



MINUTES
NEW YORK STATE CANAL CORPORATION
BOARD MEETING NO. CC-192
December 19, 2014

Minutes of a meeting of the New York State Canal Corporation, held in the board room at, 200 Southern Boulevard, 37th Floor, Albany, New York and by video conference from the New NY Bridge Project Office in Tarrytown, New York.

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 Canal Corporation. The meeting began at 11:30 a.m.

Members Present:

Donna J. Luh, Vice Chairperson

J. Donald Rice, Jr., Board Member, via video conference but did not vote

Brandon R. Sall, Board Member, via video conference

Richard N. Simberg, Board Member

E. Virgil Conway, Board Member, via video conference

Jose Holguin-Veras, Ph.D.,

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

Staff Present:

Thomas J. Madison, Jr., Executive Director

William Estes, Secretary and General Counsel

Brian Stratton, Director of the NYS Canal Corporation

John Barr, Director of Administrative Services

Harry Lennon, Acting Director of Department of Audit & Management Services

John Bryan, Treasurer and Chief Financial Officer

Frank Macarilla, Information Tech. Specialist

Michael Shamma, Acting Chief Engineer

Ted Nadratowski, Interim Director, Maintenance and Operations

Tom Pericak, Buffalo Division Director

Stephen Grabowski, Acting New York Division Director

Ahmad Ibrahim, Acting Albany Division Director

John Callaghan, Deputy Director of the NYS Canal Corporation

Howard Goebel, Hydrologist of the NYS Canal Corporation

Dan Weiller, Director of Media Relations & Communications

Shane Mahar, Deputy Director of Media Relations & Communications

Jerry Yomoah, Board Administrator

Also in attendance:

Murray Bodin, Member of Public

Ms. Nadine Lemmon, Tri-State Transportation Campaign

Alex Saunders, Member of the Public

Paul Goetz , SaxBST, LLP

Brendan Kennedy, SaxBST, LLP

Vice Chair Luh called the meeting of the Thruway Authority and Canal Corporation Boards to order. (0:22:00)

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

Item 1 by Vice Chair Luh (Appendix A)
Approval of Minutes of Meeting No. 191 (0:22:12.3)

Vice Chair Luh asked for a motion to approve the minutes of the previous meeting. Upon motion duly made and seconded, the Board approved the minutes of Meeting No. 191 held on October 20, 2014, which were made available to the Board Members as part of the Agenda.

Item 2 by Mr. Estes (Appendix B)
Adopting a Revised Governance Committee Charter and Approving the Authority/Corporation's Written Policies Regarding the Disposition of Real and Personal Property and the Authority/Corporation's Mission Statement (0:22:12.3)

This Item was advanced to the Board at the recommendation of the Governance Committee.

Upon motion duly made and seconded, the Board approved the Revised Governance Committee Charter and Approved the Authority/Corporation's Written Policies Regarding the Disposition of Real and Personal Property and the Authority/Corporation's Mission Statement and adopted the following resolution:

RESOLUTION NO.
**ADOPTING A REVISED GOVERNANCE COMMITTEE
CHARTER AND APPROVING THE
AUTHORITY/CORPORATION'S WRITTEN POLICIES
REGARDING THE DISPOSITION OF REAL AND
PERSONAL PROPERTY AND THE
AUTHORITY/CORPORATION'S MISSION STATEMENT**

RESOLVED, that the revised Governance Committee Charter, attached hereto as Exhibit B, be, and hereby is adopted, replacing all prior Governance Committee Charters, and be it further

RESOLVED, that the Authority/Corporation Boards have reviewed and approve of the Authority/Corporation's written policies regarding the disposition of real and personal property and see no need to amend them at this time, and be it further

RESOLVED, that the Authority/Corporation approve the continued use of its current mission statement, "We offer a user-fee supported Highway and Canal System that delivers high levels of safety and service."

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

Item 3 by Mr. Bryan (Appendix C)
Approving the 2014 Revised Budget and the 2015 Proposed Budget for the New York State Thruway Authority and New York State Canal Corporation (0:22:12.3)

The item was advanced to the Board at the recommendation of the Finance Committee.

Upon motion duly made and seconded, the Board Approved the 2014 Revised Budget and the 2015 Proposed Budget for the New York State Thruway Authority and New York State Canal Corporation and adopted the following resolution:

RESOLUTION NO.
APPROVAL OF THE 2014 REVISED BUDGET AND THE 2015 PROPOSED BUDGET FOR THE NEW YORK STATE THRUWAY AUTHORITY AND NEW YORK STATE CANAL CORPORATION

RESOLVED, that the Report on the 2014 Revised Budget 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 2014 Revised Budget, 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 2015, 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 II, 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. Shamma (Appendix D)
Approving the 2015 Thruway and Canal Contracts Program (0:22:12.3)

The item was advanced to the Board at the recommendation of the Finance Committee. Upon motion duly made and seconded, the Board approved the 2015 Thruway and Canal Contracts Program and adopted the following resolution:

RESOLUTION NO.
APPROVING THE 2015 THRUWAY AND CANAL
CONTRACTS PROGRAMS

RESOLVED, that the 2015 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 or his designee 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 2015 Thruway and Canal Contracts Programs;
- B. to hold the respective Engineer's/ Architect's Estimates 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 2015 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 2015 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 2015 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, prepare and approve Official Proposals, Plans and Specifications, Engineer's/Architect's Estimates of Cost and Contract Documents, including amendments and order-on-contracts, award (pursuant to paragraph D) and reject bids (pursuant to paragraph E) for such work being progressed to address a declared emergency, provided that the total of the Engineer's/Architect's Estimate of

Cost for any such contract, amendment or order-on-contract does not exceed \$2,000,000; the Board will receive contemporaneous notifications of those actions taken for 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 2015 Thruway and Canal Contracts Programs, provided that the total amount of acquisitions or the amount of grants for any one project shall not exceed \$150,000 without Board authorization;
- 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 2015 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 additional tasks through such assignment, or that significant savings to the Authority or Corporation will result through the assignment of the additional tasks;

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 2015 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 2015 Budgets which are otherwise not required for expenditure during 2015 to the proper fund in accordance with acceptable budgeting and accounting procedures;
- B. to monitor total cash expenditures for the 2015 Contracts Programs to insure that they do not exceed \$1,287,335,697 for the Thruway Authority and \$42,967,584 for the Canal Corporation during the 2015 Fiscal Year;
- C. to return bid checks submitted for such contracts to unsuccessful bidders, and to make necessary adjustments in the respective 2015 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 2015 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 5 by Mr. Barr (Appendix E)
Authorizing the Executive Director to Execute a Contract with Davis Vision to Provide Vision Care Services for Authority and Canal Corporation Employees and their Dependents (0:22:39.0)

Vice Chair Luh then invited Mr. Barr to present the resolution related to vision care services for employees. Details of the presentation and discussion with Board Members are included in the video recording of the meeting.

Upon duly motioned, seconded and without any objections, the Board authorized the Executive Director to Execute a Contract with Davis Vision to Provide Vision Care Services for Authority and Canal Corporation Employees and their Dependents and adopted the following resolution:

RESOLUTION NO.
AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT WITH DAVIS VISION TO PROVIDE A VISION CARE SERVICES FOR AUTHORITY AND CANAL CORPORATION EMPLOYEES AND THEIR DEPENDENTS

RESOLVED, that the Executive Director be, and hereby is, authorized to execute an agreement with Davis Vision to provide vision care services for both Authority and Canal Corporation employees and their dependents (“Agreement”), and be it further

RESOLVED, that the Agreement shall be for a term of five years, the cost of these services is anticipated to be approximately \$377,280 for each year of the contract term, for a maximum amount payable for the five year term of approximately \$1,886,400, 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 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 Director of Thruway Finance 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 6 by Mr. Shamma (Appendix F)
Report on the 2014 Capital Program (0:23:49.4)

Vice Chair Luh next called upon Mr. Shamma to update the Board on the Capital Program. His report was distributed to Board Members and a copy is maintained in the Authority's records along with details of the Board Members' discussion included in the video recording of the meeting.

After full discussion, the Board accepted the report on the Thruway Authority and Canal Corporation 2014 Capital Program.

Item 7 by Mr. Estes (Appendix G)
Authorizing the Executive Director or his Designee to Enter into a Settlement Agreement and Mutual Release with Erie Boulevard Hydropower, L.P. (0:28:00.5)

Vice Chair Luh next called upon Mr. Estes to present the item regarding a settlement agreement with Erie Boulevard Hydropower. Details of the presentation and discussion with Board Members are included in the video recording of the meeting.

Upon duly motioned, seconded and without any objections, the Board Authorized the Executive Director or his Designee to Enter into a Settlement Agreement and Mutual Release with Erie Boulevard Hydropower, L.P. and adopted the following resolution:

RESOLUTION NO.
AUTHORIZING THE EXECUTIVE DIRECTOR OR HIS DESIGNEE TO ENTER INTO A SETTLEMENT AGREEMENT AND MUTUAL RELEASE WITH ERIE BOULEVARD HYDROPOWER, L.P.

RESOLVED, that settlement of Claim Nos. 117565 and 124193 in the Court of Claims pursuant to the form of the Settlement Agreement and Mutual Release

submitted with this item and made a part of this resolution as though set forth in full herein, is hereby approved, and be it further

RESOLVED, that the Executive Director, or his designee, is hereby authorized to execute the aforementioned Settlement Agreement and Mutual Release, and be it further

RESOLVED, that the General Counsel, or his designee, is hereby authorized to execute all customary and usual documents to effectuate such settlement, and be it further,

RESOLVED, that the Director of Thruway Finance be, and hereby is, authorized to direct payment of settlement damages of \$487,856.30 and future payments that may become due and payable under the Settlement Agreement and Mutual Release and charge such expenditures to the fund Other Authority Projects – Canal Operations, 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 Abandonment of a Temporary Hydropower Easement In, On and Over the New York State Barge Canal Within the Boundary of the Oswego Falls/ Lock O-2 Hydroelectric Project (No. 5984) to Erie Boulevard Hydropower, L.P. (0:39:28.1)

Vice Chair then welcomed Mr. Bryan to present the item related to the abandonment of an easement on the Canal. Details of the presentation and discussion with Board Members are included in the video recording of the meeting.

Upon duly motioned, seconded and without any objections, the Board authorized the Abandonment of a Temporary Hydropower Easement In, On and Over the New York State Barge Canal Within the Boundary of the Oswego Falls/ Lock O-2 Hydroelectric Project (No. 5984) to Erie Boulevard Hydropower, L.P. and adopted the following resolution:

RESOLUTION NO.
**AUTHORIZING THE ABANDONMENT OF A
TEMPORARY HYDROPOWER EASEMENT IN, ON
AND OVER THE NEW YORK STATE BARGE CANAL
WITHIN THE BOUNDARY OF THE OSWEGO
FALLS/ LOCK O-2 HYDROELECTRIC PROJECT
(NO. 5984) TO ERIE BOULEVARD HYDROPOWER,
L.P.**

RESOLVED, that a temporary hydropower easement in, on and over the barge canal system located within the boundary defined by Federal Energy Regulatory Commission License No. 5984 for a term of 22 years is no longer useful or necessary as part of the Barge Canal System, as an aid to navigation thereon, or for Barge Canal purposes, and be it further

RESOLVED, that the sale of said temporary hydropower easement for 0.75% of the total annual revenue generated by the hydroelectric facilities operating in said licensed boundary by instrument granted be, and hereby is, approved, subject to such other legal, financial, engineering, and other terms as may be deemed by the Executive Director, the Chief Operating and Financial Officer, the Director of Canals or the General Counsel, to be in the best interest of the Canal Corporation and consistent with the intent of this agenda item, and be it further

RESOLVED, that the annual price of 0.75% of total revenue generated by the hydroelectric facilities operating

within the temporary hydropower easement granted for a term of 22 years shall be subject to the right to reappraise such interest at year ten of said term, and be it further

RESOLVED, that the annual price of 0.75% of total revenue generated by the hydroelectric facilities shall not be adjusted downward as a result of the re-appraisal; and be it further

RESOLVED, that the Office of Canal Maintenance and Operations shall prepare an Official Order abandoning such easement for Canal purposes, together with a map and description of such lands for review and execution by the Executive Director, or his designee, and be it further

RESOLVED, that following preparation of the Official Order of Abandonment, the Executive Director, or his designee, be, and he hereby is, authorized to execute such order of abandonment, and be it further

RESOLVED, that the Corporation's Contracting Officer determined that the sale of said temporary hydropower easement by negotiation is in compliance with Section 2897 (6) of the Public Authorities Law, and Section IV.I. of the Canal Real Property Management Policy, and that the transfer of the property on the terms recommended in the agenda item complies with all applicable provisions of law, including Article 9, Title 5-A of the Public Authorities Law, and with the Canal Real Property Management Policy; and be it further

RESOLVED, that such sale shall be conditioned upon the payment of certain costs incidental to the transfer of real property, and be it further

RESOLVED, that the Executive Director, or his designee, be, and the same hereby is, authorized to execute an Agreement for Sale of Real Property with Erie Boulevard Hydropower, L.P. and any amendments and/or conforming changes thereto consistent with the terms of this agenda item, along with all other documents necessary to effectuate the conveyance of the temporary hydropower easement, in accordance with the terms authorized during this meeting, and be it further

RESOLVED, that the recommendation for issuance of a Negative Declaration based on an environmental assessment of the proposed action completed in accordance with the provisions of the State Environmental Quality Review Act (SEQRA) be, and hereby is, approved, and be it further

RESOLVED, the Chief Engineer, or his designee, be, and he hereby is, authorized to sign the SEQRA Environmental Assessment and issue the Negative Declaration, and to distribute any required notices on behalf of the Canal Corporation Board with relation to this action, and be it further

RESOLVED, that the Executive Director, or his designee, the Director of Canals, the Chief Operating and Financial Officer, and the General Counsel be, and the same hereby are, authorized to take all actions necessary to grant such easement, and be it further

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

PUBLIC COMMENT PERIOD (0:42:05.5)

Mr. Murray Bodin, Member of the Public

Ms. Nadine Lemmon, Tri-State Transportation Campaign

Alex Saunders, Member of the Public

ADJOURNMENT (0:53:59.8)

Upon motion duly made and seconded, the Board voted to adjourn the meeting at 12:23 p.m.

Jerry B. Yomoah
Board Administrator

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.