



MINUTES

NEW YORK STATE THRUWAY AUTHORITY

BOARD MEETING NO. 689

December 12, 2011

Minutes of a meeting of the New York State Thruway Authority, held in the Board Room at NYSTA Administrative Headquarters, 200 Southern Boulevard, Albany, New York 12209 and via video conference at the New York Division Office, 4 Executive Blvd., Suite 400, Suffern, NY 10901.

The meetings of the New York State Thruway Authority and Canal Corporation Boards opened in joint session for the consideration of various matters. These minutes reflect only those items considered by the New York State Thruway Authority Board. The meeting began at 2:47 p.m.

There were present:

Chairman Howard P. Milstein

Donna J. Luh, Vice Chairperson

E. Virgil Conway, Board Member

Richard N. Simberg, Board Member

Brandon R. Sall, Board Member, via video conference

Jose Holguin-Veras, Ph.D., Board Member

Constituting a majority of the members of the Thruway Authority Board.

J. Donald Rice, Jr. was not present at this meeting and did not vote on any of the Items.

In addition, there were present the following staff personnel:

Thomas J. Madison, Jr., Acting Executive Director

John Barr, Director, Administrative Services

Donald Bell, Director, Maintenance and Operations

John Bryan, Chief Financial Officer

William Estes, General Counsel

J. Marc Hannibal, Director, Audit and Management Services

Brian Stratton, Director, Canal Corporation

Thomas Ryan, Chief of Staff

Ted Nadratowski, Chief Engineer

Jill B. Warner, Board Administrator

Dorraine Steele, Director, Fiscal Audit and Budget, via video conference

Jonathan Ehrlich, Special Assistant to the Chairman

Major Robert Meyers, Troop T

Lawrence Norville, Chief Compliance Officer

Kathleen LeFave, Special Assistant to the Chief of Staff

Karen Wilson, Information Technology Specialist

Joe Capovani, Civil Engineer 2, Canal Corporation

Also in attendance:

Steve VanWagenen, New York Network

Murray Bodin, public

Doug Zimmerman, Director, Toski, Schaefer & Co., P.C.

James Screen, public

Diane Yu, public

Chairman Milstein noted that he, Ms. Luh, Mr. Conway, Mr. Simberg, Mr. Sall and Dr. Veras had received and reviewed the Agenda submitted for consideration at this meeting and were prepared to act on each of the Items.

Chairman Milstein called the meetings of the Thruway Authority and Canal Corporation Boards to order. (1:37:22)

Ms. Warner recorded the minutes as contained herein (public notice of the meeting had been given).

Item 1 by Ms. Warner (Appendix A)
Approval of Minutes of Meeting No. 688 (1:37:22)

On the motion of Chairman Milstein, seconded by Mr. Conway, without any objections, the Board approved the minutes of Meeting No. 688 held on September 15, 2011, which were made available to the Board Members as part of the Agenda.

Item 2 by Mr. Madison (Appendix B)
Report on Procurement Contracts and Other Agreements Up to \$150,000 Executed by the Executive Director During the Period July 1, 2011 Through September 30, 2011 (1:37:22)

Mr. Madison submitted as Exhibit I a listing containing Personal Service Contracts up to \$150,000 for the period July 1, 2011 Through September 30, 2011.

On the motion of Chairman Milstein, seconded by Mr. Conway, without any objections, the Board accepted Mr. Madison's quarterly report.

Item 3 by Mr. Bryan (Appendix C)
Approval of Revisions to the 2011 Financial Plan and the 2012 Proposed Budget for the New York State Thruway Authority and New York State Canal Corporation (1:37:22)

On the motion of Chairman Milstein, seconded by Mr. Conway, without any objections, the Board adopted the following resolution:

RESOLUTION NO. 5908

APPROVAL OF REVISIONS TO THE 2011 FINANCIAL PLAN AND THE 2012 PROPOSED BUDGET FOR THE NEW YORK STATE THRUWAY AUTHORITY AND NEW YORK STATE CANAL CORPORATION

RESOLVED, that the Report on the 2011 Financial Plan as presented in this item be, and the same hereby is, accepted by the Board, and be it further

RESOLVED, that the Chief Financial Officer be, and he hereby is, authorized to make any and all adjustments to the appropriate funds consistent with this revised Financial Plan for 2011, and be it further

RESOLVED, that the Chief Financial Officer be, and he hereby is, authorized to make any other adjustments based on actual results that are consistent with this projected plan, and report such actions to the Board, and be it further

RESOLVED, that the Authority's proposed Budget for the fiscal year 2012, submitted by the Executive Director and the Chief Financial Officer, be, and the same hereby is, approved and funded in accordance with the attached Exhibit III, and be it further

RESOLVED, that the Executive Director or his designee be, and he hereby is, authorized to make such expenditures as set forth in this Budget, subject to compliance with Authority policies and procedures, and to make such internal adjustments and transfers within the Authority Budget as are necessary and proper, and to make any other adjustment with the concurrence of the Board, and be it further

RESOLVED, that a copy of the Budget approved herein, when printed in final form, be attached to these minutes and made a part thereof, and be submitted to the New York

State entities in accordance with Section 2801 of the Public Authorities Law, and be it further

RESOLVED, that this resolution be incorporated in the minutes of this meeting

Item 4 by Mr. Bryan (Appendix D)
Financial Reports – August, September and October 2011 (1:37:22)

On the motion of Chairman Milstein, seconded by Mr. Conway, without any objections, the Board accepted the Financial Reports for the months of August, September and October 2011.

Item 5 by Mr. Bryan (Appendix E)
Investment Transactions – Third Quarter 2011 (1:37:22)

On the motion of Chairman Milstein, seconded by Mr. Conway, without any objections, the Board accepted the Investment Transactions – Third Quarter 2011 Report.

Item 6 as Amended by Mr. Nadratowski(Appendix F)
Approving the 2012 Thruway and Canal Contracts Programs (1:37:22)

On the motion of Chairman Milstein, seconded by Mr. Conway, without any objections, the Board adopted the following resolution as amended:

RESOLUTION NO. 5909
**APPROVING THE 2012 THRUWAY AND CANAL
CONTRACTS PROGRAMS**

RESOLVED, that the 2012 Thruway and Canal Contracts Programs for Highway, Bridge, Intelligent Transportation Systems, Architectural, Canals and related facility projects, full copies of which have been provided to the Boards for review, be, and the same hereby are, approved, and be it further

RESOLVED, that the Chief Engineer be, and hereby is, authorized:

A. to prepare and approve Official Proposals, Plans and Specifications, Engineer's/Architect's Estimates of Cost and Contract Documents for such projects as are tabulated in the 2012 Thruway and Canal Contracts Programs;

B. to hold the respective Engineer's/Architect's Estimate of Cost for such contracts confidential until after contracts have been awarded;

C. to advertise for receipt of bids for those projects which are tabulated in the 2012 Thruway and Canal Contracts Programs: (1) when the final Engineer's/Architect's Estimate of Cost is equal to or less than the project's budget allocations, and (2) when the final Engineer's/Architect's Estimate of Cost does not exceed the project's budget allocation by more than \$75,000 for projects with budget allocations of up to and including \$500,000 or by more than 15 percent for projects with budget allocations that exceed \$500,000 provided confirmation is received from the Department of Finance and Accounts that sufficient funds are available in the 2012 Thruway and Canal Contracts Programs for the final Engineer's/Architect's Estimate of Cost, or (3) when the final Engineer's/Architect's Estimate of Cost exceeds the project's budget allocation beyond the limits in (2), provided that he receives prior approval of the Executive Director and confirmation from the Department of Finance and Accounts that sufficient funds are available in the 2012 Thruway and Canal Contracts Programs for the final Engineer's/Architect's Estimate of Cost;

D. to award any such contract to the lowest responsible bidder when it is deemed to be an acceptable bid, and:

1. the low bid is equal to or less than the Engineer's/Architect's Estimate of Cost; or
2. the low bid exceeds the Engineer's/Architect's Estimate of Cost by no more than \$75,000 on contracts up to and including \$500,000, or by no more than 15 percent on contracts over \$500,000 and confirmation is received from the Department of Finance and Accounts that, by virtue of bid savings and/or deferrals, sufficient funds are available for the additional difference between the Engineer's/Architect's Estimate of Cost amount and the low bid; or
3. the low bid exceeds the Engineer's/Architect's Estimate of Cost by no more than \$100,000 on contracts up to and including \$500,000, or by no more than 20 percent on contracts over \$500,000, provided that he receives prior approval of the Executive Director and confirmation from the Department of Finance and Accounts that, by virtue of bid savings and/or deferrals, sufficient funds are available for the additional difference between the Engineer's/Architect's Estimate of Cost amount and the low bid; or
4. the low bid exceeds the limits of (1), (2) or (3) provided he obtains Board authorization for the necessary additional funds;
- E. to reject bids for any such contract which are determined to be not in accordance with bid documents and specifications thereof, or not in the Authority's or Corporation's best interests, or which are submitted by bidders determined to be not responsible. In these cases and where no bids are received, he may again advertise for receipt of bids pursuant to paragraph C;
- F. to utilizing the procedure set forth in Executive Instruction 2011-4, Procedure for Declared Emergency Work,

G. to approve contingent or extra work on construction contracts, when necessary, provided the additional cost shall not exceed the bid price by more than \$150,000 for contracts bid up to and including \$1,000,000, or 15 percent for contracts bid in excess of \$1,000,000, and to approve additional extra work beyond that authorized above with the prior approval of the Executive Director, provided the final cost of the respective contract shall not exceed the total bid price by more than \$200,000 for contracts bid up to and including \$1,000,000, or 20 percent for contracts bid in excess of \$1,000,000; and to adjust and determine disputed contract claims in accordance with contract documents;

H. to enter into, extend, and modify project specific agreements or multi-project agreements with localities, utility companies, railroads, and/or others as may be necessary in order to facilitate the administration, award, progress and completion of such contracts;

I. to acquire and grant such property interests (fee title, easements, etc.), in accordance with the provisions of the Authority's and Corporation's Real Property Management Policies, as may be necessary for implementation of the 2012

J. to execute engineering agreements approved by the Board, or where otherwise authorized by the Executive Director, including amendments thereto, for services relating to projects included in the 2012 Thruway and Canal Contracts Programs;

K. to execute a supplemental agreement for expenditure of additional funds in furtherance of a Board approved engineering agreement, including any Board approved supplemental agreement, provided that the amount of such additional funds does not exceed \$150,000 in the case of agreements up to and including \$3,000,000, or 5 percent of a Board approved agreement including a Board approved supplemental agreement, in the case of agreements over \$3,000,000;

L. to execute, with the prior approval of the Executive Director, a supplemental agreement for the expenditure of additional funds in furtherance of a Board approved engineering agreement, including any Board approved supplemental agreement, provided that the amount of such additional funds does not exceed 25 percent of such Board approved agreement including a Board approved supplemental agreement and any additional funds authorized in paragraph K; and provided further, when such supplemental agreement includes additional new design or construction inspection tasks, such approval must be based upon a determination that the assignment of the additional tasks is in the best interests of the Authority or Corporation: when considering the proximity of the additional tasks to the ongoing tasks, or to expedite the

M. to exercise all powers reserved to the Authority and Corporation under the provisions of any contracts or agreements executed pursuant to these items, manage and administer any such contracts or agreements, amend the provisions of any such contracts or agreements consistent with the terms of this item and in accordance with other applicable Board authorizations, and suspend or terminate any such contracts or agreements in the best interests of the Authority or Corporation, and be it further

RESOLVED, that any powers granted to the Executive Director by the Board to approve expenditures or to increase expenditures for contracts and agreements shall be in addition to those powers granted under these resolutions and any action taken pursuant thereto shall be deemed to be authorized under this resolution, and be it further

RESOLVED, that in accordance with the other powers delegated herein, the Chief Engineer shall be, and hereby is, authorized to make all necessary decisions pursuant to the State Environmental Quality Review Act (SEQRA) with relation to the 2012 Thruway and Canal Contracts Programs, and be it further

RESOLVED, that quarterly reports shall be submitted to the Board by the Chief Engineer on: all awarded construction contracts; approved additional funds for construction contracts over and above the contingency funds; and all engineering agreements and supplemental engineering agreements, approved pursuant to the provisions of these resolutions, and be it further

RESOLVED, that the Chief Financial Officer be, and he hereby is, authorized:

A. upon award of such contracts to return such funds budgeted for such projects in the respective 2012 Budgets which are otherwise not required for expenditure during 2012 to the proper fund in accordance with acceptable budgeting and accounting procedures;

B. to monitor total cash expenditures for the 2012 Contracts Programs to insure that they do not exceed \$286,274,354 for the Thruway Authority and \$52,185,349 for the Canal Corporation during the 2012 Fiscal Year;

C. to return bid checks submitted for such contracts to unsuccessful bidders, and to make necessary adjustments in the respective 2012 approved Budgets as required by implementation of any part of this Resolution, and be it further

RESOLVED, that the provisions of this resolution shall be deemed to supersede all other inconsistent Authority and Corporation policies and procedures to the extent necessary to implement the approved 2012 Thruway and Canal Contracts Programs and for no other purposes, and be it further

RESOLVED, that these resolutions be incorporated in the minutes of this meeting

Item 7 by Mr. Estes (Appendix G)

Rescinding the Employee Non-Revenue Pass Program for Managerial/Confidential Authority and Corporation Employees and Employees of Troop T (1:37:22)

After full discussion, on the motion of Chairman Milstein, seconded by Mr. Conway, without any objections, the Board unanimously adopted the following resolution:

RESOLUTION NO. 5910
RESCINDING THE EMPLOYEE NON-REVENUE PASS PROGRAM FOR MANAGERIAL/CONFIDENTIAL

**AUTHORITY AND CORPORATION EMPLOYEES AND
EMPLOYEES OF TROOP T**

RESOLVED, that the portion of Resolution No. 1552 adopted at Meeting No. 290 on April 23, 1973 which authorizes the provision of free travel privileges on the New York State Thruway system to active Authority Managerial/Confidential employees is rescinded, and the provisions affording active Authority Managerial/Confidential employees free travel privileges on the New York State Thruway System set forth in the fourth Resolved of Resolution No. 5441 adopted at Meeting No. 643 on August 5, 2005 are rescinded, and be it further

RESOLVED, that the portion of Resolution No. 35 adopted at Meeting No. CC-11 on January 26, 1994 authorizing the provision of free travel privileges on the New York State Thruway system to active Corporation Managerial/Confidential employees is rescinded and the provisions affording active Corporation Managerial/Confidential employees free travel privileges on the New York State Thruway system set forth in the fourth Resolved of Resolution No. 348 adopted at Meeting No. CC-133 on August 5, 2005 are rescinded, and be it further

RESOLVED, that the provision affording active State Police Troop T employees free travel privileges on the New York State Thruway system set forth in Resolution No. 5707 adopted at Meeting No. 670 on November 18, 2008, is rescinded, and be it further

RESOLVED, that the Executive Director is authorized to modify applicable administrative policies and procedures to implement this resolution, and be it further

RESOLVED, that this resolution be incorporated in the minutes of this meeting

Item 8 by Mr. Bryan (Appendix H)

Authorizing the Chief Financial Officer to Approve Certain Disposals of Real Property Interests Appraised at \$15,000 or Less and to Take All Steps Necessary to Implement Same (1:39:54)

Mr. Bryan reported that under the current statute any property with a fair market value equal to or less than \$15,000 can be disposed of via negotiation, and in most instances these disposals are to people who have some sort of home or garage encroaching on Authority property. In many cases these encroachments go back quite a few decades. Approving this change would greatly accelerate the amount of time in which staff can complete these smaller disposals that would both benefit both the Authority and the buyer. All below fair market value disposals and disposals where the fair market value is greater than \$15,000 would continue to come to the Board, and Mr. Bryan would be required to report to the Board every quarter any authority taken to dispose of property under this resolution.

Chairman Milstein requested confirmation that this would not be a delegable authority, that Mr. Bryan personally must negotiate it. Mr. Bryan replied that the Public Authorities Accountability and Reform Acts require the Authority to have a Contracting Officer. That title has been deemed to be the CFO and as such Mr. Bryan is the one responsible for ensuring that the fair market value is obtained. The negotiation is loosely used here because staff has to take fair market value. The Authority/Corporation gets an independent appraisal in most cases and occasionally does an in-house appraisal for smaller transactions, and that is the price. Chairman Milstein stated that when you do an appraisal you get a range of values, there is the low end of the range, the middle of the range and the top of the range, which is why he is suggesting that there is a negotiation because unless staff only accepts the highest number permitted by law, there could be a negotiation. Mr. Bryan responded that the Authority/Corporation has staff internally that can review appraisals. Mr. Milstein clarified that negotiating is a different skill than reviewing an appraisal. He stated that the Board is comfortable delegating the negotiations to Mr. Bryan. If there is no negotiation because staff has selected the highest price in the range that the Authority is legally allowed to charge, then Mr. Bryan would not have to attend the

negotiation. However, if there is going to be an actual negotiation where there is a range of outcomes, the Board would want its best negotiator there and that would be Mr. Bryan. Chairman Milstein inquired as to how often that might occur. Mr. Bryan stated that it is rare.

Mr. Sall stated that on these smaller transactions the Authority/Corporation loses money to pay for the appraisals and various other things. He inquired as to whether or not staff is taking any steps to try to minimize the amount of money lost on each of these transactions. Chairman Milstein stated that the Authority/Corporation is permitted to sell these properties at the appraised value and inquired if it is possible to sell them for more than the appraised value. Mr. Bryan replied that the Authority/Corporation must ask for at least the fair market value. Chairman Milstein stated that part of the negotiation would determine whether the Authority/Corporation gets a higher price or whether the Purchaser absorbs the costs.

There are many transactions that the Authority/Corporation has been dealing with the last several years involving the misrecording of deeds and lot lines on people's homes. In those cases where the Authority/Corporation is giving up land for a nominal consideration due to an error, Chairman Milstein has asked staff verify that there is nothing unusual about the transaction nor was there any plot to take advantage of the Authority/Corporation. The Board wants to be more than fair with people who have to get their lot lines in order to have a saleable piece of property. Putting that group aside, there is now the group of cases where the Authority/Corporation has excess property, somebody wants it, they have land adjoining it and they want to make an offer. Staff should be mindful that the appraised value may be much less than it is worth to the next door neighbor and that is why Mr. Bryan will be there negotiating for the Board.

Then the other question arises as to whether or not to ask for certain cost reimbursement for legal and other fees. Chairman Milstein asked if Mr. Sall had a recommendation as to how this should be handled in the context of the fact that there will be a negotiation that ends in a certain price result. Should staff let the Purchaser know that there will be some kind of a processing fee of "X" and that it will, in many cases, just get added on to the negotiation but in some cases the parties will take that into account. Mr. Sall responded that staff should come up

with what the actual cost is, in terms of manpower, to implement whatever the Purchasers want, and staff should just have them pay that amount as part of the cost and additionally, they should reimburse the Authority/Corporation for any expenditure. The Authority/Corporation is giving away property for a couple thousand dollars when it might cost more in time and effort to do it.

Chairman Milstein inquired as to what it usually costs to complete one of these transactions. Mr. Estes replied that it is important to point out that staff does pass on appraisal costs and survey costs, as well as charging an application fee. Any time the Authority/Corporation hires an outside consultant to perform something professional in nature it has to be paid for by the applicant who wants to make the purchase. There is attorney time that is spent and there is staff time from John Bryan's department as well. Staff could, potentially, figure out what the internal hourly rate is, put in overhead, and charge that. However, a lot of these transactions are for less than \$15,000. Chairman Milstein asked if there are enough of these transactions that the Authority/Corporation would have a different staff count than it would otherwise have without these transactions. Mr. Estes responded that there is not. Chairman Milstein stated that there is no incremental cost to the Authority/Corporation, it gets absorbed within the normal work

Mr. Conway stated that the Board has to remember that many of these are good will and public relations matters. If staff is talking about a couple of feet on someone's lot, it is not very important to the Authority/Corporation, but it is very important to them. Chairman Milstein concurred, adding that with the lot line adjustments, the Authority/Corporation should be more than fair to anybody in this unfortunate situation through no fault of their own, if that is the case. Mr. Bryan stated that the non-encroachment, larger pieces that staff transfers almost always include assemblage value. It is not the standalone value of the property. It is the value of the property and what it means to the adjoining property. In a lot of cases, for one acre, staff may tell them that they owe four or five times the price of what it would cost if someone else just bought that one acre.

Mr. Milstein asked for confirmation that the authorization sought by the Board today is only limited to \$15,000 transactions, if it gets to be more than that, then Mr. Bryan would come back to the Board. Mr. Bryan concurred.

Mr. Sall restated that it is his belief that the Authority/Corporation is losing money on many of these transactions, but asked if this authorization may mean that the Authority/Corporation needs one less lawyer if staff will be dealing with a lot fewer of these transactions. Chairman Milstein asked that the Board be kept apprised if the volume of these transactions is material, necessitating any changes in the staffing levels the Authority/Corporation otherwise would have.

After full discussion, on the motion of Mr. Conway, seconded by Ms. Luh, without any objections, the Board unanimously adopted the following resolution:

RESOLUTION NO. 5911
AUTHORIZING THE CHIEF FINANCIAL OFFICER TO APPROVE CERTAIN DISPOSALS OF REAL PROPERTY INTERESTS APPRAISED AT \$15,000 OR LESS AND TO TAKE ALL STEPS NECESSARY TO IMPLEMENT SAME

RESOLVED, that the Chief Financial Officer be, and he hereby is, authorized, based on transactional recommendation reports and other information prepared by the Office of Real Property Management and other Authority/Corporation staff in accordance with the Thruway Real Property Management Policy and the Canal Real Property Management Policy and the Standard Operating Procedures adopted pursuant to each such policy, to approve the disposal of real property interests valued at \$15,000 or less and leases of real property where total rent is \$15,000 or less, provided that fair market value is obtained in exchange for such disposals and provided further, that all such disposals must comply with

all applicable laws, including, but not limited to, Public Authorities Law, Article 9, Title 5-A, as well as either the Thruway Real Property Management Policy or the Canal Real Property Management Policy and the Standard Operating Procedures adopted pursuant to each policy, whichever is applicable, and be it further

RESOLVED, that the Chief Financial Officer, in order to carry out the aforesaid delegation, be, and he hereby is, authorized, with regard to such delegation, to:

A. Determine that barge canal lands, barge canal terminal lands or old canal lands and appertaining structures constituting the canal system prior to the barge canal improvement are no longer necessary or useful as part of the barge canal system, as an aid to navigation thereon or for barge canal purposes and authorize abandonment of such lands so that they can be sold;

B. Determine that canal lands have no essential purpose for navigation, so that such lands can be leased;

C. Determine that Thruway Authority real property is not needed for Authority corporate purposes, so that it can be sold, or determine that it is not needed for present corporate purposes, but needed for the future, so that it can be leased;

D. Determine the method of disposal, e.g. negotiation;

E. Make all determinations that may be necessary in relation to the disposals covered by the delegation, including, but not limited to, making determinations required by the State Environmental Quality Review Act (“SEQRA”) and the Smart Growth Infrastructure Bank;

F. Take, and authorize, all actions needed to progress and effectuate the disposals that are authorized, including, but not limited to, (1) authorizing the Executive Director, or his

designee, to execute abandonment orders and maps, contracts of sale, leases, deeds and other documents in accordance with the terms of the disposals that are so authorized and subject to such other terms as may be advised by the Chief of Staff, General Counsel, Director of Canals, Director of Maintenance and Operations and Chief Engineer in accord with such authorizations; (2) authorizing the Chief Engineer, or his designee, to take all actions necessary to implement the SEQRA determinations; and (3) authorizing the Executive Director, or his designee, to exercise all powers reserved to the Authority/Corporation under the provisions of any contracts, leases, deeds or other documents related to the disposal; and be it further

RESOLVED, that the Chief Financial Officer shall report back to the Authority/Corporation Board quarterly on the disposals authorized by the foregoing delegation, and be it further

RESOLVED, that this resolution be incorporated in the minutes of this meeting

Item 9 by Mr. Estes and Mr. Bell (Appendix I)
Authorizing an Amendment to the Thruway Rules and Regulations in Relation to Eliminating the Need for Certain Advertising Device Permits (1:50:17)

Mr. Estes reported that senior managers at the Authority have been asked to review procedures in their departments that are potentially unnecessary, redundant or have outlived their usefulness. Currently, the Authority's permitting process is more restrictive than what is required by the Federal Highway Beautification Act and the by the New York State Department of Transportation. It is hereby proposed that only advertising unrelated to a business located on the property on which a sign is located will be regulated by the Authority. Accordingly, Board authorization is sought to amend the Authority's rules and regulations pursuant to the State Administrative Procedure Act to change the Authority's current permitting process so that it will

be consistent with the New York State Department of Transportation's. Administrative benefits, as well as savings in time, will accrue to both businesses along the Thruway which no longer have to file for permits and to Thruway staff who will no longer have to process these permits and perform field inspections of these signs. There will be an insignificant loss of revenue should this change be made. Chairman Milstein requested clarification with regard to the "insignificant loss of revenue." Mr. Estes replied that it is approximately \$4,000 annually.

Mr. Simberg asked if this basically permits any business sign that is self-identifying to go up without the Board's approval. Mr. Estes responded affirmatively, adding that there are still standards. Mr. Simberg asked if the Authority will still be protected against the strobe lights and flashes and everything else that people use as attention getters in other sections. Mr. Estes concurred. Chairman Milstein asked if Authority will still be protected by the standard used by federal and State with regard to pornography, that type of thing. Mr. Simberg clarified that he was referring to things that are not illegal in the State or illegal with the local governments but could be dangerous for drivers. Mr. Estes replied that those would still not be permitted.

After full discussion, on the motion of Chairman Milstein, seconded by Mr. Simberg, without any objections, the Board unanimously adopted the following resolution:

RESOLUTION NO. 5912
**AUTHORIZING AN AMENDMENT TO THE
THRUWAY RULES AND REGULATIONS IN
RELATION TO ELIMINATING THE NEED FOR
CERTAIN ADVERTISING DEVICE PERMITS**

RESOLVED, that the Board approves the proposed amendments to the Authority's rules and regulations as presented in Exhibit 1 attached hereto and authorizes the Executive Director, or his designee, to take all actions necessary for adoption of such amendments in accordance with the State Administrative Procedure Act and any other applicable statutes, policies and procedures, and be it further

RESOLVED, that the Executive Director is authorized to make modifications to such amendments as he deems appropriate in response to any comments that may be made during the adoption process conducted in accordance with the State Administrative Procedure Act and any other applicable statutes, policies and procedures, and be it further

RESOLVED, that this resolution be incorporated in the minutes of this meeting

Item 10 by Mr. Nadratowski (Appendix J)
Report on the 2011 Capital Program (2:18:29)

Mr. Nadratowski reported that by the end of this year the Authority will have let 32 projects valued at \$127 million. For the year, the Authority engineer's estimates are running approximately 9.6 percent above the successful low bidders. Due to the protracted slow recovery of the economy and the significant costs associated with the emergency repair work caused by Tropical Storms Irene and Lee, 23 projects have been delayed from the 2011 program to future years, of those 23, 13 projects are now scheduled for the 2012 letting program. Attached to the monthly report are the third quarter reports, as required by the 2011 Contracts Program Board Resolution. Cash flow expenditures through October totaled \$318 million and staff anticipates the Authority will expend the entire \$390 million approved by the Board by year end. The monthly report also includes a short briefing on the continuing tropical storm recovery efforts as well as other items the Board has expressed an interest in.

Chairman Milstein inquired as to how, if a number of projects were delayed due to the storms, is it that staff is spending the full amount. Mr. Nadratowski replied that staff had to take a look at the commitment that the Authority was going to expend over a period of time and look at projects that were also in conflict with that commitment and decide to push those projects out in order to afford the Canal recovery contracts. Chairman Milstein stated in other words, that staff substituted Canal recovery contracts for work that the Authority would have been paying for during this period and used up the full amount of the budget that way. Mr. Nadratowski concurred. Chairman Milstein inquired as to the amount of the exchange, stating that it sounds

like approximately \$25 million. Mr. Nadratowski replied that it will be at least that amount; by the time staff is done bringing the Canal back to its like new, or previous to storm, condition the Authority will have spent close to \$80 million. Chairman Milstein questioned, since the Authority is going to be reimbursed for 75 percent of that cost, if staff was in the middle of a project and stopped it so that funds could be diverted, will it end up costing more money to complete a project in two pieces rather than to have done it in one continuous piece. Mr. Nadratowski responded that staff did not stop any project that was underway; these were projects that had not yet been let. Chairman Milstein stated that in theory if the Authority builds something next year, it may cost more than building it this year. Mr. Nadratowski agreed that it is a possibility. Chairman Milstein added that when the Authority files for FEMA reimbursement, there is a cost that staff has to think about whether that would be a submittable cost to FEMA. Staff should see if there is any way to get back incremental costs from pushing that work into future years. Mr. Bryan replied that those costs are eligible and that staff intends to go after those funds as well.

Mr. Sall asked for an update regarding the Authority's work with Cornell University. Mr. Nadratowski indicated that it was a great meeting. Staff went to Ithaca, N.Y. to talk with Cornell's engineering office about collaborations that the Authority would be looking to do in the near future. There are up to nine opportunities for the Authority and Cornell to work together to look at either innovative materials or asset management techniques, among other items, one of which Chairman Milstein had suggested staff take a look at. Staff is now working on developing a detailed draft proposal.

Mr. Simberg asked if one of the issues looked at was whether or not there is a way of stabilizing unstable subgrades. Chairman Milstein replied that that issue was the original reason for the meeting with Cornell. Mr. Milstein said that the issue is that the Authority applies salt every year after plowing the snow and both, especially the salt, deteriorate the road and eventually the road bed. Staff has been asked to look into whether or not it is feasible, using nanotechnology, to have a substance that the Authority can prepare the road surface with so that when salt is applied and the conditions apply moisture and friction, that it strengthens the road instead of deteriorating it.

Mr. Simberg stated that he was hoping for something that gave the Authority a choice between digging the whole road out and pumping something underneath it. Chairman Milstein stated that there are a series of these initiatives that he has been in discussions with Tom Ryan and Tom Madison about and there is exciting progress on a lot of these. The idea is to partner with the SUNY system, Albany and Buffalo have nanotechnology centers, as does Cornell. These are important relationships for the Authority to have. Staff started with Cornell and there is no reason why the Authority should not, over time, form these relationships with other members of the SUNY system.

Dr. Veras advised that there are a number of research centers who could provide the Authority with access to nearly all the universities and colleges in the State and could also provide matching funds. Cornell is a member of these centers and it would be appropriate to have an umbrella agreement with these research centers and all the organizations. He suggested that this would be the best way to reach out because speaking to one university and without contacting the others could be dicey. Chairman Milstein stated that the magic word is matching funds and asked Mr. Estes to work with Dr. Veras and Mr. Nadratowski to research what the legal structure of participating in these types of partnerships should be, as well as the approval process for these kinds of research projects.

After full discussion, on the motion of Ms. Luh, seconded by Dr. Veras, without any objections, the Board accepted the September, October and November monthly status reports on the combined Thruway Authority and Canal Corporation 2011 Capital Program.

Item 11 by Mr. Nadratowski (Appendix K)
Authorizing Negotiation and Execution of Four Term Agreements (D214072, D214073, D214112 and D214114) with Four Firms to Provide Various Support Services (2:27:22)

The Board tabled this Agenda Item pending further discussion.

OTHER BUSINESS (2:41:45)

Chairman Milstein stated that, looking in detail at some of the numbers, and reviewing the engineer budget, it includes at least some of the \$21 out of \$33 million for this coming year, for people who do not design the roads or bridges that are built, but who verify that what was designed and what is being built conforms with the plans. Chairman Milstein asked what the man hours are for this work at a budget of \$21 million and, as Mr. Sall has raised in the past, does it make sense for the Authority to start doing more of it internally. Mr. Nadratowski replied that Audit and Management Services has been working on a report on this subject.

Mr. Hannibal stated the draft report that is being circulated demonstrates that the cost of a fully loaded in-house engineer is comparable to that of an outsourced engineer. The range for an in-house engineer was somewhere between \$76 to \$105 an hour, fully loaded with fringe benefits and everything else built in. Chairman Milstein asked, if a reviewing engineer is in the \$65-\$75,000 a year range, what would it cost the Authority with benefits. Mr. Barr replied that benefits run the Authority approximately 60 percent on top of the salary. Mr. Hannibal stated that the cost for an outsourced engineer was between \$86 to \$105 an hour.

Chairman Milstein stated that at \$75,000 a year, plus 50 percent in benefits, it would be \$110,000 per person. Using \$100,000 for calculating purposes, it is 10 people per million and at \$21 million that would be 210 people working fulltime for a year. Mr. Nadratowski clarified that the \$21 million is not just for staff, it is for equipment as well. The split would likely be 75 percent personnel and 25 percent equipment. Chairman Milstein inquired as to the kind of equipment reviewing engineers use. Mr. Nadratowski replied that inspection engineers use moves and platforms to inspect from; design engineers would have just their computer.

Dr. Veras stated that he was surprised that the figures came out to be the same, because the overhead for benefits at the Authority may be 60 percent but the firms pay a higher salary and their total direct costs might be 2.5 to 3 times the Authority's. Chairman Milstein added that the firms have the additional cost of providing office space, which the Authority already has. Mr. Hannibal responded that "fully loaded" includes fringe benefits and administrative costs as well

as a component for utilization of that person. Authority personnel might not be working fulltime on a particular project, so in order to equate it and get as close as possible to “apples to apples,” staff has to inflate that cost by another factor in order to get a calculation that is comparable. Chairman Milstein stated that the Board will take a look at the actual numbers once staff has them, but reiterated 210 people fulltime sounds like a lot of inspecting engineers, which is what the Authority could buy, more or less, with the \$21 million a year. Mr. Sall inquired as to how many engineers the Authority currently has on staff. Mr. Nadratowski replied that there are approximately 10 per Division for a total of 40 who perform field inspections.

Mr. Madison stated there have been many analyses of this exact topic, and almost none of them have ever been an “apples to apples” comparison; the report that staff did is one of the first. The consulting engineering community will give a compelling argument as to why they are so much more of a bargain, and the public employee unions will do the same thing, not considering the fully loaded costs, or the benefits, or the reallocation of people’s time within the organization. Historically it has been viewed as kind of a wash. Authority staff, by looking at the existing reports and doing some of their own investigations to try to get that “apples to apples” comparison, came to a similar conclusion. Mr. Hannibal added that numbers are based on the Authority’s historic numbers from 2006 through calendar year 2009.

Chairman Milstein asked if the Authority’s in-house engineers basically do exactly the same work as the engineers who are hired from the outside. Mr. Nadratowski advised that they do. Chairman Milstein stated that it should be very easy for staff to take the number they have and divide by the cost, and figure out what the Authority’s average cost is in order to nail that number down precisely. That number will be divided into what the Authority is actually spending on this, and if the Authority can afford to hire 210 people then that work should probably be done in-house. Mr. Nadratowski concurred, but advised that staff wants to be careful because it is a fluctuating Capital Program. The Authority never wants to be at a point where there are more people on staff than the program can support. Mr. Bryan added that in the winter time there would be lot of people sitting around. Chairman Milstein advised staff to look at that and to keep in mind that the Capital Plan for the next five years is \$384 million a year.

PUBLIC COMMENT PERIOD (2:50:00)

Murray Bodin, representing concerned grandparents, stated that it was an interesting meeting and that he can only compare it to three months ago when he was at a Port Authority committee meeting and a \$25 million contract came up, and one of the Board Members said maybe staff ought to go back and look at that again. And across the room, the staff's jaws could have hit the floor if they were close enough; they were so surprised to hear that. Low and behold two months ago they came back with a report that said instead of \$25 million they can have that done for \$20 million. There was another piece of property transfer similarly done. Last month they came in and everybody had new ideas; everybody looked at things differently. Welcome to the new world, the culture that we have all been living under is gone. The world changed when we weren't looking and we have to look at things in an entirely different way.

Tomorrow he will be at New Jersey Transit talking about displays for bus drivers. They need to be digital; all the bus drivers need is the speed of the bus. They need to have a steering wheel the same size as a little car and they are still using the big ones and that is cultural. There are a whole bunch of cultural things out there that have gone on and on because we did it last year, we did it the year before and we did it the year before that, but the world has changed. Whether it's in Greenberg, or next Monday at the MTA committee meetings or New Jersey Turnpike, he will be there and raising the same issue in every one. The world has changed. We cannot afford to do it the way we have been doing it. We cannot afford to base this year's contract on what we paid last year, because then we are repeating our mistakes. We have to look at it in a new way. It's a pleasure to be here. He will be meeting with Mr. Madison, he hopes. David Sampson, Chair of Port Authority, says at every meeting if he needs to talk to somebody, just ask. He is asking. He would like to meet with Mr. Madison regarding a number of issues that have been floating around. Mr. Conway probably remembers when Mr. Bodin used to go to the MTA, at that time Mr. Conway was Chair. He met Mr. Madison's predecessor; he worked with John Platt over the Tappan Zee Bridge. It has come a long way and he supports the new Tappan Zee Bridge. He did not support it until a month ago. The thinking of the design has changed. There are a whole bunch of things that have changed. He stated that he would like to

make an appointment to meet with Mr. Madison and discuss a number of issues that can be brought up to the standards the Chairman is talking about.

EXECUTIVE SESSION AND ADJOURNMENT (2:53:31)

Chairman Milstein requested a motion to adjourn to Executive Session to discuss the sale of securities to fund the 2012 Capital Plan, as well as to seek the advice of counsel regarding the Infrastructure Investment Act of 2011. There being no further business to come before the Boards, without any objections, on the motion of Chairman Milstein, seconded by Dr. Veras, the meetings were adjourned and the Board moved into Executive Session.

Jill B. Warner
Secretary

Note: Webcasts, which include dialogue of Authority/Corporation Board Meetings, are available on the Thruway Authority website 48 hours after such meetings occur and remain on the website for a period of four months.