

MINUTES OF A MEETING OF THE NEW YORK CITY WATER BOARD

A meeting of the New York City Water Board (the “Board”) was held on December 18, 2009, at 8:30 a.m. at the New York City Department of City Planning, 22 Reade Street, Spector Hall, New York, New York. The following members of the Board were present:

Alan M. Moss;
Marcia Bystryn;
Donald Capoccia;
Amaziah Howell;
Mehul Patel; and
Benjamin Tisdell,

constituting a quorum. Mr. Moss 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 October 30, 2009. There being no discussion, upon motion duly made and seconded, the minutes of the Board’s meeting held on October 30, 2009, were unanimously adopted.

Review and Approval of Investment Report and Guidelines

The next item on the agenda was the annual approval of the Investment Guidelines and Investment Report. Executive Director Steven Lawitts explained that State law requires annual approval of the Investment Guidelines and the Investment Guidelines require annual approval of the Investment Report. He explained that monies in the Board’s Operating and Maintenance Expense Fund are invested in Treasury Bills pursuant to the Investment Guidelines, and according to the Investment Report, earned \$3.2 million or approximately 3% last year. Board staff recommends adoption of the Investment Report and that no changes be made to the Investment Guidelines.

Mr. Capoccia said he would approve the Investment Guidelines subject to clarification that government bond dealers, authorized to enter into repurchase agreements with the Board pursuant to the Investment Guidelines, must be on the “Primary Dealer List” specified in the Investment Guidelines. Mr. Lawitts said he would endeavor to provide that clarification. 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”) adopted Investment Guidelines to establish policies for the investment of its funds on May 2, 1986 and subsequently amended the Investment Guidelines on October 24, 1990 and February 14, 1997; and

WHEREAS, pursuant to the Investment Guidelines, the Board is required annually to review and approve both the Investment Guidelines and an Investment Report; and

WHEREAS, the Board has reviewed the Investment Guidelines as contained in the Fiscal Year 2009 Investment Report and finds both the guidelines and report to be reasonable and appropriate; it is therefore,

RESOLVED, that the Investment Guidelines and the Fiscal Year 2009 Investment Report, copies of which will be filed with the minutes of this meeting, are hereby approved.

Authorization for Management of the Board and the Authority to Sign an Engagement Letter with Deloitte & Touche LLP as Independent Auditors.

The next item on the agenda was the authorization for management of the Board and the Water Authority to execute an Engagement Letter with Deloitte & Touche to conduct the Fiscal Year 2010 audit of the System Financial Statements. Mr. Lawitts said the Engagement Letter had been approved earlier today by the Joint Audit Committee of the Board and the Authority and recommended by such Committee to the Board and the Authority for approval. Responding to a question from Mr. Moss, Authority Comptroller Michele Levine said the Engagement Letter reflects the fee schedule contained in the master agreement with Deloitte previously approved by the Board and the Water Authority. 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”) and the New York City Municipal Water Finance Authority (the “Authority”) previously retained the firm of Deloitte & Touche LLP for such firm to serve as independent auditors for the financial statements of the water and sewer system of the City of New York (the “System”) for the fiscal years ending on June 30, 2008, 2009 and 2010; and

WHEREAS, pursuant to the Audit Committee Charter, the Audit Committee has evaluated the independent auditors, found their performance to be satisfactory, and recommended that the Board and the Authority authorize the management of the Board and the Authority to sign an engagement letter with Deloitte & Touche LLP as the independent auditors for the System’s financial statements for the fiscal year ending June 30, 2010; it is therefore,

RESOLVED, that the Board authorizes the management of the Board and the Authority to, upon approval of the Authority Board of Directors, sign an engagement letter with Deloitte & Touche LLP as the independent auditors for the System’s financial statements for the fiscal year ending June 30, 2010, as well as any other documents necessary to effectuate the continued retention of the independent auditors.

Consent to an Easement Exchange between DEP and Broadway Housing Development Fund Company, Inc. for the Sugar Hill Project

The next item on the agenda was approval of an exchange of easements between DEP and the developer of a housing development in upper Manhattan. DEP Deputy Commissioner of the Bureau of Water and Sewer Operations, James Roberts, explained that it is proposed that DEP trade access to a parcel of DEP land adjacent to the defunct Croton Aqueduct now used for vehicle storage in return for use of space in a portion of the completed development. The new space would enable DEP to store vehicles inside an enclosed storage facility thereby providing protection from the elements and greater security. Mr. Capoccia asked whether the developer would indemnify the Board against personal injury liability and provide insurance thereafter. Commissioner Roberts said he would endeavor to ensure that such provisions are included in the executed transaction documents. 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 (the “Lease”); and

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

WHEREAS, pursuant to Section 11.1(d)(ii) of the Lease, the City may, with the prior written consent of the Board, grant interests in property covered by the Lease which, in the reasonable judgment of the Board, do not interfere with the operation, maintenance and the collection of revenues from the Systems; and

WHEREAS, Broadway Housing Development Fund Company, Inc. (“Broadway Housing”), a New York not-for-profit corporation, has requested that the Board consent to an exchange of easements with the City in connection with Broadway Housing’s development of a mixed-use project (the “Sugar Hill Project”) that includes affordable housing, educational and cultural arts components at 404-414 West 155th Street, New York, NY (the “Project Site”); and

WHEREAS, the City currently owns in fee an irregularly shaped parcel of land located to the south and west of the Project Site that is currently occupied by DEP for vehicle storage and equipment facility purposes (the “DEP Site”); and

WHEREAS, a surface easement to Broadway Housing over the DEP Site, which Broadway Housing would pave and landscape, would provide access to the primary entrances of the Sugar Hill Project; and

WHEREAS, in exchange, Broadway Housing has agreed to grant and pave a surface easement to the City over a similarly-sized area of the Project Site housing for use by DEP as a more convenient vehicle egress and staging area, such grant being equal and full consideration for the grant of an easement to Broadway Housing by the City as described herein; and

WHEREAS, other than as described above, permanent above-grade construction would not be permitted on either easement; and

WHEREAS, the granting of an easement to Broadway Housing constitutes the granting of an interest in real property subject to the Lease; and

WHEREAS, the Board has received a presentation from DEP and has reviewed a memorandum dated March 16, 2009 from the New York City Law Department, both of which set forth a recommendation that the Board approve the grant of an easement to Broadway Housing; and,

WHEREAS, the Board has also received certification from AECOM USA, Inc., Consulting Engineer, that it has evaluated the grant of an easement to Broadway Housing, and has concluded that such transfer is reasonable and appropriate in that it provides benefits to the City and will have no adverse impact on the operation of the Systems serving the City; it is therefore,

RESOLVED, that, pursuant to the powers granted to the Board by the Lease, the Board hereby approves the grant of an easement to Broadway Housing as described above and authorizes DEP to take such actions as may be required to effectuate the granting of the easement described herein.

Approval of a License Agreement between the Board and Westchester County regarding connection to the UV Facility at Eastview.

The next item on the agenda was the approval of a license between the Board and Westchester County (“Westchester”) to facilitate Westchester’s connection to an ultra-violet water treatment plant (the “UV Plant”) being constructed by DEP. DEP Assistant Counsel, Robert Craig, explained that DEP will construct two 48” pipes from the U.V. Plant to Westchester’s water supply connection. The \$5.6 million cost of the pipes will be funded through Water Authority Bonds, the debt service on which will be paid by Westchester as a license fee pursuant to the license.

Responding to a question from Mr. Tisdell, Mr. Craig said that in addition to the license fee, Westchester will also pay a charge pursuant to a separate water supply agreement for the treated water it takes from the UV Plant. Discussion ensued among Mr. Capoccia, Mr. Moss, and Mr. Lawitts as to whether an adjustment to the license fee should be negotiated as an offset against the real estate taxes paid by DEP to Westchester. Mr. Craig said he would endeavor to negotiate this. There being no further discussion, but subject to the understanding that Mr. Craig would endeavor to negotiate some form of real estate tax relief from Westchester, 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 (the “Lease”); and

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

WHEREAS, pursuant to the Lease, the Board is authorized to establish and collect fees, rates, rents and other service charges for the use of, or for services furnished, rendered or made available by, the Systems; and

WHEREAS, pursuant to the 2002 Filtration Avoidance Determination (“2002 FAD”) issued by the United States Environmental Protection Agency (“EPA”), DEP is constructing the Catskill/Delaware Ultraviolet Disinfection Facility (“Cat/Del UV Facility”) on DEP’s property at Eastview, in the Town of Mount Pleasant, New York; and

WHEREAS, the Cat/Del UV Facility, scheduled to become operational in 2013, will provide the City with a supply of water subjected to ultraviolet light disinfection (“Treated Water”) which will ensure the City’s compliance with federal and state drinking water standards and will significantly enhance the City’s water supply protection program; and

WHEREAS, municipalities located in lower Westchester County south of the Cat/Del UV Facility would also receive and benefit from the Treated Water via their connections to the Catskill and Delaware Aqueducts; and

WHEREAS, the County of Westchester (“Westchester”), a municipal corporation organized pursuant to the laws of the State of New York, operates two (2) water districts that are currently connected to the Systems north of where a supply of Treated Water will be accessible once the Cat/Del UV Facility becomes operational; and

WHEREAS, Westchester is required by federal and state laws and regulations to obtain a supply of Treated Water by 2013; and

WHEREAS, Westchester has therefore requested the ability to make a connection to a point south of the Cat/Del UV Facility, in order to supply Treated Water to the Westchester and its water districts; and

WHEREAS, DEP has agreed to construct, for Westchester’s benefit, two (2) 48-inch lines that will run south from the Cat/Del UV Facility to the edge of DEP’s Eastview property and end in blind flanges, allowing Westchester to make a connection at this point in order to receive Treated Water (the “Connection Work”); and

WHEREAS, DEP has authorized a Change Order to the Cat/Del UV Facility Construction contract in order to advance the Connection Work; and

WHEREAS, the funding for the Change Order will be paid out of proceeds from the issuance of New York City Municipal Water Finance Authority bonds (“Water Authority Bond Issuance”); and

WHEREAS, the Connection Work is being built by DEP solely for the benefit of Westchester and its two (2) water districts, as it will allow Westchester the most efficient and expedient access to a supply of Treated Water and also allow Westchester to comply with federal and state drinking water standards in a timely manner; and

WHEREAS, due to the restrictions on Westchester’s funding of the Change Order via issuance of county municipal bonds, such restrictions related to the absence of a real property interest granted to Westchester on the area where the two (2) 48 inch lines will

be installed, Westchester has agreed to ultimately reimburse the Systems in full the amount of the Change Order issued for the Connection Work; and

WHEREAS, the mechanism for the reimbursement to the Systems by Westchester will take the form of semi-annual license fee payments made pursuant to a license agreement (“License”) to be executed by the Board and Westchester; and

WHEREAS, the license fee payments will equal in full all debt service costs related to the Water Authority Bond Issuance used to fund the Change Order; and

WHEREAS, pursuant to the Lease and to Section 1045-g of the Public Authorities Law of the State of New York, the Board is empowered to authorize and execute the License; and

WHEREAS, authorization and execution of the License will enable Westchester to best achieve its water supply needs and comply with federal and state regulations and allow the City to supply Westchester with City water in the most efficient manner pursuant to the City’s obligations to supply water to entitled entities in compliance with Section 24-360 of the Administrative Code of the City of New York; and

WHEREAS, based on the recommendations by staff and by the terms and conditions of the License which have been agreed to by both DEP and Westchester, the Board has determined that the authorization and execution of this License is reasonable and appropriate and will not result in any loss of funds or revenues as regards the Systems; it is therefore

RESOLVED, that, pursuant to the powers granted to the Board by the Lease and by law, the Board hereby approves the terms and conditions of the License and authorizes the execution of the License.

Update on DEP’s Environmental, Health & Safety Program

Mr. Lawitts next provided an update on DEP’S Environmental, Health & Safety (“EH&S”) Program. He explained that the EH&S Program was established as a requirement of DEP’s 2001 Plea Agreement with the U.S. attorney pursuant to which DEP was placed on probation. Mr. Lawitts described \$128 million in EH&S expenditures over the last 8 years which were made in compliance with the Plea Agreement thereby entitling DEP to be discharged from probation on December 31, 2009. The expenditures included rectification of approximately 46,000 action items identified in environmental audits and the establishment of an Employees Concerns and Discipline Program.

Proposed Amendments to the Agreement with Safety Management Systems, LLC for EH&S Programs and Compliance Tasks for the Marine Section of Bureau of Wastewater Treatment

The next item on the agenda was a presentation to the Board for information purposes only of an amendment to the Board’s Agreement with Safety Management Systems, LLC for EH&S Programs related to the Marine Section of the Bureau of Wastewater Treatment. Mr. Lawitts explained that the actual contract amendment will be presented to the Board for its approval at a

subsequent meeting. DEP General Counsel, Robin Levine explained that the existing contract is proposed to be increased by an amount not to exceed \$270,000 to require the contractor to perform certain remaining EH&S tasks required by DEP's Plea Agreement. Responding to Mr. Capoccia, Ms. Levine said that probation is scheduled to the end on December 31, 2009 pursuant to the Plea Agreement, and the Plea Agreement contains no provisions for extension of probation beyond that date.

Financial Update

Mr. Lawitts next presented a Financial Update. He said that the trend of reduced consumption resulting in declining revenues is continuing. There is a 5% year to date revenue shortfall from the plan target amount. Responding to Mr. Tisdell, he said the largest portion of the decline is attributable to residential rather than commercial accounts.

Mr. Lawitts said that DEP sent out 3,500 service termination notices, resulting in 35 shutoffs for customers who did not pay or enter into payment plans. Twenty-nine accounts were subsequently restored upon payment in full or entry into payment plans. DEP collected \$2.7 million as a result of the termination notices. He also said that pre-lien notices were recently sent to lien-sale eligible accounts. He then discussed the status of the Automated Meter Reading program. It is expected that 800,000 Automated Meter Reading devices or 99.4% of the plan target amount will be installed.

Findings by Booz Allen Hamilton on Current and Projected Expenditures and Revenues, and Alternatives for Water, Sewer, Stormwater and Water Conservation Rate Structures in New York City

Next, David Mader from Booz Allen Hamilton ("Booz Allen") presented a summary of Booz Allen's Rate Structure Alternatives pursuant to its consulting contract with the Board. He discussed fixed charges, stormwater rates, new development charges, and conservation pricing.

He said that fixed charges could be imposed to fund Operating and Maintenance Expenses, which increase regardless of consumption such as customer service costs, real estate taxes, indirect City costs, and debt service on Water Authority bonds. He said that stormwater charges could be imposed on premises based on their impact on the sewer system rather than as a percentage of the water charge. For example, vacant lots contribute to stormwater removal costs but currently do not pay the wastewater charge of 159% of the water charge because no water is consumed on such lots. New development charges could be imposed for new connections to the Water and Sewer system. Conservation pricing could be imposed to incentivize reduced consumption. Mr. Mader recognized that conservation is not a current priority.

Mr. Lawitts said the Booz Allen findings will be discussed with affordable housing advocates, and real estate and environmental stakeholders ahead of next year's rate adoption process.

Approval of an Amendment to the Agreement with Hazen & Sawyer/Leggette Brashears and Graham, a Joint Venture, for additional services regarding Natural Gas Drilling in the Upstate Watershed

Next DEP Assistant Commissioner David Warne described a 1-year \$250,000 extension to the consultant contract to study the impact of natural gas drilling in the upstate watershed.

Commissioner Warne said that the State's Draft Generic Environmental Impact Statement has been delayed by 6 months by the State Department of Environmental Conservation resulting in a new deadline for public comment. Additional work is now required by the consultant on project management and technical assistance to enable DEP to comment before expiration of the new public comment period.

Responding to Mr. Capoccia, DEP general counsel Robin Levine said that legal challenges to the environmental review could be commenced after release of the Final Generic Environmental Impact Statement.

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 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, the Board on November 20, 2008 authorized the selection of Hazen & Sawyer/Leggette Brashears and Graham, a Joint Venture, ("Hazen/Leggette") to provide technical assistance in developing an assessment of the impact of natural gas drilling in the watershed region of the New York City water supply system for the New York City Department of Environmental Protection, Bureau of Water Supply ("DEP-BWS"); and

WHEREAS, the Board entered into a consulting agreement dated December 23, 2008 with Hazen/Leggette in the amount of \$500,000 to provide such assistance for a term that will expire on January 4, 2010 (the "Agreement"); and

WHEREAS, DEP-BWS has identified a need for further assistance from Hazen/Leggette with respect to a technical review and comment on the New York State Department of Environmental Conservation's draft Supplemental Generic Environmental Impact Statement, which was released later than expected on September 30, 2009; and

WHEREAS, the Board has reviewed a November 19, 2009 memorandum from Paul V. Rush, P.E., Deputy Commissioner of DEP-BWS, which details the additional requested services and sets forth a recommendation that the Board authorize an amendment to the Agreement in the amount of \$250,000 for Hazen/Leggette to provide such services; and

WHEREAS, in accordance with the Water Board's Policy on the Procurement of Goods and Services, in particular, Section 5.i (prior Board 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 directed to execute an amendment to the Agreement with Hazen/Leggette to provide the additional services, upon such terms and conditions as the Executive Director may deem reasonable and appropriate, for an additional amount not to exceed \$250,000. Total compensation for services performed under the Agreement and its amendment shall not exceed \$750,000.

Miscellaneous Comments from Mr. Moss

Mr. Moss invited Board members to visit the site of the Newtown Creek Project to see the park, nature walk and other public amenities.

Mr. Moss noted that the Environmental Working Group lists New York City as thirteenth nationally in water quality and he questioned the validity of such a low ranking.

Finally, he recognized Mr. Lawitts who has served as both Executive Director of the Water Board and Acting Commissioner of DEP since the resignation of Commissioner Lloyd. Mr. Moss said Mr. Lawitts is one of the finest New York City civil servants he has known since the administration of Mayor Robert Wagner.

Adjournment

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

Secretary