

STANDING COMMITTEE PROTOCOL
(Pursuant To Host Community Relicensing Settlement Agreement
Addressing Non-License Terms and Conditions Dated June 27, 2005)
(Approved 5/28/08 Host Community Standing Committee Meeting)
(Amended 6/25/08 Host Community Standing Committee Meeting)

The Host Community Relicensing Settlement Agreement Addressing Non-License Terms and Conditions dated June 27, 2005 ("HCRSA") provides for organization of the Host Community Greenway Fund Standing Committee ("HC Committee") to administer and oversee projects financed by the Greenway Recreation/Tourism Fund. (Section 7 of the HCRSA is attached hereto as Appendix A.) The HC Committee has sole responsibility for selecting projects to be financed in whole or in part by the Greenway Recreation/Tourism Fund pursuant to the HCRSA.

Host Communities Vehicle for Participation and Inter-Community Relations

The Power Authority and the Host Communities, in a manner approved by the Host Communities and in accordance with the by-laws of the Niagara Power Coalition ("NPC") or a successor agreement, if applicable, governing such establishment, shall establish the Greenway Recreation/Tourism Fund. It is understood, however, that the Power Authority has had no role in development of the NPC by-laws.

Standing Committee Membership

Each Host Community shall have one vote and designate a member to serve on the HC Committee and an alternate to serve in case the principal member cannot attend a particular meeting or is unable to fulfill his or her duties. The Power Authority shall similarly have one vote and designate a member and an alternate. To the extent practicable and consistent with the laws and rules governing each Host Community and the

Power Authority, each principal and alternate member shall be authorized to act on behalf of his or her respective entity.

Meetings

The HC Committee shall convene quarterly and more frequently as necessary. A quorum for all meetings shall be no fewer than six (6) members. Members shall be notified of all meetings either by adoption of a regular schedule of meetings or, unless otherwise agreed, by ten (10) days notice¹ of individual meetings. Notwithstanding the preceding sentence, the Chairperson or two (2) other members may call a special meeting of the HC Committee on not less than two (2) days written notice to all members. Meetings shall be open to the public. The Power Authority will undertake to include notice of meetings on the Niagara relicensing website (<http://niagara.nypa.gov/>) or successor website; but failure to include such notice shall not be grounds for invalidation of a meeting or action taken at such meeting if other notice has been provided. Minutes of meetings will be recorded and the Power Authority will post such minutes to the website. If a member or an alternate is unable to attend a meeting in person, the member or alternate can participate in the HC Committee meeting, including the Standing Committee's deliberations, by telephone or other real-time method.

Committee Procedures

The HC Committee shall work in a cooperative manner and shall make a concerted effort to achieve consensus in all decisions. For matters other than (a) determining the

¹ Except where preceded by business, all references in this document to "days" shall be understood as signifying calendar days.

consistency with the Niagara River Greenway Plan (“Greenway Plan”) of proposed projects with the criteria set forth in the HCRSA, (b) identifying projects to receive funding and determining the appropriate level of funding pursuant to “Further Selection and Funding” below, and (c) amendment of this Protocol below, if the members cannot in good faith achieve consensus on their first attempt to decide on a particular matter, the decision at issue shall be made by majority vote of all members, not simply a majority of those present. In the event of a tie vote on any matter, such tie shall be deemed a negative result.

Consistency Determination

To be eligible for funding, a project must meet the consistency criteria described in the HCRSA. In the event that the HC Committee should fail to reach consensus on whether a project meets such consistency criteria at two meetings separated by a period of not less than thirty (30) days, the project may still be eligible for selection and funding, as described later in this section, under the following circumstances. At the second of the two aforementioned meetings of the HC Committee, the members who do not believe that a project is consistent shall then, if they have not already done so, articulate their reasons orally or in writing. (Every effort should be made to provide the reasons at least one (1) week prior to the second meeting.) Proponents of the project at issue shall have a like opportunity to respond to such statement of reasons. Following such statements and responses, each member of the HC Committee shall state such member’s position on the issue of consistency of the proposed project. If “consensus” is still not achieved, then and in such event, the following procedures shall apply:

The HC Committee shall vote and if a minimum of five (5) members of the HC Committee shall determine that a project is consistent with the Greenway Plan, then the

proposed project shall be deemed consistent with the Greenway Plan and shall be eligible for selection and funding.

Criteria for Project Approval

The criteria for projects set forth in Section 7.3 of the HCRSA (included in Appendix A) shall be the bases for project approval by the HC Committee.

Further Selection and Funding

From the projects that have been determined to be consistent, as described in the preceding sections on “Committee Procedures,” “Consistency Determination” and “Criteria for Project Approval,” the Host Community sponsor(s) of each project shall be solely responsible for: (a) identifying projects that will receive funding; and (b) determining the appropriate level of funding for each selected project.

Chairperson, Vice Chairperson and Secretary

At the first meeting and annually thereafter, the members shall select a Chairperson and Vice Chairperson from among the membership. The Chairperson shall conduct the meeting and serve as a spokesperson for the HC Committee. In the absence of the Chairperson, the Vice Chairperson shall substitute for the Chairperson. The Power Authority representative may not hold the office of either Chairperson or Vice Chairperson. In the event that a proposed project under consideration is sponsored by the entity represented by the Chairperson, the Vice Chairperson shall fulfill the Chairperson’s obligations with respect to such consideration. A Secretary shall also be selected to keep minutes and to maintain the HC Committee’s records.

Sponsorship and Funding of Proposed Projects

Host Communities may sponsor their own proposed projects consistent with Section 7 of the HCRSA and the NPC by-laws referenced therein or a successor agreement, if applicable, governing such matters. Two or more Host Communities may propose joint projects, pooling their respective portions of the Greenway Recreation/Tourism Fund.

Entities other than Host Communities may offer projects to the HC Committee provided that such projects are consistent with the geographical requirements of Section 7 of the HCRSA. Such entities shall do so by seeking the sponsorship of the Host Community within whose geographical boundaries the proposed project would be located. No such project shall be entertained in the absence of such sponsorship and, subject to the conditions stated below in this paragraph, no such project shall be approved over the objection of the Host Community within whose geographical boundaries the proposed project would be located; provided, however, that, if a particular Host Community's objection is to the contribution of funds otherwise available to such Host Community, such project may be approved by decision of the remaining HC Committee members if it is determined other funds would be used for such project. The County of Niagara's authority to object pursuant to this paragraph shall not apply where the proposed project is located within the geographical boundaries of any of the other six (6) Host Communities, provided that the project is "consistent," as described in this Protocol, does not require uses of its funds and complies with all applicable local, State and Federal laws, rules and regulations, and the authority of any of the other six (6) Host Communities to object shall not apply to a County-sponsored project located within such other Host Community's individual geographical boundaries, provided that the project is "consistent," as described in this

Protocol, and does not require use of its funds and complies with all applicable local, State and Federal laws, rules and regulations.

Nothing contained in this Protocol shall be construed as authorizing any diminution in the percentage funding allocations established in the by-laws of the NPC.

Consultation

The project proponent shall submit written evidence of consultation with the Niagara River Greenway Commission (but only if such Commission is still active in accordance with the purpose for which it was created), chief elected official, or designated representative, of any affected municipal, county, tribal entity and appropriate State and Federal agencies (individually, “Consulting Party”; collectively, “Consulting Parties”).

In such consultation, the project proponent shall have provided a description of the project, how it is consistent with the Greenway Plan, and maps or drawings showing all phases. The consultation period shall end and consultation shall be considered complete ninety (90) days after initiated whether or not a response is received and whether or not the Consulting Party agrees the project is consistent.

If the project proponent receives comments from Consulting Parties, the project proponent shall indicate how such comments were addressed. (In “addressing” comments, the project proponent should demonstrate that it has an understanding of the comments and should indicate whether the proponent agrees or disagrees with those comments and why. It is not required that the proponent agree with the Consulting Parties; but, if the proponent has changed its proposal to accommodate comments, such changes should be noted.)

Implementation of Projects (Disbursement of Funds and Monitoring)

On or before the payment dates specified in the HC Settlement Agreement, the Power Authority shall deposit \$3 million into the Greenway Recreation/Tourism Fund, as established by resolution of the HC Committee and approved by the Host Communities. The Greenway Recreation/Tourism Fund amounts shall be deposited in a manner consistent with the "Banking Arrangements and Procedures" section below and the amounts shall remain on deposit until decisions are made as to their use pursuant to this Protocol and funds are released as provided below.

Banking Arrangements and Procedures

Banking arrangements for the Greenway Recreation/Tourism Fund are as follows:

A master account consisting of a "Clearing Account" and seven (7) individual "Fund Accounts," one for each of the seven (7) Host Communities, shall be established in a commercial bank (the "Bank") within Niagara County. Both types of accounts shall be interest-bearing accounts.

A Finance Committee, consisting of three (3) HC Committee members' representatives, shall oversee the Clearing Account and the Fund Accounts.

Each Host Community shall deposit into the Clearing Account its specified share of administrative expenses of the HC Committee, determined pursuant to the percentage allocations stated in the NPC by-laws or a successor agreement, if applicable, to be used toward such administrative expenses. Issuance of checks for administrative expenses of the HC Committee shall require the signature of the Chairperson (who shall not be a member of the Finance Committee) and one member of the Finance Committee.

The Power Authority shall make its deposits of \$3 million per year into the Clearing Account.

As soon as practicable after receipt of the Power Authority deposit, the Bank shall, unless otherwise directed by all eight (8) members of the HC Committee, transfer the funds from the Clearing Account to the Fund Accounts of each of the Host Communities, pursuant to the percentage allocations stated in the NPC by-laws or a successor agreement, if applicable. To the extent that the Bank requires any authorization to make such transfers, any member of the Finance Committee is authorized to direct such transfers.

Each of the seven (7) Host Community members of the HC Committee shall be an authorized signatory for its individual Fund Account.

Funds not used in one year by a Host Community shall remain in that Host Community's Fund Account and be available to future projects of that Host Community. Use of funds for on-going costs, such as debt service, that have previously been approved as part of project costs, shall not require separate approval before each release. Administrative costs of the HC Committee not otherwise recovered as part of project costs described below shall be paid by the seven (7) Host Communities in accordance with the percentages established in the NPC by-laws or a successor agreement, if applicable, governing such matters as among the Host Communities. Such administrative costs may be paid from the interest accumulated on the funds on deposit and, if such funds are not adequate to cover such costs, from the principal on deposit.

Release of Funds

Issuance of a check for a particular project shall require the signature of the Host Community sponsor of the project from its individual Host Community Fund Account.

Funds shall be released for approved projects from the relevant Fund Account(s) of the Host Community sponsor(s) within thirty (30) days of approval, selection and funding. It is anticipated that, for most projects, a single check will be issued each year for each project. The sponsor shall be responsible for ensuring that all necessary documentation (*e.g.*, individual invoices) is retained for later reporting and auditing. No check will be issued in support of a project in a successive year until an annual report from the project sponsor, containing the information required by Section 7.5 of the HCRSA, is provided to the HC Committee.

Qualifying project costs shall consist of costs consistent with the limitations of Section 7.3 of the HCRSA, including but not limited to:

1. Costs associated with planning and development of approved projects.
2. Personnel costs directly associated with planning, development and implementation of approved projects.
3. Costs associated with approved construction and/or rehabilitation of the projects.
4. Operation and maintenance costs, including but not limited to project-related and HC Committee administrative costs, on a case-by-case basis for approved projects.

Reporting

During construction of any project and longer if so required by the HC Committee, the project sponsor shall provide the HC Committee with a quarterly report detailing the status of the project, including its operations and a summary of all fund expenditures. Thereafter, such report shall be made annually. The HC Committee, at the expense of the

project and consistent with Section 7.4 of the HCRSA, shall monitor and audit the construction process to ensure proper use of the Greenway Recreation/Tourism Fund.

General Audit

A program and financial audit of the Standing Committee shall occur every three years. The audit shall be conducted by an independent auditor agreed upon by all members of the Standing Committee or, in the event that the Office of the New York State Comptroller ("OSC") elects or consents to perform an audit, by the OSC.

Reimbursement

The project sponsor shall be responsible for reimbursing the Greenway Recreation/Tourism Fund for any improper use of funds on a project or otherwise as determined by a program or financial audit. Such sponsor shall forfeit access to the Greenway Recreation/Tourism Fund until reimbursement is complete.

Relationship to Other Procedures

Nothing contained herein and no statement or writing heretofore made, or action heretofore taken or not taken, by or on behalf of any or all of the Host Communities shall be construed as agreement by the Host Communities to or acceptance by the Host Communities of the current "Niagara Power Project Relicensing Settlement, Greenway Funds Standing Committee Protocol," developed and agreed to by any standing committees other than this HC Committee, or any future version thereof.

Amendment of Protocol

General

Except as described below, in the event that one or more members propose to amend this Protocol, the members shall work in a cooperative manner and shall make a

concerted effort to achieve consensus as to such amendment. In the event that the members are unable to achieve consensus as to an amendment, the amendment may be adopted by an affirmative vote of five (5) members.

No amendment to any section of this protocol can be made if such amendment would be contrary to the HCRSA.

Consistency Determination/Further Selection and Funding

Any amendment to the “Consistency Determination” or “Further Selection and Funding” provisions above shall require the members to make a concerted effort to achieve consensus as to such amendment and, if the members are unable to achieve consensus, then an affirmative vote of six (6) members shall be required to amend either of these two provisions.