MINUTES

NEW YORK STATE CANAL CORPORATION

BOARD MEETING NO. CC-168

July 21, 2010

Minutes of a meeting of the New York State Canal Corporation, held in the Board Room at Administrative Headquarters, 200 Southern Boulevard, Albany, New York 12209.

The meeting began at 10:55 a.m.

There were present:

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

Constituting a majority of the members of the Canal Corporation Board.

In addition, there were present the following staff personnel:

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

John Bryan, Chief Financial Officer

William Estes, General Counsel

J. Marc Hannibal, Director, Audit and Management Services

Carmella Mantello, Director of Canal Corporation

Major Robert Meyers, Troop T

Joanne Riddett, Director, Information Technology

Thomas Ryan, Director, Office of Public Affairs

Christopher Waite, Chief Engineer

Jill Warner, Secretary and Board Administrator

Richard Garrabrant, Division Director, Syracuse Division

Ted Nadratowski, Division Director, New York Division

Thomas Pericak, Division Director, Buffalo Division

William Rinaldi, Division Director, Albany Division

Wendy Allen, Deputy Chief of Staff

Deb Haslun, Director, Labor Relations

Tony Kirby, Director, Real Property Management

Michael Sikule, Director, Investments and Asset Management

Dorraine Steele, Director, Fiscal Audit and Budget

Katherine McCartney, Deputy Counsel

Kevin Allen, Assistant Director, Audit and Management Services

Harry Lennon, Senior Investigator, Audit and Management Services

Joseph Moloughney, EPA/GE Dredge Project Coordinator

Tracie Sandell, Assistant Counsel

Also in attendance:

John Armstrong, New York Network

Tom Benware, Staff, Senator Dilan's Office

Connie Cahill, Partner, Hiscock & Barclay, LLP

Jerry DeLuca, DeLuca Public Affairs

Steven Kantor, Managing Director, First Southwest Company

Sandy Pae, Associate, Goldman, Sachs & Co.

Pat Reale, Principal Budget Examiner, NYS Division of Budget

Joseph Reid, Principal, Law Offices of Joseph C. Reid

Angela Rodell, Senior Vice President, First Southwest Company

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

Freda Wang, Vice President, Goldman, Sachs & Co.

Jon White, Managing Director, Siebert Brandford Shank & Co.

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

Chairman Buono called the meeting to order.

Ms. Warner recorded the minutes as contained herein.

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

Item 1 by Ms. Warner (Appendix A)
Minutes of Meeting No. CC-167

On the motion of Mr. Sall, seconded by Ms. Luh, without any objections, the Board approved the minutes of Meeting No. CC-167 held on June 16, 2010 which were made available to the Board Members as part of the Agenda.

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

Mr. Fleischer: On December 11, 2009, Governor David Paterson signed into law the 2009 Public Authorities Reform Act, also known as "PARA," which codified many of the recommendations made by the New York State Commission on Public Authority Reform after enactment of the Public Authorities Accountability Act. PARA requires that the members of a Governance Committee possess the necessary skills to understand the duties and functions of the Committee. PARA also added the following to the list of responsibilities for a Governance Committee: examine ethical and conflict of interest issues; perform Board self-evaluations; and, recommend bylaws which include rules and procedures for the conduct of Board business. Staff reviewed the Authority/Corporation's Governance Committee Charter and recommended that the changes identified in Exhibit A be adopted to bring the Charter into compliance with PARA. These changes included revisions to the membership portion of the Charter to reflect the new PARA requirements relative to committee composition and the skills required of committee members. The changes also included revisions to the purpose and responsibility sections of the charter to incorporate the new PARA requirements specific to the duties of a Governance Committee as described above. On April 11, 2010, the Governance Committee reviewed the proposed changes to the Authority/Corporation's Governance Committee Charter and recommended that the Board adopt a revised Charter with changes incorporated as set forth in Exhibit B.

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

RESOLUTION NO. 519
ADOPTING A REVISED GOVERNANCE COMMITTEE CHARTER

RESOLVED, that the revised Governance Committee Charter, attached hereto as Exhibit B, be, and hereby is, adopted, replacing all prior Governance Committee Charters; and be it further

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

Item 3 by Mr. Fleischer (Appendix C)
Adoption of Retirement Incentive Program Pursuant to Chapter 105 of the Laws of 2010

Mr. Fleischer: This item authorizes the adoption of a Retirement Incentive Program pursuant to Chapter 105 of the Laws of 2010 which Governor David Paterson recently signed providing a retirement incentive for local governments, colleges and public authorities. The Law provides for two different incentive parts: Part A provides eligible employees with an additional 1/12 year of service for each year of retirement service credited as of the date of retirement. The maximum amount of additional service credit that can be provided under Part A is three years. Part B permits employees in Tiers 2, 3, or 4 with 25 years of credited service with the Retirement System who have reached the age of 55 years to retire without an age penalty. Should the Canal Corporation desire to enact Part A of the program, the Law requires that the Corporation Board adopt the program by resolution by August 31, 2010.

Mr. Fleischer recommended that all employees otherwise meeting the eligibility requirements be designated as eligible to participate in Part A of the program. The Law states that any employer that adopts Part A of the program must establish an open period during which employees can retire and be entitled to incentive benefits. The open period must be no less than 30 days and no more than 90 days. Mr. Fleischer recommended a 30-day open period for Part A of the incentive program to commence on August 1, 2010.

Should the Board desire to enact Part B of the Incentive Program, the Law requires the Canal Corporation Board to adopt a program by resolution no later than September 1, 2010. The Law states that any employer that adopts Part B of the program must establish an open period of

90 days in length. Mr. Fleischer recommended that the 90-day open period for Part B of the program commence on August 11, 2010.

The Corporation will be required to pay a surcharge to the Retirement System of up to 85 percent of the final average salary for each participant in Part A. The surcharge for Part B will be up to 140 percent of the final average salary for each participant. The surcharges are payable over five years. In addition, the employer is required to demonstrate salary savings equal to 50 percent of the retired employee's combined two-year base salaries during the two years following retirement for employees who retire under Part A. As a result, for all employees who retire under Part A, the Canal Corporation must save in the following two years the equivalent of a total of one year's combined salaries for all of those retired employees. Through a combination of abolishing some positions, leaving others open for a period of time, and filling others at lower salaries, staff has developed preliminary staffing plans that will achieve savings in excess of those required by the Retirement Incentive Program within the first two years. Final staffing plans with similar savings will be adopted once the actual number of retirement program participants is known.

The Canal Corporation will be constrained by the Law's requirements. In addition, some positions will remain vacant after the two-year period and others will be back-filled by employees who will not reach the job rate for three to five years. Therefore, the Corporation will continue to accrue salary savings after the first two years.

For the first two years the Law will prescribe what type of savings will have to be achieved. After those two years, there is an opportunity for continual savings for the longer term by keeping those positions open, restructuring, and looking at more efficiencies in Headquarters and other sites. Staff is very confident that the two years' savings will be achieved (which is mandated by the Law). The test for management will be to take further advantage of those continual savings opportunities for the future. As a result, it is believed that adoption of the Retirement Incentive Program will result in salary savings in the short-term, two-year term, and maintains a potential force for longer term savings as it is consistent with the Corporation's goal of reducing operating expenses.

Mr. Sall inquired as to whether there would be a substantial savings achieved by adopting the resolution.

Mr. Fleischer responded by indicating that with 50 individuals from the Canal Corporation who had expressed an interest in the Incentive, over the first two years, a net savings of over $500,000 would be realized. In years three, four and five, a net savings of greater than $1.2 million would be realized and those savings are for the Canal Corporation alone. In reviewing the Thruway Authority's net savings, the numbers are greater. Mr. Fleischer indicated that in years three, four and five there would be a potential for $8 million per year in annual cost savings.

Mr. Sall inquired if there would be any negative effects on operations.

Mr. Fleischer responded that it was "not going to be painless." Staff has been meeting regularly to ensure that the budget approvals and the approval process are in place so that by September 9, the Authority will be prepared to have already identified candidates who will be filling the most critically needed positions. Mr. Fleischer indicated that because the winter season is imminent, vacant positions dealing with winter elements of snow and ice were the most immediately critical to fill. Other positions such as Toll Division positions or positions in Administrative Headquarters will be abolished in order to save money. However, staff is confident that the Authority will save money and yet continue to deliver the same high levels of safety and service.

Mr. Bryan noted that the numbers Michael Fleischer was using were based on a survey of employees and their degree of interest in the Early Retirement Incentive. Employees were undecided and the actual numbers of employees retiring will not be known until the window of opportunity to take advantage of the program is closed. At that time it will be easier to assess the impact of the Retirement Incentive on the organization.

Mr. Bryan also noted that Mr. Fleischer asserted that many safety-related and highway positions will be pre-cleared and regardless of how many positions are vacated they will be quickly filled.

Mr. Fleischer reiterated that savings will be achieved within two years since it is mandated by the Law. Further, the test for management will be to take advantage of those two-year savings as well as the opportunities going forward in years three, four and five to continue those savings in the long-term and be consistent with the Corporation's goal of reducing operating expenses.

Dr. Holguin-Veras asked if there was a back-up plan to meet the requirements in case the number of retirees is less than we have or if we have time to react in order to meet the requirements.

Mr. Bryan said that the Authority is obligated to show savings at the end of the two-year period and there is some flexibility for the Canal Corporation to react.

Mr. Rice asked about the risk framework of filling the positions. In particular, Mr. Rice mentioned the internal movements of people who retire and if there is a significant financial risk if more people retire than expected.

Mr. Fleischer said that the risk on the operations is the succession plan. The expectation is that many high-level and mid-level employees will retire causing a succession or a domino effect. There will be opportunities for people to move up whereby one high-level person leaves making a certain salary and everyone moves up, but no one moves up to the point where the salary is at the highest grade level. The savings are there. Mr. Fleischer pointed out that the Corporation and the Authority must be very aggressive in ensuring that the best candidates move up and good candidates come behind them so that the organization will continue to function. He further stated that the operational risk is probably more than the financial risk since again, the Law sets the financial parameters for the first two years.

Mr. Bryan added that there is a buffer to the financial risk. Based on the current plan, the surcharge that the organization has to pay is $20 million. Based on this plan the savings would be $24 million in the first two years. There is a buffer that if too many unexpected employees retire, more positions can be abolished or held vacant longer. After the two-year test mentioned by Mr. Fleischer, it will be determined if safety and service levels have been impacted; if so, then perhaps some of the vacated items can be filled.

Mr. Fleischer said that the reason the Authority is allowing the incentive to be applied to snow and ice operators would not have been something that the Authority would have traditionally considered. However, with the transfer of I-84 back to the New York State Department of Transportation ("DOT"), the actual statute envisions using the retirement incentive to create vacancies to mitigate layoffs someplace else, which is precisely how staff envisioned this for the Thruway Maintenance Workers. Although I-84 employees may have an opportunity to work with DOT, it has not been determined how many, or which workers it will hire. Staff is looking through the Incentive to create some vacancies in the New York Division and elsewhere so that Thruway employees can transfer to recently vacated positions and to avert a layoff scenario for those employees.

Ms. Mantello: The Canal Corporation has a very low turnover of employees. To be realistic, the Canal Corporation will be losing some major institutional knowledge. Employees with 30, 40 years of experience will retire and the Corporation is expecting that 15- and 20-year veteran employees will step up to the plate. There will be a transition but the Canal Corporation is looking at potentially 10 percent of its workforce to retire. There will be a transition, but staff is dedicated to making it work.

The **Chairman** inquired as to whether this was an opportune time to look at reorganization and also indicated that the Board looks forward to staff returning to the Board with a larger program.

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

RESOLUTION NO. 520

ADOPTION OF RETIREMENT INCENTIVE PROGRAM PURSUANT TO CHAPTER 105 OF THE LAWS OF 2010

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

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

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

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

Item 4 by Ms. Mantello and Mr. Bryan (Appendix D)
Authorizing the Abandonment of Approximately 0.66± Acre of Canal Land Located in the Village of Stillwater, County of Saratoga, and Authorizing Its Sale to Dalton and Louise Marks

Ms. Mantello: This item authorizes the abandonment and sale of 0.66± acre of surplus Canal property in the Village of Stillwater, Saratoga County, to Dalton and Louise Marks. The property is located along the west side of the Hudson River, Champlain Canal. It is rectangular in shape and measures approximately 50 feet wide by 590 feet long. The Marks have requested to purchase the property to cure an encroachment. A portion of their home is located on a Canal parcel. This property actually is a waterfront parcel and the Town of Stillwater is interested in the waterfront property. Staff has determined that it is surplus property. The Canal Recreationway Commission ("CRC") found the abandonment consistent with the Canal Recreationway Plan. The property has been appraised by an independent appraiser for $10,000. Notice of proposed abandonment for the parcels has been published. Should any negative comments be received, the Board will be informed.

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

RESOLUTION NO. 521

AUTHORIZING THE ABANDONMENT OF APPROXIMATELY 0.66± ACRE OF CANAL LAND LOCATED IN THE VILLAGE OF STILLWATER, COUNTY OF SARATOGA, AND AUTHORIZING ITS SALE TO DALTON AND LOUISE MARKS

RESOLVED, that approximately 0.66± acre of Canal land located in the Village of Stillwater, County of Saratoga is no longer useful or necessary as part of the Barge Canal System, as an aid to navigation thereon, or for Barge Canal purposes, and be it further

RESOLVED, that following publication of the notice of abandonment for the Property as required by Section 51 of the Canal Law and transmittal of such notice to the CRC, the Office of Canal Maintenance and Operations shall prepare an Official Order abandoning the land for Canal purposes, together with a map and description of such lands for review and execution by the Executive Director, provided, however, that if negative comments are received in response to the notice, no Order shall be prepared until the Corporation Board has been informed and has determined whether a hearing is warranted, and be it further

RESOLVED, that following preparation of the Official Order of Abandonment, the Executive Director be, and he hereby is, authorized to execute such Order of Abandonment, and be it further

RESOLVED, that the recommendation for issuance of a Negative Declaration based on an environmental assessment of the proposed action completed in accordance with the provisions of the State Environmental Quality Review Act (“SEQRA”) be, and hereby is, approved, and be it further

RESOLVED, that the Chief Engineer, or his designee, be, and he hereby is, authorized to sign the SEQRA Environmental Assessment and issue the Negative Declaration, and to distribute any required notices on behalf of the Corporation Board with relation to this action, and be it further

RESOLVED, that the sale of said approximately 0.66± acre of land by quitclaim deed to Dalton and Louise Marks for $10,000 be, and hereby is, approved, subject to such other legal, financial, engineering and other terms as may be deemed by the Executive Director, the Director of Canals or the General Counsel, to be in the best interest of the Canal Corporation and consistent with the intent of this agenda item, and be it further

RESOLVED, that such sale shall be conditioned upon the payment of certain costs incidental to the transfer of real property, and be it further

RESOLVED, that the Corporation's Contracting Officer determined that the Property may be sold by negotiation without public advertising because such disposal falls under Section 2897 (6) (c) (ii) of the Public Authorities Law, and Section IV.I.1. of the Canal Real Property Management Policy, and that the sale of the Property on the terms recommended in the agenda item complies with all applicable provisions of law, including Article 9, Title 5-A of the Public Authorities Law, and with the Canal Real Property Management Policy, and be it further

RESOLVED, that the Executive Director, or his designee, be authorized to execute a contract of sale, and all other documents necessary for closing of title, and be it further

RESOLVED, that the Executive Director, the Director of Canals, the Chief Financial Officer, and the General Counsel be, and the same hereby are, authorized to take all actions necessary to effectuate closing of title, and be it further

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

Item 5 by Ms. Mantello and Mr. Bryan (Appendix E)
Authorizing the Abandonment of Approximately 1.26± Acres of Canal Land Located in the Town of Clay, County of Onondaga, and Authorizing Their Sale to Homer and Sheila Martin

Ms. Mantello: The purpose of this item is to authorize the abandonment and sale of 1.26± acres of surplus Canal Corporation property in the Town of Clay, Onondaga County, to Homer and Sheila Martin. The property is located along the Oneida River, Erie Canal and measures approximately 330 feet long. The Martins have requested to purchase the property in order to assemble it with their upland parcel. Staff has determined this is property is no longer needed for Canal purposes. The Canal Recreationway Commission ("CRC") has found the abandonment consistent with the Canal Recreationway Plan. The independent appraisal is $10,500 and the Contracting Officer recommended the sale to the Martins for the appraised value. Notice of abandonment has been published and should any negative comments be received, the Board will be informed.

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

RESOLUTION NO. 522
AUTHORIZING THE ABANDONMENT OF APPROXIMATELY 1.26± ACRES OF CANAL LAND LOCATED IN THE TOWN OF CLAY, COUNTY OF ONONDAGA, AND AUTHORIZING THEIR SALE TO HOMER AND SHEILA MARTIN

RESOLVED, that approximately 1.26± acres of Canal land located in the Town of Clay, County of Onondaga are no longer useful or necessary as part of the Barge Canal System, as an aid to navigation thereon, or for Barge Canal purposes, and be it further

RESOLVED, that following publication of the notice of abandonment for the Property as required by Section 51 of the Canal Law and transmittal of such notice to the CRC, the Office of Canal Maintenance and Operations shall prepare an Official Order abandoning the land for Canal purposes, together with a map and description of such lands for review and execution by the Executive Director, provided, however, that if negative comments are received in response to the notice, no order shall be prepared until the Corporation Board has been informed and has determined whether a hearing is warranted, and be it further

RESOLVED, that following preparation of the Official Order of Abandonment, the Executive Director be, and he hereby is, authorized to execute such Order of Abandonment, and be it further

RESOLVED, that the recommendation for issuance of a Negative Declaration based on an environmental assessment of the proposed action completed in accordance with the provisions of the State Environmental Quality Review Act ("SEQRA") be, and hereby is, approved, and be it further

RESOLVED, that the Chief Engineer, or his designee, be, and he hereby is, authorized to sign the SEQRA Environmental Assessment and issue the Negative Declaration, and to distribute any required notices on behalf of the Corporation Board with relation to this action, and be it further

RESOLVED, that the sale of said approximately 1.26± acres of land by quitclaim deed to Homer and Sheila Martin for $10,500 be, and hereby is, approved, subject to such other legal, financial, engineering and other terms as may be deemed by the Executive Director, the Director of Canals or the General Counsel, to be in the best interest of the Canal Corporation and consistent with the intent of this agenda item, and be it further

RESOLVED, that such sale shall be conditioned upon the payment of certain costs incidental to the transfer of real property, and be it further

RESOLVED, that the Corporation's Contracting Officer determined that the Property may be sold by negotiation without public advertising because such disposal falls under Section 2897 (6) (c) (ii) of the Public Authorities Law, and Section IV.I.1. of the Canal Real Property

Management Policy, and that the sale of the Property on the terms recommended in the agenda item complies with all applicable provisions of law, including Article 9, Title 5-A of the Public Authorities Law, and with the Canal Real Property Management Policy, and be it further

RESOLVED, that the Executive Director, or his designee, be authorized to execute a contract of sale, and all other documents necessary for closing of title, and be it further

RESOLVED, that the Executive Director, the Director of Canals, the Chief Financial Officer, and the General Counsel be, and the same hereby are, authorized to take all actions necessary to effectuate closing of title, and be it further

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

Adjournment

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

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Jill B. Warner
Secretary