

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

Meeting of the Members
One World Financial Center, 24th Floor
New York, NY 10281
June 15, 2010

Members Present

William C. Thompson, Jr., Chairman
Frank J. Branchini, Member
David B. Cornstein, Member
Robert J. Mueller, Member
Andy K. Shenoy, Member
Fernando A. Mateo, Member

Authority Staff in Attendance: James E. Cavanaugh, President and Chief Executive Officer
Alexandra Altman, Executive Vice President and General Counsel
Gwen Dawson, Director of Strategic Planning
Daniel Baldwin, Senior Development Counsel
Lauren Brugess, Administrative Assistant
Megan Churnetski, Assistant General Counsel and Assistant
Corporate Secretary
Sidney Druckman, Director, Special Projects
Stephanie Gelb, Vice President, Planning & Design
Antigona Hajdaraj, Special Assistant to the President
Steven E. Harper, Vice President, Safety & Site Management
Robert Holden, Vice President, Human Resources &
Administration
Gayle M. Horwitz, Chief Operating Officer
Carl D. Jaffee, Senior Development Counsel and Corporate
Secretary
Susan Kaplan, Director, Sustainability
Wilson Kimball, Senior Vice President, Operations
Karl Koenig, Controller
Jeffrey P. Laner, Associate General Counsel
Lisa Miller, Vice President, Internal Audit and Compliance
Stan Molinski, Director, Information Technology
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

Others in Attendance: Tessa Huxley, Executive Director, Battery Park City Parks
Conservancy
Vince McGowan, Assistant Executive Director, Battery Park City
Parks Conservancy
Matthew Fenton, Battery Park City Broadsheet

Julie Shapiro, Downtown Express
Brian Krapf, George Arzt Communications, Inc.
Julia Plekhanova, Trivision Group, Inc.
Abdul M. Qureshi, Trivision Group, Inc.

The meeting, called on public notice in accordance with the New York State Open Meetings Law, convened at 10:00 a.m.

Mr. Thompson first introduced the Authority's newest Member, Fernando Mateo and noted that he looks forward to working with Mr. Mateo. Mr. Mateo stated that it is a pleasure and an honor to be a Member.

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The first item on the agenda was the approval of the minutes of the May 11, 2010 meeting.

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

APPROVAL OF MINUTES OF THE MAY 11, 2010 MEETING

BE IT RESOLVED, that the minutes of the meeting of the Members of the Hugh L. Carey Battery Park City Authority held on May 11, 2010 are hereby approved.

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The next item on the agenda, presented by Mr. Thompson, was a request to re-establish the position of Chief Operating Officer and to approve the appointment of Gayle M. Horwitz to that position. Mr. Thompson explained that he has worked with Ms. Horwitz since 1996. She has extensive experience in the public sector, most recently serving as First Deputy Comptroller in the New York City Comptroller's office, and previously as Special Assistant to the President of the New York City Board of Education.

Mr. Cornstein noted that he finds Ms. Horwitz to be extremely competent and someone who will add a great deal of value to the Authority.

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

AMENDMENT OF BYLAWS TO RE-ESTABLISH POSITION OF CHIEF OPERATING OFFICER AND APPROVAL OF APPOINTMENT TO SUCH POSITION

Be it resolved, that Article II, Section 1 of the Bylaws, entitled "Officers," be amended by the inclusion of the position of Chief Operating Officer between those of "a President and Chief Executive Officer" and "an Executive Vice President and General Counsel": and be it further

RESOLVED, that a new Section 5 of such Article II be added to the bylaws, as follows:

“Section 5. Chief Operating Officer. The Chief Operating Officer, under the direction of the President, shall perform all the duties incident to his/her position and office and such other duties as shall from time to time be assigned to him/her by the President. The Chief Operating Officer is authorized to requisition monies of the Authority, and to sign vouchers, requisitions and other instruments made by the Authority. Notwithstanding anything to the contrary in these bylaws, in the event of the absence or disability of the President and the Chairman, or of a vacancy in the offices of the President and the Chairman, the Chief Operating Officer shall perform all the duties of the President and, when so acting, shall have all the powers of, and be subject to all the restrictions upon, the President. The performance of any such duty by the Chief Operating Officer shall be conclusive evidence of the power to act.”; and be it further

RESOLVED, that the previous Sections 5 through 13 of said Article II be re-numbered as Sections 6 through 14, respectively; and be it further

RESOLVED, that the appointment of Gayle M. Horwitz as Chief Operating Officer of the Authority be, and hereby is, approved.

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Mr. Cavanaugh then extended his congratulations to Ms. Horwitz and stated that everyone at the Authority looks forward to working with her.

The next item on the agenda, presented by Mr. Serpico, was a request to authorize an amendment to the contract with CB Richard Ellis (“CBRE”) for real estate consultant services, increasing the work to be performed thereunder and increasing the total contract amount to \$555,000.

In October of 2008, he said, the Members authorized a contract with CBRE for that firm to serve as real estate consultant with respect to the pending re-financing of a portion of the Authority’s outstanding debt. CBRE projected the revenues from ground rent and PILOT payments that secure the Authority’s debt obligations, which involved market analyses and forecasting and meetings with New York City Department of Finance officials, he explained.

The scope of work under the contract was previously amended to include an analysis of a rent re-structuring proposal from a group of Battery Park City condominiums as well as to estimate the value of the sale of the rental revenues the Authority receives from the office buildings within Battery Park City. The amount of the contract was increased by \$25,000 for these purposes.

The Authority has now asked CBRE to analyze the impact of future revenue from base rents under the leases with these condominiums under alternative counter-proposals which will be presented for discussion. The proposed amount of the increase for this additional work is \$55,000, bringing the total contract amount to \$555,000.

Mr. Serpico then advised the Members that depending on the progress of the negotiations with the initial group of condominiums and the likely request from other residential and/or commercial buildings for similar rent reductions, further work by CBRE and commensurate additional payments to the firm may be required.

Mr. Thompson suggested that the Members hold an executive session to discuss the rent re-set proposals.

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

AUTHORIZATION TO AMEND CONTRACT WITH CB RICHARD ELLIS, INC.

BE IT RESOLVED, that in accordance with the materials presented to this meeting, the President of the Authority or his designee(s) be, each of them hereby is, authorized and empowered to execute an amendment to the contract with CB Richard Ellis, Inc. for real estate consultant services, increasing the work to be performed thereunder and increasing the total amount payable thereunder to \$555,000; 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 conclusive evidence 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 on the agenda, presented by Mr. Laner, was a request to authorize an amendment of the contract with Wilson, Elser, Moskowitz, Edelman & Dicker, LLP ("WEMED") for tort defense legal services, extending the term until March 31, 2011 and increasing the contract amount by \$250,000, bringing the total amount to \$800,000.

In July 2007, Mr. Laner explained, the Board approved a three-year contract with WEMED to represent the Authority in matters of tort defense, particularly personal injury, for an amount not to exceed \$500,000.

Mr. Laner reminded the Members that the Authority's tort defense program was complicated in 2004 when the Authority became a part of the ongoing litigation instituted by workers hired by various contractors of the Authority's ground lessees for clean-up work in the aftermath of the September 11, 2001 terrorist attack. There are currently about 600 such claims against the Authority, he said. After protracted litigation in both State and Federal courts,

WEMED was able to secure a dismissal of nearly all claims on the basis of late notice. However, this prompted the State legislature to enact a bill which effectively overturned these rulings and permitted plaintiffs to re-file their claims, he continued. The Authority has been attempting to tender the defense of such cases to its tenants and is the process of recouping related expenses it has incurred.

In response to an inquiry by Mr. Thompson, Ms. Altman explained that after several years, and largely through WEMED's efforts, the Authority has tendered the defense of cases relating to the World Financial Center to Brookfield Properties, which is obligated to defend these claims and pay them if settled or lost. Similar efforts were performed with regard to Merrill Lynch, she said, which had two buildings in the World Financial Center and hundreds of claims. Merrill Lynch has not yet reimbursed the Authority for these legal costs, but has agreed in writing to do so. The Authority has had less success in tendering cases to the City of New York, she said; those claims relate to PS/IS 89 and Stuyvesant High School. WEMED is currently working on this issue, she stated. Substantial time is involved in defending claims of this magnitude which are of "unparalleled and unprecedented complexity," she continued. Therefore, the legal bills have been higher than expected since about 2004 or 2005. However, the Authority expects to recover a good portion of it.

In response to Mr. Thompson's inquiry, Mr. Laner stated that the City of New York has approximately 12,000 cases against it relating to the 9/11 attack. Ms. Altman then explained that the Corporation Counsel's Office has agreed to meet with the Authority to discuss the Authority's issues with regard to these claims.

Upon a motion made by Ms. Rollins and seconded by Mr. Branchini, the following resolutions were unanimously adopted:

AUTHORIZATION OF AMENDMENT TO CONTRACT WITH WILSON, ELSER, MOSKOWITZ, EDELEMAN & DICKER, LLP

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 an amendment (the "Amendment") to the contract with Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, for legal services, extending the term thereof and increasing the amount payable thereunder by an amount not to exceed \$250,000; 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 on the agenda, presented by Mr. Cavanaugh, was a request to authorize the execution of an agreement providing for the payment of \$632,000 to the Alliance for Downtown New York, Inc. for calendar year 2010 for the promotion and improvement of the lower Manhattan business district and in furtherance of its long-term economic viability, and for the continuing representation of the Authority on the Board of Directors and the Executive Committee of the Alliance for that period.

Mr. Cavanaugh explained that the Downtown-Lower Manhattan Business Improvement District ("BID") has been managed by the Alliance for Downtown New York, Inc. (the "Downtown Alliance") for the purpose of improving Lower Manhattan to benefit businesses, residents and visitors. Though Battery Park City does not fall within the BID's footprint, its residents, visitors and the employees who work in the area share a lot of services they provide such as the River to River Festival. However, he continued, the foremost service that they provide is the Downtown Connection a free bus service in Lower Manhattan with seven buses servicing riders at 37 stops along the east and west sides of the District

The Downtown Connection is so popular that the BID expanded the route to connect the east and west sides of Manhattan, Mr. Cavanaugh stated. The expansion service, due to its route along Warren and Murray Streets, has proven to be enormously successful. When the bus service was expanded, it occurred in the midst of the Authority's fiscal year, so Management agreed to fund approximately \$100,000 of it, only a portion of one year's increase. There was an understanding that in subsequent years the Authority would fund a full year's increase. In view of the importance of these services to Lower Manhattan, including Battery Park City, Management proposes that the Authority contribute an additional \$100,000 above its contribution for 2009, Mr. Cavanaugh concluded.

In response to inquiry by Mr. Thompson, Mr. Cavanaugh explained that this funding has typically been called a contribution, when in reality, the Authority received definable services in return for the payment. This year, the Authority will execute an agreement with the Downtown Alliance specifying the consideration for its contribution.

Mr. Mateo inquired whether the Authority's commercial tenants have been approached and asked to contribute funds for these services. Mr. Cavanaugh stated that the commercial tenants likely feel that because they pay rent to Authority, the Authority is essentially making the contribution on their behalf. Mr. Thompson stated that is worth a conversation to see if the commercial tenants are willing to help reduce the Authority's costs for this service.

Mr. Cornstein stated that this is a very sizeable contribution in a tough economic environment at a time when such increases are rare. Mr. Cavanaugh clarified that the Authority had committed in advance to fund half of the costs of the extended bus service and is therefore fulfilling this commitment.

Mr. Thompson requested the Members be provided with copies of the agreement, when executed, as an informational item.

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

AUTHORIZATION OF PAYMENT TO ALLIANCE FOR DOWNTOWN NEW YORK, INC.

BE IT RESOLVED, that in accordance with the materials presented to this meeting, the President of the Authority or his designees) be, and each of them hereby is, authorized and empowered to execute an agreement providing for (1) a payment to The Alliance for Downtown New York, Inc. (the "BID") in the amount of \$632,000 for calendar year 2010 to assist the BID to carry out its corporate purposes with respect to the revitalization of downtown Manhattan and (2) the continuing representation of the authority on the Board of Directors and the Executive Committee of the Bid for such period; and be it further

RESOLVED, that the President of the Authority or his designees) be, and each of them hereby is, authorized and empowered to execute all such other and further documents, and the take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transaction contemplated in the foregoing resolution, 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, presented by Mr. Woo, was a request to authorize change orders totaling \$470,718.89 under the contract with Brickens Construction, Inc. to perform additional general construction work in conjunction with the construction of Teardrop Park South ("Teardrop South").

Mr. Woo explained that Teardrop Park runs from Warren Street to River Terrace in Battery Park City's north neighborhood. The most recent work on Teardrop was in the southern area of the Park which is located in the courtyard area of the Riverhouse Condominium, the u-shaped residential tower bordered by River Terrace, Vesey Street, and North End Avenue. Teardrop South officially opened May 12, 2010.

The Members authorized an agreement with Brickens Construction Inc. in the amount of \$3,127,000 for the general construction portion of the Teardrop South project, he stated. With previously authorized change orders, the contract amount is currently \$3,341,114.

The change orders for additional work now before the Members fall into two categories, Mr. Woo explained. The first category includes items targeted to insure safety and pest control and required remediation work, and amounts to \$186,384.12, he said. Work includes additional concrete support walls, brick infill to minimize nesting areas for rodents and pests, modification of curb profile, addition of concrete rings at building slab area drains to provide access to drains, removal and replacement of cast iron drain line to improve drainage, provision of an additional support pier at south wall of amphitheater, and installation of a pressure reducing valve and water hammer arrestors, he stated.

This category also includes emergency work required in the adjacent Teardrop Park North for repair of leaks and to create positive drainage of rainwater, he continued. This was

required to be done in time for the summer season, in order to ensure the water feature area could be open to the public as soon as possible after the discovery of the water problems, he said.

The second category is work that was made necessary as a result of issues with the construction of Riverhouse, Mr. Woo explained. Reimbursement of these items has been the subject of many discussions with the condominium developer, and it is expected that there will be full or partial repayment to the Authority for this work. However, he added, it is necessary to revise the contract with Brickens so that the firm is paid for this work, and not required to wait for payment until these negotiations are complete. The total cost of this work is \$284,300, and includes three items.

The first of these, he explained, is storm water sewer work. Sheldrake was originally contracted by the Authority to install the storm water drainage system of the park, but Sheldrake's contractor installed the pipe incorrectly and would not rectify the situation. The Authority therefore needed to contract with the park contractor, Brickens, to finish this work, he said.

Second, he continued, is fountain feed and drain installation. For this work, the Riverhouse developer purchased the wrong type of material, contracting for cast iron, which would have rusted out over time, and was therefore rejected. As the developer refused to meet the specification, the Authority therefore needed to have the park contractor do the work.

Third, Mr. Woo stated, is the electrical conduit routing and wire work which the developer ran from the wrong location. As a result, the Authority's contractor had to pull the equivalent of an additional 167 feet of cable.

In response to an inquiry by Mr. Thompson, Mr. Cavanaugh stated that the Authority has advised the Authority that it is entitled to be reimbursed for these items of work, as they were the developer's contractual obligations. He also noted that the Sheldrake Organization is no longer involved with the building and that the Authority is negotiating as to reimbursement with Lehman Brothers, which had financed a large portion of the building's cost and has since it succeeded to Sheldrake's interest.

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

AUTHORIZATION OF CHANGE ORDERS UNDER CONTRACT WITH BRICKENS CONSTRUCTION, INC.

BE IT RESOLVED, that the President of the Authority or his designee(s) be, each of them hereby is, authorized and empowered to execute change orders (the "Change Orders") in the amount of \$470,718.89 under the contract with Brickens Construction Inc. for general construction work for the Teardrop Park South project; 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 Change Orders on behalf of the Authority, subject to such changes as the officer or officers executing the Change Orders 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 Change Orders; 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, presented by Mr. Cavanaugh, was a request to authorize an amendment to the contract with Brickens Construction Inc. for the Site 3 Parks Conservancy Headquarters General Construction Work, increasing the amount payable thereunder by \$33,872, bringing the contract amount to \$5,798,263.68.

Mr. Cavanaugh noted that this item is a continuation of the change orders presented at the previous Member's meeting with regard to the new Parks Conservancy headquarters. The Authority's Change Order Committee has reviewed this request, he said.

In response to inquiry by Mr. Branchini, Mr. Woo stated that there was a fifteen percent contingency in the budget for this project. Mr. Thompson noted that taking the contingency into account, the project is approximately approximately nineteen percent over its budget.

Next, in response to inquiry by Mr. Mateo, Mr. Cavanaugh outlined the Change Order Committee processes.

Mr. Cavanaugh stated that he believes this is the last change order for the Parks Headquarters project.

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

AUTHORIZATION TO AMEND CONTRACT WITH BRICKENS CONSTRUCTION INC.

BE IT RESOLVED, that the President of the Authority or his designee(s) be, each of them hereby is, authorized and empowered to execute an amendment (the "Amendment") to the contract with Brickens Construction Inc. for general construction work as to the Site 3 Parks Conservancy Headquarters project, increasing the amount payable thereunder by \$33,872; and be it further

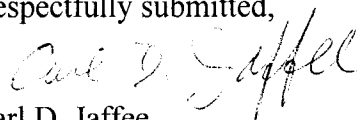
RESOLVED, that the President of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to execute and deliver the Amendment on behalf of the Authority, subject to such changes as the officer or officers executing the Amendment shall, with the advice of counsel, approve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

There being no further business, the meeting thereupon adjourned at 10:50 a.m.

Respectfully submitted,



Carl D. Jaffee
Corporate Secretary