

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

MEMBERS' MEETING

One World Financial Center – 24<sup>th</sup> Floor

New York, NY 10281

October 23, 2007

Members Present

James F. Gill, Chairman

Charles Urstadt, Vice Chairman

David B. Cornstein, Member

Frank J. Branchini, Member

Robert J. Mueller, Member

Evelyn Rollins, Member

Andy Shenoy, Member (by telephone)

Authority Staff in Attendance: James Cavanaugh, President and Chief Executive Officer

Daniel Baldwin, Senior Development Counsel

Sidney Druckman, Director, Special Projects

Annette Guarino, Deputy General Counsel

Antigona Hajdaraj, Special Assistant to the President

Steven E. Harper, Vice President, Safety & Site  
Management

Robert Holden, Vice President, Human Resources &  
Administration

Carl Jaffee, Senior Development Counsel and Corporate  
Secretary

Wilson Kimball, Senior Vice President, Operations

Susan Long, Vice President, Strategic Planning

Leticia Remauro, Vice President, Community Relations,  
Affirmative Action and Press

Robert M. Serpico, Senior Vice President, Finance and  
Treasurer/Chief Financial Officer

Roy Villafane, Director, Internal Audit

Antony Woo, Vice President, Construction

Others in Attendance:

Tessa Huxley, Executive Director, Battery Park City  
Parks Conservancy Corporation

Harvey Sobel, Buck Consultants, LLC

Steven Faber, PFM Asset Management

The meeting, called on public notice in accordance with the New York State Open Meetings Law, convened at 2:37 p.m.

The first item on the agenda was approval of the minutes of the September 11, 2007 meeting.

Upon a motion made by Mr. Urstadt and seconded by Mr. Cornstein, the following resolution was unanimously adopted:

### **APPROVAL OF MINUTES OF THE SEPTEMBER 11, 2007 MEETING**

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BE IT RESOLVED, that the minutes of the meeting of the Members of the Hugh L. Carey Battery Park City Authority held on September 11, 2007 are hereby approved.

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The next item on the agenda, presented by Mr. Serpico, was a request for approval of the budget for the Fiscal Year ending October 31st, 2008 ("FY08"). Mr. Serpico began by setting forth the financial highlights of the 2007 fiscal year ("FY07"). He noted first that revenues will exceed budget projections by approximately \$4.7 million, primarily because Brookfield Properties made payments to the Authority of approximately \$6.6 million pursuant to the ground leases for World Financial Center Towers B and D as required by a favorable arbitration decision pertaining to certain lease provisions. These payments were offset to some extent by decreased receipts of commercial office PILOT payments primarily due to a one percent decrease in the tax rate set by the City Council, Mr. Serpico stated.

Revenues from "swap" transactions were approximately \$718,000 greater than the amount budgeted due to unexpected increases in the monthly bench mark rate called "LIBOR," Mr. Serpico continued, stating that this amount is expected to be lower in FY08. Interest Earnings on bond accounts, reserves and the Special Fund are projected to exceed the budget projection by approximately \$621,000. Total debt service funded on outstanding bonds for FY07 was \$67 million, he added, and will be the same for FY08. This funding requirement will increase for Fiscal Years to come beginning in 2009, he explained.

Operating expenses, Mr. Serpico continued, were expected to be approximately \$1.5 million less than the \$29.6 million budgeted. Capital expenses were projected to be \$57.6 million, but only approximately \$17 million is expected to be spent, he reported, because several major projects included in the capital expenses budget are being carried forward to FY08's budget.

In response to an inquiry from Mr. Mueller concerning the Public Affairs budget, Ms. Druckman explained that this budget encompasses the design and printing of the annual report, videos, brochures, maps, a book about the "green" features of the Solaire residential building, and the Hudson River Festival. Mr. Cavanaugh stated that in the future the Authority will take care not to over-budget for such expenses, and will instead seek Members' approval if unbudgeted funds are needed.

With regard to Sites 23 and 24, for which approximately \$58.5 million in "upfront" lease payments will be made, Mr. Serpico explained that the closing of the ground lease transactions Cavanaugh explained that because the \$58.5 million is ultimately payable to The City of New York,, the closing date for Site 23/24 really only affects the City of New York, which has not expressed a preference as to this matter.

For FY08, Mr. Serpico reported, the proposed budget total for General Administration and Operating Expenses is the lowest in five years. Because of the decrease in projected PILOT receipts, however, and despite scheduled rent increases, budgeted revenues are also projected to be lower in FY08 than in FY07. In addition, Mr Serpico reported on the total estimated excess revenues for FY 07 of approximately \$ 124 million and a budgeted expectation for FY 2008 of \$157.7 million.

In response to inquiry by Mr. Cornstein, Ms. Kimball and Mr. Cavanaugh explained variances in departmental budgeting, due to personnel re-organizations and the abolition of the position of Chief Operating Officer.

Mr. Cavanaugh then addressed the informational item on the agenda, dealing with the provision of a 2.75% cost-of-living salary increase for Authority employees in FY08. The Authority generally grants an increase equal to that negotiated by the Civil Service Employees Association, he said, but because that union's negotiations have not yet been concluded, Management had settled upon the 2.75% number, which is an average of the increase granted for the last three CSEA contract years. When the CSEA ultimately reaches a contract, he further explained, an adjustment to that figure can be made for Fiscal Year 2009. In response to a question from Mr. Urstadt, Mr. Serpico explained that the Authority also grants merit-based raises available to employees at a maximum of 3% of salary. Mr. Cavanaugh clarified that raises are based on individual annual evaluations and usually average 2% or less.

Mr. Urstadt suggested that an appropriate committee should address the subject of merit-based raises, and Mr. Cornstein stated that he believed that this matter should be a responsibility of the Governance Committee. Mr. Gill suggested that a recommendation be made at the next Members' meeting, and Mr. Cavanaugh concurred with that suggestion.

On a motion by Mr. Cornstein and seconded by Mr. Mueller, the following resolution Was unanimously approved:

#### **APPROVAL OF AUTHORITY BUDGET FOR FISCAL YEAR 2008**

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BE IT RESOLVED, that the budget of the Authority for the fiscal year ending October 31, 2008, substantially in the form presented to this meeting be, and hereby is, approved and ordered filed with the records of the Authority; and be it further

RESOLVED, that the President or Treasurer of the Authority be, and each of them hereby is, directed to file said budget with all parties as required pursuant to all outstanding bond resolutions, agreements and requirements of law.

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The next item on the agenda, also presented by Mr. Serpico, was adoption of a plan for compliance with Government Accounting Standard Board ("GASB") 45. He explained that GASB 45 requires that an employer recognize an annual 'Other Post Employment Benefits'

(“OPEB”) cost determined based on an actuarial valuation of the value of future OPEB Plan. In the case of the Authority, Mr. Serpico said, these costs are for health care benefits for current and future retirees, adding that Management retained Buck Consultants, an actuarial consultant in this field, to calculate the valuations which are designed to meet these requirements.

Mr. Serpico recommended that the Authority set aside assets in a segregated, board-approved account designated by the Members. The Authority’s financial statements as of October 31, 2007 would show a net OPEB Obligation of \$13.8 million and would have an asset of an equivalent amount in this Fund, reported. He further recommended using the Authority’s corporate reserves to fund the liability, by recording a one time charge to operations for fiscal year ending October 31, 2008 along with a corresponding liability for the calculated annual required contribution amount at that date. The Authority would then, Mr. Serpico added, fund only the smaller, calculated annual required contribution in future years and that amount together with the interest earnings would keep the asset balance grow commensurate with the increasing liability

Mr. Serpico explained that this plan will not have an effect on the Authority’s Bond Agreements. In response to an inquiry by Ms. Rollins, Mr. Serpico explained that if the money were placed in a trust, it would be protected from creditors but in a segregated account, it is subject to general creditors, but that this is not considered a major problem for the Authority because of its financial condition. In addition, it does not preclude the Members from establishing a trust at a later date.

Upon a motion by Mr. Urstadt and seconded by Ms. Rollins, the following resolution Was unanimously approved:

#### **ADOPTION OF PLAN OF COMPLIANCE WITH GASB 45**

RESOLVED, that the Hugh L. Carey Battery Park City Authority adopt the plan of compliance with GASB 45 as at October 31, 2007 in the form presented to this meeting; and be it further

RESOLVED, that any and all actions taken by any officer of the Authority in connection with the plan of compliance in the form presented at this meeting are hereby ratified, confirmed and approved.

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The next item on the agenda, presented by Mr. Woo, was a request for authorization of a contract with Tully Construction Co. Inc. in the amount of \$450,000 for modification of the Rector Street Pedestrian Bridge.

Mr. Woo reminded the Members that the Rector Street Pedestrian Bridge is located above West Street (Route 9A) between Albany and Rector Streets, and was commissioned by the State Department of Transportation (“DOT”) immediately following the events of September 11, 2001, to be the first renewed pedestrian link between Lower Manhattan and Battery Park City. As a result of the current reconstruction and realignment of Route 9A by DOT, Mr. Woo

continued, demolition of a portion of the foundation at the east end of the bridge will be required. This will result in the removal of the entire south passageway, or “tube” of the superstructure of the bridge. The Authority has agreed with DOT to perform certain modification work to the north tube and west stairs, he added, to ensure the continuous usage of the bridge for pedestrian traffic.

Mr. Woo reported that this work was publicly advertised and names of firms were solicited from the Affirmative Action Department. Following pre-proposal meetings, proposals were received from Tully Construction Co. Inc. and E. Daskal Corp. and pre-award meetings were held with the two proposes. Representatives of the Authority’s Construction Department and the Authority’s construction manager (Tectonic Engineering) determined that both firms had a complete understanding of the project; however, after the New York City Art Commission made revisions to the original scope of work, revised proposals were requested. Mr. Woo then recommended Tully Construction Co. Inc. for the work, as being the lowest responsible bidder, as well as a firm which has worked on several Authority projects in the past

Upon a motion made by Mr. Urstadt and seconded by Mr. Branchini, the following resolution was unanimously approved:

**AUTHORIZATION OF CONTRACT WITH TULLY CONSTRUCTION CO. INC. FOR RECTOR STREET BRIDGE WORK**

BE IT RESOLVED, that in accordance with the materials submitted to this meeting, the President of the Authority or his designee(s) be, each of them hereby is, authorized and empowered to execute a contract (the “Contract”) with Tully Construction Co. Inc. for the Rector Street Pedestrian Bridge Modification work for the amount of \$450,000; and be it further

RESOLVED, that the President of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to execute and deliver the Contract on behalf of the Authority, subject to such changes as the officer or officers executing the Contract shall, with the advice of counsel, approve as necessary and appropriate and in the best interest of the Authority, such approval to be conclusive evidence by the execution and delivery of the Contract; and be it further

RESOLVED, that the President of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents, and to take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing resolutions, and any such execution of documents and any other and further actions heretofore taken are hereby ratified and any actions hereafter taken are confirmed and approved.

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The next item on the agenda, also presented by Mr. Woo, was a request for authorization of a contract with D’Onofrio General Contractors Corp. in the amount of \$7,673,000 for Phase I of the Esplanade Pile Repair and Protection project. Mr. Woo reminded the Members that

Battery Park City is situated on man-made land, constructed in the 1970's by dredging organic river soils and filling in a portion of the Hudson River with hydraulic sand fill. This fill is laterally retained with a combination of a crushed quarry stone dike, granular filter materials, timber sheeting bulkhead and a relieving platform.

In 1997, Mr. Woo continued, the vertical timber sheeting located at the back edge of the perimeter platform and designed to act as a soil retainage system was found to be undergoing marine borer infestation and was repaired. In subsequent years, he continued, various portions of the concrete structure were inspected and repaired and it has been determined that work on the piles and seawall skirting is needed to prevent the future possibility of corrosion or degradation. Mr. Woo reminded the Members that in 2004, they approved a contract with the McLaren Engineering Group, which conducted an intensive underwater diving inspection and prepared engineering and construction documents for the repair of the seawall skirt and the concrete piles that support the esplanade. This item, he continued, addresses Phase I of the repair work, in an area where the most significant amount of deterioration has been observed.

Mr. Woo reported that this work was publicly advertised and names of firms were solicited from the Affirmative Action Department. Mr. Woo further stated that following pre-proposal meetings, proposals were received from four firms and pre-award meetings were with the three lowest, most responsive proposes. Representatives of the Authority's Construction Department and the Authority's Construction Manager (McLaren Engineering Group) determined that all three firms had a complete understanding of the project. Mr. Woo recommended that contract be awarded to D'Onofrio General Contractors Corp., as the lowest proposer for this project.

Mr. Cornstein suggested that the possibility of federal funding for this project be investigated. Mr. Cavanaugh state that he believed that it was unlikely that any such funding would be available, but that this matter would be looked into.

Upon a motion made by Mr. Cornstein and seconded by Mr. Branchini, the following resolution was unanimously approved:

**AUTHORIZATION OF CONTRACT WITH D'ONOFRIO GENERAL CONTRACTORS CORP. FOR PILE REPAIR AND PROTECTION WORK**

BE IT RESOLVED, that the President of the Authority or his designee(s) be, each of them hereby is, authorized and empowered to execute a contract (the "Contract") with D'Onofrio General Contractors Corp. for Phase I of the Esplanade Pile Repair and Protection Project for the amount of \$7,673,000; and be it further

RESOLVED, that the President of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to execute and deliver the Contract on behalf of the Authority, subject to such changes as the officer or officers executing the Contract shall, with the advice of counsel, approve as necessary and appropriate and in the best interest of the Authority, such approval to be conclusive evidence by the execution and delivery of the Contract; and be it further

RESOLVED, that the President of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents, and to take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing resolutions, and any such execution of documents and any other and further actions heretofore taken are hereby ratified and any actions hereafter taken are confirmed and

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The final item on the agenda, presented by Mr. Baldwin, was authorization of an Agreement and Consent with the City of New York to authorize an expenditure of up to \$40 Million of Funding for the Port Authority of New York and New Jersey (“PANYNJ”) relative to Route 9A underpass construction. Mr. Baldwin reminded the Members that on July 31, 2006, at the request of then-Governor Pataki’s office, the Members approved the use of up to \$40 million for certain additional elements, called “Scope Extensions,” of the underpass to be constructed under West Street/Route 9A connecting the World Financial Center with the World Trade Center site. The Resolution adopted by the Members on that date (the “2006 Resolution”), he continued, authorized the use of funds held by the Authority pursuant to Section 7.A(ii) of the Settlement Agreement between the Authority and the City dated June 6, 1980, as amended to date.

Since adoption of the 2006 Resolution, he continued, representatives of the Governor, the Mayor, the City Comptroller and PANYNJ have conferred about the funding of the Scope Extensions, and have requested the Authority to enter into an agreement with the City providing up to \$40 million of funding for the PANYNJ to construct the Scope Extensions, as modified.

There have been two developments since the Resolution was adopted, Mr. Baldwin stated. First, the source of the \$40 million is no longer to be the funds dealt with under Section 7.A(ii) of the Settlement Agreement, but rather the “Special Fund” established by an agreement with the City made in 2003, in connection with a refunding of the Authority’s bonds, which removed a \$46 million reserve fund from the Authority’s financing instruments and created a free-standing “Special Fund” in that amount, to be spent, as necessary, for debt service on Authority bonds or as jointly determined by the Authority, the Mayor and the City Comptroller. The Scope Extensions to the Route 9A underpass would be the first use of proceeds in the Special Fund, he added.

The second development is that one of the Scope Extensions has been modified since adoption of the 2006 Resolution, Mr. Baldwin continued, to provide for relocation of the PATH vent shafts to a point within the World Trade Center rather than in the pavilion at the western terminus of the underpass. This change eliminates a large visual obstruction to the World Financial Center without impinging on Battery Park City.

Upon a motion made by Mr. Cornstein and seconded by Mr. Urstadt, the following resolution was unanimously approved:

**AUTHORIZATION OF ROUTE 9A UNDERPASS AGREEMENT AND CONSENT  
WITH THE CITY OF NEW YORK**

BE IT RESOLVED, that in accordance with the materials presented to this meeting, the President of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to enter into an agreement (“the Agreement”) with the City of New York, acting through its Mayor and Comptroller, providing for the Authority to pay up to \$40 million to the Port Authority of New York and New Jersey from proceeds in the Authority’s Special Fund, to be used for certain additional work in connection with construction of an underpass connecting the World Financial Center to the World Trade Center site (described in such materials as the “Scope Extensions”), it being determined that the Special Fund is not necessary to pay debt service obligations of the Authority; and be it further

RESOLVED, that the President of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to execute and deliver the Agreement on behalf of the Authority, subject to such changes as the officer or officers executing the Agreement shall, with the advice of counsel, approve as necessary and appropriate and in the best interest of the Authority, such approval to be conclusively evidenced by the execution and delivery of the Agreement; and be it further

RESOLVED, that the President of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents and to take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing resolutions, and any such execution of documents and any other and further actions heretofore taken are hereby ratified and any actions hereafter taken are confirmed and approved.

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Mr. Gill then reminded the meeting that the Authority may soon become responsible for developing Pier A, to the south of Wagner Park; and that negotiations were proceeding with New York City entities regarding construction of a new school in the southern portion of Battery Park City, which school is intended to be the first “green” school in the City. Pursuant to a motion made by Mr. Branchini and seconded by Mr. Mueller, the Members then unanimously voted to conduct an executive session to discuss the disposition of certain real property of the Authority, following a recess during which a meeting of the Battery Park City Authority as the sole member of the Battery Park City Parks Conservancy Corporation and a meeting of the Directors of the Battery Park City Parks Conservancy Corporation would be held.

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Following the recess, the meeting reconvened in executive session. No votes or actions were taken as a result of this meeting. Upon the conclusion of the executive session, the regular meeting resumed, and there being no further business, the meeting thereupon adjourned at 4:35 p.m.

Respectfully submitted,

Carl D. Jaffee  
Corporate Secretary