taxes on the force account work, the Contractor shall receive the actual cost.

Materials - For materials accepted by the Engineer and used, the Contractor shall receive the actual costs of such materials incorporated into the Work, including transportation charges paid by it (exclusive of equipment rates as hereinafter set forth).

An amount equal to fifteen percent of the above cost will be paid to the Contractor. If an approved subcontractor does the work, an amount equal to fifteen percent of the above cost will be paid to the subcontractor and the Contractor will be allowed ten percent of the cost of the work for overhead and profit. The total percent factor for overhead and profit for the Contractor and all of the subcontractors' work shall not exceed twenty-five percent. No further overhead shall be permitted.

Equipment - The Contractor will be paid for the use of Contractor-owned equipment at eighty percent of the suggested monthly rental rates listed for such equipment in the Blue Book Rental Rates for Construction Equipment (published by Equipment Guide-Book Company of Palo Alto) ("Blue Book"), which edition shall be the latest edition in effect at the time of commencement of the Work. Hourly rental rates shall be calculated by dividing the listed monthly rate by 176. For equipment used in excess of eight hours per day, the rental rate shall be sixty percent of the computed hourly rate for each excess hour. The Contractor will be paid for the use of rented equipment at the invoiced amount which cannot exceed one hundred percent of the Blue Book rates. The Contractor is responsible to provide all documentation necessary as determined by the Engineer for the purpose of determining the proper classification of the equipment as defined by the Blue Book. If it is deemed necessary by the Contractor to use equipment not listed in the applicable edition of the Blue Book Rental Rates, the Contractor shall furnish the necessary cost data and paid invoices to the Engineer for its use in establishment of such rental rate.

The rates paid as above provided shall include the cost of all repairs, depreciation, storage, insurance (except for insurance provided to the Contractor by the NFTA), and all incidentals.

Equipment operators will be paid for as stipulated in this Article.

All equipment shall be in good working condition and suitable for the purpose for which the equipment is to be used.

Unless otherwise specified, manufacturer-approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least the minimum rating recommended by the manufacturer of the equipment.

Compensation will not be allowed while equipment is inoperative or inefficient due to breakdown. Except as specified in this Article, time will be computed in half and full hours. In

computing the time for use of equipment, less than thirty minutes shall be considered one half hour.

Equipment not at the Work site. For the use of equipment moved in on the Work and used exclusively for work paid for on a force account basis, providing the NFTA has agreed to said move, the Contractor will be paid the equipment use rates provided for in this Article, for the cost of transporting the equipment to the location of the Work and its return to its original location, and for the cost of loading and unloading the equipment.

The cost of transporting the equipment shall not exceed the applicable minimum established rates by the State of New York Public Service Commission.

The equipment use period shall begin at the time the equipment is unloaded at the site of the work, shall include each day the equipment is at the site of the force account work, excluding Saturdays and Sundays and other legal holidays unless the force account work is performed on such days, and shall terminate at the end of the day on which the NFTA instructs the Contractor to discontinue the use of such equipment. The minimum time to be paid for the entire period of use shall not be less than eight hours. The time which will be paid for per day will be that next highest even-numbered hour beyond that for which the equipment was actually in operation.

Should the Contractor desire the return of the equipment to a location other than its original location, the NFTA will pay the cost of transportation, in accordance with the provisions of this Article, provided such payment shall not exceed the cost of moving the equipment to the Work.

Special Items of Work. If the NFTA and the Contractor, by agreement, determine that (a) an item of Work does not represent a significant portion of the total contract price, and (b) such item of Work cannot be performed by the forces of the Contractor or the forces of its subcontractors, and (c) it is not in accordance with the established practice of the industry involved to keep the records which the procedure outlined in this Article would require, charges for such special work items may be made on the basis of invoices for such work without complete itemization of labor, materials, and equipment rental costs.

An amount equal to fifteen percent of the above cost will be paid to the Contractor. If an approved subcontractor does the work, an amount equal to fifteen percent of the above cost will be paid to the subcontractor and the Contractor will be allowed ten percent of the cost of the work for overhead and profit on the subcontracted work without the subcontractor's mark up. The total percent factor for overhead and profit for the Contractor and all the subcontractors' work shall not exceed twenty-five percent. No further overhead shall be permitted.

Miscellaneous - No additional allowance will be made for superintendents, the use of small tools and/or accessories such as hoses, switches, valves, etc., or other costs for which no specific allowance is herein provided. Small tools are defined for the purpose of this Agreement as tools with an original purchase price of less than \$1,000.00.

Comparison of Records - The Contractor and the Engineer shall compare detailed statements, in the format set forth below, of the labor, materials and equipment incorporated into the force account work at the end of each work shift. Agreement shall be indicated by signature of both the Contractor and Engineer.

Statements - No payment will be made for work performed on a force account basis until the Contractor has furnished the Engineer with duplicate itemized statements of the cost of such force account work detailed as follows:

Name, classification, date, daily hours, total hours, rate and extension for each laborer and foreman.

Designation, dates, daily hours, total hours, rental rate and extension for each unit of machinery and equipment.

Quantities of materials, prices and extensions.

Transportation of materials.

Cost of property damage, liability and workers' compensation insurance premiums, unemployment insurance contributions and social security tax.

Statements shall be accompanied and supported by a receipted invoice for all materials used and transportation charges. However, if materials used on the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the invoices the Contractor shall furnish an affidavit certifying that such materials were taken from its stock, that the quantity claimed was actually used and that the price and transportation claimed represent the actual cost to the Contractor. The Contractor and the Engineer must agree on the unit cost of items taken from the Contractor's stock prior to incorporating the items into the Work.

The additional payment, based on the percentages specified above, shall constitute full compensation for all items of expense for force account work not specifically provided for. The total payment made as provided above shall constitute full compensation for such work.

If, in the NFTA's opinion, the Contractor or any of its subcontractors in performing force account work is not making efficient use of labor, material or equipment and/or is proceeding in a manner which is being reflected in the change order accounting and reporting as unnecessarily more expensive to the NFTA, the NFTA may, in whole or part, direct the Contractor in the deployment of labor, material and equipment. By way of illustration, inefficiency may arise in the following ways: (1) the timing of the Work, (2) the use of unnecessary labor or equipment, (3) the use of a lower percentage of apprentices than in non-change order accounting and reporting work, (4) failure to procure materials at lowest price, (5) using materials of quality higher than necessary or (6) using equipment of a larger rated capacity than necessary to accomplish the necessary work effort.

Article 21. Extra Work - Auditing and Accounting

When extra work is ordered through the issuance of a change order or supplemental agreement, reimbursement for all cost items will be subject to the provisions found in the Federal Acquisition Regulations.

Article 22. Contractor Proposals

The Contractor may at any time submit to the Engineer for its review and approval or denial proposed modifications to the Contract Documents. Upon acceptance of the proposed changes by the Engineer, a change order will be issued. Denial of a proposed modification shall neither provide the Contractor with any basis for a claim for damages nor release the Contractor from contractual responsibilities. The Contractor shall not be compensated for any direct, incidental or collateral benefits or savings the NFTA receives as a result of the proposal. The Agreement shall be subject to an equitable price adjustment if the change results in increased or decreased work.

Article 23. Value Engineering

The Contractor, at any time, may submit cost reduction proposals which may change the drawings, specifications or other requirements of the Contract Documents. Such proposals shall be identified as Value Engineering Change Proposals (VECP). In order for a proposal to be accepted under this Article, each VECP shall:

- Be initiated and originated by the Contractor. In the event the Contractor's proposal encompasses cost reduction proposals which have been considered, identified or initiated by the NFTA, the Contractor's proposal may be determined as ineligible for an equitable adjustment under this Article;

- Be identified by the Contractor at the time of submission to the Engineer as submitted pursuant to this Article;

- Require a change to the Contract Documents;

- Decrease the contract price;

- Comply with the Article entitled Engineering and Architectural Services,

- Maintain the items' required performance standards, salient features and functions such as service life, reliability, economy of operation, ease of maintenance and necessary standardized features and appearance.

A VECP should reflect the Contractor's expertise or specialization, and be based on innovation in the application of materials, techniques or methods of construction. Proposals which merely effect a quantity change or deletion of materials, components or items or which require an unacceptable extension of contract time, may be determined as ineligible for equitable adjustment under this Article.

Any VECP the Contractor submits shall be in sufficient detail to clearly define the proposed change, including:

- A description of the difference between the existing and the proposed contract requirements, and the comparative advantages and disadvantages of each;

- Contract requirements recommended to be changed if the proposal is accepted;

- A detailed estimate of the amount of the net savings, as defined below, that will result from acceptance of the proposal;

- A prediction of any effects the proposed change would have on costs of maintenance and operation; and

- A statement of the time by which the proposal must be accepted so as to obtain the maximum price reduction, noting any effect upon the contract completion time.

The Contracting Officer may accept or reject part or all of any VECP by giving the Contractor written notice thereof. Until such notice is issued, the Contractor shall remain obligated to perform in accordance with the terms of the Contract Documents. VECPs will be processed expeditiously; however, the NFTA shall not be liable for any delay in acting upon any proposal submitted pursuant to this Article. The decision of the Contracting Officer as to acceptance of any such proposal shall be final and shall not be subject to the Article entitled Disputes.

The Contractor has the right to withdraw part or all of any VECP at any time prior to acceptance by the Contracting Officer. Each VECP submitted by the Contractor shall remain valid for a period of sixty days from the date submitted. If the Contractor desires to withdraw the proposal

prior to the expiration of this period, it shall be liable for the cost incurred by the NFTA in reviewing the proposal.

When a VECP submitted pursuant to this Article is accepted:

An equitable adjustment in the contract price and in any other affected provisions of the Agreement shall be made and the Contract modified in accordance with this Article and other applicable articles of this Contract.

The net savings resulting from the change shall be shared between the Contractor and the NFTA on the basis of fifty percent for the Contractor and fifty percent for the NFTA. Net savings shall be determined by deducting from the gross savings the Contractor's costs of developing and implementing the proposal and the amount of increased costs to the NFTA resulting from the change.

The Contractor is entitled to share in the VECP savings only to the extent provided for in this Article.

The Contractor will use its best efforts to include Value Engineering arrangements in any subcontract, which in the Contractor's judgment, appears to offer sufficient value engineering potential.

A VECP identical to one submitted under any other contract, by this or any other Contractor, may also be submitted under this Agreement.

The Contractor may restrict the NFTA's right to use any VECP data by marking it with the following statement:

This data, furnished pursuant to the Article entitled Value Engineering, shall not be duplicated, used or disclosed, in whole or in part, for any purpose except to evaluate the VECP, unless the proposal is accepted by the NFTA. This restriction does not limit the NFTA's right to use information contained in this data if it is or has been obtained, or is otherwise available, from the Contractor or from another source, without limitations. When this proposal is accepted by the NFTA, the NFTA shall have the right to duplicate, use and disclose any data in any manner and for any purpose whatsoever, and have others do so whether under this or any other NFTA contract.

Article 24. Notice of Potential Claim

The Contractor shall not be entitled to additional compensation otherwise payable for any act or failure to act by the NFTA, the happening of any event or occurrence or any other cause, unless the Contractor shall have given the NFTA a written notice of potential claim.

A written notice of potential claim must be submitted to the Engineer within thirty days from the date the claim arose, i.e., from the date upon which the Contractor first became aware of the condition from which the claim emanates.

The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved and insofar as possible, the amount of the potential claim. If the claim is based upon an act or failure to act by the NFTA or an alleged differing site condition such notice shall be given to the Engineer prior to the time that the Contractor has started performance of work giving rise to the potential claim for additional compensation. Thereafter the Contractor shall not proceed with such work until receipt of written authorization from the Engineer. Any and all work done by the Contractor prior to the Engineer's authorization to proceed will be at the Contractor's expense.

It is the purpose of this Article that differences between the parties arising under and by virtue of the Agreement shall be brought to the attention of the Engineer at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken before the Contractor begins such work.

The notice requirements of this Article are in addition to those required in other Articles of the General Conditions.

Article 25. Submittal of Claim

Claims filed by the Contractor shall be in sufficient detail to enable the Engineer to ascertain the basis and amount of said claims. The Engineer will review and evaluate the Contractor's claims. It will be the responsibility of the Contractor to furnish details as may be required to determine the facts or contention involved in its claims. Failure to submit such information and details will be sufficient cause for denying the Contractor's claims.

Any claim the Contractor may make for equitable adjustment on account of delay for any cause must be accompanied by a revised progress schedule reflecting the effects of the delay and proposals to minimize those effects.

All claims must be submitted before Final Acceptance. Claims submitted after Final Acceptance shall be deemed to be waived by the Contractor.

Article 26. Disputes

Any dispute arising under this Agreement which is not disposed of by agreement shall be decided by the Contracting Officer who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless within thirty days from the date of receipt of such decision, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal of the original finding addressed to the NFTA and requesting a hearing on the claim.

If the Contractor appeals the Contracting Officer's decision, the NFTA shall appoint a Hearing Officer and the Contractor shall be afforded an opportunity to be heard and to offer evidence in its appeal. The Contractor hereby agrees that further recourse from the Hearing Officer's decision shall be limited to that available under Article 78 Civil Practice Law and Rules.

The decision of the Hearing Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or not supported by substantial evidence.

Pending final decision of the disputes hereunder, the Contractor shall proceed diligently with the performance of this Agreement and in accordance with the decision of the Contracting Officer.

Article 27. Termination for Convenience of the NFTA

The NFTA may terminate performance of work under this Agreement in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the NFTA's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent to which performance of work pursuant to this Agreement is terminated, and the effective date of the termination. If this is a demolition or removal project, and title to property has vested in the Contractor pursuant to this Agreement, upon receipt of the Notice of Termination title shall revert in the NFTA regardless of any other clause of the Agreement,

except for property that the Contractor disposed of by bona fide sale or removed from the site prior to receipt of the termination notice.

After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall:

Stop work as specified in the notice.

Place no further subcontracts or orders for materials, services or facilities, except as necessary to complete the portion of the Work which has not been terminated.

Terminate all subcontracts and orders to the extent they relate to the work terminated.

Assign to the NFTA, to the extent and as directed by the Contracting Officer, all right, title and interest of the Contractor under the subcontracts or orders terminated, in which case the NFTA shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the NFTA, to the extent it may require, which shall be final for all the purposes of this Article.

To the extent directed by the NFTA, transfer title and deliver to the NFTA (a) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (b) the completed or partially completed plans, drawings, information and other property that, if the contract had been completed, would be required to be furnished to the NFTA.

Use its best efforts to sell, to the extent directed or authorized by the NFTA, any property of the types referred to above; provided, however, that the Contractor (a) is not required to extend credit to any purchaser and (b) may acquire the property under the conditions prescribed by and at prices approved by the NFTA. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the NFTA under this Agreement, credited to the price or cost of the work, or paid in any other manner directed by the NFTA.

Complete performance of each part of the Work which has not been terminated.

Take any action that may be necessary, or that the NFTA may direct, for the protection and preservation of the property related to this Agreement that is in the possession of the Contractor and in which the NFTA has or may acquire an interest.

After receipt of a Notice of Termination, the Contractor shall submit to the NFTA its termination claim. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless an extension of time in writing is granted by the NFTA upon a written request from the Contractor received within such one year period or authorized extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the NFTA may determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

Subject to the provisions of the preceding paragraph, the Contractor and the NFTA may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph or the following paragraph, exclusive of costs for settlement of the claim, may not exceed the total contract price as reduced by (a) the amount of payments previously made and (b) the contract price of work not terminated. The contract shall be

amended, and the Contractor paid the agreed amount. The following paragraph shall not limit, restrict or affect the amount that may be agreed upon to be paid under this paragraph.

If the Contractor and the NFTA fail to agree on the whole amount to be paid the Contractor because of the termination of work, the NFTA shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under the preceding paragraph:

For contract work performed before the effective date of termination, the total (without duplication of any items) of --

The cost of the work;

The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in the cost of the work; and

A sum as profit on the cost of the work determined by the NFTA to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the NFTA shall allow no profit under this paragraph and shall reduce the settlement to reflect the indicated rate of loss.

The reasonable costs of settlement of the work terminated, including--

Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

The termination and settlement of subcontracts (excluding the amounts of such settlements); and

Storage, transportation and other costs incurred, reasonably necessary for the preservation, protection or disposition of the termination inventory.

Except for normal spoilage, and except to the extent that the NFTA expressly assumed the risk of loss, the NFTA shall exclude from the amounts payable to the Contractor the fair value, as determined by the NFTA, of property that is destroyed, lost, stolen or damaged so as to become undeliverable to the NFTA or to a buyer.

The cost principles and procedures of part 31 of the Federal Acquisition Regulations in effect on the date of this Agreement shall govern all costs claimed, agreed to, or determined under this clause.

The Contractor shall have the right of appeal, under the Disputes Article, from any determination made by the NFTA under this Article, except that if the Contractor failed to submit the termination settlement proposal within the time provided and failed to request a time extension there is no right of appeal.

In arriving at the amount due the Contractor under this clause, there shall be deducted--

All unliquidated advance or other payments to the Contractor under the terminated portion of this Agreement;

Any claim which the NFTA has against the Contractor pursuant to this Agreement; and

The agreed price for, or the proceeds of sale of, materials, supplies or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the NFTA.

If the termination is partial, the Contractor may file a proposal with the NFTA for an equitable adjustment of the price(s) of the continued portion of the contract. The NFTA shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the NFTA. {49 CFR 18.36 (i)(2)}

Article 28. Termination for Default

The Contractor shall be considered in default of this Agreement and such default will be considered as cause for the NFTA to terminate this Agreement for any of the following reasons if the Contractor:

Fails to begin the work under the Agreement within the time specified in the "Notice to Proceed."

Fails to perform the Work or any part thereof or fails to provide sufficient workers, equipment or materials to assure completion of the Work within the time specified in the Agreement.

Performs the Work unsuitably or neglects or refuses to remove materials or to perform any such work as may be rejected as unacceptable and unsuitable.

Discontinues the prosecution of the Work.

Fails to resume work which has been discontinued within a reasonable time after notice to do so.

Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency.

Makes an assignment for the benefit of creditors.

In the event of a work stoppage brought about by labor strife or unrest when it appears that resulting delays will make it unlikely that the Contractor will complete the Work within the time specified in the Agreement.

For any cause whatsoever, fails to carry on the Work in an acceptable manner.

Should the NFTA consider the Contractor in default of the Agreement, the NFTA shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the NFTA's intentions to terminate the Agreement.

If the Contractor or surety, within a period of ten days after such notice, does not proceed in accordance therewith, then the NFTA will, upon written notification from the Engineer of the facts of such delay, neglect or default, and the Contractor's failure to comply with such notice, have full power and authority without violating the Agreement, to take the prosecution of the Work out of the hands of the Contractor. The NFTA may appropriate or use any or all materials and equipment that have been mobilized for use in the Work and are acceptable and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, and such other methods as in the opinion of the Engineer will be required for the completion of the Agreement in an acceptable manner. The NFTA will not be required to obtain the lowest prices for completing the work, but shall make such expenditures as in the NFTA's sole judgment are best to accomplish same.

The expense of completing the Work, together with a reasonable charge for engineering, managerial and administrative services, as certified by the Engineer, will be deducted by the NFTA out of such moneys as may be due or may at any time thereafter become due to the

Contractor. In case such an expense is in excess of the sum which otherwise would have been payable to the Contractor under the Agreement, then the Contractor or its surety shall promptly pay the amount of such excess to the NFTA upon notice from the NFTA of the excess so due. The NFTA may, in its sole discretion, withhold all or any part of any progress payments otherwise due the Contractor until completion and final settlement of the work covered by the Notice of Termination.

The Contractor shall require in all subcontracts that the subcontractor will stop all work on the date of or to the extent specified in a Notice of Termination from the NFTA and shall require the subcontractors to insert the same provision in sub-subcontracts.

The Contractor shall immediately upon receipt communicate any Notice of Termination issued by the NFTA to the affected subcontractors and sub-subcontractors.

Article 29. State Finance Law section 139-k

Contractor certifies that all information provided to the NFTA with respect to section 139-k of the State Finance Law is complete, true and accurate. The NFTA reserves the right to terminate this Agreement in the event it is found that the information provided by Contractor in accordance with section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the NFTA may exercise its termination right by provided written notification to Contractor in accordance with the Termination for Default article of this Agreement.

Article 30. Time is of the Essence

Time is of the essence in this Agreement. All of the work under the Agreement shall be completed within the time as set forth herein from the effective date of the Notice to Proceed, unless such period of time shall be extended by the Engineer. The work shall be deemed completed when the entire project, at the completion of all work, including the completion of all punch list items, has been finally accepted by the NFTA.

Article 31. Use and Possession Prior to Completion

The NFTA shall have the right to take possession of or use any completed or partially completed part of the Work. Such possession or use shall not be deemed an acceptance of any work not completed in accordance with the Agreement. While the NFTA is in such possession, the Contractor shall be relieved of the responsibility for loss or damage to the Work other than that resulting from the Contractor's fault or negligence. If such prior possession or use by the NFTA delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment in the contract price at the time of completion will be made and the Agreement shall be modified in writing accordingly.

Article 32. Rights in Shop Drawings and Working Drawings

Shop drawings, working drawings and submittals are submitted to the Engineer by the Contractor, pursuant to the Contract Documents, showing in detail the method, fabrication, installation, control, clearance, etc., for all equipment and materials as required by the technical specifications and necessary for proper review and approval. The NFTA may duplicate, use and disclose in any manner and for any purpose shop drawings and working drawings delivered under this Agreement.

Article 33. Use of NFTA's Name in Contractor Advertising or Public Relations

The NFTA reserves the right to review and approve all NFTA-related copy prior to publication. The Contractor agrees not to allow NFTA-related copy to be published in Contractor's advertisement or public relations programs until submitting the NFTA-related copy to and receiving prior approval from the Engineer. Contractor agrees that published information on the NFTA or the NFTA's program shall be factual and in no way imply that the NFTA endorses the Contractor's firm, service or product. The Contractor shall insert the substance of this provision, including this sentence, in each subcontract, supply contract or purchase order.

Article 34. Audit and Inspection

The Contractor shall maintain and require each of its subcontractors to maintain accurate records, documents and other evidence with sound accounting procedures and practices, of all expenditures made and all costs, liabilities and obligations incurred during the performance of this Agreement. The Contractor and its subcontractors shall preserve and make available their records for a period of six years from the date of final payment under this Agreement. The Contractor shall permit and shall require its subcontractors to permit the NFTA and its authorized representatives to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant construction equipment, data and records and to audit the books, records and accounts of Contractor pertaining to this Agreement.

Article 35. Assignment

Assignment of this Agreement shall not relieve the Contractor from its responsibility for the performance of the work hereunder in accordance with the terms thereof nor from its responsibility for the performance of any other obligations hereunder, including the reimbursement of all subcontractors. The Agreement may not be assigned without the prior written approval of the NFTA.

Article 36. New York State Buy America

Section 2603-a of the Public Authorities Law provides as follows:

1. Notwithstanding any other provision of law, all public authorities shall award contracts involving steel products as follows:
 - a. All purchase contracts for supplies, material or equipment involving an estimated expenditure in excess of fifty thousand dollars shall require with respect to materials, supplies and equipment made of, fabricated from, or containing steel components, that such steel components be produced or made in whole or substantial part in the United States, its territories or possessions. The provisions of this paragraph shall not apply to motor vehicles and automobile equipment assembled in Canada in conformity with the United States-Canadian trade agreements known as the "Automotive Products Trade Act of 1965" or any amendments thereto.
 - b. All contracts in excess of one hundred thousand dollars for the construction, reconstruction, alteration, repair, maintenance or improvement of public works shall require that all structural steel, reinforcing steel or other major steel items to be incorporated in the work of the contract shall be produced or made in whole or substantial part in the United States, its territories or possessions.

2. The provisions of this section shall not apply if the governing board or body of such public authority, in its discretion, determines that such provisions would result in unreasonable costs or that such steel products or steel components cannot be produced or made in the United States in sufficient and reasonably available quantities or of satisfactory quality or design.

Article 37. Protection of Existing Vegetation, Facilities and Utilities

The Contractor will preserve and protect all existing vegetation such as trees, shrubs and grass on or adjacent to the worksite, which are not indicated to be removed and which do not unreasonably interfere with the construction work.

The Contractor will protect from damage all existing facilities at or near the site of the Work and will repair or restore any damage to such facilities at the Contractor's expense resulting from failure to comply with the requirements of this Agreement or the failure to exercise reasonable care in the performance of the Work.

The Contractor shall maintain access to fire hydrants and fire alarm boxes throughout the prosecution of the Work. Hydrants, alarm boxes and standpipe connections shall be kept clear and kept visible at all times unless approved otherwise. If visibility cannot be maintained, the Contractor shall provide clearly visible signs showing the location of the fire hydrant, fire alarm box or standpipe connection.

Article 38. Rights in Land and Improvements

The Contractor shall make no arrangements with any person to permit occupancy or use of any land, structure or building within the worksite for any purpose whatsoever, whether with or without compensation, in conflict with any agreement between the NFTA and any owner, former owner or tenant of such land, structure or building. The Contractor shall not occupy NFTA-owned property outside the worksite without obtaining prior approval from the NFTA. Any fire hydrants or sprinkler system components used by the Contractor to supply water shall be pumped or drained to prevent damage resulting from freezing.

Article 39. Damage to the Work and Responsibility for Materials

The Contractor shall be responsible for all materials delivered and work performed until completion and final acceptance of the Work.

The Contractor shall bear the risk of injury, loss or damage to any part of the Work by the elements or from any other cause. The Contractor shall rebuild, repair or restore work and materials which have been damaged or destroyed from any causes before completion and Final Acceptance of the Work and shall bear the expense thereof. The Contractor shall provide drainage, erect temporary structures and provide security as necessary to protect the Work and materials from damage and unauthorized access.

The Contractor shall be responsible for materials not delivered to the site for which any progress payment has been made to the same extent as if the goods were so delivered.

No provisions of this contract shall operate to relieve the Contractor (including its subcontractors) from the responsibility of carrying insurance to cover loss to the Contractor's (including its subcontractor's) equipment, including, but not limited to, tarpaulin, tools or tools owned by employees, scaffolding, temporary offices and construction sheds.

The Contractor's responsibility for storage and protection of material under this Agreement shall be the same for NFTA-furnished material as for Contractor-furnished material.

The NFTA may, upon written request, relieve the Contractor of the duty of maintaining and protecting certain portions of the Work, as described in this Article, which have been completed in all respects in accordance with the requirements of the Agreement and thereafter the Contractor will not be required to do further work thereon. In addition, such action by the NFTA will relieve the Contractor of responsibility for injury or damage to said completed portions of the Work resulting from use by the NFTA or the public or from the action of the elements or from any other cause, but not from injury or damage resulting from the Contractor's own operation or negligence. Such action does not relieve the Contractor of full responsibility for repairing or replacing defective work or materials in accordance with the contract requirements.

Article 40. Emergencies

In an emergency affecting the safety of life, the Work, or adjacent property, the Contractor shall make reasonable efforts under the circumstances to notify the NFTA as early as possible that an emergency exists, then, without special instruction or authorization from the NFTA as to the manner of dealing with the emergency, shall act at its own discretion to prevent such threatened loss or injury. As emergency work proceeds, the NFTA may issue instructions which the Contractor shall follow.

Article 41. Suspension of Work

The Engineer may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work ("stop work order") for such period of time as the Engineer may determine to be appropriate for the convenience of the NFTA.

No equitable adjustment shall be made for any suspension, delay or interruption to the extent (1) that performance would have been suspended, delayed or interrupted by any other cause including the fault or negligence of the Contractor or (2) for which an equitable adjustment is provided or excluded under any other provision of this contract. Adjustments shall be determined in the manner provided in the Articles entitled Payment for Agreed Prices and Payment for Force Account Work.

No claim under this Article shall be allowed unless a Notice of Potential Claim is submitted as provided in this Agreement.

Upon receipt thereof, the Contractor shall comply immediately with the written order of the NFTA to suspend the Work. Work shall be resumed when the Contractor is so advised in writing by the NFTA.

The Contractor shall insert in all subcontracts a provision that subcontractors shall comply immediately with a written order of the NFTA to the Contractor to suspend the Work and that they shall further insert the same provisions in all subcontracts.

Article 42. Accident Prevention

The Contractor is responsible for the provision of safety controls for protection to the life and health of employees and other persons; for prevention of damage to property, materials, supplies and equipment and for avoidance of work interruptions in the performance of this Agreement. The Contractor shall comply with all local, state and federal safety standards. Nothing contained herein shall relieve the Contractor of any liability imposed by such standards.

Article 43. Tools and Equipment

Equipment for use on the Work shall be of established reputation and proven efficiency and in proper satisfactory working condition. The use of any piece of equipment that at any time produces unsatisfactory results, in the opinion of the Engineer, shall be promptly discontinued and such objectionable piece of equipment shall be replaced or repaired to the satisfaction of the Engineer.

Article 44. Barricades, Warning Signs and Hazard Markings

The Contractor shall furnish, erect and maintain all barricades, warning signs and markings for hazards necessary to protect the public and the Work. When used during periods of darkness, such barricades, warning signs and hazard markings shall be suitably illuminated.

For vehicular and pedestrian traffic, the Contractor shall furnish, erect and maintain barricades, warning signs, lights and other traffic control devices in reasonable conformity with the Manual of Uniform Traffic Control Devices for Streets and Highways (published by the New York State Department of Transportation).

The Contractor shall furnish and erect all barricades, warning signs and markings for hazards prior to commencing work which requires such erection and shall maintain the barricades, warning signs and markings for hazards until they are dismantled.

Article 45. Project Records

The Engineer is required to keep its project records in accordance with the "Manual of Uniform Record Keeping" (MURK) and "Computerized Engineer's Estimate System" (CEES) (issued by the Department of Transportation of the State of New York) in force at the time the project is started. Such changes as are made in subsequent revisions of the Manual shall be incorporated in the project procedures and records unless authorized to the contrary in writing by the Engineer. The Contractor is invited to review MURK with the Engineer if desired. In several instances (such as Force Account Work, application for Approval of Subcontractors, etc.) the Contractor shall furnish the data and information in the forms as set in MURK. The Engineer will furnish the appropriate forms.

Article 46. Progress Schedules and Requirements for Maintaining Progress

The Contractor shall prosecute the Work so as to maintain pace with the progress schedule. Should the Contractor fail to maintain progress according to the schedule it shall furnish such additional manpower, equipment, additional shifts or other measures that the Engineer directs to bring its operations up to schedule without any additional cost or expense to the NFTA. The Engineer may also require the Contractor to prepare a supplemental progress schedule detailing the specific operational changes to be instituted to regain the approved schedule. Failure of the Contractor to comply with the requirements of the NFTA under this Article shall be grounds for determination by the NFTA that the Contractor is not prosecuting the Work with such diligence as will ensure completion within the time specified. Upon such determination, the NFTA may terminate the Contractor's right to proceed with the Work, or any separate part thereof.

Article 47. Progress Payments - Retention

Monthly progress payments will be made to the Contractor based upon the payment schedule in the Agreement or the Engineer's estimate of the value of the work executed and actually completed. The conditions under which such partial payments will be made are as follows:

Each contractor and subcontractor shall submit a certified copy of each weekly payroll within seven days after the regular payroll date. Failure to do so shall be grounds for withholding of progress payments. The certified payroll shall only include persons and hours for work performed pursuant to this Agreement. Except as otherwise set forth in this Agreement, payrolls shall be filed in a manner consistent with subdivision three-a of section 220 of the Labor Law as a condition precedent to payment.

The NFTA shall retain five percent of invoiced progress payments until an amount equal to five percent of the total price of the Agreement has been retained. This amount shall be retained as security for fulfillment of the Agreement until the Work is completed and accepted. The NFTA may, at its discretion, retain five percent of the estimated amount of all change orders.

The NFTA shall in addition retain an amount necessary to satisfy any claims, liens or judgments pertaining to this Agreement and filed against the Contractor in accordance with the terms of this Agreement and the applicable law.

After the initial progress payment, and before any further progress payments are made, the Contractor is required to obtain an acknowledgment from all subcontractors and suppliers included in the previous payment application that they have been paid. The Contractor shall certify that it has satisfactorily progressed the Work and met other contractual and payment obligations.

Article 48. Final Inspection and Acceptance

When the Work has been completed, the NFTA will make the final inspection for the purpose of ascertaining that the Work has been completed in accordance with the requirements of the Contract Documents. Upon correction of all deficiencies, the NFTA shall accept the Work. Immediately upon and after Final Acceptance, the Contractor will be relieved of the duty of maintaining and protecting the Work as a whole.

Final Acceptance shall be final and conclusive and no further performance of work shall be required except as regards latent defects, fraud or such gross mistakes as may amount to fraud or as regards the NFTA's rights under any warranty or guarantee.

Article 49. Final Payment

Final Payment will be made for actual quantities of work performed and materials in place as determined by the measurements of the Engineer, and the resulting quantities involved in this Agreement shall be accepted as final, conclusive and binding upon the Contractor.

When this final certificate is approved, the money due the Contractor for the performance of the project as determined by said final certificate after deduction of previous payments on account and any amounts of liquidated damages and/or engineering charges assessed against the Contractor, will be paid the Contractor, provided however, that before final payment is made the following requirements shall be satisfied:

Final inspection shall have been accomplished.

There shall be no outstanding claims against the Contractor filed with the NFTA.

The Contractor shall have paid all due obligations and shall have furnished when directed by the Engineer receipted bills or other satisfactory evidence that all obligation incurred by the Contractor and its subcontractors in carrying out the project have been satisfied.

The Contractor shall have delivered a fully executed Maintenance Bond.

The Contractor shall execute and deliver a release substantially in the following form:

“In consideration of the above payment, we hereby release the Niagara Frontier Transportation Authority and its members, officers, agents and employees from all claims, demands and liability of whatsoever nature for anything done or furnished or in any manner arising from the performance of the project.”

The acceptance by the Contractor of payment of the final certificate shall operate as and shall be a release to the NFTA and its agents from all claims or liability to the Contractor for anything done or furnished or omitted to be done or furnished for or relating to the project, or any act of neglect of the NFTA or any person, relating thereto.

Upon final determination of all of the Contractor's claims, the NFTA, in exchange for an executed release, will pay the entire sum found due upon the approval of the Chief Financial Officer, based upon final audit.

Article 50. Prompt Payment Rules and Regulations

The NFTA Rules and Regulations on Prompt Payment are incorporated herein and a copy is attached as Exhibit A.

Article 51. New York State Labor Law

In accordance with section 220 of the Labor Law, no laborer, workman or mechanic in the employ of the Contractor, and subcontractors or other person doing or contracting to do the whole of or a part of the work contemplated by this Agreement shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. Each laborer, workman or mechanic, employed by the Contractor, subcontractor or other person about or upon this project, shall be paid the wages and provided the supplements required by the Labor Law.

Article 52. Alterations and Omissions

The Work shall be performed in accordance with the true intent and meaning of the Contract Documents without any further expense of any nature whatsoever to the NFTA other than the consideration named in this Agreement.

The NFTA reserves the right, at any time during the progress of the Work, to alter the plans or omit any portion of the Work as it may deem reasonably necessary for the public interest, making allowances for additions and deductions, with compensation made in accordance with the Contract Documents, for the Work without constituting grounds for any claim by the Contractor for allowance for damages or for loss of anticipated profit, or for any variations between the approximate quantities and the quantities of the work as done.

Article 53. Delays

The NFTA and the Contractor agree that delays to the completion of the Work within the number of calendar days established in the Invitation to Bid (hereinafter, the “time of completion” or “Contract Time”), may be the result of a variety of circumstances.

Circumstances causing delay may be attributable to the acts or omissions of the NFTA, the acts or omissions of the Contractor, the acts or omissions of third parties, or “Acts of God.” These circumstances may act individually or concurrently. As set forth in the succeeding provisions of this Article, delays may result in the assessment of liquidated damages and/or engineering charges against the Contractor; or a “no-cost” extension of the Contract Time; or an extension of the Contract Time and compensation to the Contractor.

Extension of Contract Time -The Contractor agrees that it has included in its bid prices for the various items of the contract any additional costs for delay, inefficiencies, or interferences affecting the performance or scheduling of contract work caused by, or attributable to, the instances set forth hereinafter. Except with regard for the provisions governing “Concurrent Delays” the Contractor may be granted an extension of time and may not be assessed engineering charges or liquidated damages for actual, demonstrable delays arising from:

- (A) acts of God, acts of public enemy;
- (B) fires, floods, epidemics;
- (C) quarantine restrictions;
- (D) freight embargoes;
- (E) unusually severe weather;
- (F) historical, scientific and archaeological discoveries;
- (G) the presence on or adjacent to the contract site of any third party, other than as contemplated by the Article entitled Cooperation between Contractors, including but not limited to other public bodies, by railroad, transportation or private or public utility companies or corporations, or by private enterprise, or any delay in progressing such work by any third party;
- (H) the existence of any facility or appurtenance owned, operated, or maintained by any third party;
- (I) the act, or failure to act, of any other public or governmental body, including, but not limited to, approvals, permits, restrictions, regulations or ordinances;
- (J) restraining orders, injunctions or judgments issued by the court;
- (K) any labor boycott, strike, strife, action, picketing or similar situation, not attributable to the acts or omissions of the Contractor;
- (L) determinations by the NFTA to open certain sections of the project to traffic before completion of the entire contract work;
- (M) increases in contract quantities, additional contract work, or extra work or for unreasonable delays in the review or issuance of orders on contract, or shop drawings, or field change sheets;
- (N) failure of the NFTA to provide individual rights-of way parcels for an extended period of time beyond that indicated by the contract, if such unavailability, as determined by the Engineer, does not significantly affect the scheduled completion of the contract.

- (O) Stop Work Orders issued by the Engineer, except as provided for in the subsequent paragraph entitled Additional Compensation.

An extension of time pursuant to this section will be granted only if the aforesaid causes were not foreseeable at the time the Agreement was executed and did not result from the fault or negligence of the Contractor, and provided further that the Contractor has taken reasonable precautions to prevent further delays owing to such causes.

Unusually severe weather shall apply only as it affects particular portions of the work and operations of the Contractor, as determined by the NFTA. The basis used to define unusually severe weather will be data showing high and low temperatures, snowfall, rainfall, as compiled by the U.S. Department of Commerce National Weather Service.

An extension of time will not be granted for a delay caused by a shortage of materials, except NFTA-furnished materials, unless the Contractor furnishes to the NFTA documentary proof that it has diligently made every effort to obtain such materials from all known sources within reasonable reach of the Work. The Contractor shall also submit proof that the inability to obtain such materials when originally planned did, in fact, cause delay in final completion of the Work which could not be compensated for by revising the sequence of its operations. Only the physical shortage of material will be considered under these provisions as a cause for extension of time.

No consideration will be given to any claim that material could not be obtained at a reasonable, practical or economical cost, unless it is shown to the satisfaction of the NFTA that such material could have been obtained only at exorbitant prices, entirely inconsistent with current rates, taking into account the quantities involved and the usual practices in obtaining such quantities.

Additional Compensation - The Contractor agrees that the only claims it may make for extra compensation caused by delay, inefficiencies, or interference affecting the performance or the scheduling of contract will be solely limited to those arising out of the following instances:

- (A) the issuance by the Engineer of a stop work order, as provided for in the Article entitled Suspension of Work, relative to a substantial portion of work, which the Engineer determines to significantly affect the scheduled completion of the contract;
- (B) the unavailability of critical rights-of-way parcels for such an extended period of time beyond that indicated in the contract which the Engineer determines to significantly affect the scheduled completion of the contract;
- (C) the unanticipated presence of other contractors retained by the NFTA, on or adjacent to the worksite;
- (D) unforeseen or unanticipated surface and subsurface conditions, as governed by the Article entitled Differing Site Conditions.

In all of such instances, compensation to be considered will be limited to documented additional direct field costs, including field supervision, escalation of costs for labor, materials and rental equipment; and documented additional, overabsorbed, or underabsorbed home office overhead, idle equipment, financing and profit, which in the aggregate shall not exceed fifteen percent of the total of additional direct costs as identified above, incurred on the project by the Contractor during the period of the delay.

Failure of the Contractor to adequately progress the completion of the Work will be considered in determining whether the foregoing instances are the primary causes of delay. In all of such instances, for any claim asserted under this section, the Contractor shall keep detailed written

records of the costs and agrees to make same available to the NFTA at any time for purposes of audit and review.

Any dispute relating to such claims shall be subject to the Article entitled Disputes.

Notice of Delay Claim - In order to qualify for an extension of time and/or additional compensation for any delay the Contractor must notify the NFTA in writing of the cause or causes of the delay within fifteen days from the beginning of any such delay. Within thirty days after the end of the delay, the Contractor shall furnish the NFTA with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate contract references, and the measures taken to prevent or minimize the delay, and, with respect to a claim for additional compensation, detailed information supporting the costs claimed. Failure to submit such information within the specified time frames will be sufficient cause for denying the delay claims. The Engineer will ascertain the facts and the extent of the delay and its findings thereon shall be final and conclusive.

No actions on the part of the NFTA shall be deemed to be a waiver of the Contractor's obligation to comply with this section.

Concurrent Delay - The Contractor shall not be entitled to receive a separate extension of time, or extension of time and additional compensation, for each one of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the work irrespective of the number of causes contributing to produce such delay.

If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or of its subcontractors or material men, and would of itself have delayed the work, no extension of time and no additional compensation will be allowed for the period of delay resulting from such act, fault or omission.

Engineering Changes - When any part of the Work remains incomplete, including punch list items, after the expiration of the time allowed for final completion of the Work stipulated in the Agreement, unless the time or times of completion is (are) extended by written consent of the NFTA, engineering and inspection expenses incurred by the NFTA upon the Work, from the completion date originally fixed in the Agreement to the final date of completion of the Work, may be charged to the Contractor. The NFTA may either deduct the engineering charges from any monies due the Contractor or require the Contractor to pay the current amount of the engineering charges prior to the issuance of any subsequent progress payments. Consideration for any extra work, as well as extenuating circumstances beyond the control of the Contractor, will be given due consideration by the NFTA before assessing engineering and inspection charges against the Contractor. Such charges will be assessed, however, in cases where because of unwarranted reasons, inefficient operation, or for any other reason for which the NFTA determines the Contractor liable. Engineering expenses will also be charged to the Contractor for any work performed on close-out of the Agreement more than sixty days after Final Acceptance.

Liquidated Damages - When any part of the work remains incomplete, including punch list items, after the expiration of the time allowed for final completion of the Work stipulated in the Agreement, unless the time or times of completion is (are) extended by written consent of the NFTA, a sum of money as set forth in the Invitation to Bid shall either be deducted from any monies due the Contractor or required to be paid to the NFTA before any subsequent progress payments will be issued. If no money is due the Contractor, the NFTA shall have the right to recover said sum or sums from the Contractor, from the Surety, or from both. The amount(s) of these deductions is (are) to cover liquidated damages to the NFTA incurred by additional and other expenses due to the failure of the Contractor to complete the Work or any part of the

Work within the time specified, and such deductions are not to be considered as penalties and shall be in addition to any Engineering Charges imposed as hereinabove provided for. Liquidated damages shall be recovered in the event the Contractor abandons the Work.

Article 54. Insurance

The Contractor agrees to procure and maintain at its expense during the term of the Agreement insurance of the kinds and in the amounts hereafter required, with insurance companies authorized to do business in New York State, covering all operations under this Agreement, whether performed by the Contractor or its subcontractors. The policies shall provide for a thirty day notice to the NFTA prior to termination, cancellation or change.

Prior to the execution of the Agreement, the Contractor shall supply the NFTA, by delivering to the Risk Manager, 181 Ellicott Street, Buffalo, New York 14205, a certificate(s) of insurance providing evidence of insurance coverage for the Contractor for the following coverages:

- (A) Commercial General Liability insurance in a comprehensive form including coverage for property damage, bodily injury, personal injury and completed operations with a single limit of at least \$1,000,000.00 per occurrence with a \$2,000,000.00 aggregate. The certificate shall name the NFTA as an additional insured.
- (B) Protective Liability insurance issued to and covering the liability of the NFTA and all employees of the NFTA, both officially and personally, with respect to all operations under this Agreement by the Contractor or any subcontractors, including omissions and supervisory acts of the NFTA and its employees, with a single limit of \$2,000,000.00 per occurrence and a \$2,000,000.00 aggregate.
- (C) If any motor vehicle is used in the Work, Auto Liability insurance covering bodily injury and property damage with a minimum combined single limit of \$1,000,000.00. The certificate shall name the NFTA as an additional insured.
- (D) Workers' Compensation and Employer's Liability in accordance with the applicable laws of the State of New York.
- (E) Excess Liability/Umbrella Form, \$14,000,000.00

Prior to commencing the Work the Contractor shall supply the NFTA with a certificate of insurance providing evidence of insurance coverage for the Contractor for Builder's Risk/Installation Floater "All Risk" insurance protecting the Contractor, the NFTA and subcontractors from losses resulting from, but not limited to, natural disasters, fire, extended coverage perils, vandalism, malicious mischief or collapse during the course of construction. The policy shall name the NFTA, the Contractor and the Contractor's subcontractors as insureds. The amount of such insurance shall be not less at any time than the total value of the work in place, on site, in transit or in storage off site and the loss under such policies shall be made payable to the NFTA and/or the Contractor or other insureds, as their respective interests may appear. The policy shall cover all property to be used in, or incidental to, the fabrication and/or erection and/or completion of the project. It shall include all materials, machinery, equipment and supplies intended to become part of such property and false work, temporary trestles and similar structures. It shall not include tools, Contractors' equipment and any other property not a part of or destined to become part of the project. The NFTA should be advised of the amount, if any, of a deductible on the policy. In no case should the deductible amount exceed \$5,000.00. The Contractor shall provide the NFTA upon request with copies of any of the insurance policies required to be maintained pursuant to this Article.

The NFTA and the Contractor agree to waive all rights against each other for damages to the extent covered by the insurance, except for such rights they may have to the proceeds of such insurance held by the NFTA as trustee. The Contractor shall require similar reciprocal waivers by all subcontractors and sub-subcontractors. This policy shall recognize such waivers of recovery by an appropriate Waiver of Subrogation Clause Endorsement, excluding any subrogation of rights granted under New York law to the contrary notwithstanding.

Prior to the commencement of work by any subcontractor, the Contractor shall supply the NFTA with a certificate(s) of insurance providing evidence of insurance coverage for each subcontractor for the following coverages:

Commercial General Liability insurance including coverage for property damage, bodily injury, personal injury and completed operations with a single limit of at least \$1,000,000.00 per occurrence with a \$2,000,000.00 aggregate. The certificate shall name the NFTA as an additional insured.

If any motor vehicle is used in the Work, Auto Liability insurance covering bodily injury and property damage with a minimum combined single limit of \$1,000,000.00. The certificate shall name the NFTA as an additional insured.

Workers' Compensation and Employer's Liability in accordance with the applicable laws of the State of New York.

Excess Liability/Umbrella form, \$14,000,000.00.

The insurance coverage provided by subcontractors shall be written with insurance companies authorized to do business in New York State. The policies shall provide for a thirty day notice to the NFTA prior to termination, cancellation or change.

Article 55. NFTA Prompt Payment Rules and Regulations

The following prompt payment rules and regulations set forth provisions which are intended to improve relationships between the NFTA and its contractors, vendors and all those providing services or supplies through contractual relationship with the NFTA. These rules and regulations are promulgated consistent with directives set forth in section 2880 of the Public Authorities Law.

1. Definitions. As used in these rules and regulations, the following terms shall have the following meanings unless the context shall indicate another or different meaning or intent:
 - (a) "NFTA" means the Niagara Frontier Transportation Authority and its subsidiary corporations.
 - (b) "Contract" means an enforceable agreement entered into between the NFTA and a contractor.
 - (c) "Contractor" means any person, partnership, private corporation or association:
 - (i) selling materials, equipment or supplies, or leasing property or equipment to the NFTA;
 - (ii) constructing, reconstructing, rehabilitating or repairing buildings, highways or other improvements for or on behalf of the NFTA; or
 - (iii) rendering or providing services to the NFTA pursuant to a contract.
 - (d) "Designated payment office" means the office designated by the NFTA to which a proper invoice is to be submitted by a contractor.

- (e) "Prompt payment" means payment of a debt due and owing by the NFTA before interest accrues thereon pursuant to these rules and regulations.
 - (f) "Proper invoice" means a written request for a contract payment that is submitted by a contractor setting forth the description, price and quantity of goods, property, or services delivered or rendered, in such form and supported by such other substantiating documentation as the NFTA may reasonably require.
 - (g) "Receipt of an invoice" means
 - (i) the date on which a proper invoice is actually received in the designated payment office, or
 - (ii) the date on which the NFTA receives the purchased goods, property or services covered by the proper invoice, whichever is later.
 - (h) "Set-off" means the reduction by the NFTA of a payment due to a contractor by an amount equal to the amount of an unpaid legally enforceable debt owed by the contractor to the NFTA.
 - (i) "Statement" means these rules and regulations.
2. Payment Request Procedure. The contractor shall submit a proper invoice to the NFTA's designated payment office. Said invoice shall be date stamped with the date the invoice is received.
 3. Interest Eligibility and Computation. In order for the NFTA not to be liable for the payment of interest, contract payment must be made within thirty calendar days, excluding legal holidays, after the receipt of an invoice for the amount of the contract payment due; except when the contract payment is of the type where the facts and conditions are defined pursuant to sections 5 and 6 of these rules and regulations. Any time taken to satisfy or rectify any of the facts or conditions described in section 5 of these rules and regulations shall extend the date by which contract payment must be made in order for the NFTA not to become liable for interest payments by an equal period of time. Notwithstanding any other provision of law to the contrary interest shall be computed at the rate equal to the overpayment rate set by the Commissioner of Taxation and Finance pursuant to subsection (e) of section one thousand ninety-six of the tax law. The NFTA will not be liable for payment of interest when such interest is less than ten dollars.
 4. Sources of Funds. All interest due and payable to contractors under these regulations will be paid from available revenue sources including the NFTA general funds.
 5. Extensions. The facts and conditions which will reasonably justify extension of the date by which contract payment must be made in order for the NFTA not to become liable for interest payments are as follows:
 - (a) In accordance with specific statutory or contractual provisions, if payment must be preceded by an inspection period and/or an audit to determine the resources applied or used by the contractor in fulfilling the terms of the contract.
 - (b) If the necessary state government appropriation required to authorize payment has not been enacted, or when statutory, contractual or grant agreement provisions provide for prior federal review before the use of federal funds for payment.
 - (c) If payments must be processed through the State Department of Audit and Control, the State Department of Taxation and Finance, or some other entity not under the NFTA's control.

- (d) If the date by which contract payment must be made is modified in accordance with section 6 herein.
 - (e) if the contract provides that the contractor will be paid at predetermined intervals.
6. Defects or Improprieties. The NFTA shall have fifteen calendar days after receipt of an invoice by the NFTA at its designated payment office to notify the contractor of:
- (a) defects in the delivered goods, property or services;
 - (b) defects in the invoice, or
 - (c) suspected improprieties of any kind.
- The existence of such defects or improprieties shall prevent the commencement of the time period specified in section 3. When the NFTA fails to notify a contractor of such defects or suspected improprieties within fifteen calendar days of receiving the invoice, the number of days allowed for payment of the corrected proper invoice will be reduced by the number of days between the fifteenth day and the day than notification was transmitted to the contractor. If the NFTA, in such situations, fails to provide reasonable grounds for its contention that a defect or impropriety exists, the date by which contract payment must be made in order for the NFTA not to become liable for interest payments shall be calculated from the date of receipt of an invoice.
7. Public Service Law. Notwithstanding any provision of the public service law or any tariffs promulgated pursuant to that law to the contrary, the provisions of this section shall provide the sole basis for determining and making interest payments on invoices submitted by public utilities.
8. Public Access. There shall be public access as follows:
- (a) Copies of these rules and regulations and the annual report shall be available as public record.
 - (b) Each contractor doing business with the NFTA shall be given a copy of these rules and regulations.
9. Inapplicability of Rules and Regulations. These rules and regulations shall not apply to payment due and owing by the NFTA:
- (a) under the eminent domain procedure law;
 - (b) as interest allowed on judgments rendered by a court pursuant to any provision of law other than those contained in section 2880 of the Public Authorities Law;
 - (c) to the federal government; to any state agency or its instrumentalities; to any duly constituted unit of local government including, but not limited to, counties, cities, towns, villages, school districts, special districts; or any of their related instrumentalities; to any other public authority or public benefit corporation; or to the NFTA's employees when acting in, or incidental to, their public employment capacity;
 - (d) in situations where the NFTA exercises a legally authorized set-off against all or part of the payment due the contractor.
10. These rules and regulations shall be incorporated into and made a part of all contracts.

VII. Supplementary Conditions

Article 1. Definitions*

AASHTO	The American Association of State Highway and Transportation Officials, the successor association to AASHO.
Access Road	The right of way, the roadway and all improvements constructed thereon connecting the airport to a public highway.
AIP	The Airport Improvement Program, a grant-in-aid program, administered by the Federal Aviation Administration.
Air Operations Area	For the purpose of these specifications, the term air operations area shall mean any area of the airport used or intended to be used for the landing, takeoff, or surface maneuvering of the aircraft. An air operation area shall include such paved or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runway, taxiway or apron.
Airport	Airport means an area of land or water which is used or intended to be used for the landing and takeoff of aircraft, and includes its buildings and facilities, if any.
Building Area	An area on the airport to be used, considered or intended to be used for airport buildings or other airport facilities located thereon.
FAA	The Federal Aviation Administration of the U.S. Department of Transportation. When used to designate a person, FAA shall mean the Administrator or duly authorized representative.
Federal Specifications	The Federal Specifications and Standards, and supplements, amendments and indices thereto are prepared and issued by the General Services Administration of the Federal government. They may be obtained from the Specifications Activity, Printed Materials Supply Division, Building 197, Naval Weapons Plant, Washington, D.C. 20407.
Runway	The area on the airport prepared for the landing and takeoff of aircraft.
Taxiway	For the purpose of this Agreement, the term taxiway means the portion of the air operations area of an airport that has been designated by competent airport authority for movement of aircraft to and from the airport's runways or aircraft parking areas.

*Additional definitions are found throughout the Contract Documents.

Article 2. Public Convenience and Safety

The Contractor shall control its operations and those of its subcontractors and all suppliers, to assure the least inconvenience to the traveling public. Under all circumstances, safety shall be the most important consideration.

The Contractor shall maintain the free and unobstructed movement of aircraft and vehicular traffic with respect to its own operations and those of its subcontractors and all suppliers and shall limit such operations for the convenience and safety of the traveling public as specified in the section titled Limitation of Operations.

Article 3. Barricades, Warning Signs and Hazard Markings

The Contractor shall furnish, erect and maintain all barricades, warning signs and markings for hazards necessary to protect the public and the work. When used during periods of darkness, such barricades, warning signs and hazard markings shall be suitably illuminated.

For vehicular and pedestrian traffic, the Contractor shall furnish, erect, and maintain barricades, warning signs, lights and other traffic control devices in reasonable conformity with the Manual of Uniform Traffic Control Devices for Streets and Highways (published by the United States Government Printing Office).

When the work requires closing an air operations area of the airport or portion of such area, the Contractor shall furnish, erect and maintain temporary markings and associated lighting conforming to the requirements of FAA Advisory Circular 150/5340-1J, "Marking of Paved Areas on Airports."

The Contractor shall furnish, erect and maintain markings and associated lighting of open trenches, excavations, temporary stock piles, and parked construction equipment that may be hazardous to the operation of emergency fire rescue or maintenance vehicles on the airport in reasonable conformance to FAA Advisory Circular 150/5370-2E, "Safety on Airports During Construction Activity."

The Contractor shall identify each motorized vehicle or piece of construction equipment in reasonable conformance to FAA Advisory Circular 150/5370-2E.

The Contractor shall furnish and erect all barricades, warning signs and markings for hazards prior to commencing work which requires such erection and shall maintain the barricades, warning signs and markings for hazards until their dismantling is directed by the Engineer.

Open-flame type lights shall not be permitted within the air operations areas of the Airport.

Article 4. Use of Explosives

The use of electrical explosives shall not be permitted on or within 1,000 feet of the airport property.

Article 5. Limitation of Operations

The Contractor shall control its operations and the operations of its subcontractors and all suppliers so as to provide for the free and unobstructed movement of aircraft in the Air Operations Areas of the Airport.

When the work requires the Contractor to conduct its operations within an Air Operations Area of the Airport, the work shall be coordinated by the Engineer at least 48 hours prior to commencement of such work. The Contractor shall not close an Air Operations Area until so authorized by the Engineer and until the necessary temporary markings and associated lighting is in place, as provided in the Article entitled Barricades, Warning Signs and Hazard Markings.

When the Agreement requires the Contractor to work within an Air Operations Area of the Airport on an intermittent basis (intermittent opening and closing of the Air Operations Area),

the Contractor shall maintain constant communications as herein specified; immediately obey all instructions to vacate the Air Operations Area; immediately obey all instructions to resume work in such Air Operations Area. Failure to maintain the specified communications or to obey instructions shall be cause for suspension of the Contractor's operations in the Air Operations Area until the satisfactory conditions are provided.

Article 6. *Airport Security*

Airport security must be maintained at all times. Security fencing shall not be disturbed without approval from the Engineer. Any modifications to be made to security fencing for the purpose of accommodating the Contractor's movement of equipment, shall be done at the Contractor's expense. In addition, if a security gate must be left unlocked to facilitate the movement of equipment and materials, a watchman shall be posted at the gate to maintain security.

The Contractor warrants that the background of any employee, hired after November 1, 1985, who may have access to restricted areas of the Airport, has been checked, including references and prior employment histories for the preceding five (5) years, and that permitting such employee unescorted access to such restricted areas is not deemed inappropriate.

Article 7. *Badges*

The Contractor shall be required to apply for and obtain security badges necessary for performing work at BNIA. When performing work on the airfield, the contractor must supply at least one badged person in the immediate vicinity of each work operation area at all times. All gate guards are required to be badged. The Contractor shall follow the procedures in place for obtaining a BNIA security badge as stipulated in the "BNIA and NFIA Security Badge Policy" latest edition. The most current policy will be provided to the contractor at the Pre-Construction meeting. Contractor to include in his proposal all costs associated with sponsoring badges, obtaining and completing the applicable forms, scheduling and attending the Security Identification display Area (SIDA) training, badge processing, return of badges, notification of lost or unreturned badges, monthly monitoring, and the associated fees and assessments. There is a \$50.00 fingerprint processing fee for each badge and a fine up to \$500 for unreturned and lost badges.

Article 8. *Work Site Vehicle Permit*

Each vehicle used regularly by the Contractor and/or its subcontractors badged supervisory personnel must, when operating on the work site, have prominently displayed a Vehicle Permit and a Flag (red or checked) on each vehicle. The Vehicle Permit applications may be obtained from the NFTA Transit Police. The NFTA Transit Police shall require a minimum of 3-5 days for a security check on the applications before issuing them. The Contractor shall be responsible for all Vehicle Permits issued. The Vehicle Permits shall be furnished to the Contractor by the NFTA Transit Police, and shall be returned to the NFTA Transit Police upon completion of the project.

Article 9. *Driving Rules and Regulations*

The following rules and regulations pertain to the conduct and operation of ground equipment operating on the Buffalo Niagara International Airport. These rules shall be in effect at all times when operating ground equipment.

A report of any violations shall be made by a designated NFTA representative to the Airport Manager who in turn shall handle the circumstances with the Airline's Station Manager or Company Operations Manager for violation determination.

No person shall operate any vehicle on the Airport otherwise than in accordance with the rules prescribed herein for the control of such vehicles, except when given special instructions by authorized employees of the Authority, or in case of emergency involving danger to life and property. Motor vehicles and operations shall conform to the following:

New York State Motor Vehicle Laws.

Traffic Regulations Ordinances of the Town of Cheektowaga.

Local rules of the Airport.

Drivers must possess valid Driver's License.

Airport Driver's Permit.

Speed limits shall be twenty (20) miles per hour, unless otherwise authorized by the Airport Manager, as designated in the open areas within the approved lanes. All equipment being driven around aircraft within fifty (50) feet, whether parked or taxiing, cannot be operated at a speed to exceed ten (10) miles per hour.

Article 10. Contractor's Personal Vehicles

The Contractor and its personnel will be required to park their personal vehicles in a remote area to be designated by the Engineer. The Contractor shall be responsible for related costs and transporting all personnel between the parking area and the work site.

Article 11. Examination of Site

The Contractor, before submitting his Bid, shall visit the location of the work and thoroughly examine the site and make himself familiar with all conditions as they exist, or that may arise, which will affect the cost and the performance of the work.

Article 12. Maintenance of Traffic

It is the explicit intention of the contract that the safety of aircraft, as well as the Contractor's equipment and personnel, is the most important consideration. It is understood and agreed that the Contractor shall provide for the free and unobstructed movement of aircraft in the air operations areas of the airport with respect to his / her own operations and the operations of all his / her Subcontractors. It is further understood and agreed that the Contractor shall provide for the uninterrupted operation of visual and electronic signals (including power supplies thereto) used in the guidance of aircraft while operation to, from, and upon the airport.

With respect to his / her own operations and the operations of all his / her Subcontractors, the Contractor shall provide marking, lighting, and other acceptable means of identifying: personnel; equipment; vehicles; storage areas; and any work area or condition that may be hazardous to the operation of aircraft, fire-rescue equipment, or maintenance vehicles at the airport.

When the Contract requires the maintenance of vehicular traffic on an existing road, street, or highway during the Contractor's performance of work that is otherwise provided for in the Contract, Plans, and Specifications, the Contractor shall keep such road, street, or highway open to all traffic and shall provide such maintenance as may be required to accommodate

traffic. The Contractor shall furnish, erect, and maintain barricades, warning signs, flagmen, and other traffic control devices in reasonable conformity with the Manual of Uniform Traffic Control Devices for Streets and Highways unless otherwise specified herein. The Contractor shall also construct and maintain in a safe condition any temporary connections necessary for ingress to and egress from abutting property or intersecting roads, streets or highways. Unless otherwise specified herein, the contractor will not be required to furnish snow removal for such existing road, street, or highway.

The Contractor shall make his / her own estimate of all labor, materials, equipment, and incidentals necessary for providing the maintenance of aircraft and vehicular traffic as specified in the subsection.

In accordance with FAR Part 77, the Federal Regulations which establishes the requirements for notice to the FAA of proposed construction and / or alteration in the vicinity of an airport, the NFTA has submitted form 7460-1 for review and has received preliminary approval for work. The Contractor is required to notify the FAA within three (3) days of Notice of Intent to Award on this project. The Contractor shall submit supplemental information to the FAA which should include proposed equipment heights and duration of use and their relating to the aeronautical areas of the airport. The information shall be accompanied by a sketch where appropriate for clarification and shall be submitted, subsequent to approval by the Engineer to:

Federal Aviation Administration
Eastern Regional Office
Air Traffic Division, AEA-530
JFK International Airport
Fitzgerald Federal Building
Jamaica, N.Y. 11430
Tel. 718-553-1228
Fax: 718-553-1384

All construction work in the vicinity of ILS for Runways 5/23 and 14/32 should be coordinated in advance with the Section Field Office Manager, AFSFO-8439, Buffalo, New York. Additionally, the movement of Contractor vehicles and the placement of construction equipment in the vicinity of the ILS Runways, should also be coordinated in advance with AFSFO-8439.

Article 13. Coordination with Other Contractors, and Projects

The Contractor shall coordinate his work with those of other Contractors or Projects engaged in construction at the airport.

The Authority will not be responsible for any inconvenience, delay or loss experienced by the Contractor as a result of his failure to gain access to the work areas at the time contemplated. An extension of Contract time may be allowed on the basis of the amount of time delayed due to his failure to gain access to the work areas, only when such failure is due to no fault or negligence of the Contractor. The Authority will not assume any responsibility for the acts of one Contractor, which delays the work of the other.

Article 14. Major Work Items & Time Constraints, Construction Sequencing and Scheduling

Time of Completion and Liquidated Damages. The Contractors shall commence the work as of the date of Notice to Proceed (NTP) and shall complete the work in accordance with the defined

project schedule/duration. Failure of the Contractor to complete the work within the time or by the date specified may result in the assessment of liquidated damages as specified plus any additional costs as may be incurred as a result of delays to other Contractors, the Engineer, etc.

Other General Items:

- A. All construction equipment requires temporary obstruction marking and/or lighting when equipment extends above the FAR Part 77 Surfaces. Obstruction marking and lighting shall conform to FA-AC-70/7460-1K with latest amendments.
- B. The Contractor and its Subcontractors shall be restricted in all operation and equipment movements to the areas as indicated on the Contract Drawings or as ordered by the Engineer.
- C. The Engineer, at the request of the Airport Manager, may at any time require the Contractor and/or its Subcontractors to remove the equipment, materials and personnel from the vicinity of the taxiways, runways or aprons to allow the passage of jet aircraft.
- D. The Contractor is to submit his intended schedule to the Engineer for approval within five (5) calendar days of receipt of Notice to Proceed. Approval of this schedule is required prior to mobilizing on the worksite.
- E. Any proposed modifications to the project staging must be submitted in writing to the Engineer for approval.
- F. The work listed above and any remaining work shall be coordinated with the Engineer, Airport Administration and FAA Control Tower prior to commencement of work.
- G. Access to the work area will be as ordered by the Engineer.
- H. The Contractor shall coordinate his work in accordance with the Supplementary Conditions Article 17 - SAFETY ON AIRPORTS DURING CONSTRUCTION ACTIVITY.
- I. The Contractor shall coordinate his activities with those of other Contractors engaged in construction at the airport. The Contractor shall conduct his operations in such a manner as to minimize interference with the other Contractor's operation. In the event that conflicts in scheduling or access occur between Contractors, the Engineer shall be the sole judge in resolving the conflict and the Engineer's decision shall be final.
- J. Barricades shall be installed in accordance with contract documents and as ordered by the Engineer prior to commencement of any work.
- K. The Contractor shall restrict all operations and equipment movement to within the areas as designated on the contract drawings or as ordered by the Engineer.
- L. No stockpiling of materials or equipment will be permitted within the Runway, Taxiway or Taxilane Safety Areas or OFA areas. The work shall be advanced and completed as efficiently and expediently as possible to minimize interruption of airport operations.

- M. Liquidated damages, as specified, shall be assessed to the Contractor for its failure to complete the work within the time constraints specified.
- N. All sealing operations, joint sealant applications and pavement repairs must be completed in time to allow for proper cure time of working materials.

Article 15. Construction Schedule And General Construction Requirements

- A. Prior to opening any airport facility subsequent to construction, the following must apply:
 - 1. All surfaces of the facilities to be re-opened, or in the vicinity to the facilities to be re-opened, must be free of any loose debris (F.O.D.) that could potentially cause damage to aircraft.
 - 2. All appropriate temporary or permanent pavement markings as shown on the plans and specifications, or as determined by the Engineer, must be placed.
 - 3. All appropriate airfield electrical systems must be operational.
- B. All work within the air operations area shall be in accordance with Article 5 of the Supplementary Conditions.
- C. A meeting may be held 1 hour prior to the scheduled start of any construction period. Additional meetings may also be held as required by the Engineer. These meetings will be held to discuss the exact extent of the work to be performed and the appropriate NOTAM is to be issued. At a minimum, these meetings are to be attended by the Engineer, the Contractor's Construction Supervisor, and a representative of the airport administration. A representative of the FAA Control Tower may also be present at these meeting or be available via telephone.
- D. During the performance of work operations, and in addition to any other requirements herein, the Contractor must provide an approved mechanical method such as a power broom or vacuum sweeper to assist in the cleaning of ancillary areas disturbed by construction. Additional power brooms and vacuum sweepers will be required should the contractor fail to maintain the pavement and ancillary areas to the satisfaction of the Engineer. This item to be included in the contractor's lump sum price bid.
- E. The Contractor must provide, in accordance with the specifications or as directed by the Engineer, sufficient lighting of the work areas to be inspected. This item to be included in the contractor's lump sum price bid.

Article 16. Liquidated Damages for Failure to Complete Work

- A. Liquidated damages will be assessed to the Contractor for its failure to complete all work within the time allotted as specified in the contract documents. The sum of money per calendar day will be deducted from monies due to contractor as liquidated damages for failure to complete the work within the time allotted as specified in the contract documents.

Article 17. Safety on Airport During Construction Activity

1. General Safety Requirements

It is the purpose of this section to outline the general operating rules and safety measures which must be taken by the Contractor in order to expedite the construction work and at the same time permit the safe operation of aircraft at the airport.

In addition to the requirements presented herein, the Contractor is hereby notified that during the progression of work, he is bound by all requirements presented in FAA Advisory Circular 150/5370-2E: Operational Safety on Airports During Construction.

During performance of this contract, the airport runways, taxiways, and aircraft parking aprons shall remain in use by aircraft to the maximum extent possible. Aircraft use of areas near the Contractor's work will be controlled to minimize disturbance to the Contractor's operation. The Contractor shall not allow employees, subcontractors, suppliers or any other unauthorized person to enter or remain in any airport area which would be hazardous to persons or to aircraft operations. All work which is too close to an active runway, taxiway or apron to be performed under operational conditions shall be performed when the runway, taxiway or apron is not in use. Such work shall not be accomplished without prior permission from the Engineer. Construction and Facilities Maintenance Contractors shall:

- a. Be aware that the following types of safety problems and/or hazards will not be permitted:
 - 1) Trenches, holes, or excavations on or adjacent to any open runway or in safety areas.
 - 2) Unmarked/unlighted holes or excavation in any apron, open taxiway, open taxilane, or related safety area.
 - 3) Mounds or piles of earth, construction materials, temporary structures, or other objects in vicinity of any open runway, taxiway, taxilane, or in a related safety, approach, or departure area.
 - 4) Pavement dropoffs or pavement-turf lips (either permanent or temporary) which could cause, if crossed at normal operating speeds, damage to aircraft that normally use the airport. (The normal maximum is 1-1/2" for either.)
 - 5) Vehicles or equipment (whether operating or idle) on any open runway, taxiway, taxilane, or in any related safety, approach, or departure area.
 - 6) Vehicles, equipment, excavations, stockpiles, or other materials which could degrade or otherwise interfere with electronic signals from radios or electronic navigational aids.
 - 7) Unmarked utility, navaid, weather service, runway lighting, or other power or signal cables that, could be damaged during construction.
 - 8) Objects (whether marked or flagged or not) or activities anywhere on or in the vicinity of the airport which could be distracting, confusing, or alarming to pilots during aircraft operations.
 - 9) Unflagged/unlighted low visibility items (such as tall cranes, drills, and the like) anywhere in the vicinity of active runways, or in any approach or departure area.
 - 10) Misleading or malfunctioning obstruction lights.
 - 11) Unlighted/unmarked obstructions in approach to any open runway.

- 12) Inadequate, confusing or misleading (to user pilots) marking/lighting of runways, taxiways, taxilanes (including displaced or relocated thresholds).
- 13) Water, snow, dirt, debris, or other transient accumulation which temporarily obscures pavement marking, pavement edges, or derogates visibility of runway/taxiway marking or lighting, or of construction and maintenance areas.
- 14) Inadequate or improper methods of marking, barricading, and lighting of temporarily closed portions of airport operations areas.
- 15) Trash or other materials with foreign object damage potential, whether in runways, taxiways, or aprons, or in any related safety areas.
- 16) Inadequate fencing or other marking to separate construction or maintenance areas from open aircraft operating areas.
- 17) Failure to control vehicle, human, and large animal access to, and nonessential non-aeronautical activities in, open aircraft operating areas.
- 18) Failure to maintain radio communication between construction/maintenance vehicles and air traffic control tower or other on-field communications facility, e.g., FAA Flight Service Station (FSS) or Unicom radio.
- 19) Construction/maintenance activities or materials which could hamper crash-fire-rescue (CFR) vehicle access from CFR stations to all parts of the runway/taxiway system, to runway approach and departure areas, and to aircraft parking locations.
- 20) Bird attractants such as edibles (food scraps, etc.) or other miscellaneous garbage, other trash, grass/crop seeding, or ponded water on airport.

- b. conduct activities so as not to violate any safety standards contained herein.
- c. inspect all construction and storage areas as often as necessary to be aware of conditions, and promptly take all steps needed to prevent/remedy any unsafe or potentially unsafe conditions/activities discovered.

Before actual commencement of construction activity, the Contractor shall give adequate notice to Airport management of proposed time and date of commencement of construction in such areas.

Upon completion of work and return of all such areas to standard conditions, the Contractor shall notify Airport management of completion of construction.

2. Trenches, Excavations and Stockpiled Material

Open trenches or excavations exceeding 6" in depth and 6" in width or stockpiled material will not be permitted within the limits of restricted areas of operational runways or taxiways. Coverings for open trenches or excavations shall be of sufficient strength to support aircraft loading.

3. Construction in Proximity to Runways

- a. Contractor who intends on using equipment greater than 10 feet in height shall file FAA form 7460-2 Notice of Proposed Construction or Alteration at least 30 days prior to the start of construction activity. No work shall begin with oversized equipment until a response from the FAA has been received.

- b. Runway Sides: If appropriate construction/maintenance NOTAM has been issued, construction equipment under 10 feet tall is permissible as close as the following distances from centerline of runway indicated:

<u>Runway Designation</u>	<u>Distance From Centerline</u>
5 – 23	290 Feet
14 – 32	200 Feet

- c. Runway Ends: If appropriate construction/maintenance NOTAM has been issued, construction activity is permissible off the ends of the runways indicated below provided at least the indicated minimum safety area and indicated unobstructed approach slopes are maintained.

RUNWAY END No.	MINIMUM SAFETY AREA BEHIND THRESHOLD	MINIMUM UNOBSTRUCTED APPROACH SLOPE
5/23	1000'	50:1 TO 2500' FROM THRESHOLD
14/32	1000'	20:1 TO 1000' FROM THRESHOLD

- d. Taxiway / Taxilane Edges: If appropriate construction / maintenance NOTAM has been issued, construction equipment under 10 feet tall is permissible as close as 130 feet from the centerline of taxiways and 113 feet from the centerline of taxilanes.
4. Threshold Marking and Lighting. Temporary threshold marking, if required, shall be furnished and maintained by the Contractor.
 5. Closed Runway Marking. Closed runway marking, if required, shall be shown on the Plans and furnished by the Owner but installed and maintained by the Contractor.
 6. Barricades, flagging and flashers are required. Hazard marking and lighting shall be acceptable to the Airport Owner and Engineer.
 7. Motorized Vehicles
 - a. When any vehicle other than those approved for use in the aircraft movement area and runway approach area is required to travel over any portion of that area, it shall be escorted by a vehicle properly identified to operate in the area

and be provided with a flag on a staff attached to the vehicle. A flag or escort vehicle is not required for vehicles which have been painted, marked and lighted for routine use on aircraft movement areas. Any vehicle operating on the movement area during the hours of darkness should be equipped with a flashing dome-type light, the color to be in accordance with local and/or State codes.

- b. Vehicular or pedestrian traffic in active aircraft movement areas must be controlled either by two-way radio with the control tower, by escort, flagman, signal light or the means appropriate for the particular airport. The clearance should be confirmed by the driver's personal observation that no aircraft is approaching his/her position.
 - c. It may be desirable to clearly identify the vehicles for control purposes by either assigned initials or numbers prominently displayed on each side. The identifying symbols should be of 8-inch minimum, block-type characters of a color easily read. They may be applied by use of tape or water soluble paint to facilitate removal. In addition, all vehicles must display the identification media as specified in the approved security plan, if applicable.
 - d. Employee parking shall be as designated by the Engineer, Superintendent and Airport Manager.
 - e. Construction Site Access and Haul Roads: Access to the job site shall be as shown on the Plans or as designated by the Engineer, Superintendent, Construction Manager and Airport Manager.
8. Navigational Aids: The contractor shall not conduct any construction activity within the navigational aids (i.e., ILS components, VOR, ASR, ATCT) restricted areas without prior approval from the local FAA Airway Facilities Sector through the Engineer.
9. Limitations on Construction
- a. Open flame welding or torch cutting operations are prohibited unless adequate fire and safety precautions are provided and have been approved by the Engineer.
 - b. Open trenches, excavations and stockpiled material at the construction site shall be prominently marked with red flags and lighted by light units during hours of restricted visibility and/or darkness.
 - c. Marking and lighting of closed, deceptive and hazardous areas shall be provided by the Contractor, when required, in accordance with Advisory Circular 150/5340-1J, including the latest revisions.
10. Debris. Waste and loose material capable of causing damage to aircraft landing gears, propellers or being ingested in jet engines, shall not be placed on active aircraft movement areas. Material tracked on these areas shall be removed continuously during the work project.
11. Maximum Equipment Height. Unless dictated or directed otherwise by authorities, construction equipment shall not exceed a height of 150-feet above the Airport surface. Any equipment exceeding a height of 75-feet, shall be obstruction-marked and lighted, and when not in use, lowered to its stowed height.
12. Other Applicable Requirements. All other applicable requirements of Advisory Circular 150/5370-2E, shall apply to the work under this Contract.

13. The Contractor will not be permitted to enter the Airport Operations Area (AOA) unless accompanied by an individual displaying the appropriate security badge issued by the NFTA Transit Police.

The Contractor shall take all precautions necessary to insure the safety of operating aircraft as well as his/her own equipment and personnel. Special considerations must be given to aircraft operations. The Contractor shall obey all instructions as to routes to be taken by equipment traveling within the airport areas and keep all such equipment marked as noted herein.

Equipment not actually in operation shall be kept clear of the AOA. When aircraft are operating, personnel shall not enter areas of the Airport without specific permission.

No requirements of this Contract with respect to any precautions required or omitted to be required shall be deemed to limit or impair any responsibilities or obligations assumed by the Contractor under or in connection with this Contract, and the Contractor shall at all times maintain adequate protection to safeguard the public and all persons engaged in the work and shall take such precautions as will accomplish such end, without undue interference with the public or the operations of the Owner.

Article 18. Notice to Airmen (NOTAMS)

1. The contractor shall submit the notice to the airport manager or the engineer for issuance of NOTAMS.
2. The airport manager will issue, maintain, update and cancel NOTAMS during construction.
3. NOTAMS regarding shutdown or irregular operation of FAA owned facilities shall be issued, monitored and canceled by FAA employees for their facilities.

Article 19. Contractor's Staging Areas

Areas within the Airport right-of-way to be used as the Contractor's Staging (shop, storage and yard) Areas, will be determined by the Engineer. The height of any building erected or equipment or material stored, in any of the staging areas, shall be governed by the height restrictions prescribed elsewhere in these specifications. The areas shall be restored to their original condition, upon the completion of the Contract. The Contractor shall coordinate all staging efforts with other Contractors sharing the Staging Areas.

Article 20. Security

1. Job Conditions
 - a. The Contractor shall safely guard all work, materials, equipment and property from loss, theft, damage and vandalism. Each Contractor's duty to safely guard property shall include the Owner's property and other private property from injury or loss in connection with the performance of the Contract.
 - b. The Contractor shall employ watchmen as needed to provide the required security and prevent unauthorized entry.
 - c. The Contractor shall not make any claim against the Owner for damage resulting from trespass.

- d. The party responsible for security shall make good all damage to property of Owner and other arising from failure to provide adequate security.
- e. If existing fencing or barriers are breached or removed for purposes of construction, the Contractor shall provide and maintain temporary security fencing equal to the existing in a manner satisfactory to the Engineer and Owner.
- f. Maintain security program throughout construction until Owner's and occupancy precludes need for each Contractor's security program.

Article 21. Special Provisions for Night Work

When the Contractor works at night, he shall provide, maintain and relocate temporary lights to illuminate the working areas during the hours of darkness when work operations are in progress, in accordance with all state, local, FAA, federal, and OSHA requirements.

Article 22. Cleaning-up

The site of the work and adjacent premises shall be kept as free from material, debris and rubbish as is practicable. All rubbish, debris and surplus material that may accumulate during the work, must be removed by the Contractor as the work progresses. Any potential source of FOD or material, debris, or rubbish which, in the opinion of the Engineer, constitutes a nuisance, or is objectionable, shall be immediately removed by the Contractor upon notice to him to do so. Coffee cups and debris of similar nature shall be immediately disposed of properly, to the satisfaction of the Engineer.

At the completion of each construction stage, the Contractor shall remove temporary structures, equipment, materials, implements, barricades, signs, and rubbish connected with, or caused by the work, and shall thoroughly clean the area and adjacent areas of debris to the satisfaction of the Engineer. A vacuum sweeper is most suitable for this operation. The cost of cleanup shall be included in the cost bid for the Work, and shall be at no additional expense to the owner.

Article 23. NYSDOT Standard Specification References

1. NYSDOT STANDARD SPECIFICATIONS

- a. Except as modified herein, Section 200 through 700 of the latest edition of the Standard Specifications, Construction and Materials issued by the New York State Department of Transportation, Office of Engineering, including all revisions and addenda issued by NYSDOT prior to the date the Notice to Bidders is advertised, hereinafter referred to as the NYSDOT Standard Specifications, shall govern the work to be done where referred to on the plans and in these specifications. If a conflict exists between the NYSDOT Standard Specifications and these Contract Documents, the contract documents shall govern.

2. BASIC MODIFICATION

- a. Except as otherwise described in the Contract Documents, neither the State of New York or the NYSDOT are parties to this agreement.
- b. Any reference to NYSDOT Standard Specifications is limited in scope to technical engineering and construction work, materials, details, procedures, etc. all references to the State or the NYSDOT or administrative officers or employees thereof are null and void with respect to legal or contractual responsibilities.

- c. For clarification, where the State of New York or the NYSDOT or administrative officers or employees thereof are named in the Standard Specifications, such references shall be taken to mean either the Engineer or Owner as defined herein, each with the separate and distinct responsibilities described or reasonably implied by the Agreement.
 - d. The terms Engineer and Owner shall have their respective meanings as defined in these documents.
- 3. SPECIFIC MODIFICATIONS
 - a. Specific modifications to technical aspects of the NYSDOT Standard Specifications are noted on the drawings, or defined in the Technical Specifications Division of this document, or both.
- 4. MATERIAL CERTIFICATION
 - a. The Contractor shall obtain materials to be incorporated into the work from NYSDOT approved sources. The Contractor shall obtain and submit a Manufacturer's Material Certification to the Engineer for each such material item, indicating that the respective item meets the applicable NYSDOT or Technical Specification included in this Contract.

Article 24 Prevailing Wage Rates

The Contractor shall be aware that the wage rates contained in the contract documents are for the period of July 1, 2010 to June 30, 2011. The new rate schedule becomes effective July 1 of each year. It is the contractor's responsibility to obtain the current wage rate information in accordance with the provisions of the New York State Department of Labor.

NYS DEPARTMENT OF LABOR PREVAILING WAGE RATES

TECHNICAL SPECIFICATIONS

DRAWINGS