

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION

MEETING OF THE DIRECTORS

Wednesday

June 27, 2012 – 10:00 a.m.

AGENDA

I. CORPORATE ACTIONS

- A. Approval of the Minutes of March 12, 2012 Directors Meeting
- B. New York (New York County) – Jacob K. Javits Convention Center – Authorization to Enter into a Contract with Shearman & Sterling LLP to Provide Real Estate Legal Services

II. FOR INFORMATION

- A. President's Report – Project Budget and Scope of Work (Oral Report)
- B. Construction Manager's Report – Tishman Construction Company (Oral Report) Status of Construction
- C. Integrity Monitor's Report – BDO Consulting (Oral Report)

DRAFT – SUBJECT TO REVIEW AND REVISION

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION

Meeting of the Directors
633 Third Avenue
New York, New York 10017

March 12, 2012

MINUTES

In Attendance

Directors:

Henry Silverman, Chairman
Michael G. Carey
Kevin S. Corbett
David Cornstein
Jeffrey Mandel – Designee for Robert Steel
Ann Weisbrod
Carl Weisbrod
William Wheeler

NYCCDC Officers:

Barbara Lampen, President
Eileen McEvoy, Corporate Secretary

Attending for ESD:

Jonathan Beyer, Senior Counsel
Natasha Pallan, Director-Subsidiary Finance
Sheila Robinson, Assistant to the CFO

Also Present:

Convention Center Operating Corporation
Elizabeth Bradford

For Tishman Construction Corporation

Glenn Johnson
Michael J. Mennella

For Fx Fowle

Bruce Fowle, Architect

BDO Consulting

Mark E. Feldman

Mehul Patel, Project Manager - MSDC

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The Public
The Press

The Meeting of the Board of Directors of the New York Convention Center Development Corporation (“CCDC”) was called to order at 10:02 a.m. by Chairman Loewenson. It was noted for the record that the time and place of the meeting had been given in compliance with the New York State Open Meetings Law. A quorum was present.

Director Loewenson then called for the approval of the Minutes of the November 3, 2011 CCDC Directors’ meeting. Ms. Lampen clarified a portion of the Minutes. Specifically, Ms. Lampen referenced page 4, second paragraph which reads in part “Ms. Lampen further explained that looking back at the last 50 percent of the work, CCDC has spent approximately \$1.25 million per month.” That amount, Ms. Lampen stated, should be in contingency as it is not all expenditures. That reference, she further noted, was a reference to CCDC’s burn rate on contingency.

It was noted that the words “in contingency” would be added to that sentence as well as to the last sentence of the paragraph.

There being no further clarifications or corrections, upon motion duly made and seconded, the following resolution was unanimously adopted:

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APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE NOVEMBER 3,
2011 MEETING OF THE DIRECTORS OF THE NEW YORK CONVENTION CENTER
DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on November 3, 2011, as presented to this meeting, are hereby approved and all actions taken by the Directors present at such meeting as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Corporation.

* * *

Director Loewenson then asked the Directors to ratify the Governor's appointment of Henry Silverman as the Chairman of CCDC.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK (NEW YORK COUNTY) – New York Convention Center Development Corporation – Appointment of Chairman

RESOLVED that, effective March 12, 2012, Henry R. Silverman be, and hereby is, appointed Chairman of the New York Convention Center Development Corporation (the Corporation) in accordance with the provisions of the Corporation's BY-Laws.

* * *

Chair Silverman then asked Ms. Lampen to present the Annual Operating and Capital Budgets for Fiscal Year 2012-2013 for the Jacob Javits Convention Center Renovation and Expansion Civic Project for the Directors' approval.

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Ms. Lampen noted that the Controller's Office, pursuant to the State Finance Law, has promulgated regulations regarding the preparation, approval, submission and reporting of budgets and financial plans by public authorities. Those regulations require, among other things, that prior to the commencement of the fiscal year, the Directors adopt the annual budget.

Ms. Lampen went on to note that the proposed operating and capital budgets were included in the materials that were sent to the Directors. Ms. Lampen further noted that the budgets will be funded with proceeds from the Hotel Unit Fee Secured Revenue Bonds Series 2005.

Ms. Lampen explained that included in the Board packet was a recap of the briefing provided in November, 2011 when the capital budget was approved. Ms. Lampen then provided a detailed summary on where CCDC is relative to the report provided as of November 2011.

Following this presentation, Director Carl Weisbrod asked, with regard to the operating budget, why the salaries have gone down and the fringes have not proportionately decreased.

Ms. Lampen stated that this is an error as it should be a set proportion. Ms. Lampen stated that she will check with the Budget Division on that issue and come back to the Directors with an answer.

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Director Carl Weisbrod then asked, in view of the Governor’s announcement regarding the possible demolition of Javits, if there has been a review of the capital plan to see if there are items regarding the current renovation of Javits that might be deferred or eliminated altogether if the Governor’s proposal moves forward.

Ms. Lampen stated that CCDC is presently moving forward only on contracts that have already been set.

Among other things, Ms. Lampen noted that the work being done at this time falls into the category of basic operations, which allows the building to stay open and functional until such time as a decision is made to relocate, keep it open or close it.

Director Corbett noted that the bigger issue should the demolition occur, will be depreciation issues as well as issues involving bonds and the like. Ms. Lampen stated that that was correct.

Following the full presentation, the Chairman called for any further questions or comments. Hearing none and upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK (NEW YORK COUNTY) – Jacob K. Javits Convention Center Expansion and Renovation Project - Annual Operating and Capital Budgets for FY 2012-2013

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RESOLVED, that, in accordance with the materials presented to this meeting and ordered filed with the records of the Corporation, the Corporation be, and hereby is, authorized to:

Adopt the Annual Operating and Capital Budgets for FY 2012-2013; and be it further

RESOLVED, that, the President or her designee(s) be, and each of them hereby is, authorized and directed, in the name of and on behalf of the Corporation, to execute and deliver any and all documents and to take all actions as may be necessary or proper to effectuate the foregoing.

* * *

Ms. Lampen then asked the Directors to authorize CCDC to enter into a Lease Agreement with the New York Convention Center Operating Corporation (“CCOC”) to operate and maintain the Jacob Javits Convention Center.

Ms. Lampen provided the relevant background information regarding this request.

Ms. Lampen explained that there are a chain of leases that have been in effect since the statute was passed and they are statutorily defined.

These leases, she continued, run from the Operating Corporation or the Development Corporation, the owner of the assets of the Javits Convention Center, to the Triborough Bridge and Tunnel Authority (“TBTA”), the co-stockholder, by statute, of the assets.

Ms. Lampen further explained that the lease to TBTA is sublet now to the State through the Office of General Services and then through to the Operating Corporation whereby the

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Operating Corporation has the obligation by statute and by lease to operate and maintain the Convention Center.

Ms. Lampen went on to note that the provisions of the lease also provide that when bonds that were issued to finance the construction of the Convention Center are defeased or paid off, the leases between the TBTA, and the State, and the Operating Corporation are all extinguished.

The bonds, Ms. Lampen advised, were paid off, maturing in January of 2012. As a result, she continued, the leases were extinguished and the Operating Corporation is presently operating the Convention Center under their statutory authority.

Ms. Lampen explained that to preserve the continuity and to define legally the rights and responsibilities of the parties, authorization is being requested to enter into an operating lease on substantially the same terms as the previous lease between the State and the Operating Corporation for Javits North and the existing Javits.

Ms. Lampen noted that the action will be done without prejudice to the rights or obligations of the parties to the lease and to the sublease, to the extent that any such rights and obligations survive the termination of the lease and sublease.

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Mr. Beyer noted that he has discussed the issue with Andrew Kennedy, the Deputy Secretary for Economic Development, who will further address it with the Governor's Office. Because this action is without prejudice, Mr. Beyer continued, it is all right to move ahead with this request.

The ultimate goal, Mr. Beyer explained, is to ensure that the Operating Corporation has a lease in place to explicitly define the rights and responsibilities in the Statute.

Among other things, Ms. Lampen noted that the action will be in compliance with the Public Authorities Act which requires that the annual rent not exceed the statutory minimum.

Director Corbett asked if it was correct that there will be no greater exposure to CCDC or ESD. Mr. Beyer said that was correct.

Director Loewenson then asked if the CCDC Directors who are also on the CCOC Board should recuse themselves from voting on this resolution and Ms. Lampen said that they should recuse themselves.

Ms. Lampen then asked Mr. Beyer if this affects the quorum under the by-laws and Mr. Beyer said that it does not.

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The Chairman then called for any further questions or comments. Hearing none and upon motion duly made and seconded, the following resolution was unanimously adopted (It was noted for the record that Directors Corbett and Loewenson recused themselves from voting with regard to the following resolution.):

New York (New York County) – New York Convention Center Development Corporation
– Authorization to Enter into a Lease Agreement with the New York Convention Center
Operating Corporation to Operate and Maintain the Jacob K. Javits Convention Center

RESOLVED, that in accordance with the materials presented to this meeting and ordered filed with the records of the Corporation, the Corporation be, and hereby is, authorized to enter into a Lease with the New York Convention Center Operating Corporation (NYCCOC) to operate and maintain the Jacob K. Javits Convention Center on substantially the same terms and conditions as the Operating Sublease between the State of New York and the NYCCOC dated as of November 15, 1984, as amended, with such changes as shall be approved by the President or her designee(s), to reflect the changed circumstances since the Operating Sublease was originally executed.

RESOLVED, that the President or her designee(s) be, and each of them hereby is, authorized and directed, in the name of and on behalf of the Corporation, to execute and deliver any and all documents and take all actions as may be necessary or proper to effectuate the foregoing.

RESOLVED, that neither of the prior resolutions approved by the Board and none of the actions of the President or her designee(s) in connection therewith shall prejudice or otherwise affect any rights and obligations of the parties to the Lease between the Corporation and the Triborough Bridge and Tunnel Authority (TBTA), dated as of October 1, 1980, as amended, or the Sublease between the TBTA and the State of New York, dated as of October 1, 1980, as amended, to the extent such rights and obligations have survived the terminations of such Lease and Sublease.

* * *

Ms. Lampen then asked the Directors to authorize CCDC to amend its contract with Jerome Haimés Realty, Inc. for appraisal services in connection with the Project.

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Ms. Lampen outlined the relevant background information including information on a December 2006 contract with Jerome Haines Realty for appraisal services relating to the proposed hotel on CCDC property.

Ms. Lampen explained that CCDC also entered into a separate contract with Jerome Haines in September 2010 for the appraisal of the Javits North operating lease and other appraisals associated with the renovation and expansion of the Javits Center.

That September 2010 contract, she noted, will be increased by \$30,000 for three appraisals and related services. The source of funds for this amendment, she added, is the Hotel Unit Fee Secure Bond issue.

Ms. Lampen outlined the appraisal services to be performed and the reasons for same under this proposed amendment.

Following this presentation, Director Carl Weisbrod asked why CCDC was proceeding with these appraisals given the Governor's proposal regarding the Convention Center.

Ms. Lampen stated, among other things, that included in the authorization are the Public Authorities Accountability Act required appraisals for the Javits operating lease that was just approved as well as for the easement across the 33/34 property for the Highline.

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Ms. Lampen then noted that with respect to the 35-36th Street site, CCDC is proceeding with an Environmental Impact Statement (“EIS”) in preparation for a General Project Plan (“GPP”). Ms. Lampen noted that staff will return to the Board to review those actions. She added that CCDC is in dialogue with the Administration and will be taking direction from them on that matter as well.

Ms. Lampen went on to explain that presently, the direction is to continue to proceed with the preliminary work for the potential GPP and when CCDC is given clearer direction in that regard, staff will come back to the Board.

Director Carl Weisbrod expressed his concern about proceeding on an EIS and a GPP that does not take the Administration’s potential plans into account. He added that he is not sure why CCDC should spend money at this point when the direction to take will be made clearer in the near future.

The Chairman stated that CCDC is doing so to preserve its optionality until clear direction as to which plan will be implemented is provided.

Ms. Lampen stated that the authorization is to increase the amount for this contract so that she will have the authority when and if she needs to exercise that authority to move forward on those three types of appraisals.

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Director Carl Weisbrod again expressed concern about spending money on the EIS and on creating a GPP without clear direction.

Ms. Lampen explained that she is not pursuing that aggressively, but the direction she has been given is to continue to pursue it.

Mr. Mandel asked for a clarification regarding who Ms. Lampen has received direction from and Ms. Lampen stated that she is receiving the direction from the Administration.

Director Cornstein expressed his agreement with Director Carl Weisbrod's concerns and stated that while CCDC must continue to keep the operation going, the Corporation should not incur expenses that it will regret over time.

Ms. Lampen explained that she is not spending large amounts in pursuit of the EIS and the Board should not be concerned that it's a major expenditure that is being incurred.

In answer to a question posed by Director Carl Weisbrod, Ms. Lampen noted that approximately \$60,000 has been expended so far basically for traffic analysis on and around 11th Avenue prior to 11th Avenue being taken out of service through 2013 for construction of the viaduct.

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Director Corbett noted that it is important to avoid anything that would delay progress or impede the Board's ability to continue to move the project forward.

The Chairman called for any further questions or comments. Hearing none and upon motion duly made and seconded, the following resolution was unanimously adopted:

New York (New York County) – Jacob K. Javits Convention Center Renovation and Expansion Civic Project – Authorization to Amend the Contract with Jerome Haims Realty, Inc. and to Take Related Actions

RESOLVED, that in accordance with the materials presented to this meeting and ordered filed with the records of the Corporation, the Corporation be, and hereby is, authorized to amend the Contract with Jerome Haims Realty, Inc. for the additional amount of \$30,000, for a total Contract amount of \$75,000.

RESOLVED that, the President or her designee be, and each of them hereby is, authorized and directed, in the name of and on behalf of the Corporation, to execute and deliver any and all documents and to take all actions necessary or proper to effectuate the foregoing.

* * *

Director Carl Weisbrod explained that while he voted in favor of the amendments, he wanted his concerns noted for the record. The Chairman stated that they would be so noted.

Glenn Johnson from Tishman Construction then provided a Powerpoint presentation illustrating the status of construction at the site. Mr. Johnson provided a detailed account of each area of construction, noting, in part, that all was running on schedule.

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Director Corbett asked if the gutter system will be adequate given the history of the roof leaking. Mr. Johnson noted that with this gutter system there is a Gantry System that goes on top that allows access to each of the skylights and this will allow the gutters to be maintained properly.

Director Loewenson asked if vehicles will have access to the east side of the Javits Center when work is being done on the west side of 11th Avenue. Mr. Johnson said vehicles would not have access on the east side. Access, he continued, will be on the other side of the road. Passengers will be dropped off and there will be a passageway to cross over to the Javits Center.

Director Carl Weisbrod asked if time and money was saved as a result of the mild winter. Time wise, Mr. Johnson explained, schedules were met before hand. Money wise, he continued, there was no savings as the contracts are lump sum. He added that some money was saved on general conditions as far as not having to provide for snow removal and things of that nature.

Lastly, Mr. Feldman of BDO provided a report on integrity monitoring on the project.

Mr. Feldman explained that BDO has continued the process of reviewing project related activity and billing for all 23 prime contractors.

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Mr. Feldman then outlined those findings in detail for the Director's information.

Following this report, Director Carl Weisbrod asked if an update could be provided on the one Company that was particularly egregious in their record keeping. He further asked if any progress has been made on a notification system so that all public entities are made aware of this type of contractor.

Mr. Feldman stated that there is no formal procedure but he has had discussions with various entities including the Port Authority.

Mr. Feldman further stated that the Company Director Weisbrod asked about had been removed. A brief further discussion was had with regard to this Company.

Director Carl Weisbrod again stressed the importance of disseminating this information.

The Chairman noted that it would be prudent to check with counsel before any further action is taken in regard to disseminating the information as there are confidentiality and other issues in the contracts.

There being no further business, the meeting was adjourned at 10:58 a.m.

Respectfully submitted,

Eileen McEvoy
Corporate Secretary

FOR CONSIDERATION

June 27, 2012

TO: The Directors

FROM: Barbara Lampen

SUBJECT: New York (New York County) – Jacob K. Javits Convention Center

REQUEST FOR: Authorization to Enter into a Contract with Shearman & Sterling LLP to Provide Real Estate Legal Services

I. Contract Summary

Contractor: Shearman & Sterling LLP

Scope of Services: Provide legal counsel for Corporation real estate matters.

Contract Term: Five (5) years

Contract Amount: Not to exceed \$500,000

Funding Source(s): Bond Proceeds for expansion and renovation related work and other permitted uses of tax exempt bond proceeds. Convention Center Development Corporation unrestricted funds for other work.

II. Background

The Expansion and Renovation Civic Project at the Jacob K. Javits Convention Center (the "Convention Center") includes: (a) demolition of certain sections of the existing Convention Center and (b) extensive additions and modifications to, and renovations of, the Convention Center. Additional projects could include a convention center hotel and the sale and/or development of unused, or unnecessary parcels owned by the Convention Center Development Corporation (collectively the "Project"). Related real estate work could include the acquisition of significant property by the Corporation, the vacating of such property (as necessary), the integration of new and previously owned property (including the closing of roadbeds), analyses of easements (including significant subsurface right-of-ways and the Highline easement), and

various other real property matters inherent in Manhattan real estate development. To assist the Corporation in these activities, staff recommends the retention of real estate counsel. The existing contract for real estate counsel with Skadden Arps will be capped out shortly.

III. Contractor Selection Process

In June 2008, the Corporation's parent, New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), after a public solicitation on behalf of itself and its subsidiaries, approved a list of law firms that would be available for legal work on an as-needed basis, after approval of individual retention contracts, without the need for further public solicitation. This action was taken to permit ESD and its subsidiaries including the Corporation, to respond to project needs expeditiously, while having available the benefits of a broad solicitation of qualified outside law firms. This list of "pre-qualified" counsel was approved by the ESD Directors on September 18, 2008.

Staff from ESD's Legal Department recently reviewed the experience, qualification and availability of pre-qualified real estate counsel for a large complex development project and interviewed 3 of the pre-qualified firms. After such review and interviews, Convention Center Development Corporation ("CCDC") recommends that Shearman & Sterling LLP (the "Consultant") be retained to perform real estate legal services for the Project.

Consultant is one of the largest and most highly regarded law firms in New York City and has been retained by ESD and its subsidiaries on a number of significant real estate matters. In addition to Consultant's tremendous expertise and resources, Consultant advised ESD with respect to 42nd Street Redevelopment Project and thus is familiar with the area surrounding the Project. Consultant is particularly well versed in issues regarding maximizing value of ESD real estate and the use of ESD's legal powers. For these reasons, staff believes that Consultant is best suited to provide the Corporation with real estate counsel services required for the Project. Consultant's lead partner on this matter will be Chris Smith.

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has a) considered proposed contractor's ability to perform the services provided for in the proposed contract; and has b) consulted the list of officers determined to be non-responsible bidders and debarred officers maintained by the New York State Office of General Services. Based on the foregoing, staff considers the proposed contractor to be responsible.

IV. Scope of Work

The scope of work as referenced in Background is expected to immediately include the negotiation of a new easement for the city's use of the Highline. Future work is anticipated to include disposal of CCDC properties determined to be unnecessary and structuring development of CCDC's properties with private developers.

V. Contract Term, Price and Funding

Based on expected level of work, staff recommends that Consultant's contract be for an amount not to exceed \$500,000, inclusive of expenses. CCDC recommends paying costs associated with the Expansion and Renovation Civic Project with Bond proceeds from the Corporation's Revenue Bonds (Hotel Unit Fee Secured) Series 2005 and other costs under this contract with CCDC funds. If an arrangement is made with any private developer to pay all or a portion of costs, then the private developer shall pay such costs at the Consultant's customary rates.

Consultant has otherwise agreed to be compensated at ESD's standard hourly rates.

VI. Non Discrimination /Contractor Diversity

ESD's Non-discrimination and Contractor Diversity policy will apply. Shearman & Sterling LLP shall be required to use good faith efforts to achieve a Minority-Owned Business Enterprises participation goal of 12% and a Women-Owned Business Enterprise participation goal of 8%. The above-mentioned contract goals shall be a percentage of the total amount of this contract, including all expenditures made hereunder, including but not limited to, purchase orders, invoices and other payments made in the performance of this contract.

VII. Environmental Review

ESD staff has determined that the requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the authorization.

VIII. Requested Action

The Directors are requested to authorize the Corporation to enter into a contract with Shearman & Sterling LLP for real estate legal services as set forth above in an amount not to exceed \$500,000 inclusive of expenses.

IX. Recommendation

Based on the foregoing, I recommend approval of the requested actions.

X. Attachments

Resolution

June 27, 2012

Empire State Development – Authorization to Enter Into a Contract with Shearman & Sterling LLP to Provide Real Estate Legal Services and to Take Related Actions

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Shearman & Sterling LLP to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Shearman & Sterling LLP in an amount not to exceed five hundred thousand (\$500,000) for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the President of the Corporation or his designee be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.

* * *