

**MINUTES OF A SPECIAL MEETING
OF THE NEW YORK CITY WATER BOARD**

A Special Meeting of the New York City Water board (the “Board”) was held on January 25, 2008 at 8:30 a.m. at Trinity Church, 74 Trinity Place, New York, New York 10007.

The following members of the Board were present:

James T.B. Tripp;

Donald Capoccia;

Dawn S. Davis;

Marilyn Gelber;

Amaziah Howell; and

Maria Santos Valentin;

constituting a quorum. Mr. Tripp chaired the meeting and Albert F. Moncure, Jr., served as Secretary of the Meeting.

Adoption of Minutes

The first item on the agenda was approval of the minutes of the Board’s previous meeting held on December 21, 2007. There being no discussion, upon motion duly made and seconded, the minutes of the Board’s meeting held on December 21, 2007 were unanimously adopted.

Approval of an Amendment to Payment Incentive Program: Allow Payment Agreements to Conform with Lien Sale MOU

The next item on the agenda was approval of an amendment to the Board’s Payment Incentive Program (“PIP”) to conform to requirements of the Memorandum of Understanding (the “MOU”) between DEP and the City Council executed in connection with the adoption of new stand-alone water lien sale legislation. Executive Director Steven Lawitts

explained that DEP agreed with the City Council in the MOU to seek Board modification of the PIP to make the program available to lien sale eligible customers in addition to those facing service termination and to permit delinquent customers to enter into installment payment agreements rather than requiring immediate payment in full. Mr. Lawitts explained that the other provisions of the PIP – the elimination of late fees and capping utility charges at 150% of average daily consumption for a single family residence or \$2.00 per day – would remain unchanged. Responding to Ms. Gelber, DEP Deputy Commissioner Joseph Singleton explained that the ombudsperson required by the new lien sale legislation has been appointed and has been assigned a dedicated email address and telephone number, and that future water and sewer bills will contain a notice that delinquent customers are subject to the lien sale.

Responding to concerns expressed by Mr. Capoccia about whether the public is aware of the availability of the PIP, Mr. Lawitts said that both the New York Daily News and the New York Post published articles about the PIP. In addition, he said, DEP will send direct mail notices about the program to PIP eligible customers. There being no further discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

WHEREAS, the New York City Water Board (the “Board”) approved a resolution dated September 28, 2007, which authorized DEP to implement a Payment Incentive Program (“PIP”) for delinquent residential premises which are subject to a collection enforcement action; and

WHEREAS, the PIP as approved on September 28, 2007 required, among other things, the payment in full of the revised amount due and was, at the time, contemplated primarily in the context of residential premises subject to service termination; and

WHEREAS, a Memorandum of Understanding (the “MOU”) between DEP and the Council of the City of New York (the “Council”) was entered into in December 2007 in anticipation

of Tax Lien Legislation allowing the sale of stand-alone water and sewer liens, which was subsequently passed by the Council; and

WHEREAS, the MOU extended both the scope and terms of the original PIP, explicitly providing that the PIP will be available to residential premises subject to lien sales as well as service terminations and permitting accounts participating in the PIP to either pay the total amount due in full or to enter into an installment payment agreement with DEP for the amount due, with standard installment payment agreement terms to include a minimum 10% down payment and a repayment period not to exceed five years at the standard rate of interest charged on delinquent water and sewer accounts; and

WHEREAS, the Board is in agreement with the Council and DEP that the aforementioned modifications to the PIP in conjunction with the new legislation authorizing the sale of stand-alone water and sewer liens constitutes a reasonable and prudent business practice designed to address the large current percentage of delinquent water and sewer accounts; it is therefore;

RESOLVED, that the terms of the Board's September 28, 2007 PIP resolution are hereby modified to include residential premises subject to lien sales as well as service terminations and to allow either payment in full or a standard installment payment agreement; and it is;

RESOLVED further, that the Executive Director may prescribe appropriate PIP implementation guidelines so as to ensure prudent program administration consistent with the intent of the Board.

Approval of an Amendment to Agreement with Arcadis BBL (formerly Blasland, Bouck & Lee, Inc.) to Provide for Additional Technical Assistance to DEP in Implementing Environmental Health and Safety Compliance Programs

The next item on the agenda concerned the amendment of a \$12 million consulting contract to provide additional technical assistance to DEP in implementing Environmental Health and Safety ("EH&S") compliance programs relating to the Bureau of Wastewater Treatment ("BWT"). The contract amendment would cost \$8 million. DEP General Counsel, Robin Levin, explained that the BWT is subject to the supervision of the

Federal Monitor which has required an enhanced EH&S effort as part of DEPs probation under its Plea Agreement with the U.S. Attorney. The initial rollout of this effort was accomplished pursuant to a consulting contract approved by the Board in May 2006 with Blasland, Bouck & Lee, (which is now Arcadis BBL). However, said Ms. Levine, a significant amount of work must to be completed in order for Federal supervision to end by February 2009, which is the date now scheduled for probation to terminate. In response to a question from Mr. Capoccia about the genesis of the new tasks proposed to be funded pursuant to the \$8 million change order, Ms. Levine said the tasks arose out of a regulatory compliance analysis jointly prepared by BWT and the Federal Monitor with the objective of demonstrating sustainable compliance by DEP. Ms. Davis said she would like to see all of DEP's original EH&S consultant contracts and change orders previously requested from the Board as well as any information on cost savings. Executive Director, Steven Lawitts, agreed to provide these materials and data. Responding to a question from Ms. Gelber about the significance of the change in corporate structure of the contractor, Ms. Levine said the original contractor was acquired by another company but that there has been no change in its contractual relationship with the Board. Responding to Ms. Gelber's request for clarification of how the additional tasks now being proposed originated, Ms. Levine said that there had been 16,000 audit findings which will now require a programmatic effort to close out by writing new procedures and taking other actions. In response to a follow-up question from Mr. Capoccia, Ms. Levine said that the 16,000 audits were performed by another consultant and reviewed internally by DEP. Ms. Santos asked how the proposed compensation was determined. Ms. Levine said the price was arrived at through multiple discussions with the contractor, lengthy and difficult negotiations, as well as hard bargaining by DEP. Mr. Tripp said it is imperative that DEP have a sustainable EH&S compliance program by

February 2009, and it must be made clear to the Federal Monitor that DEP's probation will terminate at this time and will not be further extended. Mr. Capoccia added that, as a condition for Board approval of the contract amendment, the consultant should personally appear before the Board and commit to complete its work by the February 2009 target date for ending Federal supervision.

Ms. Levine then asked for a brief adjournment of her presentation to allow her to confer with BWT staff and Arcadis personnel. Afterwards Ms. Levine returned and said that DEP would require only \$700,000 in funding at this time which would cover work through next month, and that a representative from the consultant would appear before the Board at its next meeting to brief the Board on the new scope of work, the timetable for completion and a roadmap to the end of probation by February 2009.

There being no further discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

WHEREAS, the water and wastewater systems (the "Systems") of the City of New York (the "City") have been leased by the City to the New York City Water Board (the "Board"), pursuant to an Agreement of Lease, dated as of July 1, 1985, as amended, between the City and the Board; and

WHEREAS, the New York City Department of Environmental Protection ("DEP") operates and maintains the Systems; and,

WHEREAS, the Board and DEP both wish to ensure that the Systems are operated and maintained in a manner that complies with all applicable laws, rules and regulations; and,

WHEREAS, in furtherance of this important objective, on April 7, 2006, the Board authorized the execution and delivery of a contract between the Board and Blasland, Bouck & Lee, Inc. ("BBL"), now known as Arcadis, to provide technical assistance to DEP in implementing Environmental, Health and Safety (EHS) Compliance Programs of all operations and activities

conducted by DEP Bureau of Wastewater Treatment (BWT) and the Mission Support Bureaus (MSBs) personnel and facilities in which such activities are performed; and

WHEREAS, on May 16, 2006, the Board entered into a Consulting Agreement with BBL (the "Agreement") to provide such assistance for an amount not to exceed \$12,000,000; and

WHEREAS, DEP has identified a need for further technical assistance from Arcadis, and has requested that the Board authorize an amendment to the Agreement, enabling Arcadis to provide assistance in the implementation of EHS Compliance Programs that were underestimated or not previously identified; and

WHEREAS, funds remaining under the Agreement are insufficient to defray the cost of the additional services DEP requires; and

WHEREAS, the Board has reviewed a memorandum from Robin Levine, DEP General Counsel, dated January 15, 2008, attached hereto as Attachment 1,¹ which details the additional required services and sets forth a recommendation that the Board authorize an amendment to the Agreement with Arcadis to provide such services to DEP; and

WHEREAS, in accordance with the Water Board's Policy on the Procurement of Goods and Services, in particular, Section 5.i. (prior approval of contracts where the cumulative value exceeds \$100,000) and Section 6.iv. (waiver of competitive solicitation where the procurement is a continuation of existing services and it is desirable for purposes of continuity and compatibility), the Board finds such justification reasonable and appropriate in the present circumstances; it is therefore

RESOLVED, that the Executive Director is hereby authorized and empowered, in the name and on behalf of the Board, to execute and deliver an Amendment to the Agreement with Arcadis, upon such terms and conditions as he may deem reasonable and appropriate, so as to extend the term of the Agreement to December 31, 2009, and provide additional required technical services and increase the maximum compensation payable to Arcadis by \$700,000 to an amended amount not to

¹ Filed with Minutes of the Meeting.

exceed \$12,700,000; provided, however, that the Board may by further resolution increase this amount; and be it further

RESOLVED, that the Executive Director, the Treasurer and the Secretary of the Board be, and they each hereby are, authorized and empowered, in the name and on behalf of the Board, to execute such agreements and instruments, and to take such other and further actions, as they or any of them deem necessary or appropriate in order to effectuate the foregoing resolution.

Discussion of Audit Committee and Appointment of Three Members

The next item on the agenda was the establishment of a joint Audit Committee with the New York City Municipal Water Finance Authority (the “Authority”). Executive Director Steven Lawitts explained that the Public Authorities Accountability Act of 2005 requires that both the Board and the Authority establish an Audit Committee to recommend hiring an independent certified public accountant to audit the financial statements of the Water and Sewer System (the “System”), to oversee such audit, and to recommend approval of the annual audited financial statements of the System. Mr. Lawitts said Authority staff has proposed the establishment of a joint Authority/Board Audit Committee and has prepared a draft joint Audit Committee Charter which has been distributed to the Board.

Responding to Mr. Capoccia and Ms. Gelber, Mr. Lawitts explained that a joint committee has been proposed because the operations of both the Board and the Authority are reported on a single set of financial statements for the entire System.

Mr. Capoccia asked why the draft charter provides that a majority of the members of the joint Audit Committee shall be Authority directors. Mr. Lawitts responded that the Authority has continuing disclosure obligations to its bondholders to prepare and disseminate

annual audited financial statements for the System and therefore has a greater responsibility to oversee the audit.

Ms. Santos expressed approval of the joint audit committee concept because, she said, the capital assets of the System, which are financed by the Authority, are leased to the Board, which in turn is responsible for generating revenues to pay debt service on the Authority's bonds.

However, she objected to the Board's minority role on the Committee pursuant to the proposed joint Audit Committee Charter. Mr. Capoccia and Mr. Tripp concurred with Ms. Santos' objections.

Mr. Capoccia, Mr. Tripp, and Ms. Santos next discussed the appropriate role of the Board members on the joint Audit Committee, the role of the Board in approving and retaining the auditor for the System's financial statements, and the Board's role in approving the audited annual financial statements of the System. Mr. Kusterbeck explained that currently only the Authority's directors approve the annual audited financial statements upon the recommendation of the Authority's existing Audit Committee although, effective last year, the Authority and the Board approve engagement of the auditor. Mr. Capoccia, Mr. Tripp, Ms. Santos and Ms. Gelber said there should now be a parallel process whereby the Board, acting separately, upon the recommendation of the members of the joint Audit Committee annually continues to approve engagement of the auditor and now also approves the annual audited financial statements.

Ms. Gelber and Mr. Capoccia recommended establishment of the joint Audit Committee and adoption of the draft joint Audit Committee Charter subject to revisions being made to the Charter to reflect the concerns expressed by the Board at today's meeting.

Mr. Tripp then proposed that he, Ms. Gelber, and Mr. Moss serve on the joint Audit Committee. The other members of the Board concurred with Mr. Tripp's suggestion and it was agreed that the other members of the Board would serve as alternate members of the joint Audit Committee in the event of the unavailability of any of the initial three Board members.

There being no further discussion, upon motion duly made and seconded, the following resolution was unanimously adopted, in principle, approval of the actual text of the resolution, to be made by adoption of these minutes:

WHEREAS, each of the Board and the New York City Municipal Water Finance Authority (the "Authority") are required to establish an Audit Committee pursuant to the requirements of the Public Authorities Accountability Act of 2005 ("PAAA") which law provides that such committee shall recommend to the Board and Authority the hiring of a certified independent accounting firm and provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purposes; and

WHEREAS, the Authority has established an Audit Committee; and

WHEREAS, the Authority has agreed pursuant to the Financing Agreement dated as of July 1, 1985, as amended (the "Agreement"), by and among the Authority, the Board and the City to finance the cost of Water Projects by the issuance of its bonds, notes and other indebtedness from time to time; and

WHEREAS, such Water Projects are reflected as capital assets of the New York City Water and Sewer System (the "System") on the System's audited financial statements and the indebtedness of the Authority is reflected on the audited financial statements of the System as a liability; and

WHEREAS, the City has leased such capital assets to the Board pursuant to a Lease Agreement dated as of July 1, 1985; and

WHEREAS, the Board has covenanted and agreed in the Agreement to establish, fix and revise fees, rates or other charges for the use of or services furnished by the System to provide for the payment of debt service on indebtedness of the Authority and

the proper operation and maintenance of the System, which fees, rates, or charges are reflected as revenues on the audited financial statements of the System; and

WHEREAS, in light of the joint role of the Board and the Authority in the financial affairs of the System, it has been proposed that the Board and the Authority comply with the audit committee requirements of the PAAA through the establishment of a joint Audit Committee, and Authority staff has proposed a joint Audit Committee Charter which the Board has reviewed; and

WHEREAS, the Board desires to establish a joint Audit Committee with the Authority and establish an Audit Committee Charter governing the Committee's activities; it is therefore

RESOLVED, that the Board hereby establishes an Audit Committee which shall be a joint committee of the Board and the Board of Directors of the Authority and the initial members of the Committee from the Board (the "Board Subcommittee") shall be James T.B. Tripp, Marilyn Gelber, and Alan Moss; and each other member of the Board shall constitute an alternate member of the Board Subcommittee to act in the absence of any of the initial members; and be it further;

RESOLVED, that the members of the Committee from the Authority's Board of Directors (the "Authority Subcommittee") shall consist of the Authority Directors specified in the joint Audit Committee Charter adopted by the Board and the Authority; and be it further

RESOLVED, that the Board and the Authority each acting separately shall annually approve the retention and engagement of the independent auditor of the financial statements of the System upon the recommendation of the Board Subcommittee and Authority Subcommittee, respectively; and be it further

RESOLVED, that the Board and the Authority each acting separately shall annually approve the audited financial statements of the System upon the recommendation of the Board Subcommittee and Authority Subcommittee, respectively; and be it further

RESOLVED, that the Board conditionally approves the joint Audit Committee Charter presented to this meeting; provided, that it is appropriately revised to give effect to the foregoing terms

and conditions of this resolution and is approved in such form by the Authority's Board of Directors.

Miscellaneous

Responding to a question from Mr. Capoccia, Mr. Lawitts said the Board website will be operational next week. Ms. Davis then volunteered to be the Board's website coordinator.

In connection with a discussion of the schedule for adoption of water and sewer rates and the public hearings to be held in connection with rate setting, Mr. Tripp proposed that the Board resend to Edward Skyler, the recently designated Deputy Mayor for Operations, the Board's letter previously sent to Daniel Doctoroff, the former Deputy Mayor for Economic Development and Rebuilding relating to restructuring the Board's rental payment to the City pursuant to the System Lease.

At Ms. Gelber's request, Mr. Lawitts agreed to furnish a list of properties subject to the System Lease which are no longer needed for water supply purposes.

Updates:

- **Year-to-Date Collections**
- **Collection Enforcement Initiatives**

The next item on the agenda was an update on collections and collection enforcement.

Mr. Lawitts said that January collections are on target and that year to date revenues have increased from 8% below target to 4% below target.

Notices have been sent to PIP-eligible accounts advising such customers of the availability of the PIP. 1,790 customers (25% of eligible accounts) have enrolled in the

program. The enrollment period ends February 7, 2008. Service termination notices will be sent after February 11, 2008, to customers eligible for shut off who have not enrolled in the PIP.

The lien sale is scheduled for May 19, 2008.

Service termination notices have been sent to 167 commercial customers and service to 2 accounts has been terminated.

Deputy Commissioner Singleton said his office will notify Board members of upcoming meetings with members of the Affordable Housing Community.

Adjournment

There being no further business to come before the Board, upon motion duly made and seconded, the meeting was duly adjourned.

SECRETARY