

THE TRUST FOR CULTURAL RESOURCES
OF THE CITY OF NEW YORK

MINUTES OF MEETING
OF THE BOARD OF TRUSTEES

March 24, 2020

A meeting of the Board of Trustees of The Trust for Cultural Resources of The City of New York (the “Trust”) was held on March 24, 2020 at 4:00 p.m. by conference telephone, which permitted each person who participated to hear and be heard by all others who participated in the meeting.

Executive Order 202.1 signed by Governor Andrew Cuomo on March 12, 2020 provided, in relevant part, for the suspension of “Article 7 of the Public Officers Law, to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.” In compliance with such Executive Order 202.1, the Trust published the dial-in information on its website and included such dial-in information in the notice of the meeting provided to news organizations. The meeting was recorded and later transcribed.

The following Trustees and the designees for *ex officio* Trustees, constituting a quorum, were present:

Susan Henshaw Jones, Chair
Leah C. Johnson
Erika Mallin
Lynne B. Sagalyn
Merryl Tisch
Dawanna Williams
Ali Davis, Ms. Been’s designee
Krishna Omolade, Mr. Patchett’s designee

Ms. Jones, Ms. Johnson, Ms. Mallin, Ms. Tisch, and Mr. Omolade participated by conference telephone, which permitted them to hear and be heard by those present at the meeting. Ali Davis, the designee of Mayor Vicki Been, joined the meeting and was then excused. The position of Commissioner of Cultural Affairs of The City of New York was vacant; accordingly, Pranita Raghavan, the designee of the previous Commissioner, was not eligible to vote at the meeting, and she was also excused.

In addition, the following persons were present:

Eileen Heitzler

Orrick Herrington & Sutcliffe, LLP

Alison Radecki	Orrick Herrington & Sutcliffe, LLP
Amy Chan	New York City Economic Development Corporation
Carol Ann Butler	New York City Economic Development Corporation
Anne Adams Rabbino	Secretary
B. Seth Bryant	Assistant Secretary

The meeting was called to order at 4:00 p.m. by Ms. Jones, who explained that the meeting was taking place entirely by telephone due to Covid 19 pursuant to Governor Cuomo's executive order. No member of the public had dialed in to the conference call.

Ms. Jones referred to the recent promotion of Amy Chan to the position of Controller of the New York City Economic Development Corporation ("EDC"). Fred D'Ascoli, who previously served as Controller, has been promoted to the position of Chief Financial Officer of EDC. Ms. Jones welcomed Ms. Chan to her new role and expressed her appreciation for Mr. D'Ascoli's always helpful approach.

Ms. Jones directed the attention of the Board to the agenda and resolutions distributed on March 17 and said that the vote on all resolutions under the administrative and compliance section of the agenda would take place after the presentations on all of those items.

Ms. Sagalyn reported on the meeting of the Audit Committee, which had taken place prior to the meeting of the Board. She noted that all of the reports from RSM US LLP, the Trust's auditors, are "clean" un-qualified reports. Ms. Chan reported to the Audit Committee regarding comments from the Internal Audit Group of EDC, which has made some useful suggestions about conforming the agreement between the Trust and EDC to current practices. She discussed the plans to proceed with a Request for Proposals for Audit Services for a four-year period, beginning with the 2020 fiscal year. If that turns out not to be feasible or sensible, the contract with RSM may be extended for one year.

Ms. Jones asked Ms. Rabbino to report on the other items listed in the administrative and compliance sections of the agenda. Ms. Rabbino referred to the minutes of the most recent meeting of the Board on July 18, 2019 and of the Audit Committee on December 3, 2019. The minutes of the Audit Committee were approved by the Audit Committee at its meeting at 3:00. After your approval we will post these minutes on the website of the Trust.

Ms. Rabbino referred to the requirements of the Public Authorities Law, which mandate that a number of reports and policies be approved each year prior to March 31. These reports are generally not materially different from year to year. Certain policies are required to be reviewed annually. She described the Annual Report, which has policies and practices of the Trust, biographical information about members of the Board and appendices with detailed information about bonds outstanding or recently redeemed and projects financed. The mission statement and performance evaluation have not changed from prior years. Four responses were received to the mandatory confidential survey of Board performance, and a summary of those responses will be posted on the Trust's website. The reports on property and policies for disposing of property, procurement and investment guidelines, which required to be reviewed annually, have not changed from prior years. As in prior years, the materials for the Board's review include a report

on disbursements from the escrow accounts managed by EDC and used to pay the expenses of administering the Trust. A report about the bonds issued by the Trust in 2019, with the information required by the Public Authorities Law has been prepared. A summary of financial information from the Trust's audited financial statement in the form required by the Authorities Budget Office of the State Comptroller's Office has been prepared. The Code of Ethics adopted by the Trust in 2006 remains in effect and is submitted annually to the Board, as required by State law. The Board is required to authorize separately a report that incorporates a number of matters on the agenda. The proposed resolutions provide for the continuance in office of the members of the Finance Committee, the Audit Committee and the Governance Committee and the officers of the Trust.

Ms. Rabbino then referred to a proposed restated agreement between the Trust and EDC. The current agreement was signed in 1994 and has been extended annually since then. EDC's new Internal Audit reviewed the terms of the current agreement and determined that some obligations of EDC were not being performed, such as preparation of quarterly financial statements or carrying out certain tasks that are actually the responsibility of the trustee for each series of bonds. In addition, the Trust was not following all procedures in the current agreement, such as obtaining written authorization from the Chair before EDC makes certain payments. Robert LaPalme, a senior lawyer at EDC who is an Assistant Secretary of the Trust, Amy Chan and Ms. Rabbino have prepared a restated agreement that reflects what the parties are now doing. She noted that the fundamental obligations of the parties are not changed by the proposed restated agreement, which converts the term to match the Trust's fiscal year of January 1 through December 31. The contract will continue to require an annual renewal. The proposed resolution will extend the term through December 31, 2020.

Ms. Rabbino described the proposed purchase of director's and officer's insurance for the Trust. Many insurers are not interested in policies of this type for public entities like the Trust, and many years ago the Trust's efforts to obtain such coverage were unsuccessful. EDC's insurance broker has recently identified one carrier, PGU – Greenwich Insurance Company, which has a strong rating from Best's, that will issue a policy with a limit of liability of \$3,000,000 for a period of twelve (12) months for a total premium and related costs of a bit less than \$9,000. This is a claims made policy, so it will need to be renewed annually in order for coverage to continue. The carrier will defend the Trust and its directors and officers with lawyers selected by the carrier, but the legal fees do not count against the limit of liability. All of the cultural institutions that benefit from the Trust's activities enter into an indemnification agreement with the Trust that requires the institution to indemnify and defend the Trust and its directors and officers from all liabilities incurred in connection with that institution. The concern is that, if a borrower defaults on bonds, the borrower may also default on the indemnification obligation. In that case, counsel to the Trust does not believe that the Trust or its directors and officers would have any liability to bond holders, but litigation would be likely and would require the Trust to incur expenses for defense. Now that this insurance is available at a modest cost, which will be divided among all institutions that have outstanding bonds, we recommend purchasing the insurance.

Ms. Rabbino referred to the resolutions that authorize a Request for Proposals for audit services for 2020 – 2023 previously described by Ms. Sagalyn.

After an opportunity to raise questions, the following resolutions were moved, seconded and unanimously adopted:

RESOLVED, that the minutes of the meeting of the Board of Trustees of The Trust for Cultural Resources of The City of New York (the “Trust”) held on July 18, 2019, be and hereby are approved; and be it further

RESOLVED, that the minutes of the meeting of the Audit Committee of the Trust held on December 3, 2019, be and hereby are approved; and be it further

RESOLVED, that the Annual Report of the Trust for 2019 be, and hereby is, approved; and be it further

RESOLVED, that the Mission Statement and Performance Evaluations of the Trust for 2019 and the related information be, and hereby are, approved; and be it further

RESOLVED, that the Property Report of the Trust pursuant to Section 2800(2)(a)(7) of the Public Authorities Law as of December 31, 2019 be, and hereby is, approved; and be it further

RESOLVED, that the previously approved Procurement Policy of the Trust be, and hereby is, approved without modification; and be it further

RESOLVED, that the previously approved Policy of the Trust relating to Acquisition and Disposition of Real Property and Disposition of Personal Property (the “Property Policy”) be, and hereby is, approved without modification; and that Anne Adams Rabbino is hereby appointed as the contracting officer in accordance with Section 2896(1) of the Public Authorities Law as the person responsible for the Trust’s compliance with the enforcement of the Property Policy; and be it further

RESOLVED, that the previously approved Investment Guidelines of the Trust be, and hereby are, approved without modification; and be it further

RESOLVED, that the Trust hereby ratifies and approves the expenditure of funds in escrow accounts controlled by the New York City Economic Development Corporation (“EDC”) and applied to pay administrative, accounting and legal expenses of the Trust during the period from January 1, 2019 through December 31, 2019; and be it further

RESOLVED, that the Trust hereby approves the Schedule of Bonds issued by the Trust in 2019; and be it further

RESOLVED, that the Trust hereby receives the Assessment of Internal Controls as of December 31, 2019, as provided by the Internal Audit Department of EDC, dated March 22, 2020; and be it further

RESOLVED, that the Trust hereby approves the Independent Auditors’ Report on the Trust’s Basic Financial Statements for the years ended December 31, 2019 and 2018,

and Supplementary Information for the year ended December 31, 2019; the Agreed-Upon Procedures for the year ended December 31, 2019; the Reports on Compliance with Contractual Provisions of Debt Agreements for the year ended December 31, 2019, all prepared by RSM US LLP; and be it further

RESOLVED, that the Trust hereby approves the Annual Report of Summary Financial Information for the Trust for the fiscal year ended December 31, 2019 in the form required by the Public Authorities Reporting Information System (PARIS); and be it further

RESOLVED, that the Trust hereby authorizes the submission of the Report of the Trust for the year ending December 31, 2019, required to be filed pursuant to the Public Authorities Law Section 2800(2), together with the required exhibits, all of which have been authorized and approved hereby; and be it further

RESOLVED, that the Trust hereby authorizes the execution and delivery of the Second Amended and Restated Agreement dated as of July 1, 1993 between the Trust and the New York City Economic Development Corporation (“EDC”), effective as of January 1, 2020, and the extension of the prior agreement with EDC, which has a current expiration date of June 30, 2020, through December 31, 2020; and be it further

RESOLVED, that the Trust hereby confirms the continuation in office of Susan Henshaw Jones to serve as Chair of the Finance Committee and of Leah C. Johnson, Erika Mallin, Lynne B. Sagalyn, Merryl Tisch, Dawanna Williams and the *ex officio* members of the Board as members of the Finance Committee of the Board of the Trust; and be it further

RESOLVED, that the Trust hereby confirms the continuation in office of Lynne B. Sagalyn to serve as Chair of the Audit Committee and of Leah C. Johnson, Erika Mallin and Dawanna Williams as members of the Audit Committee of the Board of the Trust; and be it further

RESOLVED, that the Trust hereby confirms the continuation in office of Susan Henshaw Jones as Chair of the Governance Committee and of Leah C. Johnson, Erika Mallin, Lynne B. Sagalyn, Merryl Tisch, and Dawanna Williams as members of the Governance Committee of the Board of the Trust.

RESOLVED, that the Trust hereby confirms the continuation in office of Anne Adams Rabbino to serve as Secretary and of Robert LaPalme and B. Seth Bryant to serve as Assistant Secretaries of the Trust; and be it further

RESOLVED, that the Trust hereby confirms the continuation in office of Spencer Hobson to serve as Treasurer and Fred D’Ascoli and Amy Chan to serve as Assistant Treasurers of the Trust; and be it further

RESOLVED, that the Trust hereby authorizes and directs that the officers of the Trust negotiate and purchase Public Officials Management Liability Insurance with a limit of

liability of \$3,000,000 for a period of twelve (12) months from PGU – Greenwich Insurance Company for a total premium and related costs not to exceed \$9,000, and that the cost of such insurance be paid as an administrative expense of the Trust, which shall be reimbursed by the institutions with bonds outstanding in the same manner as the Trust’s expenses for audit services; and be it further

RESOLVED, that the officers of the Trust are authorized and directed to issue a Request for Proposals for Audit Services (the “Audit Services RFP”) for the years ending December 31, 2020, 2021, 2022 and 2023, with the contract to be awarded upon the authorization of the Chair of the Audit Committee, subject to such consultation with the members of the Audit Committee as the Chair shall determine to be appropriate under the circumstances; and be it further

RESOLVED, that if the officers of the Trust determine, in consultation with the Chair of the Audit Committee, that the Audit Services RFP cannot or should not be undertaken or completed in 2020 as the result of the crisis associated with COVID 19, upon the authorization of the Chair of the Audit Committee, subject to such consultation with the members of the Audit Committee as the Chair shall determine to be appropriate under the circumstances, the existing contract with RSM US LLP may be extended for one year in accordance with the requirements of the Trust’s Procurement Policy.

The Board, acting both as the Finance Committee and as the Board, then considered a proposed resolution for the benefit of Lincoln Center for the Performing Arts, Inc. (“LCPA”). Due to her position as a senior executive of LCPA, Ms. Johnson has recused herself from all discussions and actions of the Board relating to LCPA; accordingly, she left the conference line at this time. Ms. Radecki then referred to the Trust’s Revenue Bonds, Series 2008A (Lincoln Center for the Performing Arts, Inc.) (the “Series 2008A Bonds”). The Series 2008A Bonds are currently held by an affiliate of Bank of America for an interest period that ends of June 10, 2020, at which time the Series 2008A Bonds are subject to mandatory tender. LCPA’s staff and counsel have reported that, due to the market volatility, they are in discussions about an extension of the current interest period. The proposed resolution distributed in advance of the meeting would authorize the Chair and the officers of the Trust to address the mandatory tender date by extending the current interest rate period or entering into a new interest rate period. Ms. Rabbino stated that the proposed authorization is a “Type II” project for purposes of environmental review. Accordingly, no further environmental review is required.

The following resolution was then moved and seconded and unanimously adopted by the Finance Committee and the Board:

RESOLVED, that the Resolution of The Trust for Cultural Resources of The City of New York Approving Certain Matters In Connection With The Extension Or Conversion Of The Interest Rate Period On The Trust’s Revenue Bonds, Series 2008A (Lincoln Center for the Performing Arts, Inc.), be and hereby is approved. (A copy of the foregoing Resolution is attached

hereto.)

Ms. Johnson re-joined the conference line for the meeting after adoption of the foregoing resolution.

Ms. Rabbino reported that the plans of the Metropolitan Opera to issue bonds through the Trust to fund certain components of its capital program cannot move forward until the Opera is able to re-open its performances and recover from the financial impact of Covid 19. She also reported that, when market conditions improve and LCPA is able to re-open for performances, LCPA will work on moving forward with a refunding of the Series 2008A Bonds, as they contemplated earlier this year.

There being no further business to come before the meeting, the meeting was adjourned at 4:40 p.m.

Respectfully submitted,



Anne Adams Rabbino
Secretary