



MINUTES

NEW YORK STATE THRUWAY AUTHORITY

BOARD MEETING NO. 637

February 2, 2005

Minutes of a meeting of the New York State Thruway Authority, held in the Board room at Administrative Headquarters, 200 Southern Boulevard, Albany, New York, 12209.

The meeting began at 10:40 a.m.

There were present:

**John L. Buono, Chairman
Nancy Carey Cassidy, Board Member
John R. Riedman, 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
John Brizzell, Deputy Executive Director, Chief Engineer
John Bryan, Chief Financial Officer
Sharon O'Connor, General Counsel
William Rinaldi, Acting Director, Operations
Joanne Riddett, Director, Information Technology
Wendy Allen, Director, Department of Planning Services
Christopher Waite, Director, Engineering Services and Assistant Chief Engineer
George Tanner, Director, Maintenance Engineering and Assistant Chief Engineer
Michael Flynn, Director, Audit and Management Services
Jill Warner, Secretary and Board Administrator**

Captain Richard Smith, Troop T
Daniel Gilbert, Director, Public Affairs
Wilma DeLucco, Director, Administrative Services
Donald Bell, Director, Albany Division
Ramesh Mehta, Director, New York Division
Lawrence Frame, Acting Director of Canals
David Boshart, Director, Office of Land Management
Donald Ross, Assistant to the Director, Canal Corporation
Richard Matters, Real Estate Specialist 2, Bureau of Real Property Management
Sharon Leighton, Senior Project Development Specialist, Office of Canal Development
Richard Garrabrant, Deputy Division Director, Buffalo Division
Also in Attendance:
Cathy Woodruff, Reporter, *Albany Times Union*
Murray Bodin, Public
Paul Carubia, Public

Chairman Buono noted that he, Ms. Carey Cassidy and Mr. Riedman had received and reviewed the Agenda submitted for consideration at this meeting and were prepared to act on each of the items.

The Chairman called the meeting to order.

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. 636

On the motion of, Ms Carey Cassidy, seconded by Mr. Riedman, without any objections, the Board approved the minutes of Meeting No. 636 held on January 6, 2005, which were made available to the Board Members as part of the Agenda.

Item 2 by John Bryan (Appendix B)
Approving and Authorizing the Chairman to Execute a Contract with UHY, LLP for Accounting and Auditing Services and Rescinding Resolution No. 5381

This item requests the Board's approval to enter into a personal service contract with UHY to provide various required accounting and auditing services to the Authority and the Canal Corporation. Among the services to be provided are annual



Item 2 by John Bryan (Appendix B)

Approving and Authorizing the Chairman to Execute a Contract with UHY, LLP for Accounting and Auditing Services and Rescinding Resolution No. 5381 (Continued)

independent audits of our financial statements, investment practices, federally financed programs, and internal control procedures. The three year contract, with two optional one-year extensions, has a total value of approximately \$660,000.

Mr. Bryan informed the Board that this item rescinds previous board action that authorized an agreement with KPMG for these same services. KPMG, the highest scoring proposer under the RFP issued for these services, refused to accept terms required in the RFP relating to indemnification. As a result, negotiations were terminated with KPMG and this Item requests approval to proceed with a contract with UHY, the second highest ranked proposer.

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

RESOLUTION NO. 5401

**APPROVING AND AUTHORIZING THE CHAIRMAN
TO EXECUTE A CONTRACT WITH UHY, LLP FOR
ACCOUNTING AND AUDITING SERVICES AND
RESCINDING RESOLUTION NO. 5381**

RESOLVED, that the Chairman be, and hereby is, authorized to enter into an agreement with UHY, LLP for professional accounting and auditing services for a three-year term with a monetary cap of \$385,450, and be it further

RESOLVED, that the Chairman, after consultation with the Chief Financial Officer, is hereby authorized to exercise the Authority's option to extend the agreement for two additional one-year terms, with a maximum overall contract cap not to exceed \$658,580, if services provided by UHY, LLP during the initial three year term of the agreement are satisfactory, and be it further



Item 2 by John Bryan (Appendix B)
Approving and Authorizing the Chairman to Execute a Contract with UHY, LLP for Accounting and Auditing Services and Rescinding Resolution No. 5381 (Continued)

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

RESOLVED, that Resolution No. 5381, approved at Board Meeting No. 364 on November 16, 2004, is hereby rescinded, and be it further

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

Item 3 by Mr. Fleischer (Appendix C)
Quarterly Report on Personal Service Contracts Up to \$150,000 Reported for the Period 10/1/04 through 12/31/04

Mr. Fleischer submitted as Exhibit I a listing containing Personal Service Contracts up to \$150,000 for the period of October 1, 2004 through December 31, 2004.

After full discussion, on the motion of Mr. Riedman, seconded by Ms. Carey Cassidy, without any objections, the Board accepted Mr. Fleischer's report.

Item 4 by Ms. O'Connor (Appendix D)
Authorizing the Executive Director to Execute an Agreement with White & Case, on Behalf of the State of New York, to Provide Legal Services for Indian Land Claim Cases

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



Item 4 by Ms. O’Conor (Appendix D)
Authorizing the Executive Director to Execute an Agreement with White & Case, on
Behalf of the State of New York, to Provide Legal Services for Indian Land Claim
Cases (Continued)

RESOLUTION NO. 5402

**AUTHORIZING THE EXECUTIVE DIRECTOR TO
EXECUTE AN AGREEMENT WITH WHITE & CASE,
ON BEHALF OF THE STATE OF NEW YORK, TO
PROVIDE LEGAL SERVICES FOR INDIAN LAND
CLAIM CASES**

RESOLVED, that the Executive Director be, and hereby is, authorized to execute an Agreement with White & Case LLP, on behalf of the State, to provide legal defense services for the State of New York in various Indian land claim cases, including a civil action in the United States District Court for the Northern District of New York entitled Oneida Indian Nation of New York, et al., and the United States of America v. the County of Oneida, New York, et al, 74-CV-187, as well as two civil actions on appeal in the United States Court of Appeals, Second Circuit, entitled Cayuga Indian Nation of New York, et al v. George Pataki as Governor of the State of New York, et al, 02-6111, and Seneca Nation of Indians, et al v. Governor of New York, et al, 02-6185, and be it further

RESOLVED, that such Agreement shall be for a term of three years, with an option to renew for two additional one-year terms, shall have a maximum amount payable of \$5 million, and shall be on such other terms and conditions as the Executive Director and General Counsel determine to be in the best interests of the Authority, and be it further

RESOLVED, that the Executive Director’s execution of such Agreement shall be contingent upon the State of New York’s agreement to be responsible for all charges for services rendered pursuant to such Agreement



Item 4 by Ms. O’Conor (Appendix D)
Authorizing the Executive Director to Execute an Agreement with White & Case, on
Behalf of the State of New York, to Provide Legal Services for Indian Land Claim
Cases (Continued)

and allow the Authority to recoup the cost of such charges through a \$5 million waiver in cost recovery fees and bond issuance charges that would otherwise be due and owing from the Authority to the State of New York, and be it further

RESOLVED, that the Authority’s Chief Financial Officer be, and hereby is, authorized to charge expenditures for services rendered pursuant to such Agreement to the Operating Budget or an offset to the Bond Issuance charge, and be it further

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

Item 5 by Ms. O’Conor (Appendix E)
Authorizing the Executive Director to Execute a Third Amendment to the Agreement
(C100431) with Whiteman Osterman and Hanna for Legal Services to Increase the
Monetary Cap and Hourly Rates, and Exercise the Authority’s Option to Extend the
Agreement

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

RESOLUTION NO. 5403

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A THIRD AMENDMENT TO THE AGREEMENT (C100431) WITH WHITEMAN, OSTERMAN AND HANNA FOR LEGAL SERVICES TO INCREASE THE MONETARY CAP AND HOURLY RATES, AND EXERCISE THE AUTHORITY’S OPTION TO EXTEND THE AGREEMENT



Item 5 by Ms. O’Conor (Appendix E)
Authorizing the Executive Director to Execute a Third Amendment to the Agreement (C100431) with Whiteman Osterman and Hanna for Legal Services to Increase the Monetary Cap and Hourly Rates, and Exercise the Authority’s Option to Extend the Agreement (Continued)

RESOLVED, that the Executive Director be, and he hereby is, authorized to execute a Third Amendment to the Agreement (C100431) with Whiteman, Osterman and Hanna for legal services, such amendment to be on such terms and conditions as the Executive Director and General Counsel determine to be in the best interests of the Authority, and be it further

RESOLVED, that such Third Amendment shall exercise the Authority’s option to extend the Agreement for a second additional one-year term, increase the maximum amount payable under such agreement by \$375,000, from the current monetary cap of \$825,000, to a new monetary cap of \$1,200,000, and increase the hourly rates for services provided under the Agreement by 5%, 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 this Agreement, manage and administer this Agreement, amend the provisions of this Agreement consistent with the terms of this Item and other Board authorizations and suspend or terminate this Agreement in the best interest of the Authority, and be it further

RESOLVED, that sufficient funds are provided in the 2005 Thruway and Canal operating budgets for these expenditures, and be it further

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



Item 6 by Mr. Waite (Appendix F)
Authorizing Negotiation and Execution of Engineering Agreement D213469 with LiRo Engineers, Inc. for Construction Inspection Services Relative to Contract TAB 04-33, Highway Resurfacing, Interchanges 45 to 46

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

RESOLUTION NO. 5404

AUTHORIZING NEGOTIATION AND EXECUTION OF ENGINEERING AGREEMENT D213469 WITH LIRO ENGINEERS, INC. FOR CONSTRUCTION INSPECTION SERVICES RELATIVE TO CONTRACT TAB 04-33, HIGHWAY RESURFACING, INTERCHANGES 45 TO 46

RESOLVED, that the Chief Engineer or Director of Engineering Services be, and they hereby are, authorized to negotiate and execute engineering agreement D213469 with LiRo Engineers, Inc., 690 Delaware Avenue, Buffalo, New York 14209 for construction inspection services relative to contract TAB 04-33, Highway Resurfacing from Interchange 45 to Interchange 46, provided that the Maximum Amount Payable does not exceed the \$1,450,000, which will be provided through the 2005 Contracts Program (H822), and be it further

RESOLVED, that the Chief Engineer or the Director of Engineering Services or their designees shall have the authority to exercise all powers reserved to the Authority under the provisions of the Agreement, manage and administer the Agreement, amend the provisions of the Agreement consistent with the terms of this item and in accordance with the 2005 Contracts Program Resolution No. 5396 and other Board authorizations, and suspend or terminate the Agreement in the best interests of the Authority, and be it further



Item 6 by Mr. Waite (Appendix F)
Authorizing Negotiation and Execution of Engineering Agreement D213469 with LiRo Engineers, Inc. for Construction Inspection Services Relative to Contract TAB 04-33, Highway Resurfacing, Interchanges 45 to 46 (Continued)

RESOLVED that the information relating to this agreement be included in the Director of Engineering Services' Quarterly Report to the Board on Contracts Program activities, such information to include the exact Maximum Amount Payable and date of execution of the agreement and be it further

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

Item 7 by Mr. Waite (Appendix G)
Authorizing Negotiation and Execution of Two Term Agreements (D213431 and D213433) with Two Firms for Materials Testing and Inspection Services

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

RESOLUTION NO. 5405

AUTHORIZING NEGOTIATION AND EXECUTION OF TWO TERM AGREEMENTS (D213431 AND D213433) WITH TWO FIRMS FOR MATERIALS TESTING AND INSPECTION SERVICES

RESOLVED, that the Chief Engineer or Director of Engineering Services be, and they hereby are, authorized to negotiate and execute term agreements (D213431 and D213433) with the two firms listed in Exhibit A, attached hereto, for materials testing and inspection services with the Maximum Amount Payable of each of these agreements not to exceed the amount shown in Exhibit A, and be it further

RESOLVED, that the Chief Engineer or the Director of Engineering Services or their designees shall have the authority to exercise all powers reserved to the



Item 7 by Mr. Waite (Appendix G)
Authorizing Negotiation and Execution of Two Term Agreements (D213431 and D213433) with Two Firms for Materials Testing and Inspection Services (Continued)

Authority under the provisions of the Agreement, manage and administer the Agreement, amend the provisions of the Agreement consistent with the terms of this item and in accordance with the 2005 Contracts Program Resolution No. 5396 and other Board authorizations, and suspend or terminate the Agreement in the best interests of the Authority, and be it further

RESOLVED, that the information relating to each agreement be included in the Director of Engineering Services' Quarterly Report to the Board on Contracts Program activities which will include the date of execution of each agreement, and be it further

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

Item 8 by Mr. Waite and Mr. Mehta (Appendix H)
Approving Supplemental Agreement No. 2 to D212838 with Weidlinger Associates Consulting Engineers, P.C. for Construction Inspection Services Relative to Contract TANY 01-86BP, Tappan Zee Bridge Painting, and Allocating Additional Funds Therefor

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

RESOLUTION NO. 5406

APPROVING SUPPLEMENTAL AGREEMENT NO. 2
TO D212838 WITH WEIDLINGER ASSOCIATES
CONSULTING ENGINEERS, P.C. FOR
CONSTRUCTION INSPECTION SERVICES
RELATIVE TO CONTRACT TANY 01-86BP, TAPPAN
ZEE BRIDGE PAINTING AND ALLOCATING
ADDITIONAL FUNDS THEREFOR



Item 8 by Mr. Waite and Mr. Mehta (Appendix H)
Approving Supplemental Agreement No. 2 to D212838 with Weidlinger Associates Consulting Engineers, P.C. for Construction Inspection Services Relative to Contract TANY 01-86BP, Tappan Zee Bridge Painting, and Allocating Additional Funds Therefor (Continued)

RESOLVED, that the proposed Supplemental Agreement No. 2 to D212838 with Weidlinger Associates Consulting Engineers, P.C., 375 Hudson Street, New York, New York 10014, for construction inspection services relative to contract TANY 01-86BP, for an additional sum of \$1,570,000, be, and the same hereby is, approved, and be it further

RESOLVED, that the additional sum of \$171,000, be, and the same hereby is, allocated toward D212838 from anticipated savings in the 2005 Contracts Program, and be it further

RESOLVED, that the Chief Engineer or the Director of Engineering Services or their designees shall have the authority to exercise all powers reserved to the Authority under the provisions of the Supplemental Agreement, manage and administer the Supplemental Agreement, amend the provisions of the Supplemental Agreement consistent with the terms of this item and in accordance with the 2005 Contracts Program Resolution No. 5396 and other Board authorizations, and suspend or terminate the Supplemental Agreement in the best interests of the Authority, and be it further

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

Report by Michael Fleischer

Executive Director Michael Fleischer reported that four public hearings have been scheduled to discuss the Authority's Six-Year Capital Plan. The hearings will be held on the following dates at the following locations:



Report by Michael Fleischer (Continued)

**April 4, 2005 – 6:00 p.m.
Buffalo, NY**

**April 5, 2005 – 6:00 p.m.
Syracuse, NY**

**April 6, 2005 – 4:00 p.m.
Albany, NY**

**April 11, 2005 – 6:00 p.m.
Suffern, NY**

Executive Session

On the motion of, Ms. Carey Cassidy, seconded by Mr. Riedman, without any objections, the Board voted to convene to Executive Session to discuss Real Property Matters and the Employment History of a Particular Contractor

Public Session Resumed

Mr. Riedman moved that the meeting return to Public Session, Ms. Carey Cassidy seconded the motion.

Adjournment

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

**Jill B. Warner
Secretary**

