



MINUTES

NEW YORK STATE CANAL CORPORATION

BOARD MEETING NO. CC-157

November 19, 2008

Minutes of a meeting of the New York State Canal Corporation, held in the Board Room at Administrative Headquarters, 200 Southern Boulevard, Albany, New York 12209 and via video conference from the Authority's New York Division, 4 Executive Boulevard, Suffern, NY 10901.

The meeting began at 12:50 p.m.

There were present:

**John L. Buono, Chairman
E. Virgil Conway, Board Member, via video conference
Erin M. Crotty, Vice-Chair
Frederick M. Howard, Board Member
Donna J. Luh, Board Member
Kevin J. Plunkett, Board Member
Brandon R. Sall, Board Member**

Constituting all of the members of the Canal Corporation Board.

In addition, there were present the following staff personnel:

**Michael R. Fleischer, Executive Director
Sharon O'Connor, General Counsel**

Christopher Waite, Chief Engineer
John Bryan, Chief Financial Officer
Jill Warner, Secretary and Board Administrator
William Rinaldi, Division Director, Albany Division
Ramesh Mehta, Division Director, New York Division, via video conference
Richard Garrabrant, Division Director, Syracuse Division
Thomas Pericak, Division Director, Buffalo Division
Kevin Allen, Acting Director, Audit and Management Services
John Barr, Director, Administrative Services
Donald Bell, Director, Operations and Maintenance
Carmella Mantello, Director of Canal Corporation
Betsy Graham, Acting Director, Office of Public Affairs
Captain Joe Flagler, Troop T
Daniel Gilbert, Chief of Staff
Kenneth Flood, Director, Office of Real Property Management
Wendy Allen, Deputy Chief of Staff
Joanne Riddett, Director, Information Technology
Deb Haslun, Director, Bureau of Labor Relations
Tom Fitzgerald, Director, Office of Human Resource Management
Harry Lennon, Senior Investigator, Audit and Management Services
Elizabeth Yanus, Office Manager, Office of the Deputy Chief of Staff
Tracie Sandell, Assistant Counsel
Cathy Sheridan, Manager, Canal Capital Program
Dorraine Steele, Director, Office of Fiscal Audit and Budget
Karen Osborn, Budget Manager, Office of Fiscal Audit and Budget
Kimberly Chupa, Public Information Specialist
Jill Ross, Deputy Project Manager, TZB/I-287 Environmental Review
Michael Sikule, Director, Office of Investments and Asset Management

Also in attendance:
Cathy Woodruff, Reporter, *Albany Times Union*
Charles Breiner, Representative, NYS OMCE
Stanley Kramer, Bond Counsel, Hawkins, Delafield & Wood, via video conference
Angela Roddell, Senior Vice President, First Southwest, via video conference
Pat Reale, Principal Budget Examiner, NYS Division of the Budget
Steve Sacripanti, Public
Michael Anderson, Project Director, I-287/TZB Environmental Review, NYSDOT
Phil Ferguson, Financial Policy Bureau, NYSDOT
Bill Estes, Assistant Counsel to the Governor
John Armstong, Assistant Television Engineer, NYN



Chairman Buono noted that he, Mr. Conway, Ms. Crotty, Mr. Howard, Ms. Luh, Mr. Plunkett and Mr. Sall had received and reviewed the Agenda submitted for consideration at this meeting and were prepared to act on each of the items.

Ms. Warner recorded the minutes as contained herein.

Public notice of the meeting had been given, Ms. Warner said.

Item 1 by Ms. Warner (Appendix A)
Minutes of Meeting No. CC-156

On the motion of Mr. Howard, seconded by Ms. Crotty, without any objections, the Board approved the minutes of Meeting No. CC-156 held on September 17, 2008 which were made available to the Board Members as part of the Agenda.

Item 2 by Ms. Mantello and Mr. Bryan (Appendix B)
Authorizing: Approval of Extension of One Year to Complete Transfer Authorized by Resolution Nos. 390 and 431: Authorizing the Abandonment of Approximately 0.79+ Acre of Canal Land Located in the Village/Town of Fort Ann, County of Washington, For a Transfer of Jurisdiction over Such Land by the New York State Office of General Services to the New York State Department of Transportation

After full discussion, on the motion of Mr. Plunkett, seconded by Mr. Howard, without any objections, the Board adopted the following resolution:

RESOLUTION NO. 459

AUTHORIZING: APPROVAL OF EXTENSION OF ONE YEAR TO COMPLETE TRANSFER AUTHORIZED BY RESOLUTION NOS. 390 AND 431: AUTHORIZING THE ABANDONMENT OF APPROXIMATELY 0.79+ ACRE OF CANAL LAND LOCATED IN THE VILLAGE/TOWN OF FORT ANN, COUNTY OF WASHINGTON, FOR A TRANSFER OF JURISDICTION OVER SUCH LAND BY THE NEW YORK STATE OFFICE OF GENERAL SERVICES TO THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION



Item 2 by Ms. Mantello and Mr. Bryan (Appendix B)

Authorizing: Approval of Extension of One Year to Complete Transfer Authorized by Resolution Nos. 390 and 431: Authorizing the Abandonment of Approximately 0.79+ Acre of Canal Land Located in the Village/Town of Fort Ann, County of Washington, For a Transfer of Jurisdiction over Such Land by the New York State Office of General Services to the New York State Department of Transportation (Continued)

RESOLVED, that an extension of one year to complete the transfer authorized by Resolution Nos. 390 and 431, be, and the same hereby is, approved, and be it further

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

Item 3 by Mr. Barr (Appendix C)

Authorization for the Executive Director to Execute a Collective Bargaining Agreement Between the Canal Corporation and the Public Employees Federation, Division 504, AFL-CIO, Approval of Compensation for Managerial/Confidential Employees and Authorization for the Executive Director to Extend to Managerial/Confidential Employees Appropriate Bargaining Agreement Provisions Which May Be Negotiated

Mr. Barr stated that this Item is identical to the Item presented on the Thruway side with the exception that it is for PEF employees rather than CSEA. He also stated that this Item recommends no increase in the base salary of Ms. Mantello, Director of the Canal Corporation. Ms. Crotty stated that she extends the same comments and thanks to Ms. Mantello as she did to Authority staff. Chairman Buono thanked Ms. Mantello and stated that the Board appreciates all that she does.

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

RESOLUTION NO. 460

AUTHORIZATION FOR THE EXECUTIVE DIRECTOR TO EXECUTE A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CANAL CORPORATION AND THE PUBLIC EMPLOYEES FEDERATION, DIVISION 504, AFL-CIO, APPROVAL OF COMPENSATION FOR MANAGERIAL/CONFIDENTIAL EMPLOYEES AND AUTHORIZATION FOR THE EXECUTIVE DIRECTOR



Item 3 by Mr. Barr (Appendix C)

Authorization for the Executive Director to Execute a Collective Bargaining Agreement Between the Canal Corporation and the Public Employees Federation, Division 504, AFL-CIO, Approval of Compensation for Managerial/Confidential Employees and Authorization for the Executive Director to Extend to Managerial/Confidential Employees Appropriate Bargaining Agreement Provisions Which May Be Negotiated (Continued)

**TO EXTEND TO MANAGERIAL/CONFIDENTIAL
EMPLOYEES APPROPRIATE BARGAINING
AGREEMENT PROVISIONS WHICH MAY BE
NEGOTIATED**

RESOLVED, that the Executive Director be, and hereby is, authorized to execute an agreement between the Corporation and the Public Employees Federation, Division 504 (as representatives of employees in Negotiating Unit V) (“Agreement”), and be it further

RESOLVED, that such Agreement shall have a term of four years, beginning July 1, 2008 and ending June 30, 2012, and shall be on terms and conditions consistent with this item, and be it further

RESOLVED, that the Executive Director or his designee be, and hereby is, authorized to enter into Memoranda of Understanding or Settlement Agreements with representatives of PEF Division 504 to clarify or otherwise settle questions or disputes regarding the interpretation and application of the Agreement, and be it further

RESOLVED, that the base salary of Managerial/Confidential (“M/C”) employees and the M/C Salary Schedule be increased by 3.0% retroactive to the pay period that includes July 1, 2008; and effective the pay period that includes July 1, 2009, the base salary of M/C employees and the M/C Salary Schedule be increased by 3.0%; and effective the pay period that includes July 1, 2010, the base salary of M/C employees and the M/C Salary Schedule be increased by 3.0%; and effective the pay period



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Authorization for the Executive Director to Execute a Collective Bargaining Agreement Between the Canal Corporation and the Public Employees Federation, Division 504, AFL-CIO, Approval of Compensation for Managerial/Confidential Employees and Authorization for the Executive Director to Extend to Managerial/Confidential Employees Appropriate Bargaining Agreement Provisions Which May Be Negotiated (Continued)

that includes July 1, 2011, the base salary of M/C employees and the M/C Salary Schedule be increased by 4.0% provided, however, that no payment of any base salary increase be granted for the Director of Canals, and be it further

RESOLVED, that the Board continue to monitor and review this issue during the next fiscal year, and be it further

RESOLVED, that M/C employees first hired by the Corporation or Authority on or after July 1, 2008 are not eligible to receive unlimited free travel on the Thruway, and be it further

RESOLVED, that the Executive Director be, and hereby is, authorized to extend appropriate provisions of collective bargaining agreements that have been or may be reached as a result of current labor negotiations with the Authority/Corporation's unionized employees (including the reduction of such benefits) to the Corporation's M/C employees, and be it further

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



Item 4 by Mr. Barr (Appendix D)

Authorizing the Executive Director to Execute a Contract with Professional Health Services, Inc., to Provide Occupational Medical Services for Authority and Canal Corporation Employees

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

RESOLUTION NO. 461

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT WITH PROFESSIONAL HEALTH SERVICES, INC. TO PROVIDE OCCUPATIONAL MEDICAL SERVICES FOR AUTHORITY AND CANAL CORPORATION EMPLOYEES

RESOLVED, that the Executive Director be, and hereby is, authorized to execute an agreement with Professional Health Services, Inc. to provide Occupational Safety and Health Administration mandated occupational medical services for both Authority and Canal Corporation employees (“Agreement”), and be it further

RESOLVED, that the Agreement shall be for a term of two years, with the option to renew for three additional one-year terms, the cost of these services is anticipated to be \$193,000 for each of the years 2009 and 2010, for a maximum amount payable for the initial two year term of \$386,000, and be it further

RESOLVED, that the Agreement shall be on such other terms and conditions as the Executive Director, in consultation with the General Counsel, determines to be in the best interests of the Authority, and be it further

RESOLVED, that the Executive Director be, and hereby is, authorized to exercise the Authority’s option to extend the Agreement for each of the three additional one-year terms provided that the maximum amount payable for the entire five year term will not exceed \$965,000, and be it further



Item 4 by Mr. Barr (Appendix D)

Authorizing the Executive Director to Execute a Contract with Professional Health Services, Inc., to Provide Occupational Medical Services for Authority and Canal Corporation Employees (Continued)

RESOLVED, that the Executive Director or his designee shall have the authority to exercise all powers reserved to the Authority under the provisions of the Agreement, to manage and administer the Agreement, amend provisions of the Agreement consistent with the terms of this item and other Board authorizations and suspend or terminate the Agreement in the best interests of the Authority, and be it further

RESOLVED, that the Chief Financial Officer be, and hereby is, authorized to charge expenditures for services rendered under such Agreement to the appropriate funds provided therefore, subject to reallocation and adjustment as determined by final audit of charges, and be it further

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

Item 5 by Mr. Bryan (Appendix E)

Approval of the 2009 Proposed Budget for the New York State Canal Corporation

Mr. Conway stated that the Audit & Finance Committee approved the Canal Budget for Board consideration at its meeting on November 17, 2008.

Ms. Crotty stated that the 2008 Canal capital was down to \$35 million. Mr. Bryan stated that originally staff planned for Canal capital around \$54 million however, due to project delays and no agreement on the Bond Act projects it came in closer to \$35 million for the year.

Chairman Buono asked Ms. Mantello if the Corporation had received all the Federal funds related to the flooding. Ms. Mantello responded that the flood recovery work will be completed between the end of 2009 and beginning of 2010. The projects are approximately 95 percent complete at this time. FEMA is behind schedule in making payments to the Corporation but the Corporation is meeting thresholds for reimbursement and will continue to receive payments until all monies are received.



Item 5 by Mr. Bryan (Appendix E)

**Approval of the 2009 Proposed Budget for the New York State Canal Corporation
(Continued)**

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

RESOLUTION NO. 462

**APPROVAL OF THE 2009 PROPOSED BUDGET FOR
THE NEW YORK STATE CANAL CORPORATION**

RESOLVED, that the Canal Corporation's proposed Budget for the fiscal year 2009, submitted by the Executive Director, the Chief of Staff and the Chief Financial Officer, be, and the same hereby is, approved and funded in accordance with the attached Exhibit I, 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 6 by Mr. Waite (Appendix F)
Approving the 2009 Canal Contracts Program

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

RESOLUTION NO. 463
APPROVING THE 2009 CANAL CONTRACTS PROGRAM

RESOLVED, that the 2009 Contracts Program for Canals and Related Facility Projects be, and the same hereby is, 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 2009 CONTRACTS PROGRAM;
- B. to hold the respective Engineer's/ Architect's Estimate of Cost for such contracts confidential;
- C. to advertise for receipt of bids for those projects which are tabulated in the 2009 CONTRACTS PROGRAM; (1) when the final Engineer's/Architect's Estimates of Cost are 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 \$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 2009 Contracts Program, 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



Item 6 by Mr. Waite (Appendix F)
Approving the 2009 Canal Contracts Program (Continued)

Accounts that sufficient funds are available in the 2009 Contracts Program;

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; or

2. the low bid exceeds the Engineer's/Architects Estimate by up to \$75,000 on contracts up to and including \$500,000, or 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 Estimate amount and the low bid; or

3. the low bid exceeds the Engineer's/Architects Estimate by up to \$100,000 on contracts up to and including \$500,000, or 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 Estimate 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 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



Item 6 by Mr. Waite (Appendix F)
Approving the 2009 Canal Contracts Program (Continued)

advertise for receipt of bids pursuant to paragraph C;

F. to approve contingent or extra work on such 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 contracts 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;

G. 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;

H. to acquire and grant such property interests (fee title, easements, etc.), in accordance with the provisions of the Corporation's Real Property Management Policy, as may be necessary for implementation of the 2009 CONTRACTS PROGRAM; provided that the total amount of acquisitions or the amount of grants for any one project shall not exceed \$150,000 each without Board authorization;

I. 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 2009 CONTRACTS PROGRAM;

J. to approve a supplemental agreement, for expenditure of additional funds in furtherance of a



Item 6 by Mr. Waite (Appendix F)
Approving the 2009 Canal Contracts Program (Continued)

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, in the case of agreements of over \$3,000,000;

K. to approve, with the prior approval of the Executive Director, 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 25 percent including any additional funds authorized in paragraph J; and provided further, when such supplemental agreement includes additional new design or construction inspection tasks, such approval must be based upon the following: it is determined that the assignment of the additional tasks is in the best interests of the Corporation when considering the proximity of the additional tasks to the ongoing tasks, or it is determined to be in the best interests of the Corporation to expedite the additional tasks through such assignment, or it is determined that significant savings to the Corporation will result through the assignment of the additional tasks;

L. to exercise all powers reserved to the Corporation under the provisions of any contracts or agreements executed pursuant to this item, 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 Corporation, and be it further



Item 6 by Mr. Waite (Appendix F)
Approving the 2009 Canal Contracts Program (Continued)

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 this resolution 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 Contracts Program, and be it further

RESOLVED, that quarterly reports shall be submitted to the Board by the Chief Engineer on all awarded construction contracts; on approved additional funds for construction contracts over and above the contingency funds; on all engineering agreements and supplemental engineering agreements, approved pursuant to the provisions of this resolution, 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 2009 Budgets which are otherwise not required for expenditure during 2009 to its proper fund in accordance with acceptable budgeting and accounting procedure;
- B.** to monitor total cash expenditures for the 2009 CONTRACTS PROGRAM to insure that they do not exceed \$36,441,696 during the 2009 Fiscal Year;
- C.** to return bid checks submitted for such contracts to unsuccessful bidders; and to make necessary adjustments in the respective 2009 approved Budgets as required by implementation of



Item 6 by Mr. Waite (Appendix F)
Approving the 2009 Canal Contracts Program (Continued)

any part of the Resolution relative to the 2009 CONTRACTS PROGRAM, and be it further

RESOLVED, that the Executive Director or Chief Engineer be, and they hereby are, authorized to execute such contracts, including any amendments thereto, provided such amendments do not increase the authorized contract value beyond that which is otherwise authorized, and be it further

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

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

Other Business

Mr. Plunkett asked Ms. Mantello for a briefing on how the 2008 Canal Season turned out. Ms. Mantello responded that staff did an incredible job doing more with less. Overall traffic was down 22 percent over 2007 however, commercial traffic more than quadrupled since 2007 as more businesses utilized the Canal for hauling oversize cargo, generators, turbines, etc. The number of festivals also quadrupled over the past three years. Overall it was a successful season.

Adjournment

There being no further business to come before the Board, on the motion of Mr. Plunkett, seconded by Mr. Howard, without any objections, the meeting was adjourned.

Jill B. Warner
Secretary

