

**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 February 29, 2008 at 8:30 a.m. at 75 Park Place, Room 8S-1, New York, N.Y. 10007. The following members of the Board were present:

James T.B. Tripp;

Donald Capoccia;

Dawn S. Davis;

Marilyn Gelber;

Alan Moss; 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 January 25, 2008. There being no discussion, upon motion duly made and seconded, the minutes of the Board's meeting held on January 25, 2008 were unanimously adopted.

**Opportunity for Public comment**

Next members of the public were invited to address the Board.

Jim Buckley from the University Neighborhood Housing Association expressed concern about the disparate impact the Board's service termination and lien sale initiatives may have on homeowners experiencing financial distress because of the subprime mortgage crisis. Commissioner Lloyd responded that DEP does not pursue service termination where a lis

pendens has been filed against a property. In addition, she said, several days prior to the scheduled shut-off date, a notice is placed on the door of the house advising the homeowner to indicate whether it is subject to mortgage foreclosure proceedings, in which case, service termination is discontinued.

Josh Zinner, the co-chair of a neighborhood economic development organization expressed comments similar to those of Mr. Buckley. In addition he asked for a slow down of the service termination initiative and an indefinite extension of time for 1-family homes to enroll in the Payment Incentive Program. Mr. Tripp replied that Mr. Zinner should submit a written proposal to DEP, and DEP and the Department of Housing Preservation and Development should meet with Mr. Zinner and other Affordable Housing advocates to discuss his concerns.

**Presentation Concerning Status of Court Supervision of DEP’s Environmental Health and Safety Program**

- **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 was a follow-up presentation requested by the Board at its last meeting concerning the status of DEP’s Environmental Health and Safety (“EH& S”) Program. The Board had requested that DEP provide additional support for DEP’s request to fund an \$8 million change order to the consultant contract with Arcadis BBL to provide technical assistance for the EH&S program relating to the Bureau of Wastewater Treatment (“BWT”). At its last meeting, the Board approved \$700,000 in funding for the change order but deferred consideration of the remaining \$7.3 million pending DEP’s presentation at today’s meeting.

Douglas Greeley, Deputy Commissioner of the BWT, provided an overview of the BWT’s operations and a chronology of DEP EH&S compliance from 2001 to date indicating completion of significant milestones. He said that Court supervision of BWT’s operations is

scheduled to end in February 2009, but the Federal monitor has requested a six month extension of probation beyond that date.

Deputy Commissioner Greeley discussed the theory of EH&S compliance noting that employees are required to understand their work environment, including the proper operation of tools and equipment, and be aware of safe practices and comply with relevant laws and regulations. He then described the EH&S Compliance Action Programs. Next, he discussed the legacy program which addresses proper management of operations where asbestos, PCB's and other hazardous materials which were used in the past are still present in the environment. He also described a list of regulatory compliance issues identified by Arcadis BBL. Responding to a question from Ms. Gelber about the value added by Arcadis, Mr. Greeley responded that DEP could not otherwise hire the engineers, analysts and policy writers needed to comply with DEP's plea agreement within the required time constraints and that Arcadis provides all of these functions in a timely and efficient manner. Responding to a question from Ms. Gelber about BWT's accident rate, DEP General Counsel Robin Levine remarked that workplace injuries have declined significantly since the roll out of the EH&S program. Responding to a question from Mr. Moss about the impact of labor relations on EH&S compliance, Mr. Greeley said that employees generally want to work in a safe environment and are therefore supportive of the EH&S program although they do seek additional compensation when their workload is increased.

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Mr. Capoccia, Ms. Santos, and Mr. Tripp questioned Commissioner Greeley about the nature of the remaining tasks to be performed by Arcadis, whether such actions can be completed by February 2009 with the requested funding, and whether completion of such actions will suffice to convince the Court to end Federal supervision. Mr. Greeley responded that

Arcadis's work should be substantially complete by August 2008 ahead of the scheduled February 2009 date for termination of Federal supervision. He said that the requested financial resources should be adequate for this purpose. He added that many of BWT's EH&S actions have been voluntary and not mandated by the Federal monitor and the monitor seems satisfied with BWT's efforts. Ms. Levine noted that although probation is scheduled to end in February 2009, DEP's plea agreement provides that it may be extended to December 2009.

Mr. Tripp proposed that the Board approve only that portion of the requested \$7.3 million funding allocable to work to be performed by Arcadis through February 2009 with any additional required funding to be approved thereafter if needed. He specifically proposed approving \$4 million. Mr. Capoccia agreed with Mr. Tripp. Ms. Gelber also agreed with Mr. Tripp but said a more scientific approach was needed to determine the required allocation of funding through February 2009. Ms. Levine said that Arcadis has been paid at the rate of approximately \$500,000 per month so that \$6 million would be a good approximation of the funding required through February 2009. A representative from Arcadis who was present at the meeting then confirmed to the Board that such amount would be adequate.

Mr. Tripp emphasized the importance of being able to demonstrate to the Court by February 2009 that DEP has fully complied with its plea agreement and is therefore entitled to termination of Federal supervision by such date. He added that any funding approved by the Board must be used toward this end. Ms. Levine noted that termination of Federal supervision will also require satisfactory actions by other DEP Bureaus. Ms. Gelber then proposed approving \$6 million through February 2009 and requiring DEP to report back to the Board with periodic updates on the scheduled completion of required tasks. 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 the DEP Bureau of Wastewater Treatment and the Mission Support Bureaus 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**, on January 25, 2008 upon the recommendation of DEP, the Board authorized an amendment to the Agreement in an amount not to exceed \$700,000 to provide for additional necessary services from Arcadis in the implementation of EHS Compliance Programs that were underestimated or not previously identified; and

**WHEREAS**, DEP has identified a need for further technical assistance from Arcadis with respect to said EHS Compliance Programs, and has requested that the Board authorize a second amendment to the Agreement to enable Arcadis to provide such assistance; and

**WHEREAS**, the Board at its meeting held on January 25, 2008, reviewed a memorandum from Robin Levine, DEP General Counsel, dated January 15, 2008, which detailed the additional required services and set forth a recommendation that the Board authorize an amendment to the Agreement with Arcadis to provide such services to DEP; and

**WHEREAS**, in addition to reviewing the January 15, 2008 memorandum, the Board has been provided a presentation which addresses and resolves certain concerns expressed by Members at its meeting of January 25, 2008; 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, upon such terms and conditions as he may deem reasonable and appropriate, so as to extend the term of the Agreement to February 28, 2009, provide additional required technical services and increase the maximum compensation payable to Arcadis by \$6,000,000 to an amended amount not to exceed \$18,700,000; 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.

#### **Approval of Consulting Services Agreement with Mysore Nagaraja**

The next item on the agenda was the approval of a consultant contract with Mysore Nagaraja. Commissioner Lloyd said Mr. Nagaraja would review DEP's 10-year capital

plan in consultation with City Hall, the Office of Management Budget and State and Federal regulators to determine which projects in DEP's 10-year Capital Improvement Program can be stretched out or reconfigured and to develop a 20-year Capital Improvement Program. Commissioner Lloyd described Mr. Nagaraja's background as a former Chief Engineer for New York City Transit and President of the MTA Capital Construction Company.

Responding to a question from Ms. Santos, Commissioner Lloyd said that Mr. Nagaraja's maximum compensation would be \$468,000. Mr. Nagaraja would be paid on an hourly basis at the rate \$300 per hour for work specifically requested by DEP. Ms. Santos remarked that the supporting memorandum accompanying the request for Board approval should have described the method for procuring Mr. Nagaraja's services. Commissioner Lloyd agreed to provide such a description to the Board. At Ms. Gelber's request, Mr. Nagaraja then addressed the Board. He described his work at the MTA where he often negotiated construction cost reductions, separated large contracts into smaller ones and awarded contracts through competitive bidding. Mr. Nagaraja said the MTA best practices are also applicable to DEP.

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

**WHEREAS**, pursuant to Section 1045-g(8) of the New York City Municipal Water Finance Authority Act (the "Act"), the Board is authorized to enter into contracts and to retain private consultants on a contract basis for the purpose of obtaining professional or technical services to assist the Board in carrying out its responsibilities; and,

**WHEREAS**, in the interest of operating and maintaining the City's drinking water and wastewater infrastructure in an efficient manner, the New York City Department of Environmental Protection ("DEP") has identified a need for the services of a management consultant to assist in completing the implementation of DEP's capital program management plan, as well as reconfiguring major capital projects

to encourage competition and developing a twenty-year capital program to provide a broader view of the system's long term capital requirements; and

**WHEREAS**, the Board has reviewed a memorandum from DEP Commissioner, Emily Lloyd, dated February 26, 2008,<sup>1</sup> which sets forth a recommendation and request for the Board to approve a consulting contract with Mysore Nagaraja, P.E. to perform the necessary services with respect to the Capital Program; 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.v. (waiver of selection criteria based on superior qualifications to perform the service at a cost that is determined to be fair and reasonable), the Board finds the selection of Mysore Nagaraja appropriate; be it, therefore,

**RESOLVED**, that the Executive Director is hereby authorized and directed to execute an agreement with Mysore Nagaraja, P.E. to provide the necessary consulting services to DEP upon such terms and conditions as the Executive Director may deem reasonable and appropriate, provided however that the initial term of such contract shall be for one-year and total compensation for services performed shall not exceed \$468,000.

#### **Proposed Amendments to Regulation No. 2 – Termination of Service for Non-Payment**

The next item on the agenda was the consideration of certain amendments to the Board's service termination regulation. Executive Director Steven Lawitts summarized the amendments. Payment necessary to avoid termination must be received no later than 5:00 p.m. on the day prior to the scheduled termination date rather than on the actual termination date; the period within which time a termination complaint may be filed will be increased from 5 business days to 10 calendar days and a decision on the termination complaint will be deemed final for the purpose of precluding further administrative appeals. The definition of "child" would be changed from someone under the age of 18 to someone under the age of 6 for purposes of

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<sup>1</sup> Filed with Minutes of the Meeting.



invoking special procedures for premises where children reside. Customers who default on a payment agreement would be ineligible for another payment agreement for 3 years.

At this point, an unidentified member of the audience interrupted the proceedings to demand an opportunity to be heard. Ms. Levine explained that there are no public hearing requirements applicable to the Board's adoption of regulations where rates or charges for use of or services provided by the Water and Sewer System are not being adopted. Mr. Tripp added that notwithstanding the legal requirements, the Board would have provided an opportunity to be heard on any material amendments to the service termination regulation, but the changes now being proposed do not rise to that level.

Responding to a question from Ms. Gelber, Mr. Lawitts said the amendments to the regulation would be posted on the Board's website. There being no further discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

**WHEREAS**, the Board is authorized pursuant to Section 1045-h(8) of the New York City Municipal Water Finance Authority Act (the "Act") to adopt rules and regulations to provide for the discontinuance or disconnection of the supply of water or the provision of sewer services or both by the City of New York for nonpayment of fees, rates, rents or other charges therefore; and

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**WHEREAS**, pursuant to the Act, the Board previously adopted, and subsequently amended, its Regulation No. 2 authorizing the New York City Department of Environmental Protection ("DEP") to terminate water and sewer service to customers because of nonpayment of assessed charges; and

**WHEREAS**, to provide the Board and DEP with an enhanced mechanism to enforce collection of charges, in November 2007, Regulation No. 2 was amended by the Board to reflect material changes including: lowering the dollar amount and delinquent period thresholds determining an account's eligibility for service termination because of non-payment; authorizing termination of service where a customer has defaulted on a payment agreement and increasing the down payment required for a payment agreement approved in response to a termination notice;

revising the cold weather exception during which DEP will not conduct service terminations; simplifying the Termination Complaint procedure; and, revising provisions relating to the elderly, blind, disabled and the newborn baby exception as circumstances requiring Special Procedures; and

**WHEREAS**, DEP has proposed additional modifications to Regulation No. 2 including: adding and revising certain defined terms and making various stylistic changes; modifying provisions to require that payment be received by DEP by 5:00 PM on the day prior to the date service termination is to be performed in order to prevent termination; removing provisions that required DEP to discontinue termination if a customer made an offer to pay as the work was being performed; changing the number of days specified for certain events from five business days to ten calendar days; specifying that a decision by the Board in response to a Termination Complaint, which decision would include any pre-existing complaint if applicable, shall constitute a final agency determination; and revising special procedures applicable in cases where termination may take place at a home where a child resides, to cover homes having a child under six years of age rather than eighteen; and

**WHEREAS**, the Board has reviewed the proposed changes which are set forth and annexed hereto and has considered the recommendations of staff and believes that the proposed revisions to Regulation No. 2 are reasonable and appropriate; it is therefore

**RESOLVED**, that the proposed revisions to Regulation No. 2 as described above and in the form annexed hereto<sup>2</sup> are hereby approved and adopted effective February 29, 2008.

## **Financial Update**

- **Year-to-Date Collections and Collection Enforcement Initiatives**
- **Overview of FY2009 Rate Expectation**

The next item on the agenda was a financial update provided by Mr. Lawitts. Mr. Lawitts discussed year to date revenues as well as the status of the Payment Incentive Plan (“PIP”), and the Board’s collection enforcement initiatives. Year to date revenues are 3% below

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<sup>2</sup> Filed with Minutes of the Meeting.

the plan target amount. Enrollment in the PIP is ongoing and it is estimated that PIP revenues will amount to approximately 38% of collections. March 25, 2008 is the next date scheduled for service termination, and the 90-day lien sale notices were mailed on February 19, 2008.

Mr. Lawitts then briefly discussed Board staff's tentatively proposed 1½% rate increase for Fiscal Year 2009, to be followed by a formal proposal to be presented at a subsequent meeting. Mr. Tripp then asked Board staff to prepare as part of its formal proposal Fiscal Year 2009 rate projections 3 additional scenarios relating to the Board's rental payment to the City pursuant to the System Lease: First, the rate increase required under a rental structure where all rent in excess of the amount required for debt service on City general obligations bonds issued for Water and Sewer System purposes (G.O. debt service) would be applied to rate reduction; second, the rate required under the City's Comptroller's proposal to use 50% of the excess rent above G.O. debt service for pay as you go capital and 50% for rate relief; and third, the rate required and future projections if 100% of the "excess rent" were to be used for pay as you go capital financing.

**Adjournment**

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

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SECRETARY