

BUFFALO FISCAL STABILITY AUTHORITY
Meeting Minutes
August 1, 2012

The following are the minutes from the meeting of the Buffalo Fiscal Stability Authority (the “BFSA” or the “Authority”) held on Wednesday, August 1, 2012, in the Buffalo Market Arcade Complex. The meeting was called to order at 1:30 PM.

Board Members Present: Arthur, Brown (proxy), Doherty, Floss, Mesiah, and Olsen

Board Members Excused: Jurasek, Poloncarz

Board Members Absent: Giardino

Staff Present: Link, N. Miller, R. Miller, Mongold, and Tyler

Additionally Present: A. V. Buzard, Esq., Harris Beach, PLLC

Opening Remarks

Chair Olsen called the meeting to order and opened by stating that the meeting agenda is brief. The Governance Committee met earlier and recommended the full Board approve various BFSA guidelines and policies, in addition to the annual Procurement Report and the annual Prompt Payment Report. Staff will also provide a brief organizational overview. Additionally, Mr. Buzard from Harris Beach was asked to meet with the Board to provide an update on litigation matters. With respect to the Covered Organizations, there is one item to review, which is a retirement incentive the Buffalo Public School District (“the District”) had offered to the Cafeteria Managers (“Cafeteria Managers” or “Cook Managers”).

Chair Olsen noted that the Privilege of the Floor would be extended at the conclusion of this meeting to provide any member of the attending public an opportunity to address any matters discussed at the day’s meeting.

Roll Call of Directors

Chair Olsen asked Secretary Arthur to call a roll of the members. Finding a quorum present, the meeting commenced.

City of Buffalo (the “City”) Commissioner of Administration, Finance, Policy and Urban Affairs, Ms. Janet Penksa, represented City of Buffalo Mayor Byron W. Brown, in accordance with Subdivision 1 of §3853 of the BFSA Act.

Subdivision 1 of §3853 of the BFSA Act reads, “...*The Mayor and the County Executive shall serve as ex officio members. Every director, who is otherwise an elected official of the City or County, shall be entitled to designate a single representative to attend, in his or her place, meetings of the Authority and to vote or otherwise act in his or her behalf. Such designees shall*

be residents of the City of Buffalo. Written notice of such designation shall be furnished prior to any participation by the single designee...

Approval of the May 29, 2012 and June 4, 2012 Minutes

Chair Olsen introduced Resolution No. 12-18, “Approving Minutes from May 29, 2012 and June 4, 2012.”

Director Floss offered a motion to approve Resolution No. 12-18.

RESOLUTION NO. 12-18

APPROVING MINUTES FROM MAY 29, 2012 and June 4, 2012

BE IT RESOLVED that the Buffalo Fiscal Stability Authority approves the minutes of its meeting on May 29, 2012.

BE IT FURTHER RESOLVED that the Buffalo Fiscal Stability Authority ratifies and affirms Resolution No. 12-13 that was approved on May 29, 2012.

BE IT FURTHER RESOLVED that the Buffalo Fiscal Stability Authority approves the minutes of its meeting on June 4, 2012.

BE IT FURTHER RESOLVED that the Buffalo Fiscal Stability Authority ratifies and affirms Resolution Nos. 12-14 through 12-17 that were approved on June 4, 2012.

The Board voted 6-0 to approve the resolution.

Review of District Retirement Incentive – Cook Managers

Chair Olsen advanced the agenda to the next item of business: A review of the District’s retirement incentive offered to the Cook Managers represented by the American Federation of State, County, and Municipal (“AFSCME”) Local 264. He asked Executive Director Jeanette Mongold to briefly discuss the item.

Ms. Mongold began by stating that the retirement incentive was not significant from a quantitative standpoint, and that the review was performed from a qualitative perspective. The analysis included examining the break-even point of the incentive, which is the point where the savings realized from the incentive is negated by the additional costs to replace positions. The retirement incentive is an amendment to the current collective bargaining agreement (“CBA”), and under the statute, the Board is required to review modifications to CBAs.

Chair Olsen noted that once the BFSFA issues a final report on any matter involving the City or a Covered Organization, the entity must submit a public response in writing.

Ms. Penksa stated that prior to commencement of the Advisory Period, a letter was received indicating that all contracts that covered the fiscal year (“FY”) prior to the end of the Control Period would be subject to BFSFA approval. She asked if labor contracts fall under that

definition. Ms. Mongold advised that labor contracts were specifically excluded in the correspondence sent to City of Buffalo (the “City”) and the Covered Organizations. Chair Olsen noted that BFSFA currently does not have general counsel. An interpretation of the requirements of Buffalo Fiscal Stability Act (the “Act”) will be best conducted with the advice of a general counsel. As such, an opinion regarding the required reporting by the City and the Covered Organizations should be deferred until the next Board meeting when a general counsel is anticipated to be selected.

He noted that both he and Secretary Arthur anticipate having a recommendation with respect to a general counsel at the next Board meeting. Secretary Arthur stated that they will report back to the Board in September.

Ms. Mongold resumed discussing the retirement incentive by stating there are two different opinions on such incentives as follows:

- The retirement incentive truly incentivizes an individual to retire early, resulting in savings either from the elimination of a position or replacement of the position with a lower cost employee, or
- The individual would have retired regardless of the incentive offered, thus representing an additional cost to the offeror. .

Chair Olsen added that such incentives have the effect of encouraging the separation of the most experienced workers. The Board would be remiss in not recognizing there is a dark side to a retirement incentive which results in the loss of the most experienced employees and in turn years of operational and institutional knowledge. This could create some qualitative issues.

Ms. Mongold stated the retirement incentive amount offered is ten thousand dollars per eligible employee. Last year, a retirement incentive was offered to the Cook Managers in the amount of five thousand dollars. Two individuals accepted the incentive.

Chair Olsen asked what is the total current number of employees. Ms. Mongold advised there is a total of 40 employees of which 13 were identified as eligible for the retirement incentive offer.

Chair Olsen pointed out that under this plan the District would provide services with 27 Cook Managers as opposed to 40 Cook Managers. One of the blind aspects of the plan is the ability to provide the same quality and level of services.

Director Mesiah asked if the District would need to increase its overtime costs as a result of fewer Cafeteria Managers.

Chair Olsen added there are numerous questions regarding the retirement incentive because there is no way of knowing how many individuals will accept the offer. It would be reassuring to know the District planned the offer so as not to result in a significant degradation of services in providing nutrition to children in the schools.

Ms. Mongold continued with her presentation and confirmed the eligibility requirements as follows:

- Individuals must be eligible to retire under the New York State Employee Retirement System (“NYSERS”), and
- An irrevocable resignation letter must be submitted between July 12, 2012 and August 17, 2012.

The District identified 13 eligible members who qualify under the eligibility requirements. The intent of District management is to reduce the number of filled positions and avoid forced layoffs. However, the District did not provide any information as to what is the “right size” of the Cafeteria Managers workforce.

Chair Olsen questioned if the District can function as effectively with fewer, less experienced individuals or whether the incentive was solely a cost-saving measure.

Director Floss asked if the incentive has been agreed to between the Cafeteria Managers and the Board of Education since the BFSAs has not given the approval. Chair Olsen noted that the offer had been extended after the BFSAs transitioned into the Advisory Period. The BFSAs will issue a final report and the District will be required to respond in writing.

The Financial Analysis

Ms. Mongold continued her presentation. She noted that the financial analysis provided was performed by the BFSAs staff as District management did not provide a financial analysis of the incentive.

- The cost per employee that chooses to accept the retirement offer is \$26,350, consisting of the cost of moving the individual into retiree health insurance (\$16,350) and the cost of the retirement incentive itself (\$10,000).
- The savings per employee is approximately \$57,000 which includes the reduction in personnel costs for salary and benefits. The savings is based on an average salary and benefits figure for the group of eligible employees and assumes the position is eliminated.
- The net savings is \$30,958 per retiree.

The break-even point is \$31,000: as every new person is added, their compensation package is higher than \$31,000 resulting in a net loss.

Ms. Penksa asked if an analysis was performed regarding the impact of overtime. Ms. Mongold replied that the analysis performed was based on straight salary and benefit costs without any overtime assumption as it wasn't possible to estimate that impact on overtime.

Chair Olsen added that overtime is another issue, particularly related to the review of uniformed services. The use of overtime rather than increasing employees seems to be a preferred way to address deficits. However, it would be more helpful if a financial breakdown had been provided from the District beforehand; in addition, the assurance that the qualitative aspects of losing and not replacing this number of people should be explored and reported on. Replacing experienced

employees with less experienced individuals could very well result in the diminution of the quality of services.

Ms. Mongold added that there was little information from District management on this incentive. The review of the retirement incentive was therefore approached from a qualitative standpoint. The retirement incentive is a relatively small incentive when compared to the overall Food Service budget, and has funds fully available within its current budget. The issues related to what the right size of the workforce is, as well as the long-term impact on overtime, are outstanding.

Chair Olsen stated that the Board needs to set a template of what material should be remitted to the Board for these types of incentives. The fact that the BFSFA is in an Advisory Period does not mean it is not entitled to be fully informed and reassured that these transactions have been carefully reviewed. It is difficult to review these incentives when a financial breakdown is not submitted by the entity.

Director Floss asked if the average salary reduction of \$36,000 was that of the 13 individuals or the average of the total 40 employees. Ms. Mongold responded that was the average of the 13 eligible retirees.

Director Floss noted that savings from retirement incentives may extend into future years. The reoccurring annual savings in subsequent years should be calculated and discounted into a net present value amount to truly quantify the impact of the incentive.

He asked if there were any further suggestions or additional discussion. Hearing none, he suggested that, as a matter of procedure, the Board vote to submit a formal, detailed report to the District, with a letter detailing the Board's concerns and requesting a written response to the report.

Director Floss asked if it would be appropriate for the sake of clarity to draft a template of items to be remitted to the BFSFA in the future to accompany CBAs and modifications to the CBAs. Chair Olsen concurred with this suggest and directed Ms. Mongold to draft the aforementioned template.

Director Floss offered a motion to issue a report on the Cafeteria Manager Retirement Incentive to the District along with a letter listing the Board's concerns and requesting a written response.

Director Arthur seconded the motion.

Director Doherty requested a follow-up report be issued by the District after a set time period examining the actual impact of the incentive and how it compares with the initial projected impact.

Chair Olsen stated that it was important to establish the required reporting for these items. Future incentives will likely be more complex. He noted that he would be uncomfortable approving this item without knowing what the effects would be on the services that are

statutorily required to be provided, in this case healthy and nutritious meals. BFSA should take both an economic and qualitative approach to reviewing the incentives.

The Board voted 6-0 to approve the motion.

BFSA Business

Chair Olsen advanced the agenda to the next item for consideration: an organizational overview of the BFSA. Ms. Mongold will discuss this item.

Ms. Mongold began by stating that as the Board goes through the annual process of reviewing the policies and procedures of the organization, it is a good opportunity to review organizational items with the Board. She publicly thanked the entire staff for working diligently to meet the deadlines of the Board and also working with the City and Covered Organizations to accomplish tasks in a timely manner.

Chair Olsen seconded Ms. Mongold's gratitude to the staff as it is clear the Board is well prepared concerning the City and the Covered Organizations.

Ms. Mongold continued the discussion by summarizing the duties of each employee as follows:

- **Bryce Link, Principal Analyst** – Mr. Link is the Principal Analyst and oversees the City of Buffalo and the Buffalo Urban Renewal Agency (“BURA”). He serves as the Media Liaison for the BFSA.
- **Nathan Miller, Financial Analyst/Manager of Technology** – Mr. Nathan Miller is the Financial Analyst over the District, in addition to overseeing the Joint Schools Construction Board, which is coming to a close within a year.

Chair Olsen requested final reports on the JSCB's actual performance relative to its stated Women and Minority workforce goals.

- **Robert Miller, Comptroller** - Mr. Robert Miller is the BFSA's Comptroller and is also the analyst over the Buffalo Municipal Housing Authority (the “BMHA”). He is responsible for monitoring the forward delivery agreements, investing debt service set aside amounts retained by BFSA, processing debt service payments and remitting intercepted sales taxes and state aid to the city and District in a timely manner.
- **Carmen Tyler, Executive Administrative Assistant** – Ms. Tyler is responsible for the overall support of BFSA staff. Among her many duties, she is responsible for drafting minutes of meetings.

Chair Olsen noted that the BMHA was often times not responsive to requests made by the BFSA during the Control Period. A message should be sent that BFSA's expectation is to see a more timely and conformed response regarding submittals. The lack of response has been a problem for the BFSA staff and this Board. BFSA is still entitled to receive timely information.

The Committees

Ms. Mongold continued her overview presentation. She noted that there are two standing committees that the Board is required to maintain. These include:

- **The Audit, Finance & Budget Committee -**
Responsibilities include assisting the Directors in fulfilling their responsibilities as to Authority budgets, financial operations and controls, accounting policies, reporting practices and sufficiency of audit procedures. Chair Olsen serves as the Committee Chair. Committee members include Director Floss and Director Mesiah. The meetings are held three to four times per year with additional meetings called by the Chair as necessary.

- **The Governance Committee -**
Responsibilities include keeping the Board informed of current best governance practices, reviewing corporate governance trends, and reviewing and updating the Authority's corporate governance principles. The committee receives all draft BFSA policies and procedures and internal reports, and reviews and recommends approval of final drafts to the full Board. Committee meetings are held two to three times per year depending upon the needs of the organization. Additional meetings are called by the Chair as necessary. Chair Olsen is the Committee Chair. Additional committee members include Secretary Arthur and Director Doherty.

Should the BFSA resume issuing debt, BFSA will be required to bifurcate the Finance Committee from the Audit & Budget Committee.

Additional members participate in both committee meetings at the request of the Chair.

Negotiating Units within the City & the Covered Organizations

Ms. Mongold provided a brief discussion of how many negotiating units are covered under each entity, the estimated number of members for each group, and the date when the CBA expires or has expired.

- **The City of Buffalo**

Ms. Mongold noted that all negotiating units for the City of Buffalo have expired contracts.

Chair Olsen noted that police officers and firefighters are subject to binding arbitration. The most problematic is the Firefighter CBA which expired in 2002.

Ms. Mongold noted the expiration date for the Police Benevolent Association is indicated as June 30, 2010. The contract was in place before the wage freeze was implemented. When the wage freeze was lifted, the terms of the contract continued but the actual document indicates an expiration date of June 30, 2007.

Both the Blue-Collar and the White-Collar unions negotiated contracts with the City after the lifting of the wage freeze (July 1, 2007); these labor contracts have since expired. It's noted the City's exempt employees follow the terms of the White-Collar contract, per the City Charter.

▪ **The District**

The Buffalo Teachers Federation ("BTF") and Buffalo Council of Supervisors and Administrators ("BCSA") have been out of contract since June of 2004.

Chair Olsen noted that, with other municipal contracts, there is an ability to impose terms and conditions. This is not the case with the BTF where they are simply out-of-contract. In addition, nothing new affects them until they negotiate a contract. This is problematic in looking at the financial liability of the District, in light of litigation, steps and back pay. All of these have the ability to further sink the District into massive deficit.

Director Doherty asked if the BTF was engaged in current contract negotiations. Director Floss replied that mediation proceedings would occur on August 2, 2012. Ms. Mongold confirmed that a mediation hearing was scheduled.

Chair Olsen indicated the mediator may only suggest positions and facilitate dialogue without getting too far off task. The problem is with New York State law as it exists, in which the increases in benefits and steps continue to be paid after the contract expires. Salary increases and raises continue after the contract expires. This leaves little incentive for bargaining when in return for increases in salary it is likely that contributions to health benefits and other concessions will be necessary.

Director Mesiah noted that structural issues such as rising salaries (automatic step increases), pension contributions and health insurance costs need to be addressed. He emphasized the limited amount of resources available and stressed that without the cooperation of all parties involved, there will come a point where there is an inability to proceed with any plan. He inquired if the fiscal difficulties faced by the District have been communicated to the Unions, and if they realize that they need to be part of the process in addressing the structural imbalance.

Chair Olsen commented that through arbitration there is a way to establish some reasonable expectations and contributions. Given the lack of an agreement for eight years, it is going to be a difficult challenge. The Financial Plan that was approved was based on substantial cuts in instruction and services, and reducing staff positions.

Director Floss spoke from the perspective of someone who has been involved with negotiating contracts in New York State. Particularly for the teachers and the police unions, a large number of their members are now moving into a position where they have reached the highest attainable step. Not everyone in a bargaining unit is going to receive an annual step increase. If an individual was at the top step during the year 2005, they have not received any increases since then. As more and more of these union members hit this point, it is in their best interest to try to negotiate. He added that he is more optimistic that there will be a resolution to this problem. The wage freeze proved problematic in negotiating CBAs. Individuals have had to find out what the current litigation will accomplish and what the new rules of bargaining are before they can go

back to the table to negotiate. It is extremely difficult to negotiate when you don't know what the rules of the game are going to be. Perhaps there needs to be clearer legislation so that both sides will not have to go to court as often and allow contract negotiations to proceed.

Secretary Arthur asked if the District was currently compliant with its adopted Living Wage Ordinance. Ms. Mongold responded there was a three-year phase-in of the Living Wage Ordinance. The final year of the phase-in has recently occurred. When the District was negotiating with some of the unions regarding the living wage, they found that if they gave the true living wage to the new employees, there would not be a significant enough differential between the new employees and employees who have been employed for five-to-ten years. Therefore, all parties agree to consider the complete compensation package offered when determining compliance with the Living Wage Ordinance.

Director Floss asked for clarification on the current Living Wage Ordinance thresholds. Ms. Mongold responded for that for employees who receive health insurance benefits, the minimum threshold is \$10.71 an hour. The minimum threshold for employees without health insurance is \$12.02 an hour.

Chair Olsen asked if the issue of part-time employees had been resolved. Ms. Mongold stated the hourly employees include Substitute Teachers, Bus Aides, and certain Food Service workers. All employees currently receive a rate of compensation that is deemed compliant with the Living Wage Ordinance.

Director Doherty requested that the new District Superintendent, Dr. Pamela Brown, provide the Board with her top three-to-five action items for the current school year, be they curriculum-related or budgetary. Director Floss concurred.

Chair Olsen asked Ms. Mongold to contact Dr. Brown and extend the invitation to attend the September Board meeting.

▪ **Buffalo Municipal Housing Authority**

The Local 17 Operating Engineers contract which the Board disapproved in December 2010 has not moved forward since that time. Movement is expected to be forthcoming.

Chair Olsen added it would be helpful if the Board received the parameters before adoption. Since there were concerns in 2010, it would be helpful to see how those concerns were addressed.

▪ **Buffalo Urban Renewal Agency**

The Civil Service Employees Association ("CSEA") CBA is current and expires June 30, 2013.

BFSA Guidelines and Policies

Chair Olsen advanced the agenda to the next items for consideration: a recommendation from the Governance Committee to review and approve various BFSA guidelines and policies.

Director Arthur offered a motion to accept the recommendations of the Governance Committee and approve the following items:

- The Code of Ethics,
- The Mission Statement,
- The Investment Guidelines,
- The Property Disposal Guidelines,
- The Procurement Guidelines,
- The Whistleblower Policy,
- The Prompt Payment Policy,
- The Prompt Payment Report, and
- The Procurement Report.

Director Floss seconded the motion.

Chair Olsen asked if there were any questions regarding the above listed policies, procedures and reports. Hearing none, he added that at a prior meeting, BFSFA recognized that securing legal counsel services were not subject to the Procurement Policy. The intent is to hire the most qualified attorney, not necessarily the lowest bidder. He noted that both he and Secretary Arthur would report their respective findings to the full Board for consideration.

Chair Olsen noted that there were no significant changes in the policies, procedures and guidelines presented for approval.

RESOLUTION NO. 12-19
ADOPTING A CODE OF ETHICS

WHEREAS, Chapter 122 of the Laws of 2003, as amended, created the Buffalo Fiscal Stability Authority (“BFSFA”) to provide financial oversight and budgetary control over the City of Buffalo and other Covered Organizations; and

WHEREAS, as a public authority, BFSFA is subject to regulation by the State of New York, whether in the form of State law, the Governor’s Executive Orders or rules and regulations promulgated by the State Comptroller; and

WHEREAS, the Public Authorities Accountability Act of 2005 establishes a wide range of duties and responsibilities for state and local public authorities to promote the highest standards of ethical practices by authority staff and members, and thereby to engender public confidence in their activities; and

WHEREAS, one such requirement is the adoption of a Code of Ethics that, at a minimum, reflects the standards set forth in Sections 73 and 74 of the Public Officers Law; and

WHEREAS, the BFSFA adopted a Code of Ethics by Resolution No. 06-50 at its meeting on August 9, 2006; and

WHEREAS, the BFSA amended and readopted a Code of Ethics by Resolution No. 07-40 at its meeting on September 24, 2007; and

WHEREAS, the BFSA subsequently readopted its Code of Ethics annually by Resolution No. 08-36 in 2008, Resolution No. 09-35 in 2009, Resolution No. 10-39 in 2010, and Resolution No. 11-22 in 2011; and

WHEREAS, a review of BFSA's current Code of Ethics found that minor modifications were required to include current information and to correct minor grammatical and omission errors; and

WHEREAS, the Code of Ethics Appendix A, "Public Officers Law, Section 73, Business or Professional Activities by State Officers and Employees and Party Officers," and Appendix B, "Public Officers Law, Section 74, Code of Ethics," were amended to reflect minor updates to these sections of the Public Officers Law, primarily to recognize the new oversight body known as the New York State Joint Commission on Public Ethics; and

WHEREAS, the Governance Committee of the BFSA has reviewed the attached Code of Ethics and has recommended its adoption by the BFSA Board.

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority does hereby adopt the attached Code of Ethics applicable to the BFSA's Directors appointed by the Governor and to BFSA employees and former employees to ensure the highest level of honesty, ethical conduct and public trust in all of the BFSA's activities.

RESOLUTION NO. 12-20
ADOPTION OF BFSA MISSION STATEMENT

WHEREAS, Chapter 122 of the Laws of 2003, as amended, created the Buffalo Fiscal Stability Authority ("BFSA"); and

WHEREAS, the BFSA, as a New York State public authority, is subject to the provisions of the Public Authorities Accountability Act of 2005, as modified by Chapter 506 of the Laws of 2009 ("Public Authorities Law"); and

WHEREAS, Section 2824-a of Public Authorities Law requires state public authorities to develop and adopt a mission statement; and

WHEREAS, the BFSA's Board of Directors is expected to review, amend as necessary, and approve or reaffirm the Mission Statement of the BFSA annually; and

WHEREAS, the BFSA Board of Directors approved the adoption of the Mission Statement on October 3, 2011; and

WHEREAS, upon reviewing the Mission Statement, BFSA staff determined that minor modifications were necessary to provide for clarity and/or continuity; and

WHEREAS, the Governance Committee of the BFSA has reviewed the amended Mission Statement of the BFSA and has recommended its reaffirmation by the BFSA Board of Directors.

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority does hereby accept the recommendation by the Governance Committee and approves the Mission Statement in its present form.

RESOLUTION NO. 12-21
APPROVING BFSA INVESTMENT GUIDELINES

WHEREAS, Chapter 122 of the Laws of 2003 of the State of New York, as amended, created the Buffalo Fiscal Stability Authority (“BFSA”) to provide financial oversight and budgetary control over the City of Buffalo and the Covered Organizations; and

WHEREAS, Section 2925 of the New York State Public Authorities Law requires public authorities to develop investment guidelines that establish a set of basic procedures to meet investment objectives, assure that investment assets are adequately safeguarded and collateralized, establish and maintain a system of internal controls including adequate accounts and records which reflect investment transactions and provide for accurate reporting and evaluation of investments in conformance with generally accepted accounting principles; and

WHEREAS, Section 3854 of the Buffalo Fiscal Stability Act directs BFSA as to permissible investments of public funds not subject to provisions of contracts with bondholders; and

WHEREAS, in order to further comply with State law, it is necessary for the BFSA to review the adopted Investment Guidelines at least annually; and

WHEREAS, the BFSA adopted investment guidelines by Resolution 04-02 on January 21, 2004; and

WHEREAS, the BFSA has annually readopted investment guidelines as required by law with the most recent having occurred via Resolution 11-23 on July 20, 2011; and

WHEREAS, upon a review of the current Investment Guidelines, the BFSA has determined that no amendments or changes are necessary; and

WHEREAS, the BFSA’s Governance Committee has reviewed and has recommended the approval of the proposed Investment Guidelines.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Buffalo Fiscal Stability Authority hereby approve the Investment Guidelines as attached to this resolution.

RESOLUTION NO. 12-22
APPROVAL OF PROPERTY DISPOSAL GUIDELINES

WHEREAS, Chapter 122 of the Laws of 2003 of New York State, as amended, created the Buffalo Fiscal Stability Authority (“BFSA”) to provide financial oversight and budgetary control over the City of Buffalo and other Covered Organizations; and

WHEREAS, §2895 - 2897 of New York State Public Authorities Law requires public authorities to adopt comprehensive guidelines which detail the authority’s operative policy on the disposal of personal property valued in excess of five thousand dollars; and

WHEREAS, the BFSA has developed and implemented property disposal guidelines to comply with this requirement; and

WHEREAS, the BFSA originally approved the property disposal guidelines by Resolution No. 06-69 on November 9, 2006; and

WHEREAS, the BFSA most recently adopted the Property Disposal Guidelines on July 20, 2011 by Resolution No. 11-25; and

WHEREAS, upon reviewing the Property Disposal Policy, BFSA recommended changes to clarify language in concert with requirements of New York State Public Authorities Law; and

WHEREAS, the BFSA’s Governance Committee has reviewed the draft Property Disposal Policy and has recommended its approval by the Buffalo Fiscal Stability Authority’s Board of Directors.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Buffalo Fiscal Stability Authority does hereby affirm the property disposal guidelines as required by §2895 - 2897 of New York State Public Authorities Law.

BE IT FURTHER RESOLVED, that the Comptroller is affirmed as the “Contracting Officer” who shall be responsible for the disposition of property is hereby affirmed.

RESOLUTION NO. 12-23
APPROVAL OF PROCUREMENT GUIDELINES

WHEREAS, the Buffalo Fiscal Stability Authority (“BFSA”) was formed by Chapter 122 of the Laws of 2003 to provide financial oversight and budgetary control over the City of Buffalo and Covered Organizations; and

WHEREAS, the BFSA requires professional assistance in performing its mission; and

WHEREAS, the BFSA is a public authority of the State of New York and as such is governed by certain State laws that specify the method for the procurement of certain services; and

WHEREAS, in order to comply with State law it is necessary for the BFSA to adopt and review at least annually its Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts (“Procurement Guidelines”); and

WHEREAS, BFSA initially established its Procurement Policies through the adoption of Resolution 03-36, “Approving Procurement Policies For Certain Contracts” on October 7, 2003; and

WHEREAS, BFSA has annually reviewed, amended as needed, and adopted its Procurement Policies to be in compliance with applicable State laws; and

WHEREAS, BFSA most recently adopted Resolution 11-03, “Amending the Approved Procurement Policies” on March 9, 2011; and

WHEREAS, the BFSA’s Governance Committee has reviewed the Procurement Guidelines and recommended its approval by the BFSA Board of Directors.

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority does hereby approve and adopt the Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts as dated August 1, 2012.

RESOLUTION NO. 12-24
REVIEW AND APPROVAL OF WHISTLEBLOWER POLICY

WHEREAS, as a State public authority, the Buffalo Fiscal Stability Authority (“BFSA”) is subject to the provisions and requirements of the Public Authorities Accountability Act of 2005; and

WHEREAS, the Public Authorities Accountability Act of 2005 requires that all public authorities “establish written policies and procedures on personnel including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the authority, investments, travel, the acquisition of real property and the disposition of real and personal property and the procurement of goods and services”; and

WHEREAS, the BFSA has established and adopted a Code of Ethics; and

WHEREAS, the BFSA originally adopted a Whistleblower Policy on January 28, 2008; and

WHEREAS, BFSA reaffirmed the Whistleblower Policy on August 28, 2008, July 29, 2009, July 21, 2010, and July 20, 2011; and

WHEREAS, it is desired to have the BFSA’s Board of Directors review and approve the Whistleblower Policy annually as it represents a significant internal control mechanism; and

WHEREAS, such policy was reviewed by BFSA staff with minor modifications required to update the policy; and

WHEREAS, the BFSA Governance Committee has reviewed the Whistleblower Policy in its present form and recommends its approval by the full Board of Directors.

NOW THEREFORE BE IT RESOLVED, that the BFSA hereby approves the Whistleblower Policy.

RESOLUTION NO. 12-25

READOPTING THE PROMPT PAYMENT POLICY STATEMENT

WHEREAS, Chapter 122 of the Laws of 2003, as amended, created the Buffalo Fiscal Stability Authority (“BFSA”) to provide financial oversight and budgetary control over the City of Buffalo and other Covered Organizations; and

WHEREAS, as a public authority, the BFSA is subject to regulation by the State of New York, either in the form of rules and regulations promulgated by the State Comptroller or legislation approved by the State Legislature and signed into law by the Governor; and

WHEREAS, §2880 of the Public Authorities Law requires public authorities to promulgate rules and regulations detailing its prompt payment policy and to periodically review the same; and

WHEREAS, the BFSA has developed and implemented a Prompt Payment Policy statement to comply with this requirement; and

WHEREAS, the BFSA originally adopted its Prompt Payment Policy statement on September 28, 2006 by resolution 06-61; and

WHEREAS, the BFSA most recently readopted its Prompt Payment Policy statement on July 20, 2011 by Resolution 11-24; and

WHEREAS, no modifications to the Prompt Payment Policy were deemed necessary; and

WHEREAS, the BFSA’s Governance Committee has reviewed the Prompt Payment Policy and recommends its approval by the BFSA.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Buffalo Fiscal Stability Authority does hereby affirm its Prompt Payment Policy statement.

RESOLUTION NO. 12-26

APPROVAL OF THE PROMPT PAYMENT REPORT

WHEREAS, Chapter 122 of the Laws of 2003, as amended, created the Buffalo Fiscal Stability Authority (“BFSA”) to provide financial oversight and budgetary control over the City of Buffalo and other Covered Organizations; and

WHEREAS, as a public authority, the BFSA is subject to regulation by the State of New York, either in the form of rules and regulations promulgated by the State Comptroller or legislation approved by the State Legislature and signed into law by the Governor; and

WHEREAS, §2879(7) of the Public Authorities Law requires public authorities to annually prepare and approve a report on procurement contracts; and

WHEREAS, §2879(2) of the Public Authorities Law defines a procurement contract as a written agreement for the acquisition of goods or services of any kind, in the actual or estimated amount of five thousand dollars or more; and

WHEREAS, §2880 of the Public Authorities Law requires public authorities to promulgate rules and regulations detailing its prompt payment policy and to periodically review said rules and regulations; and

WHEREAS, the BFSA has developed and implemented a Prompt Payment Policy to comply with this requirement; and

WHEREAS, the BFSA originally adopted its Prompt Payment Policy statement on September 28, 2006 by Resolution No. 06-61; and

WHEREAS, the BFSA readopted its Prompt Payment Policy statement on September 24, 2007, August 20, 2008, July 29, 2009, July 21, 2010, and July 20, 2011; and

WHEREAS, the BFSA Board of Directors will be readopting its Prompt Payment Policy at the August 1, 2012 Board meeting; and

WHEREAS, the Prompt Payment Policy as readopted by the BFSA on July 20, 2011 and was in effect during the 2011-12 fiscal year, the period of the Prompt Payment Report; and

WHEREAS, the BFSA Governance Committee has reviewed the Prompt Payment Report in its present form and recommends its approval by the Board of Directors.

NOW THEREFORE BE IT RESOLVED, that the Board of Directors of the Buffalo Fiscal Stability Authority does hereby approve the 2012 Prompt Payment Report.

RESOLUTION NO. 12-27

APPROVAL OF THE ANNUAL PROCUREMENT REPORT

WHEREAS, Chapter 122 of the Laws of 2003, as amended, created the Buffalo Fiscal Stability Authority (“BFSA” or “Authority”) to provide financial oversight and budgetary control over the City of Buffalo and the Covered Organizations; and

WHEREAS, the BFSA is a public authority of the State of New York and as such is governed by certain State laws that specify the method for the procurement of certain services; and

WHEREAS, in order to comply with State law it is necessary for the BFSA to adopt and review at least annually its Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts (“Procurement Policies”); and

WHEREAS, BFSA initially established its Procurement Policies through the adoption of Resolution 03-36, “Approving Procurement Policies For Certain Contracts”, on October 7, 2003; and

WHEREAS, BFSA most recently adopted Resolution 11-03, “Amending the Approved Procurement Policies”, on March 9, 2011; and

WHEREAS, the Procurement Policies define a Procurement Contract as “any written agreement of the Authority for the acquisition of goods or services of any kind in the actual or estimated amount of \$25,000, or more”; and

WHEREAS, the provision set forth in Section §2879(2) of New York State Public Authorities Law has set a threshold amount of \$5,000.00 for contracts used in the acquisition of goods and/or services; and

WHEREAS, the adopted Procurement Policies require that the BFSA “shall annually prepare for approval by the Directors and public availability a report on Procurement Contracts as of the end of each fiscal year summarizing procurement activity by the Authority for the period of the report, including a listing of all contracts entered into, the selection process used to select such contractors and the status of existing Procurement Contracts”; and

WHEREAS, the BFSA staff have prepared a report titled “Report on Procurement Contracts for the Fiscal Year Ended June 30, 2012” in accordance with the aforementioned policies and State laws; and

WHEREAS, the BFSA’s Governance Committee has reviewed the Report of Procurement Contracts for the Fiscal Year Ended June 30, 2012 and recommends its approval by the Board of Directors.

NOW THEREFORE BE IT RESOLVED, that the Buffalo Fiscal Stability Authority does hereby approve the Report of Procurement Contracts for the Fiscal Year Ended June 30, 2012.

The Board voted 6-0 to approve Resolutions 12-19 through 12-27.

Recess

Secretary Arthur noted that the full Board meeting had been called to order without formally reconvening the Governance Committee which had met immediately preceding the full Board meeting. He recommended that the full Board meeting be recessed so that the Governance Committee could adjourn properly.

Secretary Arthur offered the motion to recess from the Board meeting for the purposes of allowing the Governance Committee to reconvene into public session to properly adjourn.

Chair Olsen seconded the motion.

The Board voted 6-0 to recess to allow the Governance Committee to reconvene.

The Board recessed at 2:18 PM

[The Governance Committee properly reconvened and adjourned this meeting.]

Return from Recess

Chair Olsen asked for a motion for the Board to reconvene.

Secretary Arthur offered a motion for the Board to return from its recess.

Director Floss seconded this motion.

The Board voted 6-0 to return from recess.

The Board returned from recess at 2:19 PM.

Litigation Update

Chair Olsen advanced the agenda to the next item of business: an update on pending litigation. Director Floss inquired if the Board should enter into Executive Session to discuss the litigation update. Chair Olsen deferred the question to litigation counsel, Mr. A. Vince Buzard of Harris Beach, PLLC.

Mr. Buzard recommended that the update on litigation occur in Executive Session.

Secretary Arthur offered a motion to recess the full Board meeting for the sole purpose of entering into Executive Session to receive an update on pending litigation.

Chair Olsen seconded the motion.

The Board voted 6-0 to enter into Executive Session to review the litigation update.

The Board exited the public session at 2:20 PM.

BUFFALO FISCAL STABILITY AUTHORITY
Executive Session Meeting Minutes
August 1, 2012

The following are the minutes from the Executive Session of the Buffalo Fiscal Stability Authority (the "BFSA") held on Wednesday, August 1, 2012, in the Buffalo Market Arcade Complex. The meeting was called to order at 2:22 PM.

Board Members Present: Arthur, Brown (proxy), Doherty, Floss, Messiah, Olsen

Board Members Excused: Jurasek, Poloncarz

Board Members Absent: Giardino

Staff Present: Link & Mongold

Additionally Present: A. V. Buzard, Esq., Harris Beach, PLLC

Pursuant to New York State Public Officers Law, Article 7, §105(d), the Board entered into an Executive Session for the purposes of reviewing an update on pending litigation involving the BFSA.

Chair Olsen called the Executive Session to order. He asked Secretary Arthur to call a roll of the Directors. Finding a quorum present, the Executive Session commenced.

Review of Litigation

Mr. A. Vincent Buzard, Litigation Counselor from Harris Beach, PLLC, provided an update on pending litigation involving the BFSA.

Adjournment

Chair Olsen asked for a motion to adjourn the Executive Session and reenter the public portion of the Board meeting.

Director Arthur offered a motion to adjourn from the Executive Session and reenter into the public portion of the Board meeting.

Director Messiah seconded the motion.

The Board voted 6-0 to adjourn from the Executive Session and reenter into the public portion of the Board meeting.

The Board exited the Executive Session at 2:45 PM

Return from Executive Session

Chair Olsen requested a motion to reconvene the full Board to public session at 2:46 PM.

Director Floss offered the motion to reconvene to public session.

Director Arthur seconded the motion to reconvene to public session.

The Board voted 6-0 to reconvene to public session.

Privilege of the Floor

Chair Olsen called the meeting to back to order. He noted that the Board had been in Executive Session to receive an update on litigation.

Chair Olsen asked if there was any additional new business for discussion. Hearing none, he extended the Privilege of the Floor to any member of the attending audience who wished to address the Board for the public record. Hearing none, he asked for a motion to adjourn.

Adjournment

Director Floss offered a motion to adjourn the meeting.

Director Mesiah seconded the motion.

The Board voted 6-0 to adjourn.

The meeting adjourned at 2:48 PM.