



## **MINUTES**

### **NEW YORK STATE THRUWAY AUTHORITY**

#### **BOARD MEETING NO. 681**

**July 21, 2010**

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 11:15 a.m.

There were present:

Chairman John L. Buono  
Dr. Jose Holguin-Veras, Board Member  
Donna J. Luh, Vice Chair  
J. Donald Rice, Jr., Board Member, arrived late  
Brandon R. Sall, Board Member  
Richard N. Simberg, Board Member

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

In addition, there were present the following staff personnel:

Michael Fleischer, Executive Director  
Daniel Gilbert, Chief of Staff  
John Barr, Director, Administrative Services  
Donald Bell, Director, Operations and Maintenance

John Bryan, Chief Financial Officer  
William Estes, General Counsel  
J. Marc Hannibal, Director, Audit and Management Services  
Carmella Mantello, Director of Canal Corporation  
Major Robert Meyers, Troop T  
Joanne Riddett, Director, Information Technology  
Thomas Ryan, Director, Office of Public Affairs  
Christopher Waite, Chief Engineer  
Jill Warner, Secretary and Board Administrator  
Richard Garrabrant, Division Director, Syracuse Division  
Ted Nadratowski, Division Director, New York Division  
Thomas Pericak, Division Director, Buffalo Division  
William Rinaldi, Division Director, Albany Division  
Wendy Allen, Deputy Chief of Staff  
Deb Haslun, Director, Labor Relations  
Tony Kirby, Director, Real Property Management  
Katherine McCartney, Deputy Counsel  
Michael Sikule, Director, Investments and Asset Management  
Dorraine Steele, Director, Fiscal Audit and Budget  
Kevin Allen, Assistant Director, Audit and Management Services  
Harry Lennon, Senior Investigator, Audit and Management Services  
Joe Moloughney, EPA/GE Dredge Project Coordinator  
Tracie Sandell, Assistant Counsel

Also in attendance:

John Armstrong, New York Network  
Tom Benware, Staff, Senator Dilan's Office  
Connie Cahill, Partner, Hiscock & Barclay, LLP  
Jerry DeLuca, DeLuca Public Affairs  
Steven Kantor, Managing Director, First Southwest Company  
Sandy Pae, Associate, Goldman, Sachs & Co.

Pat Reale, Principal Budget Examiner, NYS Division of Budget  
Joseph Reid, Principal, Law Offices of Joseph C. Reid  
Angela Rodell, Senior Vice President, First Southwest Company  
William Thompson, Senior Managing Director, Siebert Brandford Shank & Co.  
Freda Wang, Vice President, Goldman, Sachs & Co.  
Jon White, Managing Director, Siebert Brandford Shank & Co.

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

Chairman Buono called the meeting to order.

Ms. Warner recorded the minutes as contained herein.

Ms. Warner said public notice of the meeting had been given.

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**Item 1 Ms. Warner (Appendix A)**  
**Minutes of Meeting No. 680**

On the motion of Mr. Sall, seconded by Ms. Luh, without any objections, the Board approved the minutes of Meeting No. 680 held on June 16, 2010, which were made available to the Board Members as part of the Agenda.

**Item 2 Mr. Fleischer (Appendix B)**  
**Adopting a Revised Governance Committee Charter**

After full discussion, on the motion of Mr. Sall, seconded by Dr. Holguin-Veras, without any objections, the Board accepted Mr. Fleischer's report.

**RESOLUTION NO. 5840**  
**ADOPTING A REVISED GOVERNANCE COMMITTEE  
CHARTER**

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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 this resolution be incorporated in the minutes of this meeting

**Item No. 3 Mr. Fleischer (Appendix )**  
**Adoption of Retirement Incentive Program Pursuant to Chapter 105 of the Laws of 2010**

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

**RESOLUTION NO. 5841**  
**ADOPTION OF RETIREMENT INCENTIVE  
PROGRAM PURSUANT TO CHAPTER 105 OF THE  
LAWS OF 2010**

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RESOLVED, that the Board of the New York State Thruway Authority does hereby elect to provide the benefits of Part A of Chapter 105 of the Laws of 2010, commencing on August 11, 2010, for all eligible employees who retire with an effective date of retirement during the 30 day period beginning and immediately following the commencement date, and who are otherwise eligible as specified by Part A of Chapter 105, Laws of 2010, and be it further

RESOLVED, that the Board of the New York State Thruway Authority does hereby elect to provide the benefits of Part B of Chapter 105 of the Laws of 2010, commencing on August 11, 2010, for all eligible employees who retire with an effective date of retirement during the 90 day period beginning and immediately following the commencement date, and who are otherwise eligible as specified by Part B of Chapter 105, Laws of 2010, and be it further

RESOLVED, that the Executive Director is hereby authorized to take all steps necessary and appropriate to implement this resolution including designating which employees are eligible for the program, and be it further

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

**Item 4 Mr. Bryan (Appendix D)**  
**Financial Report – May 2010**

*Mr. Bryan: This Resolution seeks the Board's acceptance of the Financial Report from May, 2010. Total traffic through May was up by about .3 percent and as was seen in prior reports this year, these traffic trends closely resemble those that have been recorded on other highways across the nation and at other toll facilities that are comparable to the Thruway Authority. For the first five months of the year commercial traffic continued to slowly come back from the large losses that the Authority had experienced last year, growing by 2.2 percent. Although this growth was healthy, it was not nearly large enough to offset the losses that were experienced in the first five months of 2009, as reported at the last Board Meeting for the first part of the year. For the first five months of this year, commercial traffic was up by over 210,000 trips, but it does not compare to the 1.5 million trips lost through the first five months of last year. While there was some growth in passenger traffic earlier in the year, it has surprisingly turned flat and is now negative. The daily statistics show that traffic has waned during the early*

*part of the summer and it was disappointing since the summer months are very important in generating greater revenues. However, the Authority remains hopeful that this trend will change. For the first five months of the year passenger traffic was up by only .1 percent or 109,000 trips which was rather unique.*

Following discussion regarding the financial condition of the Authority, on the motion of Mr. Simberg, seconded by Dr. Holguin-Veras, without any objections, the Board accepted the Financial Report for the month of May 2010.

**Item 5 Mr. Bryan (Appendix E)**  
**Investment Transactions – First and Second Quarter, 2010**

*Mr. Bryan: This Item is being advanced today on the recommendation of the Finance Committee and it seeks your approval for the investment reports for the first and second quarter of this year. As with previous reports, it is being submitted to you pursuant to Office of State Comptroller guidelines that require us to report quarterly on all the investments that are made by the Authority. The report details by fund the investments made and the yield obtained for each. To quickly summarize, in the first quarter of 2010 the Authority made just over \$1.3 billion in investments earning an average yield of .14 percent and in the second quarter the Authority made \$1 billion in investments, earning an average yield of .24 percent.*

Following discussion regarding the purchase of authorized securities, repurchase agreements and certificates of deposit, on the motion of Mr. Rice, seconded by Dr. Holguin-Veras, without any objections, the Board accepted the Authority's quarterly reports on Investment Transactions.

**CHAIRMAN'S RECUSAL:**

*Chairman: Prior to Item Number 6 I would like to read a statement please on recusal. A matter is currently pending before the Board that involves the potential sale of a State personal income tax revenue bonds 2010A PIT bonds. I believe I should recuse myself from the vote pertaining to 2010 PIT transaction because I have a relative employed by one of the co-buying counsel firms on the transaction. I will not participate in any discussion nor will I vote on the 2010A*

*PIT transaction. Such recusal will also apply to any vote or any subsequent discussion concerning the 2010A PIT transaction. Additionally, no confidential information concerning this matter has been or will be shared with me. I have requested the Executive Director to advise all staff that they shall not communicate with me about this matter. I will now leave the Board Room while this matter is under consideration and ask that Vice Chair Ms. Luh please handle this particular agenda item. Thank you very much.*

**- Chairman Exits Board Room -**

**Item 6 Mr. Bryan (Appendix F)**

**Approving and Adopting the Ninth Supplemental Bond Resolution Authorizing the Issuance of State Personal Income Tax Revenue Bonds (Transportation) Series 2010A, and Supplementing and Amending the Resolution, Approving the Form of and Authorizing the Preparation, Execution and Delivery of the Preliminary Official Statement and Authorizing the Execution and Distribution of the Final Official Statement, Approving the Form of and Authorizing the Execution of One or More Bond Purchase Agreements for the Series 2010A Bonds and Authorizing the Execution of One or More Escrow Deposit Agreements and Any Additional Documents, Agreements, Consents or Certificates Deemed Necessary or Desirable in Connection with the Sale of State Personal Income Tax Revenue Bonds (Transportation), Series 2010A**

*John Bryan: This item is being advanced to the Board today on the recommendation of the Finance Committee. The resolution seeks the full Board's approval to issue a new series of Personal Income Tax Revenue bonds. More commonly referred to as "PIT" bonds. The Authority will use the proceeds of the PIT bonds to finance a number of local transportation projects. PIT bonds are issued on behalf of the State at the request of the Division of the Budget. They are secured by payments made to the Authority from funds held in the State's Revenue Bond Tax Fund which is seeded with 25 percent of the receipts collected from the State personal income tax. There is no pledge of Authority revenues or assets as security for these bonds. The Authority is not liable in the event that the State fails to appropriate the monies for debt service and the State is fully compensated for the expenses that it undertakes to pursue this transaction. The resolution authorizes the Authority to issue up to \$450 million in new money bonds with an additional authorization of \$150 million for possible refunding if the market conditions exist for that. It is important to note that as with the Trust Fund bond transaction that the Board*

*approved back in January, the Resolution does allow for a portion of the PIT bonds to be issued as “Build America Bonds” which were allowed under the American Recovery and Reinvestment Act of 2009. Today we have staff from the Division of the Budget; Goldman Sachs, which is the lead Underwriter of this transaction; Siebert, Branford, Shank, which is the MWBE Coordinating Manager on this transaction; our trusted Financial Advisors from First Southwest; and, representatives from Hiscock and Barclay and Joseph Reid who will serve as a joint venture in MWBE Bond Counsel.*

After full discussion, on the motion of Mr. Rice, seconded by Dr. Holguin-Veras, without any objections, the Board adopted the following resolution:

**RESOLUTION NO. 5842**

**APPROVING AND ADOPTING THE NINTH SUPPLEMENTAL BOND RESOLUTION AUTHORIZING THE ISSUANCE OF STATE PERSONAL INCOME TAX REVENUE BONDS (TRANSPORTATION) SERIES 2010A, AND SUPPLEMENTING AND AMENDING THE RESOLUTION, APPROVING THE FORM OF AND AUTHORIZING THE PREPARATION, EXECUTION AND DELIVERY OF THE PRELIMINARY OFFICIAL STATEMENT AND AUTHORIZING THE EXECUTION AND DISTRIBUTION OF THE FINAL OFFICIAL STATEMENT, APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF ONE OR MORE BOND PURCHASE AGREEMENTS FOR THE SERIES 2010A BONDS AND AUTHORIZING THE EXECUTION OF ONE OR MORE ESCROW DEPOSIT AGREEMENTS AND ANY ADDITIONAL DOCUMENTS, AGREEMENTS, CONSENTS OR CERTIFICATES DEEMED NECESSARY OR DESIRABLE IN CONNECTION WITH THE SALE OF STATE PERSONAL INCOME TAX REVENUE BONDS (TRANSPORTATION), SERIES 2010A**

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RESOLVED, that Part I of Chapter 383 of the Laws of New York of 2001 (“Chapter 383”) authorized the Authority solely upon the determination of the Director of the Budget, to

issue State Personal Income Tax Revenue Bonds (exclusive of certain costs) to finance the cost of various projects which meet the statutory definition of Authorized Purposes, and be it further

RESOLVED, that Chapter 383 authorized the Director of the Division of the Budget of the State of New York to enter into a financing agreement (each, a “Financing Agreement”) with Authorized Issuers to secure payment of debt service and other cash requirements in connection with the issuance of State Personal Income Tax Revenue Bonds, and be it further

RESOLVED, that on June 27, 2002, the Board approved the execution of a Financing Agreement to provide for the financing of Authorized Purposes pursuant to Chapter 383, and be it further

RESOLVED, that on August 7, 2002, the Executive Director and the Director of the Division of the Budget executed a Financing Agreement to provide for the financing of Authorized Purposes pursuant to Chapter 383, and be it further

RESOLVED, that on May 1, 2002, and as amended and restated on July 1, 2009, the Authority executed the Master Continuing Disclosure Agreement, since State Personal Income Tax Bonds are issued by the Authority and four other State authorities (collectively, the “Authorized Issuers”) under disclosure documents containing significant amounts of common information, the Division of the Budget developed a Master Continuing Disclosure Agreement to which it and all of

the Authorized Issuers became signatories. Upon the issuance of a series of State Personal Income Tax Bonds by an Authorized Issuer, such series of State Personal Income Tax Bonds is added to the master list of bond issues covered by the Master Continuing Disclosure Agreement and it is intended that the Series 2010A Bonds will be so added to such master list, and be it further

RESOLVED, that on June 27, 2002, the Board adopted the State Personal Income Tax Revenue Bonds (Transportation) General Bond Resolution (the “General Bond Resolution”) and the State Income Tax Revenue Bonds Standard Resolution Provisions (“Annex A”) (the General Bond Resolution and Annex A collectively hereinafter referred to as the “Resolution”) which authorizes the bonds of the Authority, designated as State Personal Income Tax Revenue Bonds (Transportation) to finance all or a portion of the cost of projects which meet the statutory definition of Authorized Purposes, and to refinance Prior Bonds, and be it further

RESOLVED, that Sections 201 and A-201, A-202, A-204 of the Resolution require that the issuance of State Personal Income Tax Revenue Bonds by the Authority shall be authorized by a supplemental resolution or resolutions of the Authority adopted at or prior to the time of issuance, and be it further

RESOLVED, that Section A-902 of the Resolution empowers the Authority to adopt, for any one or more of the purposes set forth therein, a supplemental resolution, and be it further

RESOLVED, that upon the request of the Director of the Budget, the Authority intends to issue in one or more series or sub-series up to \$600,000,000 of State Personal Income Tax Bonds (Transportation) Series 2010A (the “Series 2010A Bonds”), in order to finance the costs of various Authorized Purposes and, subject to market conditions, to refund certain State Personal Income Tax Revenue Bonds previously issued by the Authority pursuant to the State Personal Income Tax Revenue Bond (Transportation) Program (collectively the “Prior Bonds”), provided that such refunding produces present value savings satisfactory to the Authority and the State, all or a portion which (other than the refunding bonds) may be designated by an Authorized Officer, in consultation with the Division of the Budget, as Build America Bonds, and be it further

RESOLVED, that upon the request of the Director of the Budget, the Authority intends to issue such Series 2010A Bonds, in one or more series or sub-series, all or a portion of which (other than the refunding bonds) may be designated by an Authorized Officer, in consultation with the Division of the Budget, as Build America Bonds, in order to finance the costs of Authorized Purposes in an aggregate principal amount not to exceed \$450,000,000 and, if the foregoing conditions are satisfied, to refund Prior Bonds in an aggregate principal amount not to exceed \$150,000,000, and be it further

RESOLVED, that the refunding bonds authorized hereby may be issued simultaneously with or subsequent to the issuance of Series 2010A Bonds that are issued to finance the

costs of Authorized Purposes, but not later than December 31, 2010, and be it further

RESOLVED, that there has been prepared and submitted to the Board a form of the Ninth Supplemental Bond Resolution Authorizing an Aggregate Principal Amount Not To Exceed \$600,000,000 of State Personal Income Tax Revenue Bonds (Transportation), Series 2010A (the “Ninth Supplemental Resolution”) and amending and supplementing the Resolution relating to the selection of bonds to be redeemed in partial redemption, and be it further

RESOLVED, that the Authority intends to sell, solely upon the request of the Director of the Budget, pursuant to the Resolution and the Ninth Supplemental Resolution in one or more series or sub-series its State Personal Income Tax Revenue Bonds (Transportation) Series 2010A to the Underwriters (as named in the form of the Bond Purchase Agreement set before the Board, “the Underwriters”) pursuant to one or more Bond Purchase Agreements (collectively, the “Bond Purchase Agreement”), the form of which Bond Purchase Agreement has been set before the Board, and be it further

RESOLVED, that the Board approves and adopts the form of the Ninth Supplemental Resolution as submitted at this meeting and made a part of this resolution as though set forth in full herein, and authorizes an Authorized Officer of the Authority to approve and execute such changes to the Supplemental Resolution through a certificate or certificates of

determination as may be deemed necessary or desirable to effectuate the purposes thereof, and be it further

RESOLVED, that in connection with the sale of the Series 2010A Bonds, the Board approves the form of Preliminary Official Statement for the Series 2010A Bonds as submitted to this meeting and made a part of this resolution as though set forth in full herein, and authorizes an Authorized Officer of the Authority to approve and execute such changes as may be deemed necessary or convenient to effectuate the purposes thereof, and be it further

RESOLVED, that the Board authorizes the distribution and use of the Preliminary Official Statement relating to the Series 2010A Bonds by an Authorized Officer of the Authority in substantially the form submitted to this meeting with such changes, insertions and omissions to the Preliminary Official Statement as may be approved by such Authorized Officer of the Authority said delivery being conclusive evidence of such approval, and any amendments or supplements thereto which may be necessary or desirable, and be it further

RESOLVED, that the Board authorizes an Authorized Officer of the Authority to confirm that the Preliminary Official Statement relating to the issuance of Series 2010A Bonds to finance the costs of Authorized Purposes and/or for the issuance of refunding bonds is deemed final for purposes of Rule 15c2-12, except for certain omissions relating to certain State information and information not required under said Rule to be included therein, and be it further

RESOLVED, that the Board authorizes an Authorized Officer of the Authority to execute and deliver, on behalf of the Authority, one or more final Official Statements relating to the Series 2010A Bonds with such changes, insertions and omissions to the Preliminary Official Statement as may be approved by such Authorized Officer of the Authority said execution being conclusive evidence of such approval, and any amendments or supplements thereto which may be necessary or desirable. Any material changes from the form of the Preliminary Official Statement (excluding information provided by or certified as to accuracy by the State of New York) approved pursuant to this Resolution to be made in a final Official Statement relating to the Series 2010A Bonds issued to finance Authorized Purposes and the refunding of prior bonds, which are not made pursuant to matters which are authorized to be determined by an Authorized Officer of the Authority pursuant to this Resolution, the Ninth Supplemental Resolution or a Certificate of Determination (as defined in the Resolution) shall be distributed to members of the Authority for comments, if any, from such members prior to final printing. After execution, such Authorized Officer of the Authority or his or her designee is hereby authorized to deliver to the Underwriters of the Series 2010A Bonds an executed copy or copies of such Official Statement and any amendments or supplements thereto, and be it further

RESOLVED, that the Board approves the form of the Bond Purchase Agreement submitted at this meeting and made a part of this resolution as though set forth herein, in the manner set forth in Section 301 of the Ninth Supplemental Resolution and authorizes an Authorized Officer of the

Authority to execute and deliver one or more of such Bond Purchase Agreements and approve and execute such changes to any such Bond Purchase Agreements as may be deemed necessary or convenient to effectuate the purposes thereof, and be it further

RESOLVED, that an Authorized Officer of the Authority is authorized to execute (1) one or more schedules or supplements to the Master Continuing Disclosure Agreement and (ii) an updated schedule to the Financing Agreement (iii) one or more Escrow Deposit Agreements in connection with any refunding of any Prior Bonds, and be it further

RESOLVED, that an Authorized Officer of the Authority is authorized to execute upon such terms and conditions as are determined to be in the best interests of the Authority and are consistent with the provisions of the Ninth Supplemental Resolution any additional agreements including, but not limited to, consents and any other documents or certificates and to appoint any other agents or appropriate parties, necessary or desirable to facilitate the sale of the State Personal Income Tax Revenue Bonds (Transportation) Series 2010A issued by the Authority, determined by such Authorized Officer of the Authority to be necessary or desirable to implement the transactions described in this resolution and to be consistent with existing statutes, Authority guidelines, policies, procedures and other existing obligations and covenants and to do and cause to be done any and all acts and things necessary or convenient for carrying out the transactions contemplated by this resolution, and be it further

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

**- Chairman Re-enters Board Room -**

**Item 7 Mr. Estes as Amended (Appendix G)**

**Authorizing the Executive Director to Negotiate and Execute an Agreement with Hawkins, Delafield & Wood, LLP to Provide General Bond Counsel Services to the Authority for the Issuance of General Obligations**

*Mr. Estes: This Resolution seeks authorization to enter into an agreement with Hawkins Delafield and Wood to provide legal counsel to the Authority on matters related to public finance. On December 31, 2010 the Authority's current agreement with its bond counsel, Hawkins Delafield and Wood, will expire. In anticipation of this expiration, the Authority issued a Request for Proposals in April 2010 for firms interested in providing legal advice regarding the Authority's General Bonds and other obligations. The Request for Proposals was drafted in accordance with the "Recommendations Regarding Best Practices in Procurements for Legal Services" adopted by the Executive Order No. 10 Task Force to Increase the Utilization of Minority and Women-Owned Business Enterprise in State Debt Offerings. The Authority received 19 proposals by interested firms. An Evaluation Committee consisting of Authority staff from the Authority's Legal, Finance and Purchasing Departments evaluated the proposals in accordance with the criteria that had been previously set forth in the Request for Proposals and using a numerical evaluation for each criteria. Previously established weights for each criteria were then applied to the raw scores. Hawkins Delafield and Wood received the highest weighted score. The Authority has worked with Hawkins Delafield and Wood in the past and has found that the firm provides high quality work at competitive rates. Authority staff recommends the Board authorize the Executive Director to negotiate and execute an agreement with Hawkins Delafield and Wood for a five-year term and a maximum payable amount of \$750,000.*

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

**RESOLUTION NO. 5843**  
**AUTHORIZING THE EXECUTIVE DIRECTOR TO  
NEGOTIATE AN AGREEMENT WITH HAWKINS  
DELAFIELD & WOOD, LLP TO PROVIDE GENERAL  
BOND COUNSEL SERVICES TO THE AUTHORITY  
FOR THE ISSUANCE OF GENERAL OBLIGATIONS**

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RESOLVED, that the Executive Director be, and hereby is, authorized to negotiate an agreement with Hawkins Delafield & Wood, LLP to provide general bond counsel services on an as-needed basis, and be it further

RESOLVED, that such agreement shall be for a term of five (5) years commencing January 1, 2011 with a maximum amount payable of \$750,000 and shall be on such other terms and conditions that 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 this agreement, manage and administer this agreement, amend the 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 this resolution be incorporated in full in the minutes of this meeting

**Item 8 Mr. Estes (Appendix H)**

**Authorizing the Executive Director to Execute a Second Amendment to the Agreement with Holland & Knight, LLP (C100839) for Legal Services to Increase the Monetary Cap**

*Mr. Estes: This Resolution is seeking authorization to amend the Authority's agreement for legal services with Holland and Knight. In 2007, the Executive Director signed a contract with Holland and Knight with a monetary cap for \$150,000. In 2009, the Authority Board increased the monetary ceiling on the contract to a total of \$300,000. In May 2010, the Executive Director increased the monetary ceiling to \$450,000.*

*The Authority is currently engaged in an adjudicatory/rulemaking before the Federal Communications Commission. Level 3 is a publicly traded company that filed a petition against the Authority seeking to have the FCC reform a contract in which Level 3 is obligated to pay the Authority approximately \$675,000 annually so that it can connect into the Authority's fiber optic system. Regardless of the fact that Level 3's predecessor had paid this amount annually for six years, Level 3 alleges the contract violates the Telecommunications Act and is preventing the expansion of fiber optic service.*

*As this matter could potentially set a telecommunications legal precedent nationwide and thus considerably reduce the amount of fees Level 3 must pay to municipalities to use their right-of-way, Level 3 has dedicated a significant amount of resources to this matter. The Authority has responded in kind as Level 3 now owes the Authority nearly \$3 million with another \$6 million in fees due to the Authority through the term of the agreement. Ten years are left on the contract.*

*At this time, Staff is requesting an increase in the monetary cap for the legal agreement with Holland and Knight by \$300,000, from \$450K to \$750K.*

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

**Item 8 Mr. Estes (Appendix H)**

**Authorizing the Executive Director to Execute a Second Amendment to the Agreement with Holland & Knight, LLP (C100839) for Legal Services to Increase the Monetary Cap (Continued)**

**RESOLUTION NO. 5844**

**AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A SECOND AMENDMENT TO THE AGREEMENT WITH HOLLAND & KNIGHT, LLP FOR LEGAL SERVICES TO INCREASE THE MONETARY CAP**

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RESOLVED, that the Executive Director be, and he hereby is, authorized to execute a Second Amendment to the Agreement with Holland & Knight for legal services as amended by the First Amendment thereto (the "Agreement"), and be it further

RESOLVED, that such Second Amendment shall increase the maximum amount payable under such Agreement by \$300,000, from the current monetary cap of \$450,000 to a new monetary cap of \$750,000, and 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 Authority's Chief Financial Officer be, and he hereby is, authorized to charge expenditures for services rendered pursuant to such Agreement, as amended by the Second Amendment (the "New Agreement"), to the Operating Budget, 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 New Agreement, manage and administer the New Agreement, amend the provisions of the New Agreement, consistent with the terms of this item and other Board authorizations and suspend or terminate the New Agreement, in the best interests of the Authority, and be it further

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

**Item 9 Mr. Estes (Appendix I)**

**Authorizing the Executive Director to Execute a Second Amendment to the Agreement with Bond, Schoeneck & King, PLLC (C100835) for Legal Services to Increase the Monetary Cap**

*Mr. Estes: This Resolution seeks authorization to amend the Authority's agreement for legal services with Bond Schoeneck and King (BSK). In 2007, the Authority entered into an agreement with BSK to provide outside counsel services with a monetary cap of \$150,000. In May 2010, the Executive Director increased that cap to \$300,000. Under this contract, BSK has provided legal advice regarding: disputes arising out of a project labor agreement, an appeal before the NYS Dept. of Labor relating to the drowning of a Canal employee and in the renegotiation of a U.S. Occupational Safety and Health Administration variance. Since February 2010, BSK has also represented the Authority in a breach of contract action the Authority filed against Level 3 in the Northern District of New York. As described in the prior item, Level 3 is seeking to have the Federal Communications Commission reform a valid contract. The Authority is seeking to collect on this contract in State Court, the proper venue to hear this matter. The Authority is seeking \$9 million, which includes amounts owed and payment for the balance of the term of the contract. Staff is seeking authorization to increase the cap on the BSK contract by \$300,000 from the current cap of \$150,000 to a new cap of \$450,000.*

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

**RESOLUTION NO. 5845**  
**AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A SECOND AMENDMENT TO THE AGREEMENT WITH BOND, SCHOENECK & KING, PLLC (C100835) FOR LEGAL SERVICES TO INCREASE THE MONETARY CAP**

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RESOLVED, that the Executive Director be, and he hereby is, authorized to execute a Second Amendment to the Agreement with Bond, Schoeneck & King, PLLC (C100835) for legal services (“Agreement”), and be it further

RESOLVED, that such Second Amendment shall increase the maximum amount payable under such Agreement by \$300,000, from the current monetary cap of \$150,000 to a new monetary cap of \$450,000, and be on such other terms and conditions as the Executive Director and General Counsel determined to be in the best interests of the Authority, and be it further

RESOLVED, that the Authority’s Chief Financial Officer be, and he hereby is, authorized to charge expenditures for services rendered pursuant to such Agreement to the Operating Budget, 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, manage and administer the Agreement, amend the 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 this resolution be incorporated in the minutes of this meeting

**Item 10 Mr. Nadratowski (Appendix J)**

**Authorizing the Executive Director to Execute an Agreement with the National Multiple Sclerosis Society: New York City- Southern New York Chapter to Conduct “Bike MS Southern New York 2010” and Undertake Such Other Measures as May be Required to Facilitate the Event**

*Mr. Nadratowski: This item seeks Board approval authorizing the Executive Director to enter into an agreement with the National Multiple Sclerosis Society (“MS”), the New York City Southern New York Chapter, to conduct “The 2010 Great TZ Bike Tour for MS” a bike tour event across the Tappan Zee Bridge. If approved, this will be the 14<sup>th</sup> year of the Bike Tour across the Tappan Zee Bridge and it is the 13<sup>th</sup> year that the MS Society has been the sponsor. The Bike Tour is scheduled for Sunday, September 26, 2010, and will begin at 7:45 a.m. and end at 10:45 a.m. Bicyclists will use the Thruway between Exit 9 and Exit 11 crossing the Tappan Zee Bridge in the northbound direction. All Authority and State Police costs will be reimbursed by the MS Society which is estimated at around \$39,000 for this year. Over the past 13 years, the MS Society has raised over \$2.8 million to support research for a cure for MS through this event.*

After full discussion, on the motion of Mr. Rice, seconded by Dr. Holguin-Veras, without any objections, the Board adopted the following resolution:

**RESOLUTION NO. 5846**

**AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN AGREEMENT WITH THE NATIONAL MULTIPLE SCLEROSIS SOCIETY: NEW YORK CITY - SOUTHERN NEW YORK CHAPTER TO CONDUCT ‘THE 2010 GREAT TZ BIKE TOUR FOR MS’ AND UNDERTAKE SUCH OTHER MEASURES AS MAY BE REQUIRED TO FACILITATE THE EVENT**

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RESOLVED, that the Executive Director be, and he hereby is, authorized to execute an agreement with the National Multiple Sclerosis Society: New York City - Southern New York Chapter (“MS Society”) to hold a bicycling Event - “The 2010 TZ Bike Tour for MS” (“Event”) - under such terms and conditions as the Executive Director, in consultation with the General Counsel, determines to be in the best interest of the Authority; and be it further

RESOLVED, that the agreement will require that the MS Society remit \$39,000 to the Authority to offset the cost of assisting with the Event; 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, manage and administer the agreement, amend the 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 Executive Director or his designee be, and he hereby is, authorized to take all appropriate actions to facilitate the Event; and be it further

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

**Item 11 Mr. Waite (Appendix K)**  
**Report on the Capital Program**

*Christopher Waite: As of the end of June, the Authority reached the halfway point in the Letting Program. The letting target is \$637 million with a cash flow corresponding to \$432 million. To date, through June 30, the Authority let 19 projects. The total low bid amount for the 19 projects is \$297 million; close to \$300 million which is just under half of the total. The report stating that there was a 29 percent savings in bids compared to the engineer's estimate is incorrect and it will be corrected for the web version of this document. The correct number is 23 percent. There was a savings of 16 percent when compared to what was put in the contract program last fall when the program was adopted. The engineers upped their estimates just before letting due to them knowing more about the project.*

*I was satisfied with the bids and thought that they were good. The number of bidders on each project ranged between four and six for most jobs, however, a letting in July had 15 bidder and it was an excellent bid. It appears that because inflation is down, the Authority is getting very good prices and the jobs are getting out. There are an additional 42 projects, with a balance of approximately \$360 million, to let before the end of the year. When savings are factored in, the total for all of the bids is expected to be about \$613 million. The report also indicates that one of the projects identified to be let this year is a design effort requiring additional months for completion. It will be postponed until next year due to the complexity of the job and number of plates that require work.*

On the motion of Mr. Simberg, seconded by Ms. Luh, without any objections, the Board accepted the Report (June 2010) on the Capital Program.

**Item 12 Mr. Waite (Appendix L)**  
**Authorizing Negotiation and Execution of Engineering Agreement D213978 with Popli Architecture + Engineering & L.S., P.C. for Construction Inspection Services Relative to TAS 10-31I (D213968), Installation of ITS Devices at Various Locations in the Syracuse Division**

*Mr. Waite: This item is requesting the Board's authorization to negotiate and execute an engineering agreement with Popli Architecture and engineering for construction inspection relative to Contract TAS10-3I. The I signifies that it is ITS.*

*ITS, for cameras and signs and things like that to help traffic move. And this is in our Syracuse division. It is scheduled, well it was let in July and should be completed a year from now in October of 2011.*

After full discussion, on the motion of Dr. Holguin-Veras, seconded by Mr. Simberg, without any objections, the Board adopted the following resolution:

**RESOLUTION NO. 5847**  
**AUTHORIZING NEGOTIATION AND EXECUTION OF  
ENGINEERING AGREEMENT D213978 WITH POPLI  
ARCHITECTURE + ENGINEERING & L.S., P.C. FOR  
CONSTRUCTION INSPECTION SERVICES RELATIVE  
TO TAS 10-31I (D213968), INSTALLATION OF ITS  
DEVICES AT VARIOUS LOCATIONS IN THE SYRACUSE  
DIVISION**

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RESOLVED, that the Chief Engineer be, and hereby is, authorized to negotiate and execute engineering agreement D213978 with Popli Architecture + Engineering & L.S., P.C., 555 Pembroke Drive, Penfield, New York 14526 for construction inspection services relative to TAS 10-31I (D213968), installation of ITS devices at various locations in the Syracuse Division, provided that the Maximum Amount Payable does not exceed \$720,000 (Item I100.1 of the 2010 Contracts Program), and be it further

RESOLVED, that the Chief Engineer or his 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 2010 Contracts Program Resolution No. 5790 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 this agreement be included in the Chief Engineer's 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 13 Mr. Waite (Appendix M)**

**Authorizing Additional Funding for the Award of TANY 10-19B (D213702), Replacement of Four Thruway Bridges over Seven Lakes Drive (MP 34.03 and MP 34.04) and East Village Road (MP 36.13 and MP 36.14) in the New York Division**

*Christopher Waite: Mr. Chairman and Board members this item is requesting authorization for additional funds so that we may award contract TANY 10-19B. These are four bridges, actually it is two pair, but they are separate northbound and southbound in the New York division, and these bridges are slated for complete replacement over nearly a 3 year period. Quite a complex job with multiple stages of traffic control and a lot of moving of materials around to reconstruct these bridges. We received a low bid from A Servidone/ B. Anthony, a joint venture, in the amount of 28,345,000 plus some change. And that was \$5.7 million above the engineer's estimate which was 22.6 million. The rest of the bids ranged, continued above that from 29 million on up to 41 million. And in looking at the bids, we feel that the low bidder gave us a good price. The bids were grouped fairly well. I mean, that does range all the way from 28 to 41 but the 41 was a bit of a stringer out on the high end. And I believe we underestimated this job by not realizing how complex it would be and the staging and perhaps the contractors are looking at the length of time and hedging their bets a bit on risk for inflation*

*and so on these materials. We do believe though that by re-letting the project we would not get a better price and I recommend that we do award this job with the additional funds.*

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

**RESOLUTION NO. 5848**  
**AUTHORIZING ADDITIONAL FUNDING FOR THE  
AWARD OF TANY 10-19B (D213702), REPLACEMENT  
OF FOUR THRUWAY BRIDGES OVER SEVEN LAKES  
DRIVE (MP 34.03 AND MP 34.04) AND EAST VILLAGE  
ROAD (MP 36.13 AND MP 36.14) IN THE NEW YORK  
DIVISION**

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RESOLVED, that additional funding for the award of TANY 10-19B, replacement of four Thruway bridges over Seven Lakes Drive (MP 34.03 and MP 34.04) and East Village Road (MP 36.13 and MP 36.14) in the New York Division, to A. Servidone, Inc./B. Anthony Construction Corporation JV for their low bid of \$28,345,191.50 be, and the same hereby is authorized, and be it further

RESOLVED, that an additional sum of \$5,345,191.50 be, and the same hereby is, allocated toward contract TANY 10-19B from bid savings and other adjustments made to the 2010

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 contract, 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 this resolution be incorporated in the minutes of this meeting

**Adjournment**

There being no further business to come before the Board, on the motion of Mr. Simberg, seconded by Dr. Holguin-Veras, without any objections, the meeting was adjourned.

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Jill B. Warner  
Secretary