

MINUTES OF A MEETING OF THE NEW YORK CITY WATER BOARD

March 18, 2011

A meeting of the New York City Water Board (the “Board”) was held on March 18, 2011, at 8:30 a.m. at the New York City Department of City Planning, 22 Reade Street, Spector Hall, New York, N.Y. 10007. The meeting was held in two parts, the first being an informational meeting at which no Board action was taken due to the delayed arrival of a Board member whose presence was needed for a quorum. At the informational meeting, Board members Alan M. Moss, Marcia Bystryn and Donald A. Capoccia were present. Albert F. Moncure, Jr. served as Secretary of the meeting.

Financial Update

The first item on the agenda at the informational meeting was the presentation of a Financial Update by the Board’s Executive Director, Steven Lawitts.

Mr. Lawitts said collections for the year are 4% ahead of the plan target amount. He said this is the first time in six years that collections have been ahead of the plan target amount at this stage in the Fiscal Year.

Mr. Lawitts next described the City Council legislation reauthorizing the sale of water liens through December 31, 2014. The Mayor signed the measure into law on March 16. The new law will allow lien sales to take place during four fiscal years, as compared to three under the old law. The new law raises the payment delinquency threshold for water lien sale eligibility for two and three family homes from \$1,000 to \$2,000. It eliminates the down payment requirement for payment plans, and it extends the maximum repayment period from five to ten years. The law also imposes additional notice requirements on the Board in order to sell water liens.

Mr. Lawitts next described the status of the Automated Meter Reading (“AMR”) installation program, which is now 75% complete citywide. In addition to reducing estimated bills, AMR provides real time consumption information to customers through the internet as well as online leak notification to customers enrolled in the Leak Notification Program. Approximately 1100 customers in 1, 2, and 3 family homes are enrolled in the Leak Notification Program pursuant to which customers are sent an email alert of a possible water leak when excessive water consumption is detected by the system on 3 consecutive days.

Mr. Lawitts briefly discussed the Capital Program, which requires a commitment of \$2.5 billion for this year. To date DEP has expended \$775 million. Mr. Lawitts then briefly described the Water Authority’s program to finance the Capital Program.

Mr. Moss asked whether consideration has been given to establishment of a differential billing convention for consumption in excess of a baseline amount. Mr. Lawitts said that so-called “conservation pricing” is one of the structures discussed in the alternative rate structure study and that 100% completion of AMR installation would permit implementation of this billing method. No decision has been made to implement this billing structure.

Concession to National Grid in Connection with the Processing on Anaerobic Digester Gas

The next item at the informational meeting was a presentation by DEP Assistant Counsel, Sarah S.M. Hurley, relating to a proposed concession to National Grid in connection with the processing of anaerobic digester gas. The concession will require the Board’s consent. Pursuant to the concession, National Grid will purify digester gas generated naturally at the Newtown Creek Wastewater Treatment Plant. The purified gas will be upgraded to pipeline quality for delivery to National Grid customers through the utility’s gas distribution system. National Grid will finance construction of the processing facility at Newtown Creek and will be

reimbursed through the provision of digester gas. The project will eliminate the need for DEP to flare the gas and will result in compensation to the System for quantities of gas processed in excess of the base amount needed to compensate National Grid. Mr. Capoccia asked to see a spreadsheet describing the proposed financial arrangement. Ms. Hurley agreed to provide this. The concession will be formally presented to the Board for consent at a future meeting.

Commencement of Formal Meeting

At approximately 9:00 a.m. the formal meeting of the Board commenced with the following members of the Board present:

Alan M. Moss;

Marcia Bystryn;

Donald A. Capoccia; and

Arlene Payne,

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 at the formal meeting was approval of the minutes of the Board's previous meeting held on January 28, 2011. There being no discussion, upon motion duly made and seconded, the minutes of the Board's meeting held on January 28, 2011 were unanimously adopted.

Extension of Consent to Granting Conservation Easements on Watershed Lands

The next item on the agenda was a request by the City for a two-year extension of the Board's consent to the City's granting of conservation easements in favor of the New York State Department of Environmental Conservation. DEP Assistant Counsel, May Chin, explained

that conservation easements restrict development on environmentally sensitive lands in the upstate watershed acquired by the City pursuant to the Watershed Memorandum of Agreement. Responding to questions from Mr. Capoccia and Mr. Moss, Mr. Lawitts explained that mineral rights and timber are reserved by the City from the Leased Property leased by the City to the Board pursuant to the System Lease. Responding to a comment from Mr. Capoccia, Ms. Chin agreed to modify the text of the easement agreements to eliminate the Board's right to encumber properties, which are subject to the easements. There being no further discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

WHEREAS, pursuant to the New York City Watershed Memorandum of Agreement, dated January 21, 1997 (the "MOA"), the City of New York (the "City"), acting by and through the New York City Department of Environmental Protection ("DEP"), is engaged in a land acquisition program in the New York City Watershed; and

WHEREAS, pursuant to such program, the City is seeking to acquire fee title to, or conservation easements on, sensitive watershed lands to better protect the quality of the City's drinking water; and

WHEREAS, pursuant to the MOA, the City agreed to grant conservation easements to the New York State Department of Environmental Conservation ("NYSDEC") on lands acquired in fee under such program, all as more fully described in and subject to the terms of Paragraph 82 of the MOA; and

WHEREAS, the granting of such conservation easements constitutes the granting of an interest in real property subject to the Agreement of Lease, dated as of July 1, 1985, as amended (as so amended, the "Lease"), between the City and the New York City Water Board (the "Board"); 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 the Leased property which, in the reasonable judgment of the Board, do not interfere with the operation and maintenance of the System and the collection of revenues from the System; and

WHEREAS, by resolution adopted on June 19, 2003, the Board consented to the granting of such conservation easements by the City to NYSDEC, in substantially the form annexed to such resolution, for a period of one (1) year, and on the condition that a report on the land acquisition program be submitted to the Board together with any request to extend such consent; and

WHEREAS, by resolution adopted on May 7, 2004, the Board consented to the granting of such conservation easements by the City to NYSDEC, in substantially the form as approved by the Board on June 19, 2003, for an additional period of two (2) years, and on the condition that a report on the land acquisition program be submitted to the Board together with any request to extend such consent; and

WHEREAS, by resolution adopted on September 15, 2006, the Board consented to the granting of such conservation easements by the City to NYSDEC, in substantially the form as approved by the Board on May 7, 2004, for an additional period of two (2) years, and on the condition that a report on the land acquisition program be submitted to the Board together with any request to extend such consent; and

WHEREAS, by resolution adopted on November 20, 2008, the Board consented to the granting of such conservation easements by the City to NYSDEC, in substantially the form as approved by the Board on September 15, 2006, for an additional period of two (2) years, and on the condition that a report on the land acquisition program be submitted to the Board together with any request to extend such consent; and

WHEREAS, DEP has submitted a report on the progress of the land acquisition program together with a request to extend such consent for an additional period of two (2) years; it is therefore

RESOLVED, that the Board hereby gives its consent, for an additional period of two (2) years from the date hereof, to the granting of conservation easements by the City to NYSDEC, substantially in the form presented to the Board on November 20, 2008, on lands acquired in fee under the City's watershed land acquisition program, as and when required pursuant to the terms of the MOA; and be it further

RESOLVED, that a report be submitted to the Board on the progress of the City's land acquisition program together with

any request to extend such consent beyond such two (2) year period; and be it further

RESOLVED, that the officers of the Board be, and each of them hereby is, authorized and empowered, in the name and on behalf of the Board, to execute such agreements and other instruments, and to take such other and further actions, as the officers or any officer deems necessary or appropriate to effectuate the foregoing resolutions.

Approval of Selection of Financial Advisor and Contract Authorization

The next item considered by the Board was the approval of Financial Advisor contracts with KPMG LLP and Greenhill & Co., Inc. Mr. Lawitts explained that Board staff recently concluded a competitive request for proposals process to select Financial Advisors to advise the Board on potential public-private partnerships relating to the cogeneration of energy at the Ward's Island Wastewater Treatment Plant, as well as alternative operations at the Catskill-Delaware Ultraviolet Light Disinfection Plant and the Croton Filtration Plant. The selected contractors would also provide advice relating to the beneficial re-use of sludge and the development of hydropower at dams in the upstate watershed. Discussion ensued regarding the allocation of revenues from prospective hydropower facilities. Mathilde McLean, the Board's Treasurer, and Mr. Lawitts both explained that revenues from hydropower are specifically reserved to the City in the System Lease. Responding to Mr. Moss's uneasiness with this fact, Mr. Lawitts further explained that DEP's motivation for developing hydropower is not financial – the project would produce annual revenues of only \$300,000 to \$400,000 – but rather to prevent a private utility from obtaining a license to develop hydropower at DEP facilities as is permitted under Federal Law. A private license could impose burdensome restrictions on DEP's ability to operate the dams. As an example, Anthony Fiore, DEP Operations Chief of Staff, said that other private hydropower licenses have required a public water utility to maintain water

levels in reservoirs at higher levels than would otherwise be needed and to restrict the release of water by the utility from dams.

Mr. Lawitts described the RFP selection process and the recommendation that contracts be awarded to the two selected respondents. He said the contractors would act independently and not as a joint venture. Responding to Mr. Capoccia, Mr. Lawitts said the selection committee carefully considered the price proposals, particularly the competitiveness of the hourly rates proposed by the selected respondents. Mr. Capoccia asked for the Board to have an opportunity to review the final scope of services before the contracts are executed. Mr. Lawitts agreed to this request.

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, the Board's primary duty under the Act is to establish and collect water and wastewater rates and charges in an amount sufficient to place the water supply and wastewater systems (the "System") of the City on a self-sustaining basis; and

WHEREAS, the System is operated and maintained by the Department of Environmental Protection of the City of New York ("DEP"); and

WHEREAS, in the interest of maximizing the value of System assets and reducing risk for rate payers, the Board and DEP seek to procure the services of a firm(s) that will provide financial advisory services for the consideration and potential procurement of public-private partnerships ("P3s"), particularly for projects related to energy assets and alternative operations; and

WHEREAS, on February 2, 2011, Board staff commenced a competitive solicitation process for said financial advisory services with the advertisement of a Request for Proposals (“RFP”) in the City Record, the New York Daily News, and on the Board’s website; and

WHEREAS, eight technical proposals and cost proposals were received for consideration and review; and

WHEREAS, a Technical Evaluation Committee (“the Committee”), consisting of five qualified persons, rated and ranked each technical proposal and statement of qualifications received in accordance with the criteria stated in the RFP; and

WHEREAS, the four proposing teams, which the Committee ranked most highly based on the technical proposal and qualifications criteria set forth in the RFP, were invited to interview with the Committee; and

WHEREAS, the Committee determined that the proposals and presentations by Greenhill & Co., Inc. (“Greenhill”) and KPMG LLP (“KPMG”) were the most highly-rated on technical approach and qualifications and, after consideration of the cost proposals, determined that their cost proposals were fair and reasonable; and

WHEREAS, the Board has reviewed a memorandum dated March 11, 2011 from the Executive Director of the Board, Steven W. Lawitts, on behalf of the Committee, which summarizes the RFP and evaluation process and sets forth a recommendation that the Board authorize the Executive Director to enter into contracts with Greenhill and KPMG to provide financial advisory services to the Board with respect to P3s; and,

WHEREAS, in accordance with the Water Board’s Policy on the Procurement of Goods and Services, in particular, Section 4 (selection based on the best combination of technical merit and price) and Section 5.i (prior approval of contracts where the cumulative value exceeds \$100,000), the Board finds the selection of Greenhill and KPMG appropriate;

WHEREAS, the Board has requested that the scope of services of the agreements be made available to the Board for the Board’s review prior to execution of the agreements; it is, therefore,

RESOLVED, that the Executive Director is hereby authorized and directed to execute agreements with Greenhill and KPMG to provide financial advisory services to the Board, provided that the Board approves of the scope of services prior to execution of the agreements, for a two-year term, which may also include an option for three one-year extensions at the Board's discretion, upon such terms and conditions as the Executive Director may deem reasonable and appropriate; and be it further

RESOLVED, that the total compensation for services performed for the initial two-year term of the agreements shall not exceed \$2,700,000 of Board funds, provided that the Executive Director shall deliver a progress report to the Board on the financial advisory services provided to date at the end of the first year of the agreements.

Approval of Water Board Mission Statement and Performance Measurements

The next item on the agenda was the approval of a Water Board Mission Statement and Performance Measures as required by the Public Authorities Accountability Act. Mr. Lawitts described the Mission Statement and Performance Measures, which he said are derived from provisions of the Water Authority Act relating to the Board. There being no discussion, upon motion duly made and seconded, the following resolution was unanimously adopted:

WHEREAS, pursuant to recent amendments to the New York State Public Authorities Law (the "PAL"), the Board is required to adopt a mission statement and a list of measurements by which performance of the Board and achievement of its goals may be evaluated; and

WHEREAS, to comply with the recent amendment to the PAL, Section 2824-a, Board staff has recommended the mission statement as well as the addition of goals and measurements attached hereto; and

WHEREAS, the Board finds the mission statement and measurements to be reasonable and appropriate; it is therefore

RESOLVED, that the mission statement and measurements as attached hereto¹ are hereby approved and adopted.

Adjournment

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

Secretary

¹ Filed with Minutes of the Meeting.