

HUGH L. CAREY BATTERY PARK CITY AUTHORITY

Meeting of the Members
200 Liberty Street, 24th Floor
New York, NY 10281
March 8, 2023

Members Present

Donald Capoccia, Acting Chair
Louis Bevilacqua, Member (via video)
Anthony Kendall, Member
Catherine McVay Hughes, Member
Lester Petracca, Member

Authority Staff in Attendance: Benjamin Jones, President and Chief Executive Officer
Marie Baptiste, Deputy Treasurer
Zachary Bergen, Deputy General Counsel, Procurement & Contracts
Donna A. Canfield, Deputy General Counsel, Labor & Employment
Gwen Dawson, Vice President, Real Property
Pamela Frederick, Chief Financial Officer/Treasurer
James Gallagher, Special Counsel
Abigail Goldenberg, General Counsel
Megan Hood, Deputy General Counsel, Real Estate
Karl Koenig, Controller
John Lonie, Communications & Public Affairs Coordinator
Eric Munson, Chief Operating Officer
Lauren Murtha, Paralegal/Assistant Corporate Secretary
Jahmeliah Nathan, Vice President of Administration
Jason Rachnowitz, Director of Financial Reporting
Aline Reynolds, Senior Communications Manager
Nicholas Sbordone, Vice President of Communications and Public Affairs
Alexis Torres, Chief of Staff
Ryan Torres, Vice President of Parks Operations

Others in Attendance: Warren Ruppel, Marks Paneth
Phil Marciano, Marks Paneth
Robert Cheddar, PFM Asset Management
Marty Hammond, PFM Asset Management
Samantha Myers, PFM Asset Management
Jim Haddon, Ramirez Asset Management
Louis Sarno, Ramirez Asset Management
Various Members of the Public

The meeting, called on public notice in accordance with the New York State Open Meetings Law, convened at 2:10 pm.

* * *

The first item on the agenda was a request for approval of the minutes of the January 25, 2023 meeting. Upon a motion made by Ms. McVay Hughes and seconded by Mr. Petracca, the following resolution was unanimously adopted:

APPROVAL OF MINUTES OF THE JANUARY 25, 2023 MEETING

BE IT RESOLVED, that the minutes of the meeting of the Members of the Hugh L. Carey Battery Park City Authority held on January 25, 2023, are hereby approved.

* * *

Next, there was one comment submitted by the public that were presented during the period of public comment.

* * *

Ms. Frederick then provided the Members with an update from the Investment Committee, which met immediately prior to this meeting and was attended by Committee Chair Lester Petracca and Investment Committee member, Catherine McVay Hughes. The Committee reviewed two items. The first was a review of the first quarter investment report, which was presented by PFM Asset Management. There were no major items of note in the quarter. The Authority had its normal course of inflows and payouts. The second item reviewed the progress of the Authority's net zero investment plan, which was initially provided to the committee in August 2022. The committee will receive updates twice a year on the plan, or more frequently if there are any new State requirements.

Ms. Frederick then provided the Members with an update from the Audit Committee which also met prior to this meeting and was attended by Committee Chair Anthony Kendall, and Audit Committee member, Lester Petracca. The Committee recommended to the Conservancy Board to authorize us to file the short form tax return, which was also approved during the Conservancy Board meeting.

* * *

The next item on the agenda was the M/WBE Utilization Report presented by Ms. Nathan.

Ms. Nathan reported that for the month of January 2023, 33.03% of the Authority's qualifying spend of approximately \$500,000.00 was paid to MWBEs. Of this total amount, 25.8% was paid to MBEs, 7.7% to MBE prime contractors, and approximately 19% for MBE subcontractors. Of that same qualifying spend, approximately 7% was paid to WBEs and 4% to WBE subcontractors. For our SDVOB utilization for Q3, we achieved 16.75% utilization of service-disabled veteran owned businesses of our qualifying spend of approximately \$5 million.

* * *

The next item on the agenda was an update on the Authority's resiliency projects by Mr. Jones.

Mr. Jones began by stating that Turner is continuing work on the 30% design for the Northwest Battery Park City Resiliency Project and a draft was expected to be ready in May. Also, community engagement continues, most recently with a series of workshops with working groups of stakeholders looking at engineering analysis and its implications for the flood alignments. There were three completed to date, the first two on February 8th and 16th, attended by our Acting Chair Martha Gallo, and most recently on Monday, attended by Board Member Catherine McVay Hughes. A lot of meaningful feedback from different stakeholders was received. BPCA has also initiated conversations with building owners and artists associated with our public art collection that lie in close proximity to the potential flood alignment to educate them and get their feedback as well.

With regard to the South Battery Park City Resiliency Project, subsequent to the New York County Supreme Court's February 10th ruling denying the Battery Park City Neighborhood Association's request for an injunction to prohibit us from proceeding with the Wagner Park work, the petitioners have voluntarily discontinued the proceeding in its entirety. The litigation is now over, and we are mobilizing at the site. Ryan Torres and the Parks Operations team have largely completed their salvage work and another contractor, Posillico, was now ramping up to begin their phase. The final piece of that project is the Pier A Battery segment and the evaluation team is now reviewing the six proposals received for that work.

On the sustainability front, Mr. Jones briefly discussed that, in addition to the net zero investment plan progress, the Authority completed our greenhouse gas inventories for 2020 and 2021 as we continue to monitor our progress towards a carbon neutral Battery Park City. We have seen energy use decrease from the 2019 levels but overall emissions are impacted by the electrical grid and, until the City and State complete their efforts with cleaning the grid, we won't be able to fully achieve our carbon neutral goals. We're focused on the elements we can control within Battery Park City such as our tree canopy assessment and our district energy assessment to evaluate options in the neighborhood.

Mr. Jones then concluded his report by mentioning that the first permeable paver project in the South neighborhood was completed, and noted the recent attention for our dog waste compost program which has been expanded in the neighborhood to help us in the fight against climate change.

Ms. McVay Hughes expressed how great the e-mail was letting people know about the upcoming meetings but also providing links to prior meetings, so you could also get up to speed on the other segments which was really important. She said the material that is presented at this meeting was very deep and there was a lot of information but all very helpful.

* * *

The next item on the agenda, presented by Ms. Frederick, was the authorization to amend agreement with Milliman, Inc. for other post-employment benefit actuary services.

Ms. Frederick stated Milliman has been engaged with us for a one-year term that expired February 28, 2023. This request was to amend their contract for an additional four months so they can continue the actuarial valuations that were performed on our behalf for our OPEB fund. The request would extend the contract for an additional four months to June 30, 2023.

Upon a motion made by Mr. Kendall and seconded by Ms. McVay Hughes, the following resolution was unanimously adopted:

APPROVAL TO AMEND AGREEMENT WITH MILLIMAN, INC. FOR OTHER POST EMPLOYMENT BENEFIT ACTUARY SERVICES

BE IT RESOLVED, that in accordance with the materials submitted at this Board meeting, the President and Chief Executive Officer (the “President”) of the Battery Park City Authority or his/her designee(s) be, and each of them hereby is, authorized and empowered to amend Agreement with Milliman, Inc. to extend the term by four (4) months to June 30, 2023, and be it further

RESOLVED, that the President or his/her designee(s), and each of them hereby is, authorized and empowered to execute and deliver the amendment on behalf of the Authority, subject to such changes as the officer or officers executing the amendment 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 amendment; and be it further

RESOLVED, that the President or his/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.

* * *

The next item on the agenda, presented by Ms. Goldenberg, was a request for authorization to extend the term of the pre-qualified legal panel.

Ms. Goldenberg stated that, in 2019, the Board approved the prequalified panel of legal counsel, which had been the result of a competitive procurement. That panel was set to expire at the end of this month. In advance of the expiration of our existing panel, an RFP was issued for a new panel, to continue our relationships with existing counsel, but also inviting new counsel to bid to become part of our prequalified panel. There was a very robust response in various subject matter expertise, with various sizes of firms. She anticipated having a new panel for the Board to review and approve shortly. In the interim, to maintain continuous representation while onboarding the new panel, she requested a six-month extension of the existing panel.

Upon a motion made by Mr. Petracca and seconded by Ms. McVay Hughes, the following resolution was unanimously adopted:

APPROVAL OF TERM EXTENSION FOR PRE-QUALIFIED PANEL FOR LEGAL SERVICES

BE IT RESOLVED, that in accordance with the materials submitted at this Board meeting, the term of the approval of the panel of pre-qualified law firms described in Appendix A (collectively, the “Firms”) is hereby extended for a period six (6) months and the President and Chief Executive

Officer (the “President”) of the Battery Park City Authority or his/her designee(s) be, and each of them hereby is, authorized and empowered to enter into or extend retainer agreements (the “Agreements”) with the Firms on an as-needed basis, in accordance with the requirements of the Authority’s Pre-Qualified Vendor Policy; and be it further

RESOLVED, that the President or his/her designee(s), and each of them hereby is, authorized and empowered to execute and deliver the Agreements on behalf of the Authority, subject to such changes as the officer or officers executing the Agreements 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 Agreement; and be it further

RESOLVED, that the President or his/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.

* * *

The next item on the agenda, presented by Ms. Goldenberg, was a request for authorization to enter into a retainer agreement with Fried, Frank, Harris, Shriver & Jacobson LLP for the Wagner Hotel Bankruptcy and approval of a corresponding budget increase.

Ms. Goldenberg began by explaining to the Members that the Authority has been involved in litigation with regard to the hotel in the south part of our property, Wagner Hotel. In November of 2022, the owners of the hotel unit filed for Chapter 11 bankruptcy and we were required to appear almost immediately after their filing. She noted that our prequalified panel of legal advisors does not include bankruptcy as a subject matter expertise area since we are very infrequently involved in bankruptcy. Consequently, we proceeded under a provision in our procurement guidelines that allowed us to do an emergency procurement. Consistent with those procurement guidelines, we interviewed a variety of potential firms that could best provide counsel for us in this complicated and novel case. Ultimately, Fried Frank was selected to represent us in the bankruptcy proceeding based on their expertise both in bankruptcy and real estate as well as their unique understanding of the complexities of our ground lease. She then asked for approval to enter into a retainer agreement with Fried Frank for \$1 million, and in addition to the resolution providing for the approval of the retainer agreement, Ms. Goldenberg also asked for a concomitant increase to our operating budget for this unexpected litigation cost.

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

AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP FOR LEGAL SERVICES AND APPROVAL OF INCREASE TO AUTHORITY BUDGET FOR FISCAL YEAR ENDING OCTOBER 31, 2023

BE IT RESOLVED that in accordance with the materials presented to this meeting, the President and Chief Executive Officer of the Hugh L. Carey Battery Park City Authority (the “President”)

or her/his designee(s) be, and each of them hereby is, authorized and empowered to enter into an agreement with Fried, Frank, Harris, Shriver & Jacobson LLP to provide legal services for a period of one (1) year for a not-to-exceed total of \$1,000,000.00, and be it further

RESOLVED, that the President or her/his designee(s) be, and each of them hereby is, authorized and empowered to execute and deliver the agreement on behalf of the Hugh L. Carey Battery Park City Authority, subject to such changes as the officer or officers shall, with the advice of counsel, approve as necessary and appropriate and in the best interests of the Hugh L. Carey Battery Park City Authority, such approval to be conclusively evidenced by the execution and delivery of the agreement; and be it further

RESOLVED, that the operating budget of the Authority for the fiscal year ending October 31, 2023, approved at the October 26, 2022 meeting, be, and hereby is, approved to be amended by an increase not to exceed \$1,000,000.00 and ordered filed with the records of the Authority; and be it further

RESOLVED, that the President or her/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 further actions heretofore taken are hereby ratified and any actions hereafter taken are confirmed and approved.

* * *

The next item on the agenda, presented by Mr. Munson, was an authorization to enter into an agreement with BDO USA, LLP for Internal Controls, Technology, Finance and Accounting.

Mr. Munson began by explaining that the Authority works closely with a specialized consulting firm to audit the Authority's internal controls and recommend improvements. The contract with the current internal control vendor, Crowe, LLP, is set to expire this year, so a competitive solicitation was conducted late last year, and seven responses were received. The evaluation committee with subject matter experts across an array of functions of the Authority scored the proposals and we interviewed three of them, BDO, PF O'Connor Davies, and Crowe, LLP. With scoring incredibly close among Crowe and BDO, we requested a best and final offer prior to making a best value determination among the two firms, which ultimately resulted in our selecting BDO, LLP as the best value proposer. Though being very pleased with Crowe's work over the course of the past five years, BDO provided a significantly lower cost proposal across nearly all titles that they proposed, and their partnership with One Source Consulting as an MWBE subcontractor was determined to be a superior approach to staffing our wide array of projects over the course of the future engagement. Thus, they were rated highest technically, and among the finalists, they were the lowest priced of the proposers. He then requested approval to enter into a \$1.8 million agreement with BDO, LLP for a term of three years, with two one-year options at the Authority's sole discretion.

Upon a motion made by Mr. Petracca and seconded by Ms. McVay Hughes, the following resolution was unanimously adopted:

AUTHORIZATION TO ENTER INTO AN AGREEMENT WITH BDO USA, LLP

BE IT RESOLVED, that in accordance with the materials presented to this meeting, the President & Chief Executive Officer (the “President”) of the Authority, or her/his designees be, and each of them hereby is, authorized and empowered to execute an agreement providing for a payment to BDO USA, LLP in the amount of \$1,800,000.00 for a three (3) year term with two (2) additional options to extend at the Authority’s sole request; and be it further

RESOLVED, that the President of the Authority, or her/his designees be, and each of them hereby is, authorized and empowered to execute all such other and further documents, and take all such other and further actions as may be necessary, desirable or appropriate in connection with the transaction contemplated in the foregoing resolution, 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.

* * *

The next item on the agenda, presented by Mr. Munson, was the annual approval of disposition guidelines for the Authority’s personal and real property.

Mr. Munson explained that the guidelines set forth a requirement and exception to the requirement that property be disposed of for not less than fair market value along with advertising requirements and reporting requirements associated with the guidelines. In order to meet those requirements, the Authority works very closely with the New York State Office of General Services to dispose of property, which typically was Furniture, Fixtures, and Equipment that had reached the end of its life. The proposed guidelines were unchanged from the guidelines approved last year and the year before.

Upon a motion made by Mr. Kendall and seconded by Ms. McVay Hughes, 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 as soon as practicable 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 Assistant Corporate Secretary of the Authority be, and hereby is, directed to file the Guidelines with the minutes of this meeting.

* * *

The next item on the agenda, presented by Ms. Dawson, was an authorization to extend term of pre-qualified general contractors’ panel.

Ms. Dawson mentioned this extension was for the slate of on-call general contractors. She explained that four years ago the Board approved a panel for on-call general contractors from which the real property department was able to enter into contracts with and utilize for projects that were small to medium sized, or particularly emergency related or unexpected projects. That authorization carried with it a term of three years with an option to extend for one additional year. The option to extend for an additional year was used, and that authorization period has now expired. A new RFP for a new panel of on-call general contractors would be issued very soon, but until then it was necessary to extend the existing panel in order to continue to utilize the on-call general contractors and achieve a smooth transition to the new firms once those are approved in the coming months.

Upon a motion made by Mr. Petracca and seconded by Ms. McVay Hughes, the following resolution was unanimously adopted:

AUTHORIZATION TO EXTEND APPROVAL PERIOD OF PRE-QUALIFIED PANEL OF ON-CALL GENERAL CONTRACTORS

BE IT RESOLVED, that in accordance with the materials submitted at this Board meeting, the President and Chief Executive Officer (the “President”) of the Battery Park City Authority or his/her designee(s) be, and each of them hereby is, authorized and empowered to extend the Authority’s approval of the Current GC Panel by one (1) additional year, through January 29, 2024, during which time the Authority may continue to assign work to the Current GC Panel on an as-needed/as-requested basis in accordance with the requirements of the Pre-Qualified Vendor Policy.

RESOLVED, that the President or his/her designee(s), 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 conclusive evidence by the execution and delivery of the Contract; and be it further

RESOLVED, that the President or his/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.

* * *

Mr. Petracca made a motion to enter Executive Session, which was seconded by Ms. McVay Hughes, to discuss proposed, pending or current litigation. The Members entered Executive Session at 2:41 p.m.

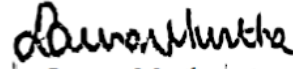
* * *

The Members exited Executive Session at 4:27 p.m.

* * *

There being no further business, upon a motion made by Mr. Petracca and seconded by Ms. McVay Hughes, the Members unanimously voted to adjourn the meeting. The meeting thereupon adjourned at 4:28 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lauren Murtha".

Lauren Murtha
Assistant Corporate Secretary

Public Comment
January 25, 2023

1. **Pat Smith:** Good afternoon. On behalf of the more than 5,000 homeowners in this community, the Battery Park City Homeowner's Coalition has asked our state legislators to oppose the measure in the proposed state budget to increase the bonding authority for the Battery Park City Authority. The BPCA's need to increase bonding authority, thereby allowing it to issue \$400 million in new bonds, gives our elected representatives a unique opportunity to urge the BPCA to negotiate with the Coalition to achieve a satisfactory solution to the troubling issue of ground rents. We urge our elected leaders to take advantage of this opportunity to best [indiscernible] their constituents, the middle-class homeowners of Battery Park City. The Homeowner's Coalition has been warning for years that unless the rate of increase in ground rents is reduced, homeowners will be unable to stay in their homes. Since no bar would accept these soaring grounds rents, and since no financial institution would write a mortgage on such a property, homeowners would be forced to just walk away leaving a community of abandoned properties. In fact, the owner of the garage at 2 South End Avenue did just that on January 1st. Faced with mounting losses because of ground rents and New York City property taxes and unable to find a bar willing to deal with these losses, the garage owner just shut down and walked away leaving a trail of misery. The community has lost 120 badly needed parking spaces, the BPCA has lost the ground rent from the garage, New York City has lost tax revenue. We urge you to act before more homeowners and businesses are forced to walk away from Battery Park City.