

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

MINUTES

Thursday, September 30, 2021

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MINUTES of the Meeting of The Port Authority of New York and New Jersey held Thursday, September 30, 2021 at 150 Greenwich Street, New York City, New York and via teleconference.

PRESENT:

NEW JERSEY

Hon. Kevin J. O'Toole, Chairman
 Hon. Kevin P. McCabe
 Hon. Robert J. Menendez

NEW YORK

Hon. Jeffrey H. Lynford, Vice Chairman*
 Hon. Leecia R. Eve
 Hon. Gary LaBarbera
 Hon. Rossana Rosado*

Richard Cotton, Executive Director
 Michael E. Farbiarz, General Counsel
 James E. McCoy, Secretary

James K. Allen Jr., Chief of Staff to the Vice Chairman
 Carrol Bennett, Chief of Staff, Office of Diversity and Inclusion*
 Justin E. Bernbach, Director, Government and Community Affairs, New York*
 Benjamin M. Branham, Chief Communications Officer
 Ana Carvajalino, Director, Financial Planning
 Rebecca L. Cassidy, General Manager, Board Unit, Office of the Secretary
 Janet D. Cox, Chief of Staff and Special Counsel to the Executive Director*
 Gideon Davidson, Special Assistant to the Executive Director*
 Jennifer S. Davis, Chief Intergovernmental Affairs Officer*
 Clarelle D. DeGraffe, Director, Rail Transit*
 Diannae C. Ehler, Director, Tunnels, Bridges and Terminals*
 Benjamin Feldman, Senior Advisor to the Chairman
 Amy H. Fisher, First Deputy General Counsel and Director of Legal Affairs
 Carrem Gay, Acting Executive Policy Analyst, Aviation Department
 Robert E. Galvin, Chief Technology Officer*
 John Gay, Inspector General*
 Erik H. George, Interim Deputy Director, Management and Budget*
 Robert Gibbon, Special Counselor to the Executive Director*
 Mary Lee Hannell, Chief, Human Capital
 Kristen Hernandez, Leadership Fellow, Human Resources*
 Milena Kosci-Garcia, Principal Board Management Support Specialist, Office of the Secretary
 Cristina M. Lado, Director, Government and Community Affairs, New Jersey*
 Huntley A. Lawrence, Director, Aviation and Acting Chief Operating Officer
 Annesa Lau, Director, Operation Services Department
 Michael G. Massiah, Chief, Diversity and Inclusion
 Elizabeth M. McCarthy, Chief Financial Officer
 Jessica Ortiz, Deputy Inspector General and Director of Investigations*

* Remote participants via teleconference.

Hersh K. Parekh, Director, Government and Community Relations for Aviation
 Redevelopment in New York*
 Alan L. Reiss, Director, World Trade Center Construction *
 Sam Ruda, Director, Port Department*
 Jessica Russ, Executive Policy Analyst, Office of the Secretary*
 Peter D. Simon, Chief of Staff to the Chairman
 James A. Starace, Chief Engineer/Director of Engineering
 Debora M. Torres, Chief of Ethics and Compliance Officer*
 Derek H. Utter, Chief Development Officer
 Lillian D. Valenti, Chief Procurement Officer
 Christine Weydig, Director of Office of Environmental and Energy Programs*
 Cheryl A. Yetka, Treasurer

Guests:

Noreen M. Giblin, Deputy Chief Counsel Authorities Unit, Office of the Governor of New
 Jersey *
 Lauren LaRusso, Senior Counsel, Authorities Unit, Office of the Governor of New Jersey*
 Magalie Massiah
 Monique Massiah

Public Commenters (Video and Written Statements):

Terrance L. Bankston
 Todd Fine
 Al Rispoli, President of Teamster
 Joint Council 73
 Alina Suarez, 32BJ SEIU
 Charlene Talarico

 Florencio Verlarde, 32BJ SEIU
 Wynnies- Fred Victor Hinds, Co-Chair,
 City of Newark Environmental Commission

Topics:

Amazon Lease
 5 World Trade Center
 Amazon Lease

 Amazon Lease
 Port Authority Personnel Matters/
 Lincoln Tunnel Incident
 Amazon Lease
 Amazon Lease

* Remote participants via teleconference.

The public meeting was called to order by Chairman O'Toole at 12:14 p.m. and ended at 12:48 p.m. The Board also met in executive session prior to the public session. Food and beverages were not offered in executive session. Mask rules were uniformly observed, and social distancing was maintained throughout the meetings, except for attendees in the same family.

Report on Prior Meeting's Minutes

Copies of the Minutes of the meeting of August 5, 2021 were delivered in electronic form to the Governors of New York and New Jersey on August 9, 2021. The time for action by the Governors of New York and New Jersey expired at midnight on August 23, 2021.

Chairman's Report

The Chairman advised that in light of the ongoing COVID-19 public health crisis, in-person attendance at the meetings will be limited to Commissioners, Port Authority staff required to conduct the meetings, and credentialed members of the press, subject to space limitations due to safety protocols.

The Chairman also advised that as part of the Port Authority's public speakers' program, three written statements and four video statements were received. The written statements were provided to the Commissioners and other relevant staff prior to today's Board Meeting and will be filed with the transcripts of today's meetings on the Port Authority's website. The four videos were shown as part of the public Board Meeting.

Moment of Silence

In observance of the 20th anniversary of the September 11, 2001 terrorist attacks on The World Trade Center, the Chairman requested a moment of silence in memory of the 84 Port Authority employees lost on that day, and the first responders and recovery workers who were lost due to illnesses relating to their work at the World Trade Center site, as well as for those who perished as a result of the bombing of The World Trade Center on February 26, 1993.

TRIBUTE TO MICHAEL G. MASSIAH

In recognition of over 40 years of dedicated service to The Port Authority of New York and New Jersey, the Board of Commissioners and Executive Director congratulated Michael G. Massiah on the occasion of his retirement. Michael, who joined the Port Authority in 1981, has served with distinction throughout his career, most recently as the agency's first Chief Diversity and Inclusion Officer, a role he has held since December 2017.

Michael Massiah has led a distinguished career in public service at the Port Authority, having held a wide array of management roles prior to his current role, including as Director of Human Resources, Director of Management and Budget, Director of the Office of Business and Job Opportunities, Director of the Office of Organizational Effectiveness and Change Management and Chief of Capital Planning Execution and Asset Management. Throughout his career, Michael has represented the Port Authority in a statesmanlike manner with both internal and external business interests. He has also been an advocate of the agency's importance to regional mobility and economic opportunities, with particular focus on the local communities in which our facilities are located.

The Port Authority's mission to meet the region's critical transportation infrastructure needs and to provide high quality, efficient transportation facilities and services for the people of this region can only be achieved through the dedication of employees like Michael. During his four decades of service, Michael has been responsible for shaping and delivering agency initiatives that promote diversity and inclusivity in the employment matters, procurement of goods and services and in dealings with both local communities and the public at large. In recent years, Michael has led collaborative efforts to implement policies, priorities, and change management strategies to ensure a Port Authority culture that embraces and strengthens workforce and business diversity and inclusion, including programs to increase opportunities for minority-owned, woman-owned, and local businesses to participate on Port Authority contracts. Of particular note, as Chairperson of the Leadership Steering Committee on Race Dynamics, which was formed in June 2020, Michael led an agency-wide effort that produced 25 far-reaching initiatives that raise standards for workplace fairness, equity, diversity and inclusion at the Port Authority. The initiatives that Michael successfully implemented in these areas throughout his career are expected to have a lasting positive impact for generations to come on the Port Authority and the bi-state region.

It is with sincere gratitude and respect that the Board of Commissioners and Executive Director recognized Michael G. Massiah for his dedicated public service and his essential contributions to The Port Authority of New York and New Jersey and the entire region it serves.

**NEWARK LIBERTY INTERNATIONAL AIRPORT – EXPANSION OF NEW
TERMINAL A BUILDING AND DEVELOPMENT OF AIRPORT LOUNGE –
AMERICAN EXPRESS TRAVEL RELATED SERVICES, COMPANY, INC. –
NEW LEASE**

It was recommended that the Board authorize the Executive Director to enter into a new lease with American Express Travel Related Services, Company, Inc. (Amex), the preferred proposer pursuant to a competitive procurement process conducted by Munich Airport International GmbH (MAI) that Port Authority staff subsequently reviewed and endorsed, providing for the construction of an approximately 50,000-square-foot expansion building (“NTA Expansion Area”) adjacent and accessible to the New Terminal A (NTA) building at Newark Liberty International Airport (EWR). The lease would also provide for the letting, operation and management of an approximately 18,000-square-foot passenger lounge within such NTA Expansion Area for a term of 15 years, with one five-year option period exercisable by Amex upon the satisfaction of certain conditions precedent. The lounge would be located on the third floor of the NTA Expansion Area, and the areas on the first and second floors of such New Building would be subleased back to the Port Authority for potential sub-subleasing to third parties. The proposed lease terms represent fair market value.

In May 2021, NTA’s terminal operator, MAI, released a Request for Information (RFI) as part of a competitive procurement process for a non-airline-branded passenger lounge at NTA, on the Port Authority’s behalf. Two firms submitted proposals, which were evaluated by MAI, and a recommendation was rendered to the Port Authority based on the following: (1) alignment with terminal profile; (2) financial terms; (3) cohesion with terminal concessions program; (4) operational risk; and (5) customer experience impact. Amex was the preferred proposer and is the lessee recommended by MAI to construct the NTA Expansion Area and operate and maintain the new airport passenger lounge. Port Authority staff concurred with MAI’s recommendation.

The lease would commence on or about January 1, 2022 and continue for 15 years after the commencement of rent payments to the Port Authority. Under the proposed lease, the payment of rent is expected to commence on or about the earlier of August 1, 2023, or the commencement of operations at the lounge. Amex would pay the Port Authority directly an approximate total aggregate rental of \$121.5 million over the term of the lease, pay a percentage of gross receipts, and invest approximately \$100 million to construct the NTA Expansion Area and passenger lounge. The Port Authority would not make any capital investments in connection with the proposed lease.

The lounge would include an array of industry-leading amenities, such as: (1) a viewing terrace overlooking the EWR airfield, Port of Newark, New York and Newark Harbor, and the Manhattan skyline; (2) multiple signature Amex food and bar areas; (3) a piano lounge; (4) a Jersey jazz-themed bar; and (5) a speakeasy-themed backstage cocktail lounge. The lounge would also offer premium amenities, such as wellness rooms, workstations and world-class restroom facilities.

With respect to the areas on the first and second floors of the NTA Expansion Area to be subleased to the Port Authority by Amex for potential sub-subleasing to third parties, the space would consist of approximately 32,000 square feet, of which approximately 22,000 square feet would be made available for subletting by the Port Authority, and the remaining 10,000 square feet would be required to support the operation of the NTA Expansion, including vertical circulation and other core building systems and support space. MAI would continue, as the operator of NTA, to have responsibility for the operation and maintenance of the portions of the NTA Expansion Area that are not exclusively leased or subleased, pursuant to its existing agreement with the Port Authority, and would be reimbursed for these costs pursuant to such agreement.

Pursuant to the foregoing report, the following resolution was adopted, with Commissioners Eve, LaBarbera, Lynford, McCabe, Menendez, O'Toole, and Rosado in favor. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Board being present.

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into a lease with American Express Travel Related Services, Company, Inc. (Amex) for the construction of an approximately 50,000-square-foot expansion of the New Terminal A (NTA) building at Newark Liberty International Airport, and the operation, and management of a new passenger lounge, for a term that would expire 15 years after rent commencement, with one five-year option period, substantially in accordance with the terms outlined to the Board; and it is further

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into subleasing agreements with Amex for areas on the first and second floors of the expansion building for potential sub-subleasing to third parties, substantially in accordance with the terms outlined to the Board; and it is further

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into any other contracts and agreements necessary or appropriate in connection with the foregoing; and it is further

RESOLVED, that the form of all contracts, agreements and other documents in connection with the foregoing shall be subject to the approval of General Counsel or his authorized representative, and the terms of such contracts, agreements and other documents shall be subject to review by General Counsel or his authorized representative.

7 WORLD TRADE CENTER – CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. – NEW LEASE

It was recommended that the Board authorize the Executive Director to enter into a restated and amended triple net lease (Lease) with the Consolidated Edison Company of New York, Inc. (Con Edison) for a 50-year term, commencing retroactively on November 1, 2020, to provide for the letting of a substation at portions of the basement, 1st, 2nd, and 3rd floors of the 7 World Trade Center (7 WTC) site, consisting of approximately 73,000 square feet. The proposed lease terms represent fair market value.

Pursuant to a lease with Con Edison that commenced in 1968, the Port Authority built a substation at the 7 WTC site to power the original WTC campus. Such lease provided for a 50-year lease term, effective upon substantial completion of the substation, which was achieved in 1970. To accommodate the WTC redevelopment after the events of September 11, 2001, Con Edison agreed to reconstruct a substation at 7 WTC on a smaller, reconfigured site. The Con Edison substation will continue to provide power to the WTC campus and other parts of lower Manhattan, including Battery Park City. The new Lease would restate and amend the previous lease with Con Edison for an additional 50-year term, under which Con Edison would continue to occupy, operate and maintain the reconfigured substation.

Pursuant to the Lease, Con Edison would be fully responsible for operating expense and capital expense obligations. Con Edison would pay a total aggregate rental of approximately \$314 million over the term of the Lease. The amount of rent would be adjusted on November 1, 2045, to be equal to the greater of fair market rent or the then current rent plus annual escalations. The Lease and rent would commence on November 1, 2020, with the rental increase being applied retroactively. The proposed terms were informed by independent appraisals undertaken on behalf of the Port Authority and Con Edison by third parties.

Pursuant to the foregoing report, the following resolution was adopted, with Commissioners Eve, LaBarbera, Lynford, McCabe, Menendez, O'Toole, and Rosado in favor. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Board being present.

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into a restated and amended triple net lease with the Consolidated Edison Company of New York, Inc. for a 50-year term to provide for the letting of a substation at portions of the basement, 1st, 2nd, and 3rd floors of the 7 World Trade Center site, consisting of approximately 73,000 square feet, substantially in accordance with the terms outlined to the Board; and it is further

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into any other agreements necessary or appropriate in connection with the foregoing; and it is further

RESOLVED, that the form of all contracts, agreements and other documents in connection with the foregoing shall be subject to the approval of General Counsel or his authorized representative, and the terms of such contracts, agreements and other documents shall be subject to review by General Counsel or his authorized representative.

**GOETHALS BRIDGE MODERNIZATION PROGRAM – PROJECT
REAUTHORIZATION AND SETTLEMENT OF CLAIMS**

At its meeting on April 24, 2013, the Board authorized the Goethals Bridge Modernization Program, to replace the then-aging Goethals Bridge, which had been completed in 1928, with a modern structure, at a total project cost of \$1.521 billion. The Bridge modernization program was structured as a public-private partnership project where the Developer (NYNJ Link Developer LLC) would, among other things, design and construct the new Bridge, pursuant to a contract with the Contractor (a joint venture of Kiewit Infrastructure, Weeks Marine and Massman Construction). The new Goethals Bridge was completed in December 2018.

For more than five years, the Port Authority (on the one hand) and the Developer and Contractor (on the other) have been involved in a dispute as to whether the Port Authority owes additional funds for the construction of the Bridge. For example, during construction the Port Authority required that Bridge support towers be built to certain engineering specifications; the Contractor complied, and built the towers to the agency's specifications, but argued that building the towers in this way went beyond the obligations it had undertaken, and the Port Authority owed them \$110.2 million in increased costs.

The dispute was presented before a non-binding arbitral body composed of three engineers, which recommended that the Port Authority was required to pay an additional \$105 million. Litigation was initiated, but was terminated as a very early stage, to save costs and in anticipation of settlement.

For reasons that have been described more fully to the Board in Executive Session, staff now recommends that the agency's long dispute with the Developer and Contractor be resolved for a total of \$50 million. As set forth below, \$50 million would be paid by the Port Authority over the course of three years. Sixteen million dollars of the proposed \$50 million settlement would be paid from the remaining amount in the project budget for contingencies, requiring that the original program authorization be increased by an additional \$34 million to cover the balance of the settlement. Therefore, the total program authorization would go from \$1.521 billion to \$1.555 billion, which represents a 2.2-percent increase.

This resolution would remain confidential until such time as the proposed settlement agreement has been executed by all parties and the litigation has been duly dismissed with prejudice.

Pursuant to the foregoing report, the following resolution was adopted in executive session, with Commissioners Eve, LaBarbera, McCabe, Menendez, O'Toole and Rosado in favor. Commissioner Lynford recused, and was not present for the consideration of, or vote on, this item. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Board being present.

RESOLVED, that the Goethals Bridge Modernization Program be and it hereby is reauthorized, at a total program cost of \$1.555 million, an increase of \$34 million; and it is further

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into a settlement agreement providing for payments by the Port Authority of a total of \$50 million, to be paid over three years, to resolve certain pending claims of NYNJ Link Developer LLC and its contractor, Kiewit-Weeks-Massman AJV, as further described to the Board; and it is further

RESOLVED, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to take any other action and enter into any other contracts and agreements necessary or appropriate in connection with the foregoing; and it is further

RESOLVED, that the form of all contracts, agreements and other documents in connection with the foregoing shall be subject to the approval of the General Counsel or his authorized representatives, and the terms of such contracts, agreements and other documents shall be subject to the review of the General Counsel or his authorized representatives.

Whereupon, the meeting was adjourned.

Secretary