

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

Meeting of the Members
One World Financial Center, 24th Floor
New York, NY 10281
March 26, 2013

Members Present

Dennis Mehiel, Chairman/CEO
Frank J. Branchini, Member
Donald A. Capoccia, Jr., Member
Martha J. Gallo, Member (by phone)
Fernando Mateo, Member
Carl Mattone, Member

Authority Staff in Attendance: Demetrios A. Boutris, President/Chief Operating Officer
Megan Churnetski, Associate General Counsel and Assistant
Corporate Secretary
Gwen Dawson, Senior Vice President, Real Estate Development &
Management
Anne Fenton, Deputy Chief Operating Officer
Kevin McCabe, Assistant to the President
Brenda McIntyre, Senior Vice President of Human Resources
Matthew Monahan, Senior Vice President, Public Information
Karl Koenig, Controller
Robert M. Serpico, Executive Vice President, Finance and Treasurer/Chief
Financial Officer
Seema Singh, Senior Counsel
Kirk Swanson, Chief Administrative Officer, Internal Control Officer and Chief
Contracting Officer
Phyllis Taylor, Executive Vice President/General Counsel, Corporate Secretary

Others in Attendance: Carol Tweedy, Asphalt Green
Jeff Simmons, Public Relations Consultant for Asphalt Green
Paul Weiss, Asphalt Green
Roger Bagley, Hawkins, Delafield & Wood
Therese Loeb Kreuzer, Downtown Express
Matthew Fenton, Battery Park City Broadsheet
Ray Broek, Withum Smith + Brown

The meeting, called on public notice in accordance with the New York State Open Meetings Law, convened at 10:00 a.m.

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The first item on the agenda was the approval of the minutes of the February 27, 2013 meeting. Upon a motion made by Mr. Capoccia and seconded by Mr. Branchini, the following resolution was unanimously adopted:

APPROVAL OF MINUTES OF THE FEBRUARY 27, 2013 MEETING

BE IT RESOLVED, that the minutes of the meeting of the Members of the Hugh L. Carey Battery Park City Authority held on February 27, 2013 are hereby approved.

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The next item on the agenda was a reaffirmation of the Mission of the Battery Park City Authority. Mr. Boutris read the Mission Statement aloud:

The Hugh L. Carey Battery Park City Authority is a New York State public benefit corporation whose mission is to plan, create, coordinate and sustain a balanced community of commercial, residential, retail, parks and open space within its designated 92-acre site on the lower west side of Manhattan.

Upon a motion made by Mr. Branchini and seconded by Mr. Mateo, the Mission Statement was unanimously reaffirmed.

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The next item on the agenda was the Chairman’s report. Mr. Mehiel updated the Members on the progress of the ball fields. He noted that there has been a lot of discussion about the availability of the ball fields, particularly given the pressure of the oncoming season. He stated that the completion of the remediation work on the ball fields is currently scheduled for April 7th. He then stated that today, the Authority will issue its first permit for 2013 activities on the ball fields. He then signed a permit for the Downtown Little League. He confirmed that they will be permitted to start the season on Sunday, April 7, 2013.

Mr. Mehiel then commended the Authority’s staff, noting the efforts of Demetrios Boutris, President, and particularly Gwen Dawson and her team who were able to “execute under difficult circumstances in a compressed timeframe.” He noted that Speaker Sheldon Silver connected the Authority to experts whose technical support was instrumental in completing this project in the short amount of time available. “So I want to thank and commend the Speaker and his staff as well.”

He also noted the interest and support of a number of elected officials who represent the downtown communities including Senator Squadron, Councilmember Margaret Chin, Assemblymember Debra Glick and others.

Mr. Capoccia noted that Gwen Dawson and her team also have their normal daily responsibilities at the Authority, so they have essentially been doing two full time jobs.

Mr. Mehiel then thanked Mr. Capoccia and stated that Mr. Capoccia performs a large amount of work for this Board. Mr. Capoccia provides strong insight and competency, he said. “And I think that all of the Members should express their appreciation to Mr. Capoccia,” he said. The other Members also thanked Mr. Capoccia.

Last, Mr. Mehiel thanked Applied Landscape Technology (“Applied”) and Astro Turf for their efforts to complete the ball fields on a very short schedule.

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The next item on the agenda was the Audit & Finance Committee report. Ms. Gallo reported that Mr. Koenig recapped the RFP and selection process for public accounting services at the committee meeting. As a result of its procurement process, Management recommended that the committee re-appoint Marks Paneth & Shron LLP ("Marks Paneth") as its public accountant for an additional three-year term for \$307,950.

Ms. Gallo also reported that Ray Broek, the Authority's out-sourced internal auditor provided an update on internal audit at the committee meeting and will also provide a full update of the internal audit plan at the next committee meeting.

Mr. Branchini and Mr. Capoccia, Audit & Finance Committee Members, stated that Ms. Gallo's report was complete.

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The next item on the agenda was the Governance Committee report. Mr. Mattone stated that revisions to the Bylaws, Committee Charters and Board Member Responsibilities are currently in draft form. The committee members will review the revisions and schedule another meeting to take action on them.

Mr. Mehiel noted that Mr. Mattone's report was complete.

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The next item on the agenda was a request for authorization to enter into a contract with Marks Paneth for public accounting services. Mr. Serpico reported that Management is recommending that the Authority enter into a three year agreement with Marks Paneth, the incumbent, in the amount of \$307,950 for the semi-annual reviews and fiscal year-end audits of the Authority's financial statements beginning with the six-month period ending April 30, 2013, through and including the completion of the audit for the fiscal year ending October 31, 2015.

Ms. Taylor noted changes to be made to the dates and dollar amounts in the resolution for the record.

Upon a motion made by Mr. Capoccia and seconded by Mr. Branchini, the following resolution was unanimously adopted:

AUTHORIZATION TO ENTER INTO A CONTRACT WITH MARKS PANETH & SHRON LLP FOR ACCOUNTING SERVICES

BE IT RESOLVED, that in accordance with the materials presented to this meeting, the President of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to enter into a contract (the "Contract") with Marks Paneth & Shron LLP to provide audit services for a three-year period beginning with a review of the Authority's semi-annual financial statements for the six month period ended April 30, 2013 and ending with the fiscal year ending October 31, 2015, for the total amount of \$307,950; and be it further

RESOLVED, that the President of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to execute and deliver the Contract on behalf of the Authority, subject to such changes as the officer or officers executing the Contract shall, with the advice of counsel, approve as necessary and appropriate and in the best interest of the Authority, such approval to be conclusively evidenced by the execution and delivery of the Contract; and be it further

RESOLVED, that the President of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents and to take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing

resolutions, and any such execution of documents and any other and further actions heretofore taken are hereby ratified and any actions hereafter taken are confirmed and approved.

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The next item on the agenda was a request for the ratification, confirmation and approval of actions taken by the Authority's Emergency Contracts Sub-Committee. First, Ms. Dawson thanked Mr. Capoccia for his efforts in heading up this Subcommittee. Then, Ms. Dawson presented an update on Superstorm Sandy remediation efforts and the Subcommittee process. She noted that there were additional updates since the board materials were sent to the Members and noted that the resolution will be revised to reflect the changes discussed.

She reported that, the ball fields are now substantially complete. There are some additional adjustments that need to take place, but the Authority is delighted that the contractor, Applied, was able to get the turf installed, she said.

With respect to the community center, Ms. Dawson continued, permanent power and heat were restored, the sheetrock replacement is complete, flooring replacement has begun, the damaged chiller units were removed, pumps were repaired, pump motors were replaced and the exterior door was replaced. The installation of the new chiller units will continue, which is a very time intensive process, and there will be additional mechanical and electrical repairs and adjustment replacements of the elevator, she said. IT and fitness equipment will also be installed.

At Pier A, Ms. Dawson reported, the damaged water-source heat pumps and the in-floor heating units were replaced. Work is currently in process on removing the 36 damaged exterior door systems and on installing the fire alarm control panel and replacement elevator. She stated that in the coming weeks, work will continue on the replacement of electrical cabling/restoration of permanent power, partial replacement of damaged columns, repair of concrete slab damage, replacement of the elevator and installation of replacement doors.

"[A]ll is going well with all of those projects," Ms. Dawson reported.

With respect to the larger storm damage, she continued, the Authority is working with an engineering firm and its insurance company to define the scope of work required with regard to the electrical infrastructure throughout Battery Park City.

"I'd like to also reiterate my thanks to Mr. Capoccia who [ha]s made himself available to come in and review these change orders with the staff," Ms. Dawson said.

As of March 25, 2013, she reported, the Board's delegated Sub-Committee comprised of Chairman Dennis Mehiel and Member Donald Capoccia has approved storm-related change orders, contracts and contract amendments in the total amount of \$9,293,794.43 out of its overall \$13.5 million authority. She then requested that the Members ratify the Sub-Committee's approval of these expenditures.

Mr. Mehiel observed that current estimates for the remediation work exceed the Sub-Committee's delegated authority. Ms. Dawson confirmed that the Authority would not exceed the delegated authority before the next meeting, so no further action is needed at this time.

Mr. Serpico reported that the Authority received \$1.25 million for the ball fields and \$500,000 for Pier A in insurance advances with more advances on the way. Furthermore, he continued, there is another \$1.2 million coming from Milstein's insurers for the community center. He noted Kirk Swanson's considerable work with regard to FEMA; "because we fully intend to get 75% of any dollars that are not reimbursed by the insurance carriers," he said.

Upon a motion made by Mr. Branchini and seconded by Mr. Mattone, the following resolution was unanimously adopted:

RATIFICATION, CONFIRMATION AND AUTHORIZATION OF ACTIONS TAKEN BY THE BATTERY PARK CITY AUTHORITY EMERGENCY CONTRACTS SUB-COMMITTEE, AS SET FORTH ON ATTACHMENT "A"

WHEREAS, the Members approved a delegation of authority to the Emergency Contracts Sub-Committee on January 29, 2013 to approve Emergency Contracts, as such terms are defined in the attached Resolution of the Board, dated December 4, 2012, in an aggregate amount not-to-exceed \$13.5 million, payable from corporate insurance reserves and advances on insurance proceeds; and

WHEREAS, pursuant to the delegation, the Emergency Contracts Sub-Committee has approved Emergency Contracts in the total amount of \$9,293,794.43 through March 25, 2013.

NOW THEREFORE BE IT RESOLVED, that in accordance with the materials presented at this meeting, the actions of the Emergency Contract Sub-Committee, as set forth in the attached "Attachment A," are hereby ratified, confirmed and authorized; and

BE IT FURTHER RESOLVED, that the President of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents, and then take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing resolutions, and any such execution of documents and any other further actions heretofore taken are hereby ratified and any actions hereafter taken are confirmed and approved.

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The next item on the agenda, presented by Ms. Taylor, was a request to authorize the pre-qualification of law firms for legal services.

Ms. Taylor explained that this is a continuation of the discussion from the January meeting regarding the establishment of a pool of pre-qualified law firms to provide legal services to the Authority and the Conservancy. The Legal Department issued an RFP in August of 2012 and completed an extraordinary amount of work to evaluate the 25 responses to serve in our pool of outside counsel. The selected firms may provide services to the Authority for up to a five year term. Some or all of the firms may be used. Staff clarified to each firm that simply because a firm is included in the pool, does not mean that it will be engaged to provide services. Although Board approval is not required for contracts up to \$250,000, she explained, in the interest of full disclosure because this is a pool concept, we wanted to bring all of the firms before the Members for approval.

Today, she stated, Management is requesting approval of Harris Beach (real estate); Gonzalez Saggio (real estate); Carter Ledyard, (real estate); WEMED (personal injury); Carter Ledyard (environmental); Couch White (public utilities); Carter Ledyard (land use); and Couch White (energy).

The Authority's pool of pre-qualified counsel will consist of a total of eleven (11) pre-qualified firms in thirteen (13) areas of practice, she concluded.

Mr. Capoccia inquired as to whether the \$250,000 cap applies to the area or to the firm. Ms. Taylor explained that the cap will be applied to each firm. In response to discussion, Ms. Taylor clarified that she would engage counsel on a per project basis, only as needed.

Ms. Gallo asked, as to large matters that may arise, what triggers the use of a competitive procurement method outside of pre-qualified counsel? Ms. Taylor explained that even the pre-qualified firms are asked to compete for the individual assignments with specific proposals. Ms. Gallo asked if this is a matter of policy or discretion. Ms. Taylor advised that it is discretion.

Mr. Mehiel stated that between now and the next board meeting, the President and General Counsel should consider codifying what are existing practices of the Authority. Mr. Mehiel stated “[w]e’ll come back with guidelines ahead of the next meeting.”

Ms. Taylor explained that the firms are selected based on expertise and the price quotes are typically very similar because the Authority caps the rates at \$400 an hour. But staff can codify current practices and give the Members a chance to respond and “let me know if you’d like for us to do something further,” she said.

Upon a motion made by Mr. Branchini and seconded by Mr. Mattone, the following resolution was unanimously adopted:

AUTHORIZATION TO PRE-QUALIFY FIRMS FOR LEGAL SERVICES CONTRACTS

BE IT RESOLVED, that the General Counsel of the Battery Park City Authority (the “Authority”) or her designee(s) be, and each of them hereby is, authorized and empowered to pre-qualify Harris Beach (real estate); Gonzalez Saggio (real estate); Carter Ledyard, (real estate); Wilson Elser Moskowitz Edelman & Dicker, LLP (personal injury); Carter Ledyard (environmental); Couch White (public utilities); Carter Ledyard (land use); and Couch White (energy) (the “Firms”) for legal services contracts on a per assignment basis during the next five (5) year period (the “Contracts”), each for an amount not to exceed \$250,000.00; and be it further

RESOLVED, that the General Counsel of the Authority or her designee(s) be, and each of them hereby is, authorized and empowered to execute and deliver the Contracts on behalf of the Authority, subject to such changes as the officer or officers executing the Contract shall, with the advice of counsel, approve as necessary and appropriate and in the best interest of the Authority, such approval to be conclusive evidence by the execution and delivery of the Contract; and be it further

RESOLVED, that the General Counsel of the Authority or her designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents, and to take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing resolutions, and any such execution of documents and any other and further actions heretofore taken are hereby ratified and any actions hereafter taken are confirmed and approved.

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The next item on the agenda, presented by Mr. Serpico, was a request for authorization to enter into an agreement with American Express Company (“AMEX”) and BFP Tower C Co. LLC to resolve the Tower C Percentage Rent issue and authorization to execute documentation in connection with Brookfield’s \$250 million renovation project.

Mr. Serpico reminded the Members that at the Authority’s September 25, 2012 meeting, the Members authorized the execution of virtually all documentation relating to Brookfield’s proposed \$250 million renovation project relating to the four World Financial Center Towers, contingent upon the resolution of the Tower C percentage rent issue and the Tower C condominiumization issue. The Authority, AMEX and Brookfield have made substantial progress, resolving the percentage rent issue. However, although several conversations

regarding the condominiumization have taken place and progress is being made, resolution of the outstanding condominiumization issues is not imminent.

Mr. Serpico explained that the Authority is a party to a Severance Lease between itself, as Landlord, and AMEX and Brookfield, as Tenants-in-common under which the Tenants-in-common are obligated to pay the Authority percentage rent. There was a \$3.2 million payment in dispute from years 2008 to 2012. Mr. Mehiel clarified that Brookfield was not funding its half of the payments that the Authority received from AMEX.

Most of Brookfield's disputes relate to a matter that was previously arbitrated with the Authority, Mr. Serpico explained. As Brookfield recently received a favorable ruling on the Tower A arbitration, they relied on that heavily in negotiations. Rather than arbitrate this matter again, the Authority and Brookfield have agreed to split the \$3.2 million difference.

Mr. Serpico noted that, with regard to the lease amendment, new percentage rent terms will be put in the Severance Lease going forward.

Therefore, Mr. Serpico explained, Brookfield will give AMEX \$1.4 million and the Authority will give AMEX a credit to future rents due the Authority under the Severance Lease. Mr. Serpico also noted that AMEX, in its negotiation with Brookfield, agreed to fund approximately \$300,000 of the \$3.2 million.

Ms. Taylor noted that Management is requesting authorization to execute documentation in connection with Brookfield's \$250 million renovation project after the percentage rent agreement is fully executed.

Upon a motion made by Mr. Capoccia and seconded by Mr. Mateo, the following resolution was unanimously adopted:

AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH AMERICAN EXPRESS COMPANY ("AMEX") AND BFP TOWER C CO. LLC ("BROOKFIELD") TO RESOLVE THE TOWER C PERCENTAGE RENT ISSUE AS PER THE TERMS SET FORTH ON ATTACHMENT A; AND AUTHORIZATION TO EXECUTE DOCUMENTATION IN CONNECTION WITH BROOKFIELD'S \$250 MILLION RENOVATION PROJECT

BE IT RESOLVED, that in accordance with the information presented at this meeting, the President of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to execute and deliver a tri-party agreement between the Authority, AMEX and Brookfield on behalf of the Authority, pursuant to the terms set forth in Attachment A, subject to such changes as the officer or officers of the Authority shall, with the advice of counsel, approve as necessary and appropriate and in the best interest of the Authority, such approval to be conclusively evidenced by the execution and delivery of the Agreement; and be it further

RESOLVED, that, in accordance with the materials presented to the Members at the September 25, 2012 meeting regarding Brookfield's \$250 million retail renovation project, the President of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to execute any and all documents relating thereto, provided that the tri-party agreement described above is fully executed; and be it further

RESOLVED, that the President of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents and to take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing resolutions, and any such execution of document and any other and further actions heretofore taken are hereby ratified and any actions hereafter taken are confirmed and approved.

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The next item on the agenda, presented by Mr. Mehiel, was a request for authorization to enter into a contract amendment and settlement agreement and release with Asphalt Green, Inc.

Mr. Boutris explained that this deal has been around since 2008 and was executed in 2009. The Members have heard about the latest iteration as recently as their October meeting. The only intervening significant event, he noted, has been Superstorm Sandy.

"I want to thank all the Asphalt Green participants. I want to thank the Chairman. I want to thank our staff. Gwen has been heroic in putting this together," Mr. Boutris said. He noted that the timeframes have been supported by Mr. Serpico, Ms. Taylor and Ms. Fenton. "This has been a real team effort lead by the Board and Chairman."

Mr. Boutris explained that the objective is to get Asphalt Green in by the start of their summer program, at the end of June. There are timeframes leading up to that where the Authority and the Asphalt Green will work together hand in hand allowing them access as the rebuild continues. "[W]e are very comfortable with the details of this contract as its being presented," he said.

He noted that under the proposed amendment and settlement agreement, the Authority has committed to pay Asphalt Green an additional \$692,000; \$300,000 of which will be paid in settlement of all prior claims or obligations and \$392,000 of which will be paid to cover costs relating to delays caused by Superstorm Sandy.

Mr. Mehiel reminded the Members that in October they discussed an amendment to the original contract which "changed the basic nature of the relationship between Asphalt Green and the Authority to one in which Asphalt Green is a tenant and at a moment in the future based upon their ability to generate revenue, there would be a rental income stream." The only material difference since that time is the intervening delay which is attributable to the storm damage.

For Asphalt Green, Mr. Mehiel continued, being able to commence operations in the late spring or very early summer is very different from what they intended and therefore, they suffered losses as a result. "[W]e did reach a compromise and it is my judgment that it's a fair compromise." The amendment and settlement agreement basically state that Asphalt Green will have access by May 1st, he said.

If the Authority misses its deadlines, as set forth in the amendment and settlement agreement, then there will be additional financial exposure for the Authority. It will cost the Authority \$25,000 a week if Asphalt Green does not have access on May 1st. Further, if the Authority delays Asphalt Green so that they cannot hold their summer camp, it will cost the Authority another \$200,000.

Based on the analysis and work performed by Staff, Mr. Mehiel stated that he is comfortable the Authority will meet these deadlines.

Mr. Mateo asked for clarification regarding the \$392,000 payment. He asked whether a business interruption insurance policy would cover that loss. Mr. Mehiel stated that, as Asphalt Green was not yet in business, such a policy would not cover this loss.

Mr. Mateo also inquired what the loss was attributable to. Mr. Mehiel explained that the loss was for expenses spent on staff and for the difference in start dates for the community center.

Mr. Mateo stated "I think that we're being extremely generous."

Mr. Mehiel stated that against the backdrop of the current contract with Asphalt Green, this is a far more equitable outcome.

Mr. Capoccia stated that every day, if someone's not meeting the dates needed to reach these milestones, "Demetri needs to know and then Demetri, you then should call whoever you need to call to come over and one of us will convince these contractors that they need to move."

Mr. Mehiel reminded the Members that his "objective was to get a community center up and running."

Ms. Gallo asked Ms. Tweedy if the delays in opening have affected Asphalt Green's credibility in the community and its membership numbers.

Ms. Tweedy explained that they originally had 1700 memberships, 3000 people, when the contract renegotiations began. Then Superstorm Sandy occurred. People were frustrated and it was not appropriate to discuss the ongoing contract negotiations with them at that point. "We lost some credibility," she said. There were some cancellations and since January, the rate of cancellations has increased to about 10 per week.

"I am optimistic," Ms. Tweedy continued. Once a signed contract can be announced, Asphalt Green will be able to "recover those who went away; we think they will be back."

Last, Ms. Taylor recognized Ms. Singh for her "extraordinary amount of time and effort on this project to bring it to a conclusion."

Upon a motion made by Mr. Branchini and seconded by Mr. Mattone, the following resolution was unanimously adopted:

AUTHORIZATION TO ENTER INTO A CONTRACT AMENDMENT (THE "AGREEMENT") WITH ASPHALT GREEN, INC. TO MANAGE THE COMMUNITY CENTER LOCATED AT 212 NORTH END AVENUE

BE IT RESOLVED, that in accordance with the materials presented to this meeting, the President/COO of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to execute an Agreement with Asphalt Green, Inc., in the form presented at this meeting and attached hereto, in connection with the management of the community center located at 212 North End Avenue in Battery Park City, to be owned by the Authority; and be it further

RESOLVED, that the President of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to execute and deliver the Agreement on behalf of the Authority in the form presented at this meeting, subject to such minor changes as the officer or officers executing the Agreement shall, with the advice of counsel, and approve as necessary and appropriate and in the best interest of the Authority, such approval to be conclusively evidenced by the execution and delivery of the Agreement; and be it further

RESOLVED, that the President of the Authority or his designee(s) be, and each of them hereby is, authorized and empowered to execute all such other and further documents and to take all such other and further actions as may be necessary, desirable or appropriate, in connection with the transactions contemplated in the foregoing resolutions, and any such execution of documents and any other and further actions heretofore taken are hereby ratified and any actions hereafter taken are confirmed and approved.

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The next item on the agenda, presented by Mr. Swanson, was a request for approval of guidelines for the disposition of real and personal property (the "Guidelines").

Mr. Swanson explained that each year, the Authority is required to submit Guidelines to the New York State Authorities Budget Office by March 31. He then summarized the major changes made to the Guidelines which included: ensuring compliance with the required language in Article 9; designating the Authority's Contracting Officer, in compliance with Article 9; editing the Guidelines to ensure applicability to real property as well as personal property and adding dollar amounts, where applicable, in compliance with Article 9. He noted that the "lion's share" of the work revising the Guidelines was completed by Ms. Singh.

He stated that the Members are requested to approve and authorize the filing of the guidelines for the disposition of real and personal property. Further, he requested that the Members designate him as the Authority's Contracting Officer. He explained that the duties of the Contracting Officer are directly related to his current duties.

Upon a motion made by Mr. Mateo and seconded by Mr. Mattone, the following resolution was unanimously adopted:

APPROVAL OF GUIDELINES FOR THE DISPOSITION OF PERSONAL AND REAL PROPERTY

BE IT RESOLVED, that the Guidelines for the Disposition of Personal and Real Property Owned by the Authority (the "Guidelines") as presented to this meeting, be, and hereby are approved; and be it further

RESOLVED, that the Contracting Officer shall file the Guidelines, on before the thirty-first of March, 2013 with the New York State Comptroller; and be it further

RESOLVED, that the Guidelines be posted on the Authority's internet website; and be it further

RESOLVED, that the Secretary of the Authority be, and hereby is, directed to file the Guidelines with the minutes of this meeting.

DESIGNATION OF CONTRACTING OFFICER

BE IT RESOLVED, that pursuant to the Public Authorities Law, Kirk Swanson is hereby designated as Contracting Officer of the Authority.

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There being no further business, upon a motion by Mr. Capoccia and seconded by Mr. Branchini, the Members unanimously voted to adjourn the meeting. The meeting thereupon adjourned at 11:30 a.m.

Respectfully submitted,



Megan Churnetski
Assistant Corporate Secretary

Attachments:

Storm Damage Cost Summary

Resolution of the Board, dated December 4, 2012

Term Sheet re Resolution of Tower C Office Percentage Rent Dispute

Proposed Amendment and Proposed Settlement Agreement and Release
between Asphalt Green and Battery Park City Authority

Attachment A
Storm Damage Cost Summary
4/30/2013

Estimated Total Remediation Costs for BPCA, per Project

Pier A	\$	4,512,591.00
Community Center	\$	4,567,607.00
Ballfields	\$	2,661,699.00
Other (Electrical Cable, Vault Repair, South Cove Repair, etc.)	\$	6,100,000.00
Total	\$	17,841,897.00

Incurred Costs and Approved Change Orders/Expenditures, by Project

Pier A

LiRO Emergency Construction Management (Total \$461,983 less \$17,440 Non-Storm Related Work)	\$	444,543.44
Stalco Emergency Cleanup and Construction	\$	355,078.50
H3 Amendment/Remediation	\$	497,000.00
Design Constructs - Peer Review (\$70,000 Approved of Pending \$99,000)	\$	70,000.00
Wood Advisory Services Emergency Timber Analysis/Moisture Test	\$	14,950.00
Enviroscience Emergency Mold and Moisture Testing	\$	5,640.00
GB Geotechnics Emergency Column Testing	\$	3,750.00
RLB General Construction Corp. (Disposal of Damaged CM Trailer	\$	19,350.00
Stalco #SAN-GCCO-12	\$	22,560.00
Stalco #SAN-GCCO-13	\$	41,320.68
Stalco #SAN-GCCO-08	\$	8,055.74
Stalco #SAN-GCCO-11	\$	5,378.92
Stalco #SAN-GCCO-9	\$	65,926.00
Stalco #SAN-GCCO-14	\$	122,530.48
Stalco #SAN-GCCO - 15	\$	49,662.00
Stalco #SAN-GCCO - 17	\$	14,088.20
Stalco #SAN-GCCO-19	\$	860,474.00
Stalco #SAN-GCCO-22	\$	101,992.54
Stalco #SAN-GCCO-10	\$	41,211.55
Stalco #SAN-GCCO-23	\$	41,256.00
Stalco #SAN-GCCO-24	\$	7,970.00
Olympic #SAN-PCO-01	\$	65,327.80
Olympic #SAN-PCO-02	\$	16,905.00
Olympic #SAN-PCO-03	\$	12,400.00
Crana #SAN-ECO-1	\$	5,887.61
Crana #SAN-ECO-3	\$	366,425.00
Crana #SAN-ECO-5	\$	28,566.00
Crana #SAN-ECO-4	\$	35,494.00
ACS #SAN-MCO-02	\$	53,497.17
ACS #SAN-MCO-01 (\$79,400 Approved of Pending \$94,039.30)	\$	79,400.00
Total Pier A	\$	3,456,640.63

Community Center

Stalco Expense Emergency Cleanup & Construction	\$	290,133.50
Stalco #CC-SAN-GCO-03	\$	9,660.00
Stalco #CC-SAN-GCO-02	\$	76,637.00
Stalco #CC-SAN-GCO-01	\$	177,020.00
Stalco #CC-SAN-GCO-05	\$	14,472.00
Stalco #CC-SAN-GCO-06	\$	30,445.00
Stalco #CC-SAN-GCO-08	\$	164,618.00
Stalco #CC-SAN-GCO-12	\$	264,389.00
Stalco #CC-SAN-GCO-13	\$	70,854.00
Stalco #CC-SAN-GCO-14	\$	23,525.00
SJ Electric #CC-SAN-ECO-01	\$	79,872.00
SJ Electric #CC-SAN-ECO-03	\$	26,900.00
SJ Electric #CC-SAN-ECO-05	\$	6,738.00
SJ Electric #CC-SAN-ECO-04	\$	56,220.00
SJ Electric #CC-SAN-ECO-02	\$	162,213.00
SJ Electric #CC-SAN-ECO-06	\$	27,388.00
LiRO Contract Amendment (Includes Emergency Construction Management)	\$	209,646.84
hMa Architects Contract Amendment (Includes Emergency Assessment and Design)	\$	198,500.00
Derive Technology	\$	144,560.00
Precor	\$	214,779.42
JFD Sales	\$	21,737.16
R&S United #CC-SAN-MCO-02	\$	7,220.00
R&S United #CC-SAN-MCO-01	\$	1,433,419.00
Total Community Center	\$	3,710,946.92

Community Center Auditorium (Post Sandy Burst Pipe Damage)

Stalco #CC-SAN-GCO-18	\$	116,436.00
Stalco #CC-SAN-GCO-17	\$	9,117.00
Stalco #CC-SAN-PCO-01	\$	4,067.09
Total Community Center Burst Pipe Damage	\$	129,620.09

Ballfields

BBS Architects Emergency Assessment	\$	4,800.00
Stantec Amendment (Includes Emergency Assessment)	\$	37,566.00
Applied Landscape Technology (ballfield replacement)	\$	1,095,861.00
Applied Landscape Technology #ALT-01	\$	64,005.00
Entech Engineering (On-call Construction Management)	\$	64,152.00
Ensign Engineering (On-call Engineering Services)	\$	42,190.95
Stalco #CC-SAN-GCO-16	\$	248,899.00
Total Ballfields	\$	1,557,473.95

<i>Other</i>	
Ove Arup Emergency Assessment	\$ 65,000.00
Affiliated Adjustment Group, Ltd. (Adjustments for all three project areas/policies)	\$ 380,000.00
McLaren Engineering Emergency Underwater Inspections	\$ 35,200.00
Total Other	\$ 480,200.00
<u>Total Incurred Costs and Approvals to Date</u>	\$ 9,334,881.59
<u>BPCA Board's Emergency Contracts Subcommittee Approval Limit of \$13,500,000 less</u>	
<u>Total Incurred Costs and Approvals to Date</u>	\$ 4,165,118.41
<u>Total Remediation Remaining</u>	\$ 8,507,015.41
Pier A	\$ 1,055,950.37
Community Center	\$ 727,039.99
Ballfields	\$ 1,104,225.05
Other	\$ 5,619,800.00
<u>Insurance Advances To Date</u>	\$ 3,550,000.00

RESOLUTION AUTHORIZING THE ESTABLISHMENT OF A SUB-COMMITTEE OF THE BATTERY PARK CITY AUTHORITY (THE "AUTHORITY") BOARD TO REVIEW AND APPROVE EMERGENCY CONTRACTS (AS DEFINED HEREIN) IN AN AGGREGATE AMOUNT NOT-TO-EXCEED \$6 MILLION FROM THE AUTHORITY'S CORPORATE INSURANCE RESERVES OR ADVANCES ON INSURANCE PROCEEDS

WHEREAS, the Battery Park City Authority Board (the "Board") has adopted Procurement Guidelines (the "Guidelines") that govern the procurement of goods and services by the Authority; and

WHEREAS, pursuant to the Guidelines, the President/COO of the Authority can approve contracts in an amount not exceeding \$250,000 and contract amendments as follows:

- For contracts not exceeding \$2,500,000, amendments that do not in the aggregate exceed 10% of the contract amount previously approved by the Members; and
- For contracts exceeding \$2,500,000, amendments that do not in the aggregate exceed the greater of \$250,000 or 5% of the contract amount previously approved by the Members; and

WHEREAS, on October 29, 2012, Superstorm Sandy caused significant damage to Lower Manhattan, including Battery Park City and, as a result, emergency storm remediation and recovery work is required on the 92-acre Battery Park City site; and

WHEREAS, the Authority must enter into new contracts, contract amendments and/or issue change orders (collectively, the "Emergency Contracts") for the remediation and recovery work in an aggregate amount not-to-exceed \$6 million from the Authority's corporate insurance reserves or advances on insurance proceeds; and

WHEREAS, many of the Emergency Contracts will require Board approval because they will exceed the President/COO's approval authority, and

WHEREAS, because the Board meets monthly, it is necessary to establish a sub-committee of the Board in order to timely approve Emergency Contracts that may arise between board meetings.

NOW THEREFORE BE IT RESOLVED, that, in accordance with the Authority's enabling legislation and By-laws, the Members hereby establish the Emergency Contracts Sub-Committee (the "Committee") to review and approve Emergency Contracts in a timely, efficient and expeditious manner and to assist the Board generally in its oversight and supervision of expenditures made by the Authority for these purposes; and be it further

RESOLVED, that the Committee shall consist of Chairman Mehiel and Mr. Capoccia, who shall be authorized to approve Emergency Contracts in an aggregate amount not-to-exceed \$6 million from the Authority's corporate insurance reserves or advances on insurance proceeds; and be it further

RESOLVED, that the Committee shall be authorized to take such further action as may be required to fully implement the Committee's mandate on behalf of the full Board.

RESOLVED, that the Committee shall expire on or before June 30, 2013 unless further action is taken by the Members to extend the Committee beyond this date.

This Resolution shall take effect immediately.

ATTACHMENT A - TERM SHEET

Resolution of Tower C Office Percentage Rent Dispute

American Express Company ("AMEX"), as Managing Co-Tenant of Tower C, has currently (with respect to all Fiscal Years through and including the Semi-Annual Percentage Rent Statement for Fiscal Year 2012) paid to Battery Park City Authority ("BPCA") \$3,338,000 in respect of "Percentage Rent" under the Tower C Severance Lease, of which amount \$3,207,139 has been invoiced to and is in dispute by BFP Tower C Co. LLC ("Brookfield").

This Term Sheet sets forth the agreed-upon terms for the resolution of this dispute.

1. Brookfield will pay AMEX \$1,416,069 (one-half of (\$3,207,139 less \$375,000 that represents AMEX's participation in the settlement) and BPCA will pay AMEX (but not Brookfield) \$1,416,069, or, alternatively, BPCA shall credit AMEX (but not Brookfield) \$1,416,069 against the next Rental payments (excluding PILOT) due under the Severance Lease commencing April 1, 2013.
2. Net Fixed Rent for the Base Lease Year for "Percentage Rent" calculations for Fiscal Year 2013 and each Fiscal Year thereafter: \$72,139,006 (The average, on a per square foot basis, of the base year "Net Fixed Rent" in each of Tower A, B and D, multiplied by the square footage in Tower C.)
3. 2012 Percentage Rent Statement: The Percentage Rent Statement for Fiscal Year 2012 will be prepared and filed in accordance with the methodology and Base Lease Year amount employed for prior years and the semi-annual statement for 2012, but BPCA shall agree that any additional payments that would be due for Fiscal Year 2012 by use of the prior methodology and Base Lease Year amount shall not be due and payable by AMEX and Brookfield.
4. Prior Years Final. BPCA shall waive the right to dispute the reporting for "Percentage Rent" for Fiscal Years 2012 and all prior Fiscal Years. Tenant shall not be required to amend or re-file Percentage Rent Statements for any years prior to 2013.
5. Written Agreement. The parties shall memorialize this resolution of the Tower C Office Percentage Rent Dispute within the appropriate documents that are to be executed in connection with, and at the same time as, the overall approval of Brookfield's and its affiliates' retail redevelopment project and a resolution of other Tower C issues between AMEX and Brookfield (the "Global Settlement"). It is acknowledged that no agreement shall be effective unless and until incorporated in, and as part of, the documents entered into by BPCA, Brookfield and AMEX to approve the Brookfield retail redevelopment project and to evidence the Global Settlement, including the amendment to the tenancy-in-common agreement between AMEX and Brookfield.

FOR SETTLEMENT PURPOSES ONLY

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this "Release"), made as of March 26, 2013, between **BATTERY PARK CITY AUTHORITY, d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY ("BPCA")**, a body corporate and politic, constituting a public benefit corporation of the State of New York, having an office at One World Financial Center, 24th Floor, New York, NY 10281, and **ASPHALT GREEN, INC. ("AG")**, a New York not-for-profit corporation, having an office at 555 East 90th Street, New York, NY 10128 (BPCA and AG being sometimes referred to hereinafter as a "Party", or collectively, as the "Parties").

WITNESSETH:

WHEREAS, this Release is entered into in conjunction with that certain Amendment of Management Services Agreement (the "Amendment") between BPCA and AG, dated as of even date hereof; and

WHEREAS, the Parties are entering into this Release and the settlement and releases contained herein solely to avoid the expense, delay, inconvenience, burden and uncertainty of any dispute, without any admission of fault, wrongdoing, unlawful conduct, or liability on the part of BPCA, AG or any other party;

NOW, THEREFORE, in consideration of the mutual agreements contained in this Release, and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by the Parties), and intending to be legally bound hereby, the Parties agree as follows:

1. **Payment for Prior Periods:** Upon the execution of this Release, BPCA shall pay AG \$692,000 in full and complete satisfaction of any and all outstanding invoices and moneys due to AG at any time prior to the Commencement Date (as defined in the Amendment). AG acknowledges such full and complete satisfaction of all such outstanding invoices and moneys due. AG shall pay and satisfy in full all outstanding third-party invoices or monies due to third-parties relating to the Center (as defined in the Amendment) or pursuant to any agreement or contract entered into by AG relating to the Center as of the Commencement Date and shall indemnify and hold harmless BPCA against all third-party invoices and monies due to third-parties in perpetuity.

2. **AG Release of BPCA:** AG, on behalf of itself, and its respective past and present principals, representatives, agents, officers, directors, shareholders, partners, members, managers, employees, attorneys, predecessors, successors, assigns, parents, subsidiaries and affiliates (all of the foregoing, separately and collectively, the "AG Parties") does hereby unconditionally and irrevocably release BPCA and its respective past and present principals, representatives, agents, officers, directors, shareholders, partners, members, managers, employees, attorneys, predecessors, successors, assigns, parents, subsidiaries and affiliates (all of the foregoing, separately and collectively, the "BPCA Parties") from and against any and all actions, causes of action, liabilities, suits, covenants, contracts, controversies, agreements, promises, damages, judg-

ments, executions, claims, obligations, counterclaims, crossclaims, offsets, defenses, debts, and demands of every kind whatsoever, whether at law or in equity (collectively, the "Actions"), that AG or any of the AG Parties ever had, now has or hereafter can, shall or may have against BPCA or any of the BPCA Parties, whether known or unknown, foreseeable or unforeseeable, disclosed or undisclosed, accrued or unaccrued, suspected or unsuspected, direct or derivative, contingent or absolute, from the beginning of the world in perpetuity that in any way, directly or indirectly, concern, are based on, arise out of or relate to the Original Agreement (as defined in the Amendment), the Center, or otherwise, and any and all agreements, contracts, understandings, undertakings or obligations of any and every kind relating to the Original Agreement, the Center (and/or any aspects thereof or matters in any way related thereto) and any and all actions, dealings, and statements of BPCA or any of the BPCA Parties relating to or in connection with the foregoing, except for and excluding any obligation, responsibility or right of BPCA or AG which is covered by, is the subject of, or is governed by, the Amendment (the "Amendment Matters"); and for the avoidance of doubt, Amendment Matters shall not include any claim asserted by any Party after the date of this Release which is based on a condition, event or state of facts existing prior to the date of this Release.

3. BPCA Release of AG: BPCA, on behalf of itself, and the BPCA Parties does hereby unconditionally and irrevocably release AG and AG Parties from and against any and all Actions that BPCA or any of the BPCA Parties ever had, now has or hereafter can, shall or may have against AG or any of the AG Parties, whether known or unknown, foreseeable or unforeseeable, disclosed or undisclosed, accrued or unaccrued, suspected or unsuspected, direct or derivative, contingent or absolute, from the beginning of the world in perpetuity that in any way, directly or indirectly, concern, are based on, arise out of or relate to the Original Agreement, the Center, or otherwise, and any and all agreements, contracts, understandings, undertakings or obligations of any and every kind relating to the Original Agreement, the Center (and/or any aspects thereof or matters in any way related thereto) and any and all actions, dealings, and statements of the AG or any of the AG Parties relating to or in connection with the foregoing, except for and excluding Amendment Matters.

4. Indemnification of BPCA: AG agrees to pay, and to protect, indemnify and hold harmless, BPCA and the BPCA Parties from and against any and all claims, costs, losses, liabilities, penalties, actions, suits, damages, judgments, demands, expenses (including reasonable attorneys' fees) and obligations whatsoever, that may be asserted against or incurred by BPCA or the BPCA Parties relating to any contract, agreement, arrangement, understanding, obligation, undertaking, guarantee or promise made by AG or any of the AG Parties or any invoices, demands, accounts, bills, fees, charges or monies due by or from AG or any of the AG Parties to any third-party relating to the Original Agreement or the Center prior to the Commencement Date.

5. Unknown Claims: Notwithstanding any provision of law, statutory or otherwise, that provides that a general release does not extend to claims which a party does not know or suspect to exist in its favor at the time of executing the Release, which if known by it must have materially affected its agreement to settle, the Releases set forth in Sections 2 and 3 above shall apply, in accordance with their terms, to claims whether known or unknown, contingent or absolute, suspected or unsuspected, accrued or unaccrued, disclosed or undisclosed. Each Party understands and acknowledges the significance and consequences of waiver of any such

provision and hereby assumes responsibility for any injuries, damages or losses that it may incur. Each Party further acknowledges that it has been advised by its attorneys concerning, and is familiar with, California Civil Code Section 1542 and expressly waives any and all rights under California Civil Code Section 1542, or any law of any state or territory of the United States, or principle of common law, that is similar, comparable, or equivalent to California Civil Code Section 1542, with respect to the subject matter of this Release as set forth above. California Civil Code Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Each Party acknowledges that the release of such unknown claims was a material and separately bargained for element of the releases contained in this Release.

6. Insurance Aspects: Sections 1, 2, 3, 4, and 5 shall not be deemed to release any insurer providing insurance coverage to (and/or any insurance coverage for) AG or any of the AG Parties and/or BPCA or any of the BPCA Parties (but no such insurer shall have any rights of subrogation against AG or any of the AG Parties and/or BPCA or any of the BPCA Parties).

7. Actions to Enforce Release: Notwithstanding the provisions of Sections 2, 3, and 5 above, the release provisions set forth in such Sections shall not apply to actions to enforce the terms of this Release.

8. No Admissions: This Release and all negotiations, statements and proceedings in connection therewith are not intended to be, and shall not in any event be construed or deemed to be, or represented or caused to be represented as, an admission or concession or evidence of any fault, liability or wrongdoing whatsoever. Neither this Release nor any matter relating to it may be offered or received in evidence or otherwise referred to in any civil, criminal, or administrative action or proceeding as evidence of any wrongdoing or liability. The Parties have entered into this Release solely to avoid the expense, delay, inconvenience, burden and uncertainty of a dispute.

9. Authority; Further Assurances:

(a) AG hereby warrants and represents to BPCA that AG has all necessary right, power and authority to enter into and to comply with the terms, covenants and conditions of this Release, and that the person who has executed this Release is an authorized signatory of AG. This Release constitutes the legal, valid, and binding obligations of AG, enforceable against AG in accordance with its terms.

(b) BPCA hereby warrants and represents to AG that BPCA has all necessary right, power and authority to enter into and to comply with the terms, covenants and conditions of this Release, and that the person who has executed this Release is an authorized signatory of BPCA.

This Release constitutes the legal, valid, and binding obligations of BPCA, enforceable against BPCA in accordance with its terms.

(c) Each of the Parties shall take such actions (and sign and deliver such other instruments and documents) as may be reasonable and necessary to effectuate the transactions contemplated under this Release.

10. No Waiver: No waiver of any provision of this Release shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. No forbearance by any Party to seek a remedy for any breach by any other Party of any provision of this Release shall constitute a waiver of any rights or remedies with respect to any subsequent breach.

11. Entire Agreement: The Parties acknowledge and agree that this Release embodies the entire and complete terms and conditions of their agreement described herein and that it supersedes any and all prior representations, understandings and agreements, whether written or oral. The Parties further acknowledge and represent that this Release is executed without reliance upon any agreement, promise, statement or representation by or on behalf of any Party except as set forth herein, and each of the Parties acknowledges that no other Party nor any agent or attorney of such Party has made any promises, representations, or warranties whatsoever, whether express or implied, which are not contained herein in writing concerning the matters set forth herein. Each Party has read this Release and has had it fully explained by counsel, and is fully aware of its contents and legal effect.

12. Amendment: This Release may not be amended, supplemented or modified except by a written instrument duly executed by the Parties.

13. Headings: Section headings contained herein are for the purpose of organization only, and shall not constitute a part of this Release.

14. Execution in Counterparts: This Release may be signed in counterparts, and a facsimile or electronically scanned copy of an executed signature page shall be as effective as an original. All fully executed copies shall be considered duplicate originals.

15. Governing Law: This Release and any disputes arising hereunder shall be governed by and interpreted in accordance with the laws of the State of New York without regard to its rules on conflicts of laws.

IN WITNESS WHEREOF, BCPA and AG have executed this Release as of the day and year first above written.

**BATTERY PARK CITY AUTHORITY
d/b/a HUGH L. CAREY BATTERY
PARK CITY AUTHORITY**

By: _____
Name:
Title:

ASPHALT GREEN, INC.

By: _____
Name: Carol Tweedy
Title: Executive Director