



MINUTES

NEW YORK STATE THRUWAY AUTHORITY

BOARD MEETING NO. 687

July 18, 2011

Minutes of a meeting of the New York State Thruway Authority, held in the Board Room at Metropolitan Transportation Authority Headquarters, 347 Madison Avenue 7th Floor, New York, New York 10017, and via video conference from the Authority's Administrative Headquarters, 200 Southern Boulevard, Albany, New York 12209.

The meetings of the New York State Thruway Authority and Canal Corporation Boards opened in joint session for the consideration of various matters. These minutes reflect only those items considered by the New York State Thruway Authority Board. The meeting began at 3:18 p.m.

There were present:

Chairman Howard P. Milstein

Donna J. Luh, Vice Chair

J. Donald Rice, Jr., Board Member

Richard N. Simberg, Board Member

Brandon R. Sall, Board Member

Jose Holguin-Veras, Ph.D., via video conference

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

E. Virgil Conway was not present at this meeting and did not vote on any of the Items.

In addition, there were present the following staff personnel:

Michael R. Fleischer, Executive Director

John Barr, Director, Administrative Services

Donald Bell, Director, Maintenance and Operations

John Bryan, Chief Financial Officer

William Estes, General Counsel

J. Marc Hannibal, Director, Audit and Management Services

Brian Stratton, Director, Canal Corporation

Thomas Ryan, Chief of Staff

Ted Nadratowski, Chief Engineer

Jill B. Warner, Board Administrator

Thomas Pericak, Division Director, Buffalo Division

Patrick Hoehn, Acting Division Director, Syracuse Division, via video conference

Stephen Grabowski, Acting Division Director, New York Division

John Callaghan, Deputy Director, Canal Corporation

Catherine Sheridan, Acting Deputy Director for Canal Maintenance,
Operations & Engineering, via video conference

Wendy Allen, Director, Management and Planning, via video conference

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

Jonathan Gunther, Assistant Counsel, via video conference

Lawrence Norville, Chief Compliance Officer

William McDonough, Investment Officer, via video conference

Captain Michael Eaton, New York State Police, via video conference

Jonathan Ehrlich, Special Assistant to the Chairman

Kathleen LeFave, Special Assistant to the Chief of Staff, via video conference

Peter Casper, Assistant Counsel, via video conference

Karen Wilson, Information Technology Specialist

Also in attendance:

Honorable Stephanie A. Miner, Mayor, City of Syracuse

Elizabeth Butler, Executive Assistant to Don Rice

William C. Thompson, Jr., Senior Managing Director, Siebert Brandford Shank & Co.

John Waters, Managing Director, Siebert Brandford Shank & Co.

Michael A. Burke, Partner, Sidley Austin LLP

Benjamin Asher, Senior Managing Director, Public Resources Advisory Group

David Paget, Principal, Sive, Paget & Riesel, P.C.

David Roberts, Assistant Attorney General, Office of the Attorney General, via video conference

Michael Novakowski, Chief Budget Examiner, Division of the Budget, via video conference

Pat Reale, Principal Budget Examiner, Division of the Budget, via video conference

Seth Agata, Assistant Counsel, Executive Chamber, via video conference

Thomas Callahan, Principal, Hydraulic Race Co.

Karl Diehl, New York Network

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

Chairman Milstein called the meetings of the Thruway Authority and Canal Corporation Boards to order.

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

Item 1 by Ms. Warner (Appendix A)
Approval of Minutes of Meeting No. 686

On the motion of Mr. Sall, seconded by Ms. Luh, without any objections, the Board approved the minutes of Meeting No. 686 held on May 18, 2011, which were made available to the Board Members as part of the Agenda.

Item 2 by Mr. Bryan (Appendix B)
Financial Reports – April and May 2011

On the motion of Mr. Sall, seconded by Ms. Luh, without any objections, the Board accepted the Financial Reports for the months of April and May 2011.

Item 3 by Mr. Bryan (Appendix C)
Investment Transactions – Second Quarter 2011

On the motion of Mr. Sall, seconded by Ms. Luh, without any objections, the Board accepted the Investment Transactions – Second Quarter 2011 Report.

Item 4 by Chairman Milstein and Mr. Fleischer (Appendix D)
Recognizing and Honoring John L. Buono

Mr. Fleischer reported that this item seeks to recognize and honor the former Chairman, John Buono, who served as the Chairman of the Thruway Authority and Canal Corporation for nine years from June 2002 to June 2011.

Chairman Milstein stated that the proposed resolution is a fitting tribute for someone that served for nine years in his position.

After full discussion, the Board adopted the following resolution:

RESOLUTION NO. 5898
**RECOGNIZING AND HONORING CHAIRMAN JOHN L.
BUONO**

WHEREAS, John L. Buono has served as Chairman of the New York State Thruway Authority and the New York State Canal Corporation since June 20, 2002, and

WHEREAS, Chairman Buono has provided meritorious leadership and has contributed to several significant New York State Thruway Authority and New York State Canal Corporation accomplishments including adoption of a seven-year, \$2.74 billion Capital Plan, initial deployment of highway speed E-ZPass on the Thruway, completion of significant reconstruction projects at Interchange 17 and Interchange 8 that have resulted in enhanced mobility, reduced congestion and improved air quality, progression of two major Tappan Zee Bridge deck replacement projects that ensure safe and efficient travel for the thousands of motorists that cross the bridge daily, initiation of a reconstruction project between Interchanges 23 and 24 that aims to improve mobility in the heavily traveled commuter corridor, commencement of a 15-mile pavement reconstruction project between Interchanges 39 and 40 that will afford customers traveling between Syracuse and Weedsport a smoother ride, elimination of tolls at the Black Rock and City Line toll barriers, installation of more than 100 intelligent transportation systems components that provide real-time traffic, weather, construction and emergency information through the “Thruway Regional Advisory Network System” and the “Advanced Traffic Management System,” which collectively improved the efficiency of the Authority’s incident response and traffic management programs, support of development in Canal communities through grant awards from the “Erie Canal Greenway Grant Program” and the bi-annual tourism matching grants program, support of educational projects using historic vessels, promotion of tourism through the advancement of initiatives to rehabilitate and expand the Erie Canalway Trail, as well as

partnering in annual events such as “Canal Splash!,” “Canal Clean Sweep,” “Canalway Trail Celebration,” and “Cycling the Erie Canal,” and completion of major Canal initiatives including the 2010 World Canal Conference, streamlining policies and procedures related to managing Canal real property, responding to devastating flooding along the Mohawk Valley in 2006, and continuing to rehabilitate and restore Canal infrastructure now, therefore, be it further

RESOLVED, that Chairman Buono’s service is hereby proclaimed as meeting the very highest standards of excellence in public service, and be it further

RESOLVED, that the Boards of the New York State Thruway Authority and the New York State Canal Corporation, on behalf of the People of the State of New York, hereby extend to Chairman Buono their thanks and appreciation for his dedicated service, his many contributions to the advancement of infrastructure improvements and economic development initiatives, his commitment to customer service, and his continued leadership and counsel to his fellow Board Members and staff in their respective activities and programs, and be it further

RESOLVED, that a copy of this resolution be presented to Chairman Buono and be incorporated in the minutes of this meeting

Item 5 by Mr. Fleischer (Appendix E)
Report on Procurement Contracts and Other Agreements up to \$150,000 Executed by the Executive Director During the Period October 1, 2010 through December 31, 2010

Mr. Fleischer submitted as Exhibit I a listing containing Personal Service Contracts up to \$150,000 for the period October 1, 2010 through December 31, 2010.

After full discussion, on the motion of Mr. Sall, seconded by Ms. Luh, without any objections, the Board accepted Mr. Fleischer's quarterly report.

Item 6 by Mr. Estes (Appendix F)

Approving and Adopting the Tenth Supplemental Bond Resolution Authorizing the Issuance of State Personal Income Tax Revenue Bonds (Transportation) Series 2011A, 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 2011A 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 2011A

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

RESOLUTION NO. 5899

APPROVING AND ADOPTING THE TENTH SUPPLEMENTAL BOND RESOLUTION AUTHORIZING THE ISSUANCE OF STATE PERSONAL INCOME TAX REVENUE BONDS (TRANSPORTATION) SERIES 2011A, 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 2011A 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 2011A

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 Division of the Budget of the State of New York ("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 Budget 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 and as further amended and restated as of December 1, 2010, 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 2011A 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 "Bond 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 Bond 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 Bond 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 \$450,000,000 of State Personal Income Tax Bonds (Transportation) Series 2011A (the "Series 2011A 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, and be it further

RESOLVED, that upon the request of the Director of the Budget, the Authority intends to issue such Series 2011A Bonds, in one or more series or sub-series, in order to finance the costs of Authorized Purposes in an aggregate principal amount not to exceed \$400,000,000 and, if the foregoing conditions are satisfied, to refund Prior Bonds in an aggregate principal amount not to exceed \$50,000,000, and be it further

RESOLVED, that the refunding bonds authorized hereby may be issued simultaneously with or subsequent to the issuance of Series 2011A Bonds that are issued to finance the costs of Authorized Purposes, but not later than December 31, 2011, and be it further

RESOLVED, that there has been prepared and submitted to the Board a form of the Tenth Supplemental Bond Resolution Authorizing an Aggregate Principal Amount Not To Exceed \$450,000,000 of State Personal Income Tax Revenue Bonds (Transportation), Series 2011A (the "Tenth Supplemental Resolution") and amending and supplementing the Bond 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 Bond Resolution and the Tenth Supplemental Resolution in one or more series or sub-series its State Personal Income Tax Revenue Bonds (Transportation) Series 2011A 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 Tenth 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 2011A Bonds, the Board approves the form of Preliminary Official Statement for the Series 2011A 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 2011A 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 2011A 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,

promulgated by the Securities and Exchange Commission under the Securities and Exchange Act of 1934, as amended, 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 2011A 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 2011A 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 Tenth 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 2011A 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 Tenth 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 (i) 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 Tenth 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 Series 2011A Bonds 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

Item 7 as Amended by Mr. Estes (Appendix G)
Authorizing the Waiver of Competitive Procedures for the Executive Director to Execute an Agreement with White & Case, LLP, On Behalf of the State of New York, To Provide Legal Services for Indian Land Claim Cases and Other Issues and Disputes Involving Indian Nations

Mr. Estes reported that this item would give the Executive Director of the Authority authorization to enter into an agreement with the law firm of White & Case, LLP to perform legal services for the Executive Chamber of the Governor. In order to do so the Board would waive procurement contract competition requirements. The Authority would be responsible for paying all charges incurred by White & Case, LLP, however, the Authority would be fully reimbursed by the State.

For over a decade the Authority has maintained a contract with White & Case, LLP for the benefit of the Executive Chamber. This contract agreement originally began when both the State and the Authority were named as defendants in lawsuit with an Indian Nation. Since that initial contract, the Authority has been removed from that litigation, but the Executive Chamber has asked that the Authority continue to act as a contracting agent for the Governor's office. The current contract will expire on August 1, 2011 and has a balance of \$356,406.

The Authority's policy permits the Authority to waive publication of an intent to contract for goods or services in the New York State *Contract Reporter* when, due to the specialized nature of the goods or services required or the historical relationship which exists with the vendor, it is in the best interest of the Authority to continue that relationship. Given the past successful relationship with White & Case, LLP, and the ongoing litigation and other disputes with Indian Nations, it is in the best interest of the Authority and the State to waive contract competition requirements. The Authority will need to seek a waiver for free advertising from the Office of the State Comptroller before it can enter into a contract with White & Case, LLP.

Although the Authority will be responsible for paying White & Case, LLP's bills, the State will fully credit the Authority for annual costs allocated to the Authority for the State's provision of services pursuant to Public Authorities Law Section 2975. The proposed resolution

references credit that would be extended pursuant to Public Authorities Law Section 2976. However, today staff received a letter from the Division of Budget in which credit would only be extended pursuant to 2975, therefore, staff recommends that the reference to Public Authorities Law 2976 be stricken from the proposed resolution.

The terms of the contract would be similar to the last contract entered into with White & Case, LLP. The duration of the contract would be for three years, with two additional options to renew for one year each. The Maximum Amount Payable would be \$5 million. The proposed contract will be presented to the Office of the State Comptroller for review and approval. Staff is recommending that the Board approve the proposed resolution, as amended, with the reference to Public Authorities Law 2976 stricken.

Representatives from the Governor's Counsel's office in Albany, as well as from the Attorney General's office and the Division of Budget were available to explain the credit if the Board had any concerns.

Chairman Milstein stated that it makes sense to use the law firm that has the historical knowledge and relationships in dealing with these issues, rather than spend a lot of money getting another law firm up to speed. He inquired as to whether there is any reason to be concerned about the state extending credit to the Authority based upon the Authority's payments to White & Case, LLP. Mr. Estes responded that this is a longstanding practice, and the Authority has always received full credit.

Mr. Rice asked if staff supervises the litigation or if the Authority is merely a financial conduit. Mr. Estes replied that the Authority is merely a financial conduit and does not supervise the litigation in any way.

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

RESOLUTION NO. 5900

AUTHORIZING THE WAIVER OF COMPETITIVE PROCEDURES FOR THE EXECUTIVE DIRECTOR TO EXECUTE AN AGREEMENT WITH WHITE & CASE, LLP, ON BEHALF OF THE STATE OF NEW YORK, TO PROVIDE LEGAL SERVICES FOR INDIAN LAND CLAIM CASES AND OTHER ISSUES AND DISPUTES INVOLVING INDIAN NATIONS

RESOLVED, that the competitive procedures required by the Thruway Authority Procurement Contracts Policy are waived and the Executive Director be, and hereby is, authorized to execute an Agreement with White & Case LLP, on behalf of the State, to provide legal services for the State of New York in various Indian land claim cases and representation in other issues and disputes involving Indian Nations, 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 and allow the Authority to recoup the cost of such legal services through a \$5 million waiver of the annual costs allocated to the Authority for the State's provision of services to the Authority pursuant to Public Authorities Law Section 2975 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 8 by Mr. Estes (Appendix H)

Authorizing the Executive Director to Execute an Amendment to the Agreement for Outside Environmental Counsel for the Tappan Zee Bridge/I-287 Corridor Study with Sive, Paget & Riesel, P.C. (C100423) and Allocate the Funds Therefor

Mr. Estes reported that the law firm of Sive, Paget, and Riesel has been environmental counsel on the Tappan Zee Bridge corridor study, along with the firm of Whiteman, Osterman and Hanna, since 2002. In October 2006 this contract was amended to extend Sive, Paget and Riesel's contract term until the issuance of the National Environmental Policy Act's Record of Decision ("ROD"). The Draft Environmental Impact Statement ("DEIS") is still being drafted by the study's technical consultants, and therefore the federal lead agencies on the project (the Federal Highway Administration and the Federal Transit Administration), have not yet issued an ROD.

The Authority requires the continued counsel of Sive, Paget and Riesel in reviewing chapters of the DEIS as well as meeting with and responding to the comments of the Federal Highway Administration and the Federal Transit Administration. Prior to a final Environmental Impact Statement being released, the DEIS will be released for public comment. Counsel is needed to review and address the public's comments for the release of the final Environmental Impact Statement.

Given the complexity of this project and the extensive amount of work already completed, staff recommends that Sive, Paget and Riesel remain on the project. The original contract entered into with Sive, Paget and Riesel had a Maximum Amount Payable ("MAP") of \$1 million, and this was increased to \$2 million in 2008. As of May, this contract had a balance of \$162,365 and staff projects this balance will be depleted by October 2011. Therefore, staff proposes an increase of the MAP under this contract by an additional \$1 million. This Board authorization would not cover the defense of the ROD by Sive, Paget and Riesel.

Although all costs of the Tappan Zee Bridge study are shared among the three partners, which is the Department of Transportation, Metro North Railroad, and the Thruway Authority, all costs for outside environmental counsel are borne exclusively by the Authority. In the past the Board determined it was in the best of the Authority and the project to hire outside environmental counsel since the Department of Transportation does not have an attorney involved in the review and development of the documents.

Dave Paget, a principal in the law firm of Sive, Paget, and Riesel was present to answer any questions the Board had. Chairman Milstein asked Mr. Paget to address the Board regarding the status of the work he does for the Authority.

Mr. Paget reported that at the present time the parties are working to develop the DEIS which is the document that initiates the formal environmental review. The size of the DEIS is extensive, probably 5,000 pages. It is a lengthy, arduous, rigorous process and is comprehensive in its coverage.

There is involvement at every level of government and everyone has to have the opportunity to express its institutional concerns. The public is also immersed in the process. The Chairman inquired as to how long this has been going on. Mr. Paget responded that it has been approximately seven years. There have been intervals of relative inactivity and one of the realities is the difficulty of engaging the necessary agencies. Many are under-resourced, have competing priorities, and the matter of convening a meeting with all relevant agencies becomes a formidable exercise. Some agencies lack travel budgets, cannot allocate the necessary staff, or lack the expertise to deal with the issues they raise.

Mr. Sall inquired as to who the lead agency is on this project. Mr. Paget responded that there are co-lead agencies. The Federal Transportation Administration and the Federal Highway Administration preside over the publication of the environmental review document, but join a bevy of federal agencies. There are also state agencies and local entities as well as the triad of the

Department of Transportation (“DOT”), the Metropolitan Transportation Authority (“MTA”), and the Thruway Authority as co-sponsors.

Mr. Sall asked if staff has been interfacing with governments in Rockland County and Westchester County. Mr. Paget responded that that has been more a function of DOT and other consultants and is not really a major element of the Authority’s efforts.

Mr. Simberg stated that he has watched this project closely over the past three years and is as satisfied as he can be with the quality of the legal work that the Authority has been given. He is, however, concerned with the integration of that work into the actual day-to-day process of commencing the study, which is under the lead agency of DOT. He believes that as the Authority continues on with this project, staff should work more closely with MTA and DOT in order to have a better concurrence as to the legal status of any joint actions, which has been lacking in the past, and is going to be much more critical going into the final details of this enormous project in the next few years. Chairman Milstein requested that the Authority’s General Counsel make any recommendations to facilitate that happening.

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

RESOLUTION NO. 5901
AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN AMENDMENT TO THE AGREEMENT FOR OUTSIDE ENVIRONMENTAL COUNSEL FOR THE TAPPAN ZEE BRIDGE/I-287 CORRIDOR STUDY WITH SIVE, PAGET & RIESEL, P.C. (C100423) AND ALLOCATE THE FUNDS THEREFOR

RESOLVED, that the Executive Director be, and he hereby is, authorized to execute an amendment to the Agreement with Sive, Paget & Riesel, P.C. (C100423) for ongoing outside environmental counsel services for the Tappan Zee Bridge Environmental Review process, to increase the maximum amount

payable under such agreement by \$1,000,000, from the current monetary cap of \$2,000,000 to a new monetary cap of \$3,000,000, and be it further

RESOLVED, that an additional \$50,000 in 2011 cash flow be allocated to this agreement through bid savings and other adjustments made to the 2011 Contracts Program, 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 WOH and SP&R Agreements, manage and administer the WOH and SP&R Agreements, amend the provisions of the Agreements consistent with the terms of this Item and other Board authorizations and suspend or terminate the Agreements in the best interest of the Authority, and be it further

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

Item 9 by Mr. Nadratowski (Appendix I)
Authorizing Negotiation and Execution of Two Engineering Agreements (D214065 and D214085) with Two Firms for Construction Inspection Services Relative to TAN 11-17 and TAN 11-34B

Mr. Nadratowski reported that the first item seeks Board authorization to negotiate and execute two engineering agreements with two separate firms for construction and inspection services. In accordance with Authority policy, Urban Engineers of New York, P.C. has been designated to provide construction inspection services for a construction contract to complete seven miles of concrete pavement repair on Niagara Thruway in the Buffalo Division from the Peace Bridge to the Tonawanda barrier. The cost of the inspection is estimated to be \$630,000 and is 11 percent of the low bid submitted by Oak Grove Construction.

A second firm, Nussbaumer and Clark, Inc., has been designated to provide construction inspection services for the rehabilitation of the southbound South Grand Island Bridge in the

Buffalo Division. The cost of the inspection is estimated to be \$2.1 million and is approximately 10 percent of the anticipated construction costs.

Board authorization is requested to negotiate and execute individual agreements with each firm for a maximum amount payable not to exceed \$630,000 for services provided by Urban Engineers and \$2.1 million for services provided by Nussbaumer and Clark.

Chairman Milstein asked if these authorizations are for the same project. Mr. Nadratowski responded that they are for two separate projects. Chairman Milstein inquired if it is typical that inspection costs would be 10 percent of the construction cost. Mr. Nadratowski replied that it is typical but that the maximum amount payable is maximum that the authorization could be negotiated for so it may in fact end up being less. Chairman Milstein stated that 10 percent seems rather high.

Mr. Sall stated that he has consistently voiced some objection to having outside engineering inspect asphalt jobs. He believes that the Authority should hire more engineers if there are not enough people to do it in-house as it should not require real outside experience. Chairman Milstein inquired as to why the Authority hires so many outside firms. Mr. Nadratowski responded that the Authority is limited by the number of in-house staff at each of the division locations and that the Authority could certainly do more in-house if more people were hired. When the Authority has large capital programs, like it has had over the last several years, many more jobs are done through consultant inspection agreements. Staff is trying to come up with a balance while working at minimum staffing levels. The Authority is at the end of two very large capital programs so it is to be expected that a high volume of construction inspection work has been done by outside firms.

The Chairman suggested that staff review the economics of doing business this way and look into possible cheaper solutions without adding staff to the payroll that may only have work to do a percentage of the time. Mr. Sall added that he has suggested that staff look into a job share with DOT for times when their engineers are not as busy as the Authority's. Mr. Nadratowski replied that staff is currently looking into shared services with DOT. Mr. Bryan added that the SAGE

Commission was looking into those issues as well but to date has not released their recommendations.

Dr. Veras asked how staff estimated the numbers for these two projects. Mr. Nadratowski responded that a cost estimate is prepared for each and every construction project. Initially the projects are put out to the specific division where the construction office looks at which ones can be done in-house and which ones have to go through to a consultant. For the ones that go to consultants, staff prepares an independent cost estimate, which includes the number of staff and the hours expected over the life of the contract. That results in an independent cost estimate that is used as the Authority's measure for when consultants submit proposals. Staff uses the estimate to base the comparisons and acceptance of costs upon.

Chairman Milstein stated that he is familiar with high-rise concrete construction, and usually the cost of the concrete construction could be \$10 million or \$20 million. The cost of the inspector of the concrete construction could be \$50,000, \$70,000 so it is a lot less than this. He accepts that there may be reasons for that, but wanted everyone to understand that 10 percent is a heavy number, he requested that in the future staff review these costs closely and explain the basis for them.

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

RESOLUTION NO. 5902
**AUTHORIZING NEGOTIATION AND EXECUTION OF
TWO ENGINEERING AGREEMENTS (D214065 AND
D214085) WITH TWO FIRMS FOR CONSTRUCTION
INSPECTION SERVICES RELATIVE TO TAN 11-17 AND
TAN 11-34B**

RESOLVED, that the Chief Engineer be, and he hereby is, authorized to negotiate and execute engineering agreements D214065 and D214085 for construction inspection services with each of the two (2) firms listed in Exhibit A, attached hereto, provided that sufficient funding has been identified to complete the

projects to be inspected through these engineering agreements, with the Maximum Amount Payable of each of these engineering agreements not to exceed the amount shown in the attached Exhibit A, and such engineering agreements shall be on such other terms and conditions as the Chief Engineer, in consultation with the General Counsel, determines to be in the best interests of the Authority, 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 engineering agreements, manage and administer the engineering agreements, amend the provisions of the engineering agreements consistent with the terms of this Item and in accordance with the 2011 Contracts Program Resolution and other Board authorizations, and suspend or terminate the engineering agreements in the best interests of the Authority, and be it further

RESOLVED, that information relating to each agreement be included in the Chief Engineer's 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 10 by Mr. Nadratowski (Appendix J)
Report on the 2011 Capital Program

Mr. Nadratowski reported that through June, 16 contracts were let with low bids totaling \$89.2 million which compare favorably to the engineers' estimates of approximately \$101.5 million, approximately a 12 percent difference. Cash flow for all active projects through May totaled \$112.3 million and if all current 2011 contracts are let, Authority staff expects that approximately \$350 million in cash flow will be expended this year.

After full discussion, on the motion of Mr. Sall, seconded by Mr. Simberg, without any objections, the Board accepted the May and June monthly status reports on the combined Thruway Authority and Canal Corporation 2011 Capital Program.

ADJOURNMENT

There being no further business to come before the Boards, without any objections, on the motion of Mr. Sall, seconded by Ms. Luh, the meetings were adjourned.

Jill B. Warner
Secretary

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