

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

MEMBERS' MEETING

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

New York, NY 10281

March 20, 2007

Members Present

James F. Gill, Chairman

Charles Urstadt, Vice Chairman

David B. Cornstein, Member

Frank J. Branchini, Member

Evelyn Rollins, Member

Andy Shenoy, Member

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

Alexandra Altman, Executive Vice President and General Counsel

Daniel Baldwin, Senior Development Counsel

Debra Bogosian, Controller, Finance

Sidney Druckman, Director, Special Projects

Michael Fragin, Vice President, Strategic Planning

Annette Guarino, Deputy General Counsel

Antigona Hajdaraj, Executive 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

Susan Kaplan, Assistant Director, Construction

Peter McCourt, Assistant Director, Planning & Design

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

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

Antony Woo, Vice President, Construction

Lisa Miller, Vice President, Internal Audit and Compliance

Wilson Kimball, Senior Vice President, Operations

Others in Attendance:

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

Vince McGowan, Battery Park City Parks Conservancy

Brian Krapf, George Arzt Communications Corporation

Jessica Daniels, Mitchell & Titus, LLP

Neil Williams, Mitchell & Titus, LLP

Robert Christophel, CIRS  
Robert Fox, CIRS  
Richard Koski, Buck Consultants  
Raymond Miller, CIRS  
Dmitry Basis, Mercer Human Resources Consulting  
David Rosenblum, Mercer Human Resources Consulting  
Morris Snow, Mercer Human Resources Consulting

The meeting, called on public notice in accordance with the New York State Open Meetings Law, convened at 10:15 a.m.

The first item on the agenda was approval of the minutes of the February 20, 2007 meeting.

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

**APPROVAL OF MINUTES OF THE FEBRUARY 20, 2007 MEETING**

BE IT RESOLVED, that the minutes of the meeting of the Members of the Hugh L. Carey Battery Park City Authority held on February 20, 2007 are hereby approved.

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The next item on the agenda, presented by Mr. Serpico, was the authorization to contract with KPMG, LLP for public accountant services. Mr. Serpico explained that the firm of KPMG, LLP has been the Authority's public accountant for the past four years. Management believes this firm's services over the past four years have been excellent and cost effective, he said.. However, in the interest of prudent management controls, other firms are periodically solicited to compete for the contract for accounting services. Accordingly, an advertisement was placed in the New York State Contract Reporter in October, 2006 requesting firms to submit proposals for this work.

A management selection committee was formed to interview the responding firms and evaluate the proposals, Mr. Serpico said. This committee included the Chief Financial Officer, Controller, Accounting Manager, Vice President of Internal Audit and Compliance and Director of Internal Audit. At a meeting of the Authority's Audit Committee, management was directed to interview the three firms proposing the lowest cost of services.

The selection committee then evaluated these firms, based on predetermined criteria, and presented the results to the Audit Committee. Based on a recommendation from the selection committee, the Audit Committee, at a meeting on March 9, 2007, voted to recommend to the Members the hiring of KPMG. Mr. Serpico noted that under the Public Authorities Accountability Act, the lead partner on the engagement could serve on the Authority's account for only one more year, but management believes that KPMG would continue its past level of service under a different engagement partner.

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

**AUTHORIZATION OF CONTRACT FOR ACCOUNTING SERVICES WITH KPMG, LLP**

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 KPMG, LLP to provide audit services for a three-year period beginning with a review of the Authority's semi-annual financial statements for the six month period ended April 30, 2007 and ending with the fiscal year ending October 31, 2009, for the total amount of \$503,630; 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. Cornstein then noted for the record that he had participated in a recent Investment Committee meeting and commended both the Authority staff and its outside consultant for its management of the Authority's investment assets.

The next item on the agenda, presented by Mr. Cavanaugh, was the approval of the designation of a Contracting Officer. The Public Authorities Reform Act of 2005 created Sections 2896 and 2897 of the Public Authorities Law which require the Authority to establish guidelines for the disposition of Authority property, he said, and to designate a Contracting Officer to supervise such disposition. He noted that the functions of Wilson Kimball, the Authority's Senior Vice President, Operations and Internal Control Officer, are closely related to property disposition, and recommended that she be appointed to the new position as well.

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

## **DESIGNATION OF CONTRACTING OFFICER**

BE IT RESOLVED, that pursuant to the Public Authorities Reform Act 2005, Wilson Kimball is hereby designated as Contracting Officer of the Authority.

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Ms. Kimball then presented the next item on the agenda, the adoption of the Guidelines for the Disposition of Real and Personal Property for which she would be responsible to administer as Contracting Officer.

Management recommends, she said, that any personal property to be disposed of be turned over to the State Office of General Services for this purpose. OGS has the personnel and procedures in place to deal with this function and can handle property disposition much more effectively and expeditiously than the Authority would be able to do. Disposition of real property would be in accordance with the proposed guidelines, which are based on the new law requiring their adoption. Reporting requirements in the proposed guidelines are also based on the statutory language, she said.

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

## **APPROVAL OF GUIDELINES FOR THE DISPOSITION OF REAL AND PERSONAL PROPERTY**

BE IT RESOLVED, that the Guidelines for the Disposition of Real and Personal Property Owned by the Authority (the "Guidelines") as presented to this meeting, be, and hereby are approved; and be it further

RESOLVED, that the Contracting Officer shall file the Guidelines, as well as the name of the Authority's designated Contracting Officer, on before the thirty-first of March, 2007 with the New York State Comptroller; and be it further

RESOLVED, that the Guidelines be posted on the Authority's Internet website; and be it further

RESOLVED; that the Secretary of the Authority be, and hereby is, directed to file the Guidelines with the minutes of this meeting.

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The next item on the agenda, presented by Ms. Miller, was the approval of modifications to Conflict of Interest, Ethics, and Whistle Blower policies. Ms. Miller reported to the Members that the Governor has issued Executive Order No. 1, entitled "Establishment of Ethical Conduct Guidelines," which expands upon certain ethical rules which are already binding upon Authority employees with respect to the acceptance of gifts, use of State property for personal purposes, and nepotism in hiring and contracting.

In addition to this change to the ethics provisions of the Employee Handbook, Management proposes a minor change to the Authority's Whistleblower policy, Ms. Miller said. The Governance Committee has suggested that it would be more appropriate to permit a whistleblower to report to the Governance Committee rather than to the Audit Committee with respect to matters not concerning accounting practices, financial internal controls or auditing.

Mr. Urstadt asked if the proposed changes apply to the Battery Park City Parks Conservancy employees as well. Ms. Miller reported that as a matter of law, such employees are not covered by the Executive Order but as a matter of practice, the Authority and the Conservancy are acting as if they are in fact covered, and the employees have already received training relating to these matters. Mr. Cavanaugh also stated that the Conservancy Directors would be asked at their next meeting to establish governance and audit committees, consistent with those committees now functioning at the Authority./

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

**RATIFICATION AND ADOPTION OF CONFLICTS OF INTEREST AND ETHICAL STANDARDS POLICY AND AMENDMENT OF WHISTLEBLOWER POLICY**

BE IT RESOLVED, that the Conflicts of Interest and Ethical Standards Policy, in the form presented to this meeting be, and hereby is ratified and adopted, and shall be set forth in the Authority's Employee Handbook as an addition to the current Guidelines Regarding Conflicts of Interest and Ethical Standards; and be it further

RESOLVED, that the Whistleblower Policy, in the form presented to this meeting, be and hereby is amended, ratified and adopted, and shall be set forth in the Authority's Employee Handbook.

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The next item on the agenda was the approval of funding for the Parks Conservancy to join the Cultural Institutions Retirement System ("CIRS"), subject to the approval of the Directors of the Conservancy, at a meeting to follow this Members' meeting, to join CIRS.

Mr. Cavanaugh noted that the question of the Conservancy joining CIRS had been raised at a meeting of the Conservancy Directors on February 7, 2007, and that the Directors determined to defer action until presentation of a report prepared in consultation with Mercer Human Resources Consulting. The report, which had been distributed to all Directors, noted a significant discrepancy between the retirement benefits accorded to Conservancy and Authority employees, respectively, and concluded that the joining of CIRS by the Conservancy offers the best and most financially sound option to roughly equalize such benefits. The report also found that CIRS has the necessary financial capability to operate a retirement plan for the Conservancy.

Mr. Cavanaugh explained that the proposed action by the Members would allow the withdrawal of approximately \$2.1 million from the Conservancy's operating reserve account, which withdrawal must be approved by the Authority, in order to finance the purchase of credit

for past services for Conservancy employees, after offsetting an appropriate amount contributed to date by the Conservancy to the current “403-b” retirement plan of such employees.

Mr. Fragin explained the cost benefit analysis contained in the Mercer report and the additional costs which would be involved in having the Conservancy employees become employees of the Authority and join the New York State Employees Retirement System rather than CIRS.

Ms. Rollins asked whether the enhanced retirement benefits to be enjoyed by Conservancy employees under CIRS could be withdrawn by other Members in the future, and Ms. Altman stated that this possibility could be obviated by making adoption of the benefits a contract between the Conservancy and its employees.

Mr. Cornstein inquired about replenishment of the reserve fund, and Mr. Serpico replied that this matter would be presented to the Members on an annual basis. Mr. Branchini asked about discrepancies between Authority and Conservancy employee retirement benefits, and Mr. Cavanaugh explained that these discrepancies would be minor, especially for employees who had served for longer periods of time. Mr. Urstadt asked about the consequences if the Conservancy employees no longer were employees of that entity and Mr. Fox responded that CIRS would work with the Authority to take appropriate actions in that event.

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

**AUTHORIZATION OF FUNDING FOR THE PARKS CONSERVANCY TO JOIN THE CULTURAL INSTITUTIONS RETIREMENT SYSTEM**

BE IT RESOLVED, that the Battery Parks City Parks Conservancy (“Conservancy”) is authorized to withdraw funds from its operating reserve account, held by the Authority, in an amount sufficient to enable the Conservancy to join the Cultural Institutions Retirement System (“CIRS”) and solely for such purpose, and to make the required payment to CIRS for the Conservancy’s current fiscal year, and to purchase credit for past service of current Conservancy employees as described in the materials presented to this meeting; and be it further

RESOLVED, that the Senior Vice President-Finance of the Authority be, and hereby is, authorized and directed to take such actions and to execute such documents and agreements as may in his judgment be necessary to effectuate such actions.

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Ms. Guarino then addressed the next item on the agenda, authorization of an amendment to the legal retainer agreement with Wasserman Grubin & Rogers, LLP for commercial litigation work. She reminded the Members that this item had been presented for consideration at the February meeting of the Members, at which time Mr. Gill recused himself from voting because his law firm, Bryan Cave LLP, represents an entity opposing the Authority in an arbitration proceeding in which Wasserman Grubin represents the Authority. His recusal resulted in an

insufficient number of Members voting on the matter for any action to be taken. Mr. Gill then asked Mr. Urstadt to preside over the meeting while this matter was being considered.

Ms. Guarino reported that the Wasserman firm is currently handling two matters for the Authority, a routine construction indemnity claim with a subcontractor and an arbitration of a lease dispute concerning the Conservancy's leased space at the Cove Club Condominium. To compensate the firm for its continued work through the completion of the arbitration proceeding and post hearing period, an amendment to its retainer agreement is required, increasing the amount payable thereunder to an amount which requires Members' approval under the Authority's Procurement Guidelines. She further stated that the firm bills its time at the Authority's standard "blended rate" of \$400 per hour, which is approximately 20% below the actual rates billed by the attorneys on similar matters for non-government clients.

Upon a motion made by Mr. Shenoy and seconded by Mr. Cornstein, the following resolution was approved by all Members except Mr. Gill, who abstained from voting:

**AUTHORIZATION TO AMEND CONTRACT WITH WASSERMAN GRUBIN & ROGERS, LLP**

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 execute an amendment (the "Amendment") to the Authority's contract with Wasserman, Grubin & Rogers, LLP for legal services, increasing the amount payable thereunder to the amount of \$425,000; 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 Amendment on behalf of the Authority subject to such changes as the officer or officers executing the Amendment 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 Amendment; 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, presented by Mr. Woo, was the authorization of a contract with Hellman Electric Co. for upland utility improvements for a new Port Authority Ferry Terminal. Mr. Woo explained that on November 29, 2004 the Authority and the Port Authority of New York and New Jersey ("PA") entered into a License Agreement to allow the PA to construct and operate a permanent ferry terminal at Battery Park City. Under this agreement, certain physical

improvements on Authority property are to be performed by the Authority and the cost of the work is to be reimbursed to the Authority by the PA. Most of such work has been completed by the Authority and payment has been received from the PA, he said. However, the installation of electrical cable was omitted from the original scope of work, and this work must now be performed.

Mr. Woo explained the bidding process which had been conducted in accordance with the Authority's Procurement Guidelines and stated that Management recommends the award of this contract to Hellman Electric Co. The Authority has been advised by staff of the PA that at the next meeting of its directors, in April, approval will be requested for reimbursement to the Authority of the total amount of \$822,200 for this work, which amount includes \$57,630 for construction management services.

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

**AUTHORIZATION OF CONTRACT WITH HELLMAN ELECTRIC CO. FOR UPLAND ELECTRICAL UTILITIES WORK**

BE IT RESOLVED, that in accordance with the materials submitted at 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 Hellman Electric Co., to perform the Port Authority Ferry Terminal Upland Electrical Utilities Work in the amount of \$764,570; 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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Mr. Harper then requested an authorization of an amendment to a contract with Derive Technologies, LLC for additional work in the establishment of an emergency command center in the Authority's community facility in the Regatta Condominium. He reported that in January of this year, the Authority entered into an agreement with Derive to install the required infrastructure, hardware and equipment to establish a centralized audio/video emergency



command center. The center would be utilized as a base from which to coordinate Authority functions in the event of an emergency.

Staff has now determined that the original scope of work did not clarify the need for carpentry work to mount various items of equipment or the creation of additional low voltage/high voltage electrical feeds to power this equipment, Mr. Harper said. The additional cost of this work brings the total contract amount above the \$250,000 amount which necessitates Members' approval.

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

**AUTHORIZATION TO AMEND CONTRACT WITH DERIVE TECHNOLOGIES, LLC  
TO PROVIDE A EMERGENCY COMMAND CENTER**

BE IT RESOLVED, that the president of the Authority or his designee(s) be and each of them hereby is, authorized and empowered to execute an amendment (the "Amendment") to the contract with Derive Technologies LLC for installation of an emergency command center in the Regatta Condominium, increasing the amount payable thereunder by \$56,750; and be it further

RESOLVED, that the President of the Authority or his designee(s) be, each of them hereby is, authorized and empowered to execute and deliver the Amendment on behalf of the Authority, subject to such changes as the officer or officers executing the Amendment 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 Amendment; 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 final item on the agenda was the authorization of an amendment to the Authority's contract with One Source Inc. for office cleaning services. Mr. Holden noted that the office lease for the Authority's 24<sup>th</sup> floor space at One World Financial Center requires the use of a specified cleaning service. The original contract for such service, entered into in 1998, was for the annual amount of \$24,959.44, and has since been amended periodically. The Authority and One Source have now agreed to a three year extension of the cleaning contract, at an annual cost to the Authority of \$32,000, he said. The total added payments of \$96,000 require the approval of the Members, pursuant to the Authority's Procurement Guidelines.

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

**AUTHORIZATION OF AMENDMENT TO CLEANING SERVICES CONTRACT  
WITH ONE SOURCE INC.**

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 execute an amendment (the "Amendment") to the Authority's contract with One Source, Inc for office cleaning services, extending the term thereof for a period of three years at an annual cost of \$32,000; 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 Amendment on behalf of the Authority subject to such changes as the officer or officers executing the Amendment shall, with the advice of counsel, and 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 Amendment; 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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There being no further business, the meeting thereupon adjourned at 11:15 a.m.

Respectfully submitted,

Carl D. Jaffee  
Corporate Secretary