

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

Meeting of the Members  
One World Financial Center, 24th Floor  
New York, NY 10281  
September 14, 2010

Members Present

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

Authority Staff in Attendance: James E. Cavanaugh, President and Chief Executive Officer  
Alexandra Altman, Executive Vice President and General Counsel  
Daniel Baldwin, Senior Development Counsel  
Lauren Brugess, Administrative Assistant  
Megan Churnetski, Assistant General Counsel and Assistant  
Corporate Secretary  
Gwen Dawson, Director, Strategic Planning  
Sidney Druckman, Director, Special Projects  
Allyson Ford, Special Counsel  
Stephanie Gelb, Vice President, Planning & Design  
Antigona Gjini, Special Assistant to the President  
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  
Peter McCourt, Director, Planning & Design  
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, Battery Park City Parks Conservancy  
Vince McGowan, Battery Park City Parks Conservancy  
Randy Tancer, Battery Park City Parks Conservancy  
Mark Godfrey, CB Richard Ellis  
Tim Sheehan, CB Richard Ellis

Julie Shapiro, Downtown Express  
Matt Dunning, Tribeca Tribune  
Brian Krapf, George Arzt Communications, Inc.

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

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The first item on the agenda was the approval of the minutes of the July 20, 2010 meeting.

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

**APPROVAL OF MINUTES OF THE JULY 20, 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 July 20, 2010 are hereby approved.

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The next item on the agenda, presented by Mr. Cavanaugh, was a request to adopt a resolution amending the bylaws so as to allow the Chairman to designate an acting President without limitation as to his designation.

He explained that the proposed amendment to the bylaws of the Authority will allow the Chairman to designate an acting president in the event of a vacancy in the office of the President, pending the approval of an appointment to that position by a vote of the Members. Currently, he continued, the bylaws provide that in the event of a vacancy in the office of the President, the Executive Vice President and General Counsel of the Authority shall perform all the duties of the President. The proposed amendment will remove the limitation that the acting President must be that person.

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

**AMENDMENT OF BYLAWS**

BE IT RESOLVED, that Section 2 of the Bylaws is hereby amended to read as follows:

“Section 2. Chairman. The Chairman of the Authority shall be elected from among the Members of the Authority and shall hold office until his/her successor is elected and qualified. The Chairman of the Authority shall preside at all meetings of the Members of the Authority and shall have such other duties as the Members may direct. In the event of the absence or disability of the President, or of a vacancy in the office of the President, the Chairman or his/her designee 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 Chairman shall be conclusive evidence of the power to act.”

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The next item on the agenda, presented by Ms. Altman, was a request to establish policies regarding contributions to non-governmental entities, seasonal Authority events, non-fraternization and meal allowances.

Ms. Altman explained that the Chairman has requested that certain of the Authority’s policies be updated, including the policies for contributions to other entities, seasonal Authority events, non-travel-related meals, and standards of employee conduct.

With regard to contributions to non-governmental organizations, she explained, the Authority has set standards to determine whether a proposed contribution is appropriate. However, she noted, these standards have not been formally codified and published. This resolution will articulate these standards and make them easily accessible to the public.

As to seasonal Authority events, she continued, the Members will be informed on a regular basis as to what seasonal events are occurring and how much they are costing.

In response to an inquiry by Mr. Mueller, Ms. Altman explained that the Members have always received along with the annual budget, a list of the Authority’s proposed contributions. Mr. Mueller noted that he had not seen such a list until last year and asked whether the Members will have to give prior approval through the budget process of the list of proposed contributions. Mr. Cavanaugh explained that in approving the budget, the Members are essentially approving the list.

Mr. Thompson stated that the Members should be made aware of any deviations from the proposed contribution list. In response to inquiry by Mr. Mueller, Mr. Thompson stated that nevertheless, there may be times where the Members will need to delegate the ability to make such decisions to the President, with the understanding that the President will notify the Members afterward.

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

**ADOPTION OF POLICY REGARDING CONTRIBUTIONS TO NON-GOVERNMENTAL ENTITIES**

BE IT RESOLVED, that the Authority hereby adopts the following policy regarding contributions to non-governmental organizations:

## POLICY AS TO FINANCIAL CONTRIBUTIONS TO NON-GOVERNMENTAL ORGANIZATIONS

The Authority may from time to time give financial support to non governmental entities that advance the mission of the Authority, including organizations that:

- Promote the mission of the Battery Park City Authority
- Promote and develop the economy and infrastructure of lower Manhattan
- Increase visitation to Battery Park City
- Serve the Battery Park City community through educational, cultural, recreational or other civic activities
- Highlight the Battery Park City Authority's position on sustainability and 'green' buildings
- Provide mechanisms for creating affordable housing in New York City
- Promote the certification and utilization of minority and women-owned businesses as directed by Article 15-A of the New York State Executive Law.

Each such instance of financial support shall be appropriately documented.

## **ADOPTION OF POLICY REGARDING SEASONAL AUTHORITY EVENTS**

BE IT RESOLVED, that the Authority hereby adopts the following policy regarding seasonal events:

### POLICY AS TO SEASONAL EVENTS

Christmas parties, picnics and other events or celebrations designed to build employee morale may be paid for by the Authority, at the discretion of the President, after consultation with the Chairman, provided that the expenses for any such purpose shall be reasonable and appropriate. The President shall advise the Members on a semi-annual basis of any such events held or conducted in the previous semi-annual period, with a report of actual expenses for each such event.

## **ADOPTION OF POLICY REGARDING NON-FRATERNIZATION**

BE IT RESOLVED, that the Authority hereby adopts the following policy regarding non-fraternization:

POLICY AS TO NON-FRATERNIZATION

Consensual romantic and/or sexual relationships or platonic living relationships between a supervisor and an employee in which the supervisor has the ability to impact the progress or assignments of another employee are strictly prohibited. Such relationships can be disruptive to the work environment, create a conflict or the appearance of a conflict of interest, and lead to charges of favoritism, discrimination, and claims of indirect sexual harassment. While the Authority has no desire to interfere with the private lives of its employees, or their off-duty conduct, where such conduct impacts upon the work environment in a negative manner, such as noted above, the Authority reserves the right to take whatever action is appropriate, in its discretion, to protect BPCA’s interests.

AND BE IT FURTHER RESOLVED, that the foregoing policy be set forth as Section LVIII in the Authority Employee Handbook.

**ADOPTION OF POLICY REGARDING MEAL ALLOWANCES**

BE IT RESOLVED, that the Authority hereby adopts the following policy regarding meal allowances:

POLICY AS TO MEAL ALLOWANCES

In general, the Authority will not reimburse employees for business lunches or other business meals. Departmental meals at the Authority’s expense are not encouraged and are not permitted unless approved in writing, in advance, by the President/CEO.

Food and beverages for events or meetings of employees may not be procured by the Authority unless approved in writing, in advance, by the President. In general, such expenses are discouraged and should in all cases be modest.

Employees are eligible to be reimbursed for a dinner after working beyond normal business hours only if they have worked at least 7.5 hours on the day of the dinner and are still at the office 2.5 hours after their work days has ended. The maximum reimbursement for such dinner is \$20. To be reimbursable, the dinner must be procured in, or in the immediate vicinity of, Battery Park City.

Each receipt submitted for reimbursement for such dinner must be itemized by the vendor/restaurant that provided the goods or services, and must be accompanied by the supervisor’s written statement that the employee’s overtime was duly authorized.

AND BE IT FURTHER RESOLVED, that Section LIV of the Authority Employee Handbook be amended to set forth the foregoing policy.

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Next, Mr. Cavanaugh introduced Mr. Woo, who would present the next agenda item, by stating that after a very long and distinguished career at Battery Park City, Mr. Woo will be retiring and this will be his last Members' meeting. He also stated that Susan Kaplan, the Authority's Director of Sustainability, will also be retiring before the next Members' meeting.

Mr. Thompson and the other Members expressed their gratitude to Mr. Woo and Ms. Kaplan.

Mr. Woo then presented a request to authorize a contract with Stalco Construction Inc. in the amount of \$9,080,728 for the Pier A Phase III Core & Shell General Construction Work.

Mr. Woo reminded the Members that Gwen Dawson, Director of Strategic Planning, had presented an update on Pier A project at the last Members' meeting. As part of her presentation, he continued, she also informed the Board that the Pier A general contractor, McGowan Builders, had withdrawn from the project.

The rebidding of the general construction portion of the core and shell work was advertised on May 31, 2010 in the New York State Contract Reporter, the Minority Commerce & Employment Weekly and in the City Record on June 7, 2010, he stated. In addition, names of potential contractors were solicited from the Affirmative Action Department. A total of fifteen firms requested and picked up Proposal (RFP) packets, he noted. Four of these firms were M/WBE firms.

A pre-proposal meeting was held on June 9, 2010, Mr. Woo continued. Drawings and specifications were updated to reflect current conditions and information, and a total of eight addenda were issued to all firms, including certain additional work that was not in the original RFP packet, he explained. These addenda were issued from June 16<sup>th</sup> through July 29<sup>th</sup>. On July 30, 2010 proposals were received from seven firms, one of which is an M/WBE, he noted. One firm submitted an incomplete bid package and was therefore disqualified from consideration.

Pre-award meetings were held on August 4, 2010, with Authority staff, the Authority's construction manager, architect and structural engineer and the three lowest responsive proposers, Mr. Woo stated. The wide range of pricing among the six responsive proposers and particularly among the three lowest responsive proposals led the Authority to conclude that clarification of certain items of work scope would be desirable. Consequently, he said, all six responsive proposers were given the opportunity to submit a "best and final" proposal, to include consideration of the clarifications provided by the Authority. On August 11, 2010 "best and final" proposals were received from all six responsive proposers.

On August 13, 2010, he continued, a request for clarification was issued by the Authority, asking that the six responsive proposers submit a clarification of their respective proposals to exclude any pricing for hexagonal pavers in the plaza area and the Authority's exercise of Add Alternate #1 for a river water HVAC system support structure. On August 16, 2010, proposal clarifications were received from five of the responsive proposers,

Based upon a review of the price, the qualifications and experience of the responsive proposers, and based upon the responses provided to questions about the project posed during the course of proposer interviews, Mr. Woo stated, it was apparent that Stalco Construction Inc. had submitted the most responsive proposal with the lowest price and that Stalco Construction Inc.

has a clear understanding of the scope of work, has met the qualifications required, and can complete the work in a timely fashion.

Next, Mr. Mueller inquired into why there was such a great disparity in the amount of bids. Mr. Woo explained that the Authority has not previously worked with the higher bidders. In response to an inquiry by Mr. Thompson, Mr. Cavanaugh explained that these bids are more in line with the original cost estimates for this work than was that of the original general contractor.

Mr. Mateo noted that there has been excellent participation of minority-owned firms on this project. Last, Mr. Mateo noted that the title of the Affirmative Action Department is no longer appropriate. The term “is just not politically correct,” he said, and should be changed to the “Diversity Program.” Mr. Thompson then stated that as the State now uses the term “diversity,” the Authority would do so as well.

Mr. Mateo also noted that the contractors that are awarded Pier A contracts are required to make efforts to employ people from minority groups on the job sites. There is diversity in the dollars that are spent on the project, but it is also important that the Authority ensures that the people working on the site reflect New York City, he added.

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

**AUTHORIZATION OF CONTRACT WITH STALCO CONSTRUCTION INC. FOR GENERAL CONSTRUCTION WORK FOR THE RESTORATION OF PIER A**

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 Stalco Construction Inc. for the Pier A Phase III Core and Shell General Construction Work in the amount of \$9,080,728; 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 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 to authorize an amendment to the contract with McLaren Engineering Group (“McClaren”) for Engineering and Inspection Services for the Esplanade Pile Repair and Protection project, increasing the contract amount by \$180,035, including \$162,256 for professional services and \$17,779 in reimbursable expenses, and bringing the total contract amount from \$808,725 to \$988,760.

In November of 2004, Mr. Woo explained, the Authority entered into a contract with McLaren to perform pile remediation engineering & inspection services for marine structures work. The scope of services under this contract included an investigation of the condition of the concrete piles supporting the Battery Park City esplanade, developing a program to repair those piles and providing inspection services during the actual repair work, he said.

In July 2005, Mr. Woo continued, McLaren presented its findings that the concrete piles in the North Cove Marina area showed the greatest signs of deterioration, particularly the north side of the Marina, and therefore should be the first area addressed. This phase of work was bid out in 2007 and construction started in 2008 and continued through the summer of 2009.

Over the course of the project, he said, the many presentations of the investigations and the extended construction period for this work resulted in many more hours of McLaren’s time than allocated in the original scope of work under the contract. Many of the funds in McLaren’s contract were expended on items not anticipated in the original contract, including extensive presentations during the investigation/engineering phases to the New York City Office of Management and Budget. Also, he continued, as a result of agreement by Authority management to implement the project in a manner that would minimize the impact of the work on North Cove Marina operations, the work was done in a much less linear way, in order to work with the operator’s slip rental schedules. Another unanticipated impact was from the Port Authority’s ferry terminal project, he explained. A clear schedule and staging plan was not received from the Port Authority in a timely manner, forcing the Authority to rework its schedule for the piles, breaking up the work into two summer seasons and ending in the summer of 2009 rather than the fall of 2008.

The Authority now plans to address the piles in the area south of the Winter Garden, as requested by Brookfield Properties, Mr. Woo stated. This is also a critical area in need of repair which, we were recently informed, needs to be completed by October 2010 to allow the New York State Department of Transportation and the Port Authority to proceed with the river water discharge work, and to eventually allow the State Department of Transportation to complete the reconstruction of the bikeway/walkway and landscape work down Route 9A. Therefore, he concluded, Management is requesting an additional \$180,035 for McClaren to complete this work.

In response to an inquiry by Mr. Cornstein, Mr. Cavanaugh explained that the Authority has not attempted to get contributions for these costs from Brookfield or the Port Authority because it was thought to be unlikely that they would contribute. Mr. Cornstein said that “it never hurts to try” and Mr. Thompson stated that such a request could, at the very least, become an item for discussion in future dealings with these entities.

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

**AUTHORIZATION OF AMENDMENT TO CONTRACT WITH MCLAREN ENGINEERING 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 contract with McLaren Engineering Group for the Engineering and Inspection Services) for the Esplanade Pile Repair and Protection Project (the "Amendment"), increasing the amount payable thereunder by the amount of \$180,035; 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.

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The meeting then recessed until the conclusion of a meeting of the Directors of the Battery Park City Parks Conservancy. After the Members' meeting resumed, upon a motion made by Mr. Cornstein and seconded by Mr. Mueller, the Members voted unanimously to conduct an executive session for the purpose of discussing personnel matters and the proposed lease of real property pursuant to Sections 105(f) and (h) of the Public Officers Law, respectively.

No actions were taken by formal vote at the executive session and such session and the meeting adjourned at 11:20 a.m.

Respectfully submitted,



Carl D. Jaffee  
Corporate Secretary