

**MINUTES OF THE MEETING  
of the  
MASSACHUSETTS CONVENTION CENTER AUTHORITY**

September 16, 2010

A meeting of the Massachusetts Convention Center Authority was held on September 16, 2010 in Room 201 at the Boston Convention & Exhibition Center, 415 Summer Street, Boston, Massachusetts 02210. Members in attendance were: Chair Michelle Shell, Mark Erlich, Ann Conlon Roosevelt, Paul Sacco, Ronald Rakow (designee of the Acting Collector-Treasurer of the City of Boston), Michelle Consalvo, Barbara Capuano, Vanessa Otero and Scott Jordan (designee of the Secretary of Administration and Finance). Staff members in attendance were: James E. Rooney, Kenneth A. Sinkiewicz, Fred Peterson, Jack Haley, Steve Snyder, Shu Hsia, Lily Daly, Johanna Storella, Michelle Ho, Milton Herbert, Maureen Baker, Colleen Richards Powell, Todd Mattuchio, Joann Washington, Howard Davis, Robert O'Shea, Mac Daniel, Katie Hauser, Dennis Callahan, and William Smith.

I. ROLL CALL

Chair Shell called the meeting to order at 8:33 a.m., and a quorum was established by a call of the roll.

II. MINUTES

Upon a motion duly made and seconded, the minutes of the June 10, 2010 and August 27, 2010 meeting were approved.

III. EXECUTIVE DIRECTOR'S REPORT

1. Mr. Rooney welcomed the Board members and introduced Ronald Rakow, the City of Boston Commissioner of Assessing, who is serving as a Board Member as the designee of the Acting Collector-Treasurer of the City of Boston, Vivian Leo. Mr. Rooney also welcomed William Walsh, a representative of the State Auditor's Office who is part of the team conducting the statutorily mandated biennial audit conducted by that office.

2. Mr. Rooney indicated Board member Carol Fulp would not be in attendance today because she was in New York serving as the United States Representative to the Sixty-Fifth Session of the United Nations General Assembly, a position to which she was appointed by President Barack Obama.

3. Mr. Rooney reported that members of the Convention Partnership spent substantial time this summer in working groups on various detailed aspects of the Partnership areas of inquiry including finance; headquarter hotel and BCEC expansion and urban context. He indicated that there were no Partnership Meetings scheduled for

September, but meetings were scheduled for October and November. He also indicated that an interim report will be issued soon and copies will be distributed to the Board.

4. Mr. Rooney indicated that the MassMutual Center was gearing up for sports with the Springfield Falcons of the AHL beginning its season in early October, the Springfield Armor of the NBA-DL opening on the evening after Thanksgiving, and a 12 team Tip Off Classic running from November 20th to November 22<sup>nd</sup>, with UMASS, AIC and Springfield College participating on different days.

5. Mr. Rooney indicated that construction work was proceeding to replace the entrance ramps at the Boston Common Garage and that Pay-on-Foot at the facility would be running soon. Mr. Rooney indicated that the Ultimate Fighting Championship which held its main event at the Garden, held a Fan Expo at the Hynes that was very well attended, and successful beyond predictions. Coming soon to the Hynes is Legos Kidsfest which is expected to attract children of all ages. At the BCEC, we are hosting an event to introduce Levy to our past and future short and long term customers to acquaint them with new menus and tastes.

6. Mr. Rooney introduced Mr. Herbert who described a recent successful sales mission to Washington D.C., the headquarters and home of many of the organizations and associations which make up our customer base. Mr. Herbert described the great work of the Boston Convention Marketing Center, the Greater Boston Convention and Visitors Bureau and Hotel staff in putting on an event at the Carpenters Building which was very well attended and which heard remarks from both Senator Kerry and Senator Brown welcoming potential customers to the event.

7. Mr. Rooney indicated that he was recently appointed to the select 13 member Board of the Professional Convention Management Association, and also, that as a result of the recent passage of Economic Development legislation and the creation of an 11 person Massachusetts Marketing Partnership, Mr. Rooney as Executive Director would become a member of that partnership, an entity designed to guide and oversee all marketing of Massachusetts tourism, travel, convention, film and sports related marketing.

#### IV. HYNES SPACE B LEASE

##### A. Executive Session

Chair Shell advised the Board that it was about to take up and discuss a matter relating to strategy to be used in the negotiation of a real estate lease, and because discussing the same in open session would be detrimental to the Authority's bargaining position, it is appropriate that the Board suspend the meeting, and move to executive session. Upon a motion duly made and seconded the aforementioned Board members Shell, Erlich, Roosevelt, Sacco, Rakow, Consalvo, Capuano, Otero and Jordan voted unanimously in favor of moving to executive session. Chair Shell announced that the meeting would reconvene at the conclusion of the executive session, in approximately

twenty minutes.

## B. Regular Session Reconvened

Upon the Regular Meeting being reconvened Mr. Davis made the following presentation:

### Board Vote - Lease of "Space B" at the Hynes Convention Center

At its August meeting, the Board considered and discussed the marketing of "Space B" at the Hynes Convention Center. This space, located at the corner of Boylston and Dalton Streets, contains approximately 9,000 square feet. The Authority's staff presented a comparative analysis of lease proposals from three tenant prospects. These proposals were also compared to the targeted rental rates and other criteria previously established for Space B leasing. Other information presented to the Board included a comparison of proposed lease terms for Space B with the lease terms with Towne Stove and Spirits for Space A.

After deliberation, the Board determined that the most advantageous lease proposal was from Darden Restaurants, for a Capital Grille restaurant. The Board then voted to authorize the Executive Director to negotiate a lease with Darden for a Capital Grille restaurant on terms substantially consistent with a letter of intent from Darden. This letter of intent was attached to the vote. In event of successful negotiations, execution of a lease was subject to final approval of the lease terms by the Board.

Subsequent negotiations with Darden were successful, with rent and other key lease terms unchanged from the letter of intent. Schedule A attached hereto compares the letter of intent terms with the final negotiated terms. Schedule B attached hereto contains additional terms of the negotiated lease.

Upon a motion duly made and seconded the Board voted unanimously as follows:

**VOTED: that the Executive Director is hereby authorized to enter into a lease with Capital Grille Holdings, Inc., for Space B at the Hynes Convention Center, on terms and conditions set forth on Schedules A and B attached hereto and incorporated herein as presented to the Board this day.**

Schedules A and B are filed with these Minutes

## V. BOARD VOTE-MASSACHUSETTS OFFICE OF TRAVEL AND TOURISM

Mr. Rooney asked Mr. Smith to make a presentation concerning this matter as follows. The Massachusetts Office of Travel and Tourism (MOTT) has substantial expertise and the ability to provide substantial services to the Authority by the development and performance of domestic and international marketing initiatives in connection with convention and tourism promotion related to the Authority's business and mission in the Boston and Springfield areas.

It is desirable for the Authority to take advantage of the expertise and ability and to engage MOTT to provide such services. It was noted that during the State Budget process the Legislature provided for these funds to be made available to MOTT. There were questions and discussions among Board Members concerning the source, use and allocation of these funds along both categorical and geographical lines, and the Board requested the Executive Director to obtain certain information concerning these sources uses and allocations.

Upon a motion duly made and seconded the Board voted unanimously as follows:

**VOTED: The Authority authorizes the Executive Director to enter into a contract with the Massachusetts Office of Travel and Tourism in an amount not to exceed \$5 million for the development and performance of domestic and international marketing initiatives in connection with convention and tourism promotion related to the Authority's business and mission in the Boston and Springfield areas on such terms and conditions as the Executive Director determines to be in the best interest of the Authority.**

#### VI. BOARD VOTE-BOSTON TEA PARTY SHIP AND MUSEUM

Ms. Storella, Mr. Rooney and Mr. Smith made the following presentation. In connection with the MCCA's mission to generate significant economic impact, to host meetings and conferences and to promote tourism in the Boston metropolitan area, the MCCA proposes to contract with Historic Tours of America to provide a loan in an amount not to exceed \$18 million to allow Historic Tours to complete construction and commence operations within the next two years and provide the MCCA with a new, unique meeting location in its portfolio.

In August 2001, lightning caused a fire at the Boston Tea Party Ship and Museum (BTPSM), which resulted in the entire existing site being demolished. As a result of the substantial efforts of Historic Tours of America, an experienced historical tourism company, plans have been formulated for a new interactive facility to be constructed in its place.

Historic Tours of America has been the owner and operator of the BTPSM since 1993 and has obtained the rights to the Tea Party Ship site through a lease with the City of Boston/Boston Redevelopment Authority. Historic Tours has made a significant investment, approximately \$4 million, in the restoration and expansion of the site as a major tourist attraction. In addition, the Boston Redevelopment Authority has authorized a \$3 million grant from the City of Boston to support the renovation and expansion of the site; however, Historic Tours has been unable to obtain financing for the remainder of the costs of the project, approximately \$18 million, due to the collapse of the capital markets and the uniqueness of an attraction credit.

The \$25 million reconstruction and expansion will consist of approximately 6,840 square feet under roof on the first level, including a gift shop and museum. Museum space will be expanded to twice its previous size and will offer a multitude of easy, understandable

exhibits, video presentations, living history programs, and memorabilia, including one of the two known surviving tea chests from the December 16, 1773 Boston Tea Party. On the second floor, there will be approximately 4,640 square feet of space, including a Boston Tea Party Tavern and Tea Room, which will offer food service and can accommodate special catered events.

Under the proposed transaction, MCCA would loan Historic Tours up to \$18,000,000 via a draw from the Convention Center Fund through a long term loan agreement with an annual percentage rate of 4.5%. The rate is commensurate with current Bond Buyer's 20 Bond Index and the 20-year historical average of the 1-Year LIBOR rate. After review of the appraisal and developing multipliers from historical results and comparable attractions, the MCCA believes the Boston Tea Party Ship and Museum could generate a net operating income of \$1.5 - \$1.8 million per year, which would more than cover debt service. The return over the life of the loan is valued at \$29 million.

In addition to the loan repayments, the MCCA has the opportunity of being able to use the facility as a means to achieve their basic mission of attracting convention groups to the city. As such, the MCCA will be in a position to a) be a full sponsor of the facility; b) use the facility for a certain number of events for corporate, convention and visitor entertainment, a truly unique meeting venue; and, c) have a certain number of complementary pass opportunities for use in marketing and convention sales. The value of this package to the Authority's sales and marketing efforts is approximately \$150,000 per year.

Finally, the Boston Tea Party Ship and Museum has an attraction component to its operations; which under Chapter 152 of the Acts of 1997 will require BTPSM to pay five per cent of its attraction proceeds to the Convention Center Fund, which amounts to approximately \$215,000 annually.

During the construction phase, the anticipated investment is expected to support approximately 45 full-time equivalent jobs for 16-months across all areas of the construction industry including electricians, carpenters, and steelworkers. Additionally, the number of full-time jobs created to support operations is approximately 25-30 jobs including management, maintenance, food and beverage and retail positions.

This proposal represents an exceptional partnership between a private operator, a state Authority and a City all working towards the goal of enhancing the overall City of Boston's visitor industry. As one of the preminent events leading up to the Revolutionary War, the Boston Tea Party Ships and Museums represents a significant part of American history, and the reconstruction and expansion of the Tea Party Ship site will provide students and families with an interactive way of learning history and the importance of their city's role during this time period. Finally, the Boston Tea Party Ship and Museum will compliment the MCCA's mission to generate significant regional economic activity and maximizing the investment return for the residents and businesses in the Commonwealth of Massachusetts and generate future sustainable jobs for the citizen's of Boston.

In advance of proceeding with negotiations concerning this loan transaction, the Authority secured the support of the Commonwealth and the City regarding this transaction and has executed a Memorandum of Agreement with the Commonwealth regarding the transfer of the \$18 million from the Convention Center Fund to the MCCA.

There was discussion among Board members concerning the legal authority and the precedential effect of undertaking the activity that was the subject matter of the vote. There was an assurance that the authority for such activity was present in the Authority's Enabling Acts, and that the project was effectively one of a kind both in its nature and location. There were discussions concerning the financial advisability of such a loan and analysis in response indicating enhanced return on investment of funds, increased revenues to the Convention Center Fund, the value of the completion of the project to the Authority's mission, and the creation of construction jobs and permanent employment. Chair Shell indicated that in absence of a formal committee review, the board relied on assurances made by the ex-officio members involved that this had been properly researched and by Mr. Rooney that a vote at this time was necessary in order to prevent the project from stalling

Board member Capuano indicated that although she saw this project as a value to the city and the seaport and that she certainly supports the creation of jobs, she did not believe that the MCCA should get into the business of making commercial loans to entities that have been unable to obtain financing by other means.

She indicated that she supports the concept of rehabilitating and improving the Tea Party Museum. However, she was concerned that the MCCA has overstepped its authority, and even if the MCCA has the legal authority to lend funds to other entities, she does not believe it to be within the spirit of the laws that created the MCCA, and for these reasons, she would vote no on lending funds to the Tea Party Museum. Chair Shell requested that the pro-forma and supporting financial analysis for the loan be distributed to the board.

Upon a motion duly made and seconded the Board voted seven in favor, one against, as follows:

**Voted: The Massachusetts Convention Center Authority authorizes the Executive Director to execute any and all documents necessary or convenient in order to provide a loan in an amount not to exceed \$18,000,000 for the Boston Tea Party Ship and Museum project consisting of the construction of (i) a Bridge House structure on a fixed platform supported by pilings attached to the Congress Street Bridge, which structure will contain a retail store, restrooms, storage, two re-enactment pre-show areas and offices, a floating barge housing a museum on the first floor and Tavern/Tea Room on the second floor, and a storage work area below decks, and (ii) moored historical replica ships of two of the original Tea Party Ships, the *Eleanor* and the *Brig Beaver II*, together with (iii) such piles, foundations, utility connections and other appurtenances as are necessary for the use and operation of**

**the foregoing, upon terms and conditions substantially in the form of those contained on the term sheet attached hereto as Exhibit A and incorporated herein.**

Exhibit A to the Vote is filed with these Minutes

VII. BOARD VOTE-SOUTH BOSTON WAYFINDING PROJECT

With the goal of enhancing and improving access to the South Boston Waterfront area, including the BCEC, and at the same time improving the City's visitor, convention attendee and tourism experience, representatives of the Authority, Massport, the City of Boston and the Boston Redevelopment Authority, have collaborated to develop an enhanced vehicular & pedestrian wayfinding signage system to achieve these goals on a two phased approach.

As part of this plan, Massport has agreed to administer a program under which it would contract for the purchase, installation and construction relating to approved wayfinding signage to be placed in agreed upon locations, funding fifty percent of the costs itself, and the Authority and the City/Boston Redevelopment Authority would provide the remaining twenty-five percent each. It is anticipated that the Authority's Phase I share will amount to \$250,000. The current schedule envisions 17 vehicular signs to be installed by the end of 2010.

Phase II will involve a yet to be determined number of vehicular and pedestrian signs.

Upon a motion duly made and seconded the Board voted unanimously as follows:

**Voted: that the Massachusetts Convention Center Authority hereby authorizes the Executive Director to negotiate and enter into a Contract with the Massachusetts Port Authority in connection with the development design, and installation of the South Boston Waterfront Wayfinding Pedestrian & Vehicular Phase I Signage Project, in an amount not to exceed \$250,000.**

VIII. BOARD VOTE: DESIGN SERVICES FOR CONVENTION PARTNERSHIP

In 2008 and 2009, the Authority, with the assistance of a consulting team, undertook a comprehensive master planning effort related to the Boston Convention & Exhibition Center (BCEC). The consulting team emphasized the importance of additional hotel inventory proximate to the BCEC, to accommodate demand from the BCEC and from any potential expansion. The consulting team also recommended that expansion of the BCEC be considered. Specific expansion elements recommended for further consideration included an additional ballroom, expanded exhibit hall and meeting room space, and other, more specialized expansion possibilities.

In late 2009, the MCCA announced the "Top 5" initiative, with the objective of making Boston a "top five" North American destination for meetings and conventions. A 27-member working group, the Convention Partnership, was established to guide efforts to

achieve this goal and to issue a report with its findings. The Convention Partnership is co-chaired by MCCA Executive Director James Rooney and Paul Guzzi, President and Chief Executive Officer of the Greater Boston Chamber of Commerce.

Earlier this year, following a multi-step procurement, the Boston-based architecture firm ADD Inc, together with tvs design, an Atlanta-based firm with extensive convention center experience, were selected to provide architecture, planning and related services to the Convention Partnership. At its meeting on June 10, 2010 the Authority's Board authorized the Executive Director to enter into a contract with ADD Inc/ tvs design for an initial amount not to exceed \$250,000. This initial authorization was intended to provide sufficient funding for design services expected to be provided to the Convention Partnership through the summer of 2010. The June 10 vote indicated that this initial contract amount would likely increase in the future, as the scope of services necessary to support the Convention Partnership – and the additional subconsultants necessary to support the architecture team – were more fully identified.

During the summer, the architecture team provided a broad range of services to the Convention Partnership. Background information related to potential expansion of the BCEC as well as the development of a new headquarters hotel was prepared; an extensive programming effort was undertaken; concept designs were developed; numerous meetings with stakeholders were conducted; and many issues and questions raised by Convention Partnership members were addressed.

As the Convention Partnership efforts extend into the fall of 2010 and the winter of 2010/2011, additional support services from the ADD Inc/ tvs design team and their subconsultants will be required. These services will include more detailed and specific headquarters hotel analyses, more in-depth investigations related to potential BCEC expansion components, and related studies of matters such as land acquisition, expansion phasing options, and other topics.

Additional fees to the ADD Inc/ tvs design team in the amount of \$910,000 will allow these services to continue to be provided through the end of 2010 and the first part of 2011. A proposal providing a detailed scope of services and associated fees has been submitted by the design team and reviewed by Authority staff. Mr. Rakow expressed concern that an expenditure this large had not been processed through a committee structure. Chair Shell stated that this was being done on an exception basis since the committees had not yet been formed and that once established future matters would be routed through the appropriate committees before presentation to the Board

Upon a motion duly made and seconded the Board voted unanimously as follows:

**VOTE – The Massachusetts Convention Center Authority hereby authorizes the Executive Director to amend the design services agreement with the team of ADD Inc/ tvs design, to provide additional services in support of the Convention Partnership in accordance with a proposal dated September 9, 2010 in an amount not to exceed \$910,000.**



IX. BOARD VOTE: BCEC BUILDING AUTOMATION SYSTEM MAINTENANCE

Mr. Haley made presentations concerning this and the following two votes, assisted by Mr. Smith. This is a three year preventative maintenance contract for the Boston Convention & Exhibition Center's Building Automation Systems. The existing system is a Tour Andover Controls system consisting of controllers in various locations throughout the building, which controls and monitors the systems throughout the building. The contract requires inspection, testing, preventative maintenance, and incidental servicing on a regular basis, as well as occasional major and emergency service and repairs. Schneider Electric is currently maintaining the system.

This project is subject to bidding in accordance with the State's construction bid law, M.G.L. c.149. The invitation for bids was advertised on July 21, 2010. The General bids were opened on August 12, 2010. The following bid was received from a contractor prequalified by DCAM:

Schneider Electric Buildings Americas, Inc.	\$480,969
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The law requires award of the contract to the lowest responsible and eligible bidder, which in this case is Schneider Electric. A vote to authorize award of this contract to Schneider Electric would take the following form:

**VOTE: The Massachusetts Convention Center Authority hereby authorizes the executive director to award to Schneider Electric Buildings Americas, Inc. a contract for the Boston Convention & Exhibition Center Building Automation System Maintenance in the amount of \$480,969 in accordance with the bidding documents dated July 21, 2010.**

X. BOARD VOTE: CONTRACT FOR BCEC ROOF EXPANSION JOINT REPAIRS

This project is to perform roof modifications to the Boston Convention & Exhibition Center. The work includes removal, replacement and repair of existing expansion joints and associated roofing at the Boston Convention & Exhibition Center.

This project is subject to bidding in accordance with the State's construction bid law, M.G.L. c.149. The invitation for bids was advertised on August 25, 2010. The following general bids were received from contractors prequalified by DCAM:

<b>Contractor</b>	<b>Contract Price</b>
Greenwood Industries	\$853,000
Titan Roofing	\$879,900

The bid document documents contained a requirement that general bidders propose utilizing Minority Business Enterprises (MBE) for 7.4% of the work and Women's

Business Enterprises for 4% of the work. No waivers were sought or granted. Greenwood Industries did not include any MBE utilization as required by the bid documents and its bid was rejected. The law requires award of the contract to the lowest responsible and eligible bidder, which in this case is Titan Roofing which complied with the MBE/WBE utilization provisions of the bid documents.

A vote to authorize award of this contract to Titan Roofing would take the following form:

**VOTE: The Massachusetts Convention Center Authority hereby authorizes the executive director to award to Titan Roofing a contract for the Boston Convention & Exhibition Center Roof Expansion Joint Repairs in the amount of \$879,900, in accordance with the bidding documents August 25, 2010.**

**XI. BOARD VOTE: CONTRACT FOR HYNES CONVENTION CENTER EXTERIOR ROOF AND EXTERIOR ENVELOPE REPAIRS**

This project consists of providing all labor, materials and equipment for performing roof, masonry and curtain wall replacement and repairs at the Hynes Convention Center.

This project is subject to bidding in accordance with the State's construction bid law, M.G.L. c.149. The invitation for bids was advertised on August 18, 2010. The filed sub-bids were opened on September 2, 2010, and the General bids were opened on September 10, 2010. The lowest filed sub-bid withdrew its bid asserting that it had made an error late afternoon on September 9th. This made it making it necessary to substitute the second lowest filed sub-bid in that category in any bids carrying the withdrawn sub-bidder as provided by applicable law. The following general bids were received from contractors prequalified by DCAM:

Contractor	Bid Price	A&A Window Sub-bid Substitute	Total Contract Price	Alternate	Total with Alternate
John F. Shea	\$1,810,480	included A&A window in their bid	\$1,810,480	\$160,000	\$1,970,480
Titan Roofing, Inc.	\$1,873,820	\$72, 174	\$1,945,994	\$96,000	\$2,041,994
Greenwood Industries	\$2,132,000	\$72, 174	\$2,204,174	\$290,000	\$2,494,174
Gibson Roofs, Inc.	\$2,688,000	\$72, 174	\$2,760,174	\$1,200,000	\$3,960,174

The law requires award of the contract to the lowest responsible and eligible bidder, which in this case is John F. Shea.

A vote to authorize award of this contract to John F. Shea would take the following form:

**VOTE: The Massachusetts Convention Center Authority hereby authorizes the executive director to award to John F. Shea a contract for the Hynes Convention Center Exterior Roof and Exterior Envelope Repairs in the amount of \$1,970,480, in accordance with the bidding documents August 18, 2010.**

XII. BOARD VOTE: GENERAL CONTRACTOR FOR BCEC MARQUEE AND VIDEO WALL

Mr. Davis made the following presentation. In January of 2010, a presentation was made to the Board of Directors regarding two significant electronic video display projects at the BCEC, a “marquee” to be located on the plaza adjacent to Summer Street, and a “video wall” in the main lobby. Both projects had been considered during the original construction of the BCEC, but were not undertaken at the time for a number of reasons, including budget and schedule constraints and a concern that the electronic display technology was rapidly evolving, so that timing might not have been optimal.

The January Board presentation described these two projects as re-conceived and updated. This presentation also placed the projects in the context of an electronic display master plan for the BCEC and the Hynes Convention Center. Budgets for the projects as well as digital renderings and scale models were also presented to the Board. The Board approved funding for the design and engineering of the marquee and video wall at the January meeting.

A follow-up presentation was made to the Board at its June 2010 meeting. The status of the pre-qualification processes for selecting bidders for two scopes of work – general construction and fabrication and installation of the LED displays – was discussed. Renderings and videos illustrating the designs for the marquee and main lobby video wall were presented. The project budget was also presented and discussed.

At the June meeting, the Board authorized the award of two contracts. The first was the contract with an LED display vendor, responsible for fabricating and installing the electronic displays. The second was a contract with a general contractor, responsible for construction of the marquee structure, a plinth at the base of the marquee, demolition and reconstruction of sections of a wall in the main lobby of the BCEC where the video display will be installed, and electrical and other work related to the marquee and video wall. The authorization to award the LED display vendor contract was in the not-to-exceed amount of \$4,300,000; the authorization to award the contract to the general contractor was in the not-to-exceed amount of \$1,900,000.

Bids were received in July and August. The low bid for the LED displays was \$2,299,800, \$2,000,200 below the not-to-exceed authorization. The low bid for the

general contractor scope of work was \$2,058,080, \$158,080 above the not-to-exceed authorization. In the aggregate, the two bids were \$1,842,120 below the not-to-exceed authorizations.

To award the contract to the general contractor, an increase in the amount of the authorization is necessary. A vote to authorize the Executive Director to enter into a contract would take the following form:

**VOTED: that the Executive Director is hereby authorized to enter into a contract with a general contractor for the BCEC marquee and video wall projects in an amount not to exceed \$2,058,080.**

VI. OLD BUSINESS

There was no old business.

VII. NEW BUSINESS

Chair Shell indicated that the Authority was undergoing its annual audit conducted by its outside auditing firm Sullivan, Rogers & Company and since new committee appointments are not yet ready to be made, it is necessary and desirable to form an Audit Committee to work with the outside auditors and review their report in anticipation of a presentation at the October Board Meeting.

Accordingly, Chair Shell made a motion which was duly seconded and the Board voted unanimously as follows

**VOTED: There shall be an Audit Committee of the Board charged with the responsibility of working with, and reviewing the results and findings of, the Authority's outside auditors, in connection with Financial Statements for the Year Ended June 30, 2010 and Independent Auditors Report and Report on Internal Control and Compliance for the Year Ended June 30, 2010 prepared by Sullivan, Rogers & Company ("Report"), and which shall dissolve upon the Authority's Board's acceptance of said Report. The committee will consist of the Board chair, Scott Jordan and Barbara Capuano and such other members as the Board chair may determine.**

VIII. ADJORNMENT

Upon a motion duly made and seconded, the Board voted unanimously to adjourn at 11:35 am.

ATTEST



\_\_\_\_\_  
William J. Smith  
General Counsel

**EXHIBIT A**

**DRAFT**

September \_\_\_, 2010

Mr. Christopher Belland, Chief Executive Officer  
The Boston Tea Party Ship, Inc.  
c/o Historic Tours of America  
201 Front Street, Suite 224  
Key West, FL 33040

**Re: Term Sheet – Proposed Loan to Boston Tea Party Ship, Inc. for proposed Boston Tea Party Ships and Museum, Boston, Massachusetts**

Dear Chris:

The Massachusetts Convention Center Authority (“MCCA”) is prepared to provide The Boston Tea Party Ship, Inc. (the “Borrower”) with a construction loan (the “Loan”) to help finance the construction of the Boston Tea Party Ships & Museum (the “Project”) at the Congress Street Bridge in Boston, Massachusetts, and the purpose of this letter is to set forth the general terms under which MCCA would be prepared to provide the Loan.

The general terms contained in this letter are based upon information supplied to MCCA by Borrower and the assumption that no further information subsequently obtained by MCCA would negatively impact its evaluation of the proposed transaction. The proposed transaction must be approved by the Board of Directors of MCCA, which has the power to accept or reject any part or all of the proposed terms contained herein.

**PROJECT:**

The Project will consist of the construction of (i) a Bridge House structure on a fixed platform supported by pilings attached to the Congress Street Bridge, which structure will contain a retail store, restrooms, storage, two re-enactment pre-show areas and offices, a floating barge housing a museum on the first floor and Tavern/Tea Room on the second floor, and a storage work area below decks, and (ii) moored historical replica ships of two of the original Tea Party Ships, the *Eleanor* and the *Brig Beaver II*, together with (iii) such piles, foundations, utility connections and other appurtenances as are necessary for the use and operation of the foregoing.

BORROWER: The Boston Tea Party Ship, Inc., which must be a single purpose, bankruptcy remote entity. Transfers of interests in the Borrower will be subject to Lender consent.

LENDER: The Massachusetts Convention Center Authority.

CLOSING DATE: On or before December 15, 2010, subject to an extension for causes which are beyond the control of Borrower.

FACILITY AMOUNT: Lender will provide up to \$18,000,000 of construction financing for the development of the Project (the "Loan Proceeds"). The Boston Redevelopment Authority ("BRA") will make a \$3,000,000 (the "BRA Grant Funds") grant to the Borrower pursuant to an agreement between the Borrower and BRA approved by Lender (the "BRA Grant Agreement")

The Loan Proceeds as well as the BRA Grant Funds and Borrower equity requirements shall be as follows:

Loan Proceeds:	Up to \$18,000,000
BRA Grant Funds:	\$3,000,000
Borrower equity:	\$3,989,369.00 (See Schedule 3 of Exhibit A)
Approved Project Cost:	\$24,978,061

The Loan Proceeds shall be used solely for costs included in the final Approved Project Budget. A preliminary Approved Project Budget is attached hereto as part of Exhibit A. Lender acknowledges that Borrower equity of \$3,989,369.00 has already been invested by Borrower. The parties acknowledge and agree that the final Approved Project Budget will reflect adjustments to such preliminary Approved Project Budget approved by Lender based, *inter alia*, upon the final bid price(s) for construction of the Project. Any additional Borrower equity necessary to complete the Project pursuant to the final Approved Project Budget must be put in escrow with the Escrow Agent (as defined below) at the Closing.

The BRA Grant Funds will be advanced by the BRA in accordance with the BRA Grant Agreement.

LOAN IN BALANCE: The Loan Agreement shall require Borrower to advance funds as determined by Lender promptly if the unfunded Loan Proceeds (and the remaining BRA Grant Funds and Borrower equity deposited in escrow at the Closing, if any) will be insufficient, in Lender's judgment, to complete construction of the Project and the initial funding of the

required reserve fund.

LOAN DOCUMENTS:  
SECURITY

The Loan will be documented by a promissory note, a first leasehold mortgage on the Borrower's leasehold interests under its Lease with the BRA for the Premises (as hereinafter defined), first lien perfected security interest (Article 9 security agreements) in the barge, vessels, personal property, furniture, fixtures and equipment, intellectual property, and any and all other real and/or personal property used in connection with the operation of the Project, and a pledge on gross receipts generated by the operation of the Project. The Loan Documents shall include an assignment of all Project permits, approvals and contracts (together with "will-serve" letters from all designers and contractors), as well as a non-recourse carve-out guaranty and an environmental indemnity agreement, each of which must be executed by Deacon Transportation, Inc., as guarantor ("Guarantor"). The Loan Agreement and other Loan Documents shall include such covenants, representations and warranties as are customary for commercial construction loans, including without limitation, an indemnification from Borrower against construction defects and third-party claims.

INTEREST RATE:

The annual interest rate shall be 4.5%, compounded annually.

DEFAULT RATE:

If any monthly loan payment or other payment due under the Loan Documents is not made within five (5) business days from the date when due, then the default interest rate shall be 12% from the date such payment was due. If any sums are overdue more than fifteen (15) business days, an additional 3% late charge shall also be paid by Borrower.

MATURITY:

The Loan will mature on the 23<sup>rd</sup> anniversary of the closing date. There shall be no extension options.

PAYMENTS:

From the Closing of the Loan through Borrower's receipt of a certificate of occupancy for the Project, Borrower shall make "interest only" payments on that portion of the Loan Proceeds which have been disbursed by the Escrow Agent to, or on behalf of, Borrower. These "interest-only" payments will be paid from Loan Proceeds. For the period of five (5) years from the date of receipt of the certificate of occupancy, the Loan shall amortize on a thirty (30) year amortization schedule. After this five (5) year period, the Loan shall amortize on a straight line schedule of interest and principal payments to pay off the Loan by the end of the Loan term.

All interest accrued on the Loan Proceeds and any Borrower equity



held in an escrow account by the Escrow Agent shall inure to Lender. All Loan payments shall be due on the first day of each month during the term. The Loan Agreement shall require that if, in any given Borrower fiscal year, the Project generates net operating income (after operating and maintenance expenses, debt service and required reserve deposits) in excess of twice annual debt service, fifty percent (50%) of the amount in excess of twice annual debt service will be paid to Lender as a Loan prepayment, thereby reducing the principal of the Loan. In the case of any such prepayment, the Loan shall be re-amortized based on the new principal amount and the Borrower will execute an Allonge to the Promissory Note and such other documents as Lender may require. Borrower may prepay any portion of the Loan without penalty. The monthly Loan payments shall be payable prior to any distributions to Borrower, any parent thereof, or any other entity affiliated with Borrower ("Affiliate") or any investor in any of the foregoing, or other creditors of Borrower other than payment of operating and maintenance expenses as aforesaid.

BORROWER EQUITY: See Facility Amount section.

REQUIRED RESERVE: The Loan Agreement shall require that, upon receipt of any certificate of occupancy from the City of Boston for the Project and the opening of the Project for business, the Borrower shall fund and maintain from operating income or other sources available to the Borrower (other than the Loan Proceeds), an operating, renewal and replacement reserve, which after such initial funding, shall be funded after payment of usual and customary operating and maintenance expenses and debt service, and prior to any distribution of net income to Borrower, any Affiliate thereof, or any investors of Borrower or any Affiliate thereof. The amount of such reserve shall be one and one-half percent (1.5%) of gross revenue for the immediately preceding year with respect to the operating portion of the reserve and one percent (1%) of gross revenue for the immediately preceding year with respect to the renewal and replacement portion of the reserve. For purposes of calculating such reserve with respect to the first operating year for the Project, gross revenue shall be deemed to be the estimated amount thereof shown in the Project's initial operating pro forma as approved by Lender. Until the operating, renewal and replacement reserve is fully funded as required above, the Borrower shall post as of the date prior to the date the Project opens for business to the public, a letter of credit or other security satisfactory to Lender in an amount equal to the unfunded amount of such reserve, which Lender may authorize Borrower to draw upon to pay operating and debt service costs in the event Project

revenues are insufficient.

GUARANTEES:

As noted above, the Guarantor shall execute and deliver at Closing a non-recourse carve-out guaranty for standard exculpatory carve-outs, including, without limitation, fraud, misapplication of funds, willful misconduct, voluntary bankruptcy, intentional ERISA violations, and violations of transfer restrictions. In addition, Guarantor, in addition to Borrower, must execute an environmental indemnity agreement in favor of Lender.

CONTRACTORS:

All contractors who contract directly with Borrower for construction of components of the Project involving work in excess of \$250,000.00 and each such contractor's construction contract(s) shall be subject to the approval of Lender; provided, however, that, after the closing of the Loan, Lender shall be deemed to have given its approval if Lender fails to approve or reject a proposed contractor or construction contract within ten (10) business days after receipt of (1) the proposed contractor's identity, including any financial information of the contractor requested by Lender, and (2) the construction contract. Lender agrees that the following contractors are approved by Lender for purposes hereof: A.J. Martini Inc., Lee Kennedy Co. Inc., John Moriarty & Associates Inc. and Suffolk Construction Co. Inc.

BONDS:

The Borrower's contractors shall be bondable for purposes of payment, performance, and lien bonds as certified by a surety company reasonably acceptable to Lender. Additionally, Lender shall have the right to require payment, performance, and lien bonds from any subcontractor performing concrete deck work or installing the proposed pilings.

INSURANCE:

Lender's insurance requirements shall include liability insurance, business interruption insurance, all-risk insurance, workers' compensation and employers' liability insurance, and all other insurance as Lender may require, in amounts and with coverages as Lender may require, from one or more companies qualified in the Commonwealth of Massachusetts, each with a rating approved by Lender.

TITLE:

At the Closing, Borrower shall provide Lender with such title insurance policies as Lender may reasonably require to ensure that Lender has a perfected, first lien security interest in all of the Project collateral.

SURVEY:

Borrower shall provide at its expense, an up-to-date, ALTA-ACSM survey of the subject real property to be mortgaged (the "Premises"), showing no state of facts objectionable to Lender. Such survey shall

show that the proposed structures will be within the lot lines and that the proposed utility conduit and utility lines will be within easements or other property rights that benefit the Premises and are reasonably acceptable to Lender. A recertification of the original survey for the "as-built" condition shall be required prior to the final disbursement of Loan Proceeds.

CONSTRUCTION  
DRAWS:

All Loan Proceeds shall be deposited at the Closing into an escrow account at a national title insurance company acceptable to Lender (such company, the "Escrow Agent"). Any Borrower equity required by Lender to ensure the completion of the Project shall be deposited with Escrow Agent at the Closing, and any Borrower equity required at any time during the term of the Loan shall be deposited into escrow with the Escrow Agent. All accrued interest on each escrow account shall inure to Lender and shall be paid to Lender monthly. During the construction of the Project, (i) construction advances shall be made on a monthly basis pursuant to requisitions approved by Lender and its construction consultant and accompanied by such certifications and lien waivers as are customary in construction loan transactions, and (ii) Loan payments due to Lender shall be made on the first (1<sup>st</sup>) day of each month. Lender agrees that Borrower may include within its first requisition and be reimbursed at Closing from the Loan Proceeds for (i) the costs incurred by Borrower prior to the Closing (up to \$300,000), for revising and updating the plans and specifications for the Project in accordance with the 7<sup>th</sup> or 8<sup>th</sup> edition of the Massachusetts State Building Code, as applicable, and (ii) the other costs incurred by Borrower prior to the Closing referred to in Exhibit B attached hereto; provided however, that all costs referred to in the preceding clauses (i) and (ii) must be documented to the reasonable satisfaction of Lender, and such costs shall be included in the final Approved Project Budget. The Borrower shall draw down the BRA Grant Funds in accordance with the BRA Grant Agreement. Interest under the Loan Documents will not accrue on Loan Proceeds transferred to the Escrow Agent until those funds have actually been disbursed by the Escrow Agent to, or for the benefit of, Borrower.

REPORTING:

After the commencement of Project operations, the Borrower and Guarantor shall be required to provide to Lender:

1. annual financial statements within 120 days of fiscal year end, and federal tax returns for each such entity annually within 30 days of such filing, but no later than October 1 of each year;
2. evidence of payment of any real estate and personal property taxes due within 10 days after the payment thereof; and

3. management-prepared quarterly operating statements within 30 days of the end of each calendar quarter, such statements to be certified by the chief financial officer of the Borrower.

EXPENSES:

By Borrower's acceptance of the terms of this term sheet, Borrower hereby agrees to pay at Closing out of the Loan Proceeds, customary expenses incurred by Lender in connection with this transaction, including but not limited to, appraisal fees, environmental site assessment fees, title insurance premiums and fees, survey charges, closing and recording fees, as well as the costs incurred by Lender in connection with the underwriting, negotiation, and documentation of the Loan (such as attorney's and construction consultant's fees); however, Borrower shall not be obligated to pay more than \$100,000 on account of such costs. Borrower shall be obligated to reimburse Lender up to \$100,000 for such Lender's costs actually incurred whether or not the Loan closes, it being understood that if the Loan does not close, such reimbursement obligation of up to \$100,000 shall be Borrower's sole cost and responsibility.

MATERIAL ADVERSE CHANGE:

If there occurs a material adverse change in the circumstances or conditions affecting Borrower, Guarantor, or the Premises, as determined by Lender, up to the time of Closing, this Term Sheet (except for the provision relating to "Expenses" above) shall be null and void.

EVENTS OF DEFAULT:

The Loan Documents shall contain customary provisions concerning defaults, including acceleration on the bankruptcy of Borrower or the Guarantor (the "Borrower Parties"), sale of the Premises or the Improvements thereon, or any transfer of interests in the Borrower Parties without the consent of Lender.

CONCESSION AGREEMENT:

The parties or Lender shall enter into a Concession Agreement with the BRA, which shall include provisions granting Lender non-exclusive rights during the term of the Loan, to market the Project, recognizing Lender as a principal sponsor of the Project, and granting Lender advertising rights within the Project and on marketing materials for the Project, including its Web site. During the term of the Loan, Lender (i) shall be granted exclusive rights to use the Project after normal operating hours of the Project for six corporate, convention or visitor entertainment events annually, and (ii) shall have 200 free admission tickets per quarter for use in its marketing and convention sales efforts.

CONDITIONS PRECEDENT:

The Lender's obligation to make the Loan is conditioned upon the following:

1. The Lease of the Premises between Borrower and the BRA to Lender's satisfaction;
2. BRA's commitment of the BRA Grant Funds pursuant to documentation acceptable to Lender;
3. Borrower's demonstration of sufficient additional Borrower cash equity (above the documented \$3,989,369 Borrower equity set forth on Exhibit A) to complete the funding of construction of the Project and the initial required reserve (or to post a letter of credit in an amount equal to the unfunded reserve);
4. Approval by Lender's Board of Directors;
5. Completion to Lender's satisfaction of Lender's and its consultants'/counsel's review of the physical and environmental conditions of the Premises, Project plans and specifications, zoning and other regulatory approvals, and approval by the Lender of all customary due diligence matters related to the Project, Borrower and the Guarantor, each in Lender's sole and absolute discretion;
6. Borrower and Lender's mutual agreement on execution of all documents required by any of them in connection with the transaction contemplated hereby;
7. The BRA's agreement to the Concession Agreement ensuring Lender's use of the Project for tourism-related events during the term of the Loan, such agreement to be acceptable to the Lender;
8. Lender's receipt of and satisfaction with the survey of the Premises and title insurance policies evidencing Lender's perfected security interest in the Project collateral;
9. Legal opinions reasonably satisfactory to Lender and its counsel regarding customary issues, including, without limitation, authority/enforceability, perfection, and zoning/land use/environmental permitting;
10. Lender's satisfaction with the value of the collateral;
11. Prior to the commencement of construction, Lender will retain Tishman Construction Company at Borrower's cost to review and approve the plans, specifications, and construction budget (subject to the \$100,000 cap set forth in the "Expenses" section above). In addition, Tishman shall perform inspections for the benefit of Lender from the start through the completion of construction of the Project, at Borrower's sole cost and expense;
12. Compliance with OFAC;

13. Compliance of the Project with the Americans with Disabilities Act; and
14. Negotiation of a satisfactory Escrow Agreement with the Escrow Agent pursuant to which construction requisitions will be funded at the direction of Lender after they are approved by Lender and its construction consultant.

GOVERNING LAW: The laws of the Commonwealth of Massachusetts shall govern this term sheet and the Loan Documents.

This Term Sheet is presented to you by Lender for discussion purposes only. Except for the terms of the paragraph entitled "Expenses," this Term Sheet does not create any binding obligations on Lender or Borrower. The parties acknowledge that creation of any such binding obligation is subject to the conditions described in the paragraph entitled "Conditions Precedent" above. If the foregoing is acceptable to you, please sign where indicated below and return an executed copy to me on or before September \_\_, 2010.

Sincerely,

Johanna Storella  
Chief Financial Officer

AGREED AND ACCEPTED:

Boston Tea Party Ship, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Duly Authorized

Date: September \_\_, 2010

EXHIBIT A

Preliminary Approved Project Budget

[See attached]

EXHIBIT B



**Schedule A**  
**Comparison: LOI to Lease**

	<b>LOI</b>	<b>Proposed Lease</b>
<b>Space (SF)</b>	10,700	10,379
<b>Initial Lease Term</b>	17 years	Unchanged
<b>Rent Structure</b>	yr 1-2: \$0/SF yr 3-7: \$60/SF yr 8-12: \$66/SF yr 13-17: \$72.60/SF	Unchanged
<b>Percentage Rent</b>	5% gross revenue above natural break point commencing year 13	Unchanged
<b>Lease Security</b>	GMRI Inc. to guaranty all lease obligations for entire lease term (approximately \$10 million for initial 17 years)	Unchanged
<b>Landlord Investment Returns</b>		
<b>IRR</b>	41.65%	Unchanged
<b>Total Rent/SF</b>	\$886	Unchanged
<b>Discounted Rent/SF</b>	\$439	Unchanged

**Notes:**

Investment returns include rent paid less landlord's costs.

Discount rate of 6% applied.

**Schedule B**  
**Additional Lease Terms**

- Leased Premises:
  - Primary Space: Approximately 8,652 SF
  - Additional Space: Approximately 1,727 SF  
(arcade area and existing men's room)

- Base Rent:

<b>Years</b>	<b>Rent (PSF/yr)</b>	<b>Primary Space Annual Rent</b>	<b>Additional Space Annual Rent</b>	<b>Total Annual Rent</b>
1 - 2	\$0	\$0	\$0	\$0
3 - 7	\$60.00	\$519,120	\$0	\$519,120
8 - 12	\$66.00	\$571,032	\$113,982	685,014
13 - 17	\$72.60	\$628,135	\$125,380	\$753,515

- Percentage Rent: 5% of gross revenue above "natural breakpoint" (beginning year 13).
- Lease Term: 17 years plus 3, 5-year renewal options.
- Renewal Term/Rent Increases: Base rent increases 10% at beginning of each 5-year renewal term.
- Rent Commencement Date: 365 days from lease execution.
- Landlord T.I. Costs: None – all improvements paid for by Tenant.
- Condition of Space at Delivery: Tenant accepts "as is."
- Lease Guarantor: GMRI, Inc. (owner of approximately 1,800 restaurants).