

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
FRIENDS OF HUDSON RIVER PARK,
FRIENDS OF CLINTON COVE, HELL'S KITCHEN
NEIGHBORHOOD ASSOCIATION, HON. GALE
BREWER, HON. TOM DUANE, FRANZ LEICHTER,
KATHLEEN STASSEN BERGER, TOBI BERGMAN,
KRISTIN DIONNE, JOHN GARCIA, NICHOLAS
HABER, CORY OLICKER HENKEL, LAUREN
MCGRATH, DARCI OBERLY, SHELLY SECCOMBE,
PETER SIRIS, ARTHUR STOLIAR AND
DAVID TILLYER,

Index No. 105763/05
I.A.S. Part 5 (Stallman, J.)

Duplicate original

Plaintiff-Petitioners,

-against-

NEW YORK CITY DEPARTMENT OF
SANITATION, THE CITY OF NEW YORK,
THE STATE OF NEW YORK, AND
HUDSON RIVER PARK TRUST,

Defendant-Respondents.
----- X

SETTLEMENT AGREEMENT AND ORDER

WHEREAS, under the terms of the Hudson River Park Act [Laws of 1998, Chapter 592, Section 7] (the "Act"), the City of New York and its Department of Sanitation ("DSNY") (hereinafter, collectively, the "City") were obligated (1) to relocate all sanitation uses at Pier 97 at 57th Street in Hudson River Park (hereinafter, "Pier 97") by December 31, 2003; (2) to relocate the salt pile and remove the incinerator from the Gansevoort Peninsula at Gansevoort Street (hereinafter "Gansevoort") by December 31, 2003; and (3) to use best efforts to relocate the sanitation garage from Gansevoort; and

WHEREAS, under the terms of Section 7.9g and d of the Act, upon the relocation of such sanitation uses and facilities at Pier 97 and Gansevoort, the vacated areas are to be used only for park purposes, plus the marine company one fireboat station on Pier 53; and

WHEREAS, under the terms of the Hudson River Park Act, sanitation truck parking and other sanitation uses which are incompatible with park uses are considered incompatible governmental uses; and

WHEREAS, the City has continued its sanitation uses at Pier 97 beyond December 31, 2003 and believes that it is necessary to continue to use the Pier for such operations until May 2008, when a new sanitation garage at 57th Street is expected to be completed; and

WHEREAS, the City has continued to use the salt pile and parts of the incinerator building on Gansevoort beyond December 31, 2003 and believes that it is necessary to continue maintaining those facilities at Gansevoort until December 31, 2012; and

WHEREAS, as a result the continuing occupancy of Pier 97 and use of the salt pile and incinerator building on Gansevoort, those areas cannot be converted to park uses until, at the earliest, 2008 in the case of Pier 97 and 2013 in the case of Gansevoort; and

WHEREAS, the plaintiffs in this action allege that the City has failed to use its best efforts to relocate the sanitation garage from Gansevoort, but the City disputes this claim; and

WHEREAS, the City has begun construction of a new facility which will house DSNY district personnel and provide some space for light truck maintenance at Gansevoort (hereinafter, the "Swing Space"), which it proposes to use until December 31, 2012; and

WHEREAS, the plaintiffs in this action allege that the construction of the Swing Space violates the Hudson River Park Act by adding a new facility at Gansevoort in an area previously cleared of sanitation uses and thus to be used only for park uses, but the City disputes this claim; and

WHEREAS, the City asserts that the Swing Space will allow the City to rebuild a number of its sanitation facilities in Manhattan more quickly and efficiently than would otherwise be the case, thereby reducing adverse impacts on the public; and

WHEREAS, Friends, along with other entities and individuals, filed an action against the City, the Hudson River Park Trust and the State of New York in the Supreme Court of New York State; and

WHEREAS, the plaintiffs subsequently withdrew the action against the State of New York only; and

WHEREAS, the City's ability to move its sanitation operations from Pier 97 and Gansevoort at this time or anytime in the near future is limited and the City has asserted that the relocation of such operations is likely to result in severe and adverse public impacts; and

WHEREAS, notwithstanding a good faith search, the City has not been able to identify any sites to which the sanitation operations at Pier 97 and Gansevoort could be relocated on an interim basis, though it is still willing to continue that search; and

WHEREAS, the City has expressed its commitment to moving with reasonable speed to complete the new Garage at 57th Street, which will allow it to remove its sanitation operations from Pier 97; and

WHEREAS, the City has already begun to pursue the regulatory approvals necessary for construction of a new sanitation garage adjacent to the West Side Highway at Spring Street (hereinafter, the "Spring Street Garage"); and

WHEREAS, the City is also prepared to assume full financial responsibility for the remediation of Pier 97 and Gansevoort so that upon completion of clean-up, these lands will be suitable for park purposes, a commitment which may involve a significant financial expenditure; and

WHEREAS, the City is agreeable to paying to the Hudson River Park Trust (hereinafter, the "Trust") the sum of \$21,500,000, which amount will be used to design and construct new park facilities at Pier 97 and Gansevoort when the sanitation operations are relocated from those sites; and

WHEREAS, the parties in this action believe that a settlement on the terms described below constitutes a fair and equitable resolution of competing interests and they jointly recommend that the Court approve the settlement;

NOW, THEREFORE, in settlement of the claims alleged by plaintiffs in this action, but subject to the approval of the Court and its continuing jurisdiction over this matter, the parties agree as follows:

1. Pier 97: Continuing Occupancy; Removal Date.

The City may continue to use and occupy Pier 97, including the adjacent salt pile, for its sanitation uses until **May 1, 2008**. If the City fails to relocate its sanitation uses from Pier 97 by that date the City shall pay an additional sum to the Trust, as set forth in the Schedule of Payments attached as Exhibit A, and as discussed in Paragraph 6 of this Agreement and Order. However, in the event that, notwithstanding the penalty payment, either 1) the City has not vacated Pier 97 on or before January 1, 2009, or 2) at any time after May 1, 2008, it does not appear likely that the City will vacate on or before January 1, 2009, then the plaintiffs shall have the right to seek Court intervention and any remedy available in law or equity.

2. Gansevoort: Continuing Occupancy; Swing Site; Removal Date.

The City may continue to use and occupy Gansevoort, excluding the CNG facility, for its sanitation uses until **December 31, 2012**. The City may also add to its operations at Gansevoort by completing and operating the **Swing Space**, and by relocating sanitation vehicles which are to service Manhattan Districts 2, 4 and/or 5 or from Districts 2, 5, and/or 6, but in no event any other or additional districts to Gansevoort; provided that use of the Swing Space shall be permitted only until **December 31, 2012**. If the City fails to relocate its sanitation uses from Gansevoort by that date, the City shall pay an additional sum to the Trust, as set forth in the Schedule of Payments attached as Exhibit A, and as discussed in Paragraph 6 of this Agreement and Order. However, in the event that, notwithstanding the penalty payment, the City has not vacated Gansevoort on or before December 31, 2013 ; or at any time after January 1, 2013, it does not appear likely that the City will vacate on or before

December 31, 2013, the plaintiff shall have the right to seek Court intervention and any remedy available in law or equity, subject to the provisions of paragraph 7.

3. Cleanup/Delivery of Sites.

The City will be deemed to have relocated its sanitation uses from Pier 97 and Gansevoort, respectively, at such time as it ceases operations at the site, including but not limited to truck parking and storage, and removes the salt pile from it, though other facilities and structures may still remain on the site. As soon as practicable after the City ceases operations at Pier 97 or Gansevoort, the City shall, at its expense, but in coordination with the Trust, remove, or arrange to have removed, all such other facilities or structures at the site, including, without limitation, in the case of Pier 97, the operations center and the adjacent salt pile structure and, in the case of Gansevoort, the salt pile building, the incinerator building, the Swing Space and the marine transfer station down to, but not including, the piling.

Following the City's relocation of sanitation uses from Pier 97 and Gansevoort, the City shall proceed promptly to investigate site conditions at Pier 97 and Gansevoort, respectively. The City agrees to undertake preliminary borings at representative locations on the Gansevoort site and also to commence a Phase I investigation of the site no later than June 30, 2008, and to share the results with the Trust, but it shall not be obligated to undertake any other onsite activities until its operations are relocated. The City shall commence a Phase II investigation, if it is required, no later than 30 days after the City's relocation of sanitation uses and shall thereafter proceed diligently with such investigation if it is required. Once the site conditions are known, the City shall, at its expense, but in coordination with the Trust, remediate any contamination at the site, so that the site will be usable for its intended park purposes. The City agrees to perform such clean-up, or have it performed, in the shortest practicable time period.

4. Spring Street Garage: City Commitments

The City has identified a site at the corner of the West Side Highway and Spring Street as the preferred location for a new sanitation garage (hereinafter, the "Spring Street Garage") to which its sanitation uses at Gansevoort could be relocated on or before December 31, 2012. The construction of a new garage at that site is necessarily subject to regulatory reviews and/or approvals, including but not limited to those under the State Environmental Quality Review Act, the Rules of Procedure for City Environmental Quality Review, and the City Uniform Land Use Review Procedure. Subject to the foregoing, the City is committed to pursuing the Spring Street Garage on a time schedule that will allow it to be completed by December 31, 2012. Schedules of the anticipated process for regulatory approvals, acquisition, design and construction are annexed hereto as Exhibit B. Although these schedules are anticipatory and non-binding, and may be delayed due to litigation or other developments beyond the City's control, and although the City may determine that construction of a garage on that site is not appropriate, or that another site is preferred, the City's commitment pursuant to Paragraph 2 of this Agreement and Order shall not be changed. In the event that the plaintiffs believe that the process of securing approvals for, and designing and building the Spring Street Garage has fallen behind by one year or more due to delays within the City's control, they may apply to the Court to seek an enforceable schedule for the completion of the Spring Street, or any other

remedy pursuant to this Agreement or provided by law or equity, subject to the provisions of paragraph 7.

5. Investigation of Interim Sites

The parties agree that the City has made a good faith effort to find interim sites that would allow it to remove its uses from Gansevoort at date prior to December 31, 2005, but has been unable to find any that, considering, among other things, availability, location and DSNY's operational requirements, would allow such uses to be removed very much earlier, if earlier at all, than such date. Nonetheless, the City agrees to continue to investigate possible interim sites over the next year, and if a site or sites are identified that would allow the removal, on a reasonable cost basis, of all sanitation operations from Gansevoort earlier than December 31, 2011, to report back to plaintiffs.

6. Payments by City; Escrow of Funds

The City will pay the Trust the sum of \$21,500,000. as set forth in, and subject to the provisions of the schedule annexed hereto as Exhibit A. An initial payment of \$6,000,000 shall be made to the Trust within 60 days of the effectiveness of this agreement, and the balance shall be paid to the Trust in semi-annual installments in accordance with the schedule annexed hereto as Exhibit A.

If the City fails to remove its facilities from Pier 97 and/or Gansevoort, as the case may be, by the removal dates set forth in paragraphs 1 and 2, the City shall make additional payments to the Trust, as provided in Exhibit A.

All amounts paid to the Trust under this agreement are restricted funds and shall be held by it in a separate escrow account and invested as the Trust shall deem prudent. Such amounts, together with any income realized on the principal, shall be used and disbursed by the Trust at such time or times and in such amounts as it shall determine, in its discretion; provided that any amounts used and disbursed shall be used and disbursed solely to plan, design, prepare the site and construct the park facilities contemplated for Pier 97 and Gansevoort; and provided further that such amounts shall be used and disbursed only for eligible capital costs as defined below; and provided further that no more than \$7 million, plus any income realized thereon, shall be used and disbursed for Pier 97 and adjacent areas, with the balance used and disbursed for the new park facilities at Gansevoort. In the event that park construction at Pier 97 and Gansevoort is complete and a balance still remains in the escrow account, such balance shall be used and disbursed solely for park construction at other locations in the Hudson River Park, and only for Eligible Capital Costs at such locations as that term is defined below.

For purposes of this Agreement, "Eligible Capital Costs" shall mean costs and expenses of Capital Contracts that, in the City's sole determination: (1) provide for the construction, reconstruction or installation of a physical public betterment or improvement (or any preliminary studies and surveys relating thereto) which costs are classified as capital assets according to generally accepted accounting principles and the directives of the New York City Comptroller, and (2) may be financed by the City with bonds pursuant to

subdivision 19 of Section 11.00.a or other appropriate subdivision of the New York State Local Finance Law providing for the original improvement or embellishment of a new park, playground, or recreational area of not less than fifty (50) acres. "Capital Contract" shall mean an executed contract for consultant and/or construction activities reflecting a commitment of a capital expenditure in furtherance of the development of Pier 97 and Gansevoort in conformity with the Hudson River Park concept and financial plan, dated May 1995, as modified by the May 1998 final environmental impact statement and as may be further modified from time to time in accordance with the Act, which contract has been executed in accordance with applicable Trust procurement guidelines. Nothing herein shall constitute an authorization for the issuance of bonds.

Neither the payments made pursuant to this section nor any other consideration given by the City under this agreement shall reduce the City's other commitments to fund the Hudson River Park, including without limitation, the amounts appropriated and re-appropriated for the Park in the City's fiscal 2005-06 budget.

7. Reporting and Enforcement

Every six months after the effectiveness of this agreement, beginning June 30, 2006, the City shall provide a written report to the plaintiffs and the Trust setting forth the status of (i) its efforts to remove its operations from Pier 97 and Gansevoort and construct/complete the new garage at 57th Street and the Spring Street Garage and (ii) as appropriate, the results of site investigations at Pier 97 and Gansevoort and any remediation of those sites, identifying any special problems that have arisen or that it contemplates may arise. Reports provided to the plaintiffs and the Trust in December 2008 and December 2010 shall also be provided to the Court. Plaintiffs shall have the right to comment on such reports and, if they deem it appropriate, to ask the Court for an opportunity to appear before it to discuss the status. All parties shall also have the right, upon appropriate notice to the other parties and at any time or from to time, to seek enforcement of any part of this agreement by the Court.

The City shall exercise due diligence in complying with the provisions of this Agreement and Order. The parties acknowledge that the City may not be able to adhere to a deadline contained in paragraphs 1 and/or 2 of this Agreement and Order due to an event beyond the City's control, including, for example, an act of terrorism, court order, contractor strike or the like despite the City's due diligence to comply with the provisions of this Agreement and Order at issue. If such an event occurs, the City shall notify the other parties to this Agreement in writing within a reasonable time after the date the City knew or should have known of the occurrence of such event and may seek the agreement of the parties or apply to the Court for an extension of the deadlines contained in paragraphs 1 and/or 2 of this Agreement, limited to the period of time that such event placed the City's ability to meet such deadlines beyond the City's control.

8. Effectiveness of this Agreement

The effectiveness of this agreement shall be subject to the approval of the Court and incorporated into a judicial order of the Court, which may be accomplished, if the Court is

agreeable, by a "SO ORDERED" provision at the end of this agreement. The agreement shall be effective on approval by this Court.

9. Dismissal of Action; Continuing Jurisdiction of the Court.

Upon the effectiveness of this agreement, the action initiated by plaintiff shall be marked as settled and the stipulation between the parties staying construction of the Swing Site Garage shall be deemed dissolved. However, the Court shall retain jurisdiction for the purposes of enforcing this agreement and considering modifications to it, and for all other appropriate purposes.

10. Notice.

Any notice required to be given under this Stipulation shall be effective if hand delivered or sent by facsimile with a copy by certified mail:

If to Plaintiffs to:

Alterman & Boop, LLP
35 Worth Street, 3rd Flr.
New York NY 10013
Fax: (212) 431-3614

Friends of Hudson River Park
c/o Albert K. Butzel, President
311 West 43rd Street, Suite 300
New York NY 10036
Fax: (212) 757-0985

If to Defendants to:

Susan Amron, Esq.
New York City Law Department
100 Church Street
New York, NY 10007
Fax: (212) 788-1619

Robert Orlin
General Counsel
New York City Department of Sanitation
125 Worth Street
New York, NY 10013
Fax: (212) 788-3876

Hudson River Trust
c/o General Counsel
Pier 40 @ West Houston St
New York, NY 10014
Fax: (212) 627-2021

Any Notice shall be effective on the next business day after delivery or on the third business day after service by fax and certified mail.

Susan E. Anson
ASSISTANT CORPORATION COUNSEL
CITY OF NEW YORK

NAUER
ALTERMAN & BOOP LLP,
ATTORNEY FOR PLAINTIFF'S

Albert K. Betzel *DA*
FRIENDS OF HUDSON RIVER PARK

June Silbafeld
HUDSON RIVER PARK TRUST

SO ORDERED:
October 7, 2005

[Signature]
J S C.

10/10/10

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EXHIBIT A

Exhibit A - Settlement Payment Terms

In accordance with paragraph 6 of the agreement and order, the City will pay the Hudson River Park Trust the sum of \$21,500,000, in the installments identified below. The amounts paid to the Trust shall be held by it in a special escrow account and disbursed and used as provided in Section 6 of the Agreement.

The initial \$6,000,000.00 shall be paid to the Trust within 60 days after the effectiveness of the Agreement. The remaining balance shall be paid in semi-annual installments on January 10 and July 10 of each year, beginning January 10, 2006. The following are the annual payments, half to be paid on January 10 each year and half to be paid on July 10, except as otherwise provided.

<u>Year</u>	<u>Total Annual Payment</u>
2006	\$3,100,000
2007	\$3,100,000
2008	\$1,800,000*
2009	\$1,800,000
2010	\$1,800,000
2011	\$1,850,000
2012	\$1,850,000
2013	**

Notes:

* The 2008 figure assumes that the City removes its sanitation operations from Pier 97 by May 1, 2008. If it fails to remove all its operations from Pier 97 by that date, the amount payable for 2008 shall be \$3,300,000; \$900,000 of which shall be paid January 10, 2008, \$750,000 of which shall be payable on May 5, 2008 and \$1,650,000 of which shall be payable on July 10, 2008. If the City fails to remove its operations from Pier 97 by January 1, 2009, the payment for each subsequent year shall be increased to such amount as the Court shall determine.

**The City is committed to remove its sanitation operations from Gansevoort by December 31, 2012. If it removes all its operations prior to that date, then, provided that it gives six months' advance notice of its leaving, it shall not be obligated to pay any semi-annual installment due after it has left

If, in contrast, the City fails to remove all of its sanitation operations from Gansevoort by December 31, 2012, the amount payable for 2013 shall be \$2,725,000 (payable in semi-annual installments. Payment for any subsequent year in which the City continues to maintain any sanitation operations at Gansevoort (which shall be permitted only with the approval of the Court) shall be increased by 20% over the previous year's payment or to such greater amount as the Court may order.

EXHIBIT B

**Exhibit B – Anticipated Design, Review and Construction Schedule
for the Spring Street Garage**

Activity	Date
Advertisement of Request for Proposals (“RFP”)	September 2005
Award/Execute Contract	April 2006
Submission of Draft Environmental Impact Statement	May 2006
ULURP Certification	May 2006
Commencement of Design	July 2006
Submission of Final Environmental Impact Statement	July 2006
Completion of ULURP Review	January 2007
Submission of Preliminary Design	April, 2007
Acquisition of Property pursuant to EDPL	October 2007
Submission of Final Design	November, 2007
Start Construction	November, 2008
Complete Construction	November, 2012

CITY OF N.Y. LAW DEPT.
OFFICE OF CORP. COUNSEL
COMMUNICATIONS SECTION

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SETTLEMENT AGREEMENT AND ORDER	
MICHAEL A. CARDOZO <i>Corporation Counsel of the City of New York</i> Attorney for City Defendants-Respondents 100 Church Street, Room 6-139 New York, N.Y. 10007 <i>Of Counsel:</i> Susan E. Amron Michael Burger Tel: (212) 788-1578	

RECEIVED
OCT 28 2005
HUDSON RIVER PARK TRUST