

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

MEMBERS' MEETING

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

New York, NY 10281

September 11, 2007

Members Present

James F. Gill, Chairman

Charles Urstadt, Vice Chairman

David B. Cornstein, Member

Frank J. Branchini, Member (by telephone)

Robert J. Mueller, Member

Evelyn Rollins, Member (by telephone)

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

Hector Calderon, Director, Affirmative Action

Sidney Druckman, Director, Special Projects

Stephanie Gelb, Vice President, Planning & Design

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, Director of Sustainable Development

Wilson Kimball, Senior Vice President, Operations

Susan Long, Vice President, Strategic Planning

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

Antony Woo, Vice President, Construction

Others in Attendance:

Peter Dougherty, Skidmore, Owings, and Merrill

Roger Duffy, Design Partner, Skidmore, Owings, and Merrill

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

Brian Krapf, George Arzt Communications

Vincent McGowan, Battery Park City Parks Conservancy Corporation

Robert Simko, Battery Park City Broadsheet

The meeting, called on public notice in accordance with the New York State Open Meetings Law, convened at 2:20 p.m.

The first item on the agenda was approval of the minutes of the July 17, 2007 meeting.

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

**APPROVAL OF MINUTES OF THE JULY 17, 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 July 17, 2007 are hereby approved.

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The next item on the agenda, presented by Mr. Cavanaugh, was a request for authorization of funding for a light sculpture/canopy at the Skyscraper Museum. Mr. Cavanaugh reminded the Members that in October 1999, the Board approved a ground lease with Millennium Partners LLC to develop Site 1 as a mixed use building containing a Ritz Carlton Hotel and residential apartments. As part of that project, Millennium was required to provide not less than 5,000 square feet of ground floor space and to construct the core and shell for a public amenity space intended to be used for the permanent home of the Skyscraper Museum.

Mr. Cavanaugh explained that when Roger Duffy, partner of Skidmore, Owings, and Merrill, LLP (“SOM”), designed the Skyscraper Museum, he anticipated that it would include a canopy/light sculpture by the world renowned artist, James Turrell. The Skyscraper Museum opened in 2004, Mr. Cavanaugh continued, but due to a lack of funds, the canopy was not included in the museum as originally constructed. He explained that The Skyscraper Museum has now asked the Authority to help fund the construction of the light sculpture/canopy by contributing the amount of \$750,000. The Museum is prepared to fund the \$550,000 balance of the design, construction and installation costs, and would pay for annual maintenance costs. The proposed funding agreement between the Authority and the Museum would require that the Authority funds will not be advanced unless the Museum has established that all other necessary funds for the installation have been secured, he added, and also noted that the New York City Department of Transportation and the New York City Art Commission have approved the project.

Next, Mr. Duffy presented a slide show exhibiting Mr. Turrell’s work to the Members. Mr. Turrell’s work is on display in the Guggenheim Museum, the Metropolitan Museum of Art, and PS1, as well as many of the most famous international museums, Mr. Duffy stated. He advised the Members that the light sculpture/canopy project won a design award from the Art Commission for the City of New York in 2003 as an outstanding public project exemplifying the highest design standards.

Mr. Duffy then demonstrated, with a model, how the canopy would look and work after completion. Mr. Gill noted that the canopy meets all of the Authority's Green Guidelines, and asked Mr. Duffy to try to ensure that Mr. Turrell be present at the dedication of the work.

Mr. Cornstein inquired as to the amount of visitors the museum currently receives. Mr. Cavanaugh responded that he does not currently have that information, and Ms. Gelb noted that this art piece would be likely to increase visitation to the museum. Ms. Altman added that this artwork is not just an enhancement to the museum but also to Battery Park City's public art program, which is one of the country's most significant and innovative such programs. In response to a question from Ms. Rollins, Ms. Druckman explained that the price of Mr. Turrell's artwork falls in the middle price range of all the public artwork previously commissioned by the Authority.

Mr. Urstadt requested that a report on attendance at the museums in Battery Park City be prepared semi-annually for the Members.

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

**APPROVAL OF CONTRIBUTION TO SKYSCRAPER MUSEUM FOR LIGHT SCULPTURE/CANOPY**

BE IT RESOLVED, that in accordance with the information presented to the meeting, the amount of \$750,000 be contributed to The Skyscraper Museum to be used as partial payment for the cost of construction and installation of a light sculpture/canopy at the Museum; 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 a funding agreement and 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 transaction contemplated in the foregoing resolution.

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The next item on the agenda, presented by Mr. Cavanaugh, was a request to amend the Memorandum of Understanding dated October 9, 1997 with respect to the World Financial Center Arts and Events Program, pursuant to which the Authority would contribute \$210,000 toward the costs of that program to defray the cost of the 2007 events.

Ms. Druckman explained that the Authority has been contributing to the World Financial Center Arts & Events Program since 1997. Mr. Cavanaugh added that the Authority is joining American Express, Merrill Lynch and Brookfield Financial Properties in contributing to this program on an annual basis. Mr. Gill suggested that it would also be appropriate for Goldman

Sachs to contribute to this program. Mr. Cavanaugh responded that this possibility would be investigated.

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

**AUTHORIZATION TO AMEND MEMORANDUM OF UNDERSTANDING FOR THE  
WORLD FINANCIAL CENTER ARTS & EVENTS PROGRAM**

BE IT RESOLVED, that the President of the Authority or his designee(s) be, and each of them hereby is, authorized to execute an amendment of the Memorandum of Understanding (the "Amendment") pertaining to the World Financial Center Arts & Events Program to increase the funds to be provided by the Authority by the additional amount of \$210,000 to be allocated to the costs of the 2007 program; 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 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. Woo, was a request for authorization of a contract with Community Electric, Inc. in the amount of \$361,772 for the electric service relocation work for the Battery Park City ball fields. Mr. Woo explained that on October 11, 2006, the Members approved the execution of ground leases between the Authority and entities designated and controlled by the Milstein Organization, Inc. ("Milstein") for the development of Site 23/24 in the north neighborhood. As part of this development, the Authority has mandated that the developer set aside space for a 60,000 square foot community center/ball field maintenance facility in the base of the buildings, he added. Mr. Woo further explained that Milstein will be responsible for the core and shell construction of the facility, and the Authority will be responsible for the fit out and furnishing as well as the construction of the terrace above and around the facility. Currently, the electric service for the ball fields is located between West Street and Murray Street and runs in the North sidewalk of Murray Street along the edge of the building site. This service is in conflict with the proposed development for Site 24 and therefore must be relocated, he concluded.

Mr. Woo reported that in accordance with the Authority's Procurement Guidelines, the contract for this work was publicly advertised. In addition, names of firms were solicited from the Affirmative Action Department. He asserted that a total of seventeen firms, including eight M/WBE firms, requested and picked up proposal packets. Mr. Woo further stated that following pre-proposal meetings, proposals were received from Hugh O'Kane Electric Company and Community Electric, Inc. Hugh O'Kane's proposal was found to be non-responsive, as the company did not include many of the required documents in its package. Accordingly, the Authority's Construction Department and Construction Managers determined that Community Electric, the only other proposer, whose financial proposal was in any event lower than that of Hugh O'Kane, should be recommended for the work.

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

**AUTHORIZATION OF CONTRACT WITH COMMUNITY ELECTRIC, INC.**

BE IT RESOLVED, that the President of the Authority or his designee(s) be, each of them hereby is, authorized and empowered to enter into a contract (the "Contract") with Community Electric, Inc. for electric service relocation for the Battery Park City ball fields for the amount of \$361,772; 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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Mr. Woo also presented the next item on the agenda, a request for authorization of an amendment to the contract with the Thornton Tomasetti Group in the amount of \$32,580 for the re-design of the South Bridge steel trusses. Mr. Woo explained that New York State Route 9A is being realigned by the State Department of Transportation to coordinate with the new Freedom Tower and the World Trade Center Memorial project. As a result of this realignment, he stated, the eastern pier of the South Bridge across West Street is being relocated and the bridge extended east by approximately sixty feet. This will require an additional eastern support which is to be located on top of the extended Port Authority bathtub slurry wall, he asserted.

In February 2006, Mr. Woo continued, the Authority entered into a contract with the Thornton Tomasetti Group in the amount of \$225,000 to perform engineering design and consulting services for the project. The scope of work under the contract included the design of the structural steel superstructure of the bridge extension and the reinforcement of the existing structure. The design work has been completed and an RFP package for the construction work has been prepared, Mr. Woo explained. However, he continued, the Port Authority has since shifted the location of the bridge support, and additional engineering work is needed to re-analyze the South Bridge steel trusses as a result of this change. The cost of these additional services is \$32,580, and this additional cost brings the amount of the work over the \$250,000 threshold contract amount which requires Members' approval.

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

**AUTHORIZATION OF AMENDMENT TO CONTRACT WITH THE THORNTON TOMASETTI GROUP**

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 to the Authority's contract (the "Amendment") with the Thornton Tomasetti Group for the redesign of the South Bridge steel trusses for an amount not to exceed \$32,580; 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, also presented by Mr. Woo, was a request for authorization of a change order to the contract with Phoenix Marine Company, Inc. in the amount of \$85,260 for additional work identified for repairs to the structural support components of South Cove Park. In November 2005, Mr. Woo explained, the Authority hired Parsons Brinkerhoff ("PB") as the structural engineer to investigate the underwater support elements of the South Cove. Based on that firm's findings and documents it produced, remedial repairs to the structural support components of South Cove Park were recommended.

In September 2006, the Members authorized a contract with Phoenix Marine Company, Inc. in the amount of \$389,400 to perform this repair work, Mr. Woo stated. The proposed change order before the Board Members is for additional repair work required, he noted. During the construction inspection of the repair work, the Authority's Construction Manager, URS Corporation, noticed that additional deterioration had occurred to the support structure. Phoenix Marine Company, Inc. proposed the amount of \$85,260 to perform this additional work, which the Construction Department and the Authority's Construction Manager believe is fair and equitable, Mr. Woo concluded.

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

**AUTHORIZATION OF CHANGE ORDER UNDER CONTRACT WITH PHOENIX MARINE COMPANY, 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 a change order ("Change Order") to Phoenix Marine Company, Inc. for the additional work necessary to repair the structural support components of South Cove Park for a not-to-exceed amount of \$85,260; 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 Order on behalf of the Authority, subject to such changes as the officer or officers executing the Change Order 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 Order; 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 a request for authorization of a contract with Minelli Construction, Inc. in the amount of \$1,467,200 for the Wagner Pavilion Phase II Restoration project. Mr. Woo explained that in the fall of 1996 it became apparent that the brick walls of the Wagner Park Pavilion were discolored by lime deposits, a phenomenon known as efflorescence. Work was done to address the worst instances of efflorescence he said, but unfortunately, the efflorescence problem continued through the subsequent years, indicating that water was penetrating behind the brick work.

Mr. Gill asked whether the Authority has filed a lawsuit against the firm which installed the walls. Ms. Miller explained that it was determined at that time that the legal costs involved in such a suit would likely exceed the cost to fix the walls. After later damage to the walls appeared, the statute of limitations barred such a suit, she concluded. Ms. Altman added that the initial repair work performed by Authority effectively foreclosed a lawsuit against the original contractor because there is no longer any clarity as to who had done what and what had caused the problem.

The architectural firm investigating this situation has taken probes in the areas of the pavilion indicated above and has now assembled a package detailing all necessary repairs, Mr. Woo noted. He explained that the project was publicly advertised and names of firms were solicited from the Affirmative Action Department. A total of fourteen firms requested proposal packets. Four of these firms were M/WBE firms.

Following a pre-proposal meeting, proposals were received from three firms, and pre-award meetings were held with the three proposers. The lowest proposer, AGFA, explicitly stated that it had deliberately submitted a low proposal with the intent of establishing a relationship with the Authority as to future work, Mr. Woo said; moreover, the project architect, construction manager and in-house staff determined that this proposal was unrealistically low and that the work could not be properly performed for this amount. Mr. Woo therefore recommended Minelli Construction Company, Inc., as the lowest responsible proposer for this contract.

Mr. Gill advised that in the future, any proposal such as the one submitted by AGFA should be withdrawn by the contractor from further consideration.

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

**AUTHORIZATION OF CONTRACT WITH MINELLI 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 a contract (the "Contract") with Minelli Construction, Inc. for the Wagner Pavilion Restoration Phase II Project for the amount of \$1,467,200; 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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Before closing the meeting Mr. Gill informed the meeting that the Authority may soon become responsible for developing Pier A, to the south of Wagner Park; 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 State; and that the Authority is in discussions to try to help dissuade Merrill Lynch, a tenant of Brookfield Properties in the World Financial Center, from relocating its offices out of Battery Park City.

Mr. Jaffee indicated that a brief meeting of the Authority, as the sole shareholder of the Parks Conservancy, would take place after the next Members’ meeting.

There being no further business, the meeting thereupon adjourned at 3:30 p.m.

Respectfully submitted,

Carl D. Jaffee  
Corporate Secretary