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July 19, 2004

The Honorable Anthony M. Masiello
Mayor, City of Buffalo
City Hall
Buffalo, NY 14202

The Honorable
Buffalo Common Council
City Hall
Buffalo, NY 14202

RE: FUTURE DEVELOPMENT: BUFFALO'S OUTER HARBOR

Dear Mayor Masiello & Honorable Members:

As you know, one principal effort of my time in public service has been to seek tangible improvement to Buffalo's Outer Harbor waterfront lands. Under control and stewardship of the NFTA for nearly 50 years, and in the wake of generations of missed opportunities for development, these lands have remained fallow and wasted. New efforts to redevelop the land, most particularly including the partnerships that have developed between my office and NFTA over the past several years, have shown great promise. Also promising are the recent efforts to attract national developers to offer proposals to develop the land and move our Outer Harbor to a new stage in its existence, one of the vibrancy and promise that this land most assuredly holds.

What I propose is a method by which these efforts may be expedited, for the greater good of the city and the region alike. In short, I am asking that once the property redevelopment is complete, NFTA shall relinquish its possession and abandon any economic claim to ownership, possession or control of the current 120 acres of Outer Harbor land, allowing such land to be returned to the city's tax rolls once it is redeveloped.¹

As you know, despite moderate use of the facilities on the Outer Harbor, the undeveloped land itself has little real value. Owing to the NFTA's status as a public authority, it is also the case that no property tax revenue is paid to the city,

¹ Allowing, however, for NFTA recovery of funds expended on the authority's part for redevelopment efforts.

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for general fund or school purposes, nor to Erie County. Because of our efforts at Gallagher Beach and at other sites along the Outer Harbor, funded environmental remediation plans have been set in place that have removed or will soon remove obstacles to the land's redevelopment.

It should be noted that over the past several years, NFTA has been an effective partner with my office, and with our work with city, federal, state and county officials to facilitate certain development efforts on the Outer Harbor, most notably at Gallagher Beach. Their efforts demonstrate NFTA's ability to work cooperatively to manage by objective and to manage designed and funded rehabilitation projects to completion. They have assisted in doing so with Gallagher Beach, and have earned an opportunity to do so again.

I know well of claims suggesting that true ownership and title to the Outer Harbor lands is in the city's, and not NFTA's, hands, and that any transfer of title to the state by NFTA is inappropriate. Notwithstanding such claims, I believe that a compromise proposal that effectively accomplishes what we have for so long sought – tangible development on the Outer Harbor – is something that all parties involved should take into close consideration. Accordingly, I suggest the following:

- NFTA efforts to redevelop 120 acres of Outer Harbor lands, consistent within Requests for Qualifications (RFQs) issued earlier this year, continue to be pursued, but with specific goals, objectives and timeframes established within a Memorandum of Understanding (MOU). City leaders will support the redevelopment plan with the understanding that NFTA will act as lead agency and facilitator of the redevelopment effort, while in the end, the city and county will be principal financial beneficiaries when the land is made taxable.
- A clear agreement is reached and policy statement is made between the city and the NFTA within the MOU that the eventual goal of the development process is NFTA relinquishment of all claims to Outer Harbor for the purposes of returning the lands to the city's tax rolls, to the extent that such land excludes such portions of land that will remain public property and will, thus remain tax-exempt.²
- As indicated above, the portion of the land not set aside as recreational public property would eventually return to the city's tax rolls, thereby

² This revenue would be recurring in nature, and would go beyond what any "one-shot" infusion of funding the city might possibly receive from the state or the NFTA (in return for a city-sponsored land claim) would inevitably yield.

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providing a new source of tax revenue to the city. NFTA agrees to relinquish all control and possession of these lands without consideration or remuneration of any kind, and does so as a matter of effective public policy.

- The city would drop its current \$4 million claim against the NFTA concerning ownership and title of the 80 acres of waterfront land slated to become Buffalo's Outer Harbor State Park.
- In consideration of the foregoing, the NFTA agree to drop current claims against the city concerning the DL&W Terminal, as well as claims against the city involving certain Metro rail stations and for city dumping on NFTA-controlled Outer Harbor lands, with such claims as a sign of the mutual goodwill established between the entities as a result of these efforts.³

I hasten to add strong justification for the city's abandonment of any proposed land claim against NFTA concerning the authority's legal right to transfer the 80-acre parcel of land to the New York State Department of Parks in anticipation of the opening of the Outer Harbor State Park later this year. The \$5 million payment from State Parks to NFTA represents a purchase amount that seeks to make NFTA whole for its anticipated losses in revenue associated with its operation of the marina and restaurant operations on the site. The city makes a claim that it maintains reversionary rights to the property. Many have argued, however, that due to NFTA's continued history of redirecting revenue earned at the Outer Harbor to mass transit services, city residents, who some argue utilize NFTA's mass transit system to a greater degree, have benefited from revenue earned at the Outer Harbor already.

Regardless of whether you ascribe any validity to the above argument, any effort on the city's part to extract a financial price in return for this land would inevitably impact the new state park itself; on this very day, state parks workers are installing new improvements to this land, which later this summer will result in the historic opening of a new state park along Buffalo's waterfront. We ought to strive to ensure that every dollar earmarked for site improvements and enhancement of the public's access to the water's edge remains at the Outer Harbor site. I believe that this proposal, with particular emphasis on putting more than 120 acres of prime waterfront property back onto the city's tax rolls, has the potential to bring far greater dividends to the city in the years to come.

³ These current claims against the city total approximately \$1 million.

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To illustrate that point, I have requested both from the city as well as the county's real property tax officers information concerning the amount of assessed valuation of commercial and residential property in the area known as "Waterfront Village," in an effort to, as closely as possible, create an "apples to apples" comparison of what a redeveloped Outer Harbor area may mean to the city and county in terms of future real property tax revenue. According to the city's Commissioner of Assessment and Taxation, 2.67 acres within Waterfront Village is commercial, and 21.95 acres is residential, respectively yielding the city approximately \$394,000 and \$1.2 million per year. Speaking only to the point of residential land, were the NFTA to redevelop this 120 acres of Outer Harbor land for residential use, and a conservative estimate of roughly 35 percent of that area, or just more than 40 acres, were redeveloped for residential purposes, if land value comparable to that of Waterfront Village were established at that location, the city could see new real property tax revenue of nearly \$2.5 million annually, while simultaneously energizing the Outer Harbor waterfront area with new residents, commercial mixed use and entertainment development along the water's edge. A copy of Commissioner Michaux's property tax analysis is attached.

In closing, let me reiterate my sincere appreciation to the Mayor, the Common Council, and to the NFTA for its respective assistance with Outer Harbor projects thus far. Beginning with the city's half-million dollar investment in Gallagher Beach Phase 1 and continuing on with NFTA's assistance with my office in the project management of these efforts, both the city and NFTA have been strong and important partners in our common quest to breathe new life into our waterfront. I hope that this proposal is one that your respective administrations may look upon favorably, and I am eager to discuss with both of you its substance in greater detail.

Very truly yours,



BRIAN M. HIGGINS
Member of Assembly
145th District

- c: All members, Buffalo Common Council
All members, NFTA Board of Commissioners
Lawrence Meckler, Esq., Executive Director, NFTA