

**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 9, 2011 at 8:30 a.m. at the New York City Department of City Planning, 22 Reade Street, Spector Hall, New York, New York 10007. The following members of the Board were present:

Alan M. Moss,
Marcia Bystryn,
Alfonso L. Carney, Jr.,
Mehul J. Patel,
Arlene M. Payne, and
Benjamin Tisdell,

constituting a quorum. Mr. Moss chaired the meeting, and Albert F. Moncure Jr., served as secretary of the meeting.

Approval of Minutes of November 18, 2011 Meeting

The first item on the agenda was approval of the minutes of the Board’s previous meeting held on November 18, 2011. There being no discussion, upon motion duly made and seconded, the minutes of the meeting held on November 18, 2011, were unanimously adopted.

Amendment to Agreement with Greenhill for Financial Advisory Services

The next item on the agenda was an amendment to the contract with Greenhill & Co., Inc. (“Greenhill”) to authorize a \$1.8 million success fee in connection with the proposed privatization of the Catskill/Delaware Ultraviolet Disinfection Facility (the “UV Facility”). Executive Director, Steven Lawitts, reminded the Board that it previously authorized a \$1.2

million retainer with Greenhill to provide financial advisory services in connection with the consideration and potential procurement of public-private partnerships. The contract provides for additional compensation, to be agreed upon, in the event a successful transaction in which Greenhill furnishes advice is implemented. It is now proposed that Greenhill manage the competitive selection of a private entity to operate and maintain the UV Facility, which is currently under construction with a scheduled completion date of April 2012. The private operator would be selected through negotiations with two firms identified pursuant to a previously issued Request for Qualifications (“RFQ”).

Mr. Lawitts then described the requirements of Local Law 35. The law requires a review by the City Council and Comptroller of the costs and benefits of the privatization of a public function prior to issuance of a Notice to Proceed by a City agency in the agency’s sole discretion.

Mr. Tisdell next initiated a discussion among himself, Mr. Moss, Mr. Patel, Mr. Carney, and Ms. Payne by asking how the amount of the success fee was determined. Mr. Lawitts explained that the \$1.8 million fee was an attempt to approximate a percentage of the present value of the savings expected to be achieved by private operation of the UV Facility instead of operation by DEP. The present value of the savings was calculated by discounting the estimated savings at an assumed rate of return on investment. The success-fee percentage is comparable to other success-fee percentages received by Greenhill in other public-private partnerships on which it has consulted. Responding to a follow-up question from Mr. Tisdell, Mathilde McLean, the Board’s Treasurer, explained that Greenhill has not previously furnished advice with respect to an operating contract similar to that for the UV Facility. Rather in the past it has primarily consulted on asset transactions where its fee has been a percentage of the sale

price because the municipality selling the asset has wanted to maximize sale proceeds, and a fee that was positively correlated with the sale price aligned Greenhill's interests with that of the municipality. In the current transaction the City wants the value of the operating contract to be as low as possible so as to maximize savings. A success fee based on the value of the contract would act as a disincentive to achieving this objective. Mr. Patel remarked that the success fee needs justification since the amount of the potential savings is not known. Mr. Moss, on the other hand, said he was pleasantly surprised that there were respondents to the RFQ and thought that the amount of the success fee was reasonable in light of the complexities of the project. Ms. McLean said another way to analyze the fee is that \$1.8 million equates to about 3,000 hours of Greenhill staff time which, she said, is a reasonable estimate of the effort required to complete the project. Responding to Mr. Carney, Mr. Lawitts said the success fee would only be paid after DEP has given the selected operator a Notice to Proceed after completion of a cost-benefit analysis by DEP, which substantiates the expected savings, and that the contract with Greenhill will provide for a "claw-back" or recoupment of the success fee if the contract with the operator is terminated because of litigation with respect to the process or contract operations. Ms. Payne asked that the resolution approving the success fee specifically reference the "claw-back" provision, and Mr. Tisdell asked for a baseline comparison of the proposed success fee with fees earned by Greenhill in other privatizations on which it has consulted. Mr. Lawitts agreed to both requests. A consensus was reached to approve the proposal, subject to satisfaction of Ms. Payne's and Mr. Tisdell's requests.

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

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, on February 2, 2011, Board staff commenced a competitive solicitation process for a firm(s) that would 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, the Board by Resolution dated March 18, 2011, authorized the Executive Director to enter into an agreement with Greenhill & Co., Inc. ("Greenhill") to provide said financial advisory services upon such terms and conditions as the Executive Director deemed reasonable and appropriate; and

WHEREAS, the Board executed a contract with Greenhill on April 26, 2011 that allowed for a future written agreement to be established in the event that the Board or City pursued a specific "Transaction", which is hereby defined as an agreement between the City, the Board, or any of their respective departments, affiliates or agencies and one or more private or publicly-traded companies (the "Counterparty") with regards to a System asset on which Greenhill is providing financial advice; and

WHEREAS, a Transaction related to alternative operations of the Catskill/Delaware Ultraviolet Disinfection Facility has been identified and an amendment to the Greenhill contract is sought that will provide for a Transaction fee to be paid only upon the execution of a contract with a Counterparty and issuance of a notice to proceed with such Counterparty's substantial operation

and maintenance of the Catskill/Delaware Ultraviolet Disinfection Facility; 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 contract with Greenhill to allow for a Transaction fee to be payable to Greenhill only upon the execution of a contract with a Counterparty and issuance of a notice to proceed with such Counterparty's substantial operation and maintenance of the Catskill/Delaware Ultraviolet Disinfection Facility; provided, however, that the Transaction fee shall be subject to reduction or recoupment in whole or in part upon the early termination of the contract with the Counterparty because of an action nullifying the Transaction; and be it further

RESOLVED, that the total compensation of the Transaction fee shall not exceed \$1,800,000 of Board funds, bringing total compensation for Greenhill over the life of the contract, excluding allowable expenses, to a maximum of \$3,000,000 of Board funds.

Presentation: Operational Excellence Program

The next item on the agenda was a presentation on the status of the Operational Excellence Program by David Alexandre, project manager for the contractor, Veolia Water North America Operating Services, LLC ("Veolia"). He described the major components of phase one of the program: (i) "top-down" identification of potential improvements, (ii) "bottom-up" verification; (iii) prioritization and detailing of improvement measures; and (iv) creation of the final report and transformation plan.

Mr. Alexandre described progress to date on the first component mentioned above in which Veolia is benchmarking or comparing DEP practices with U.S. and international best practices and performing “ride-along” observations of work practice and productivity. He said Veolia has preliminarily identified several inefficient practices. Veolia has suggested, for example, that one-third of watershed storm water management practices, which are currently outsourced, could potentially be performed by DEP personnel instead at a savings of up to \$217,000. With respect to the Bureau of Water and Sewer Operations (“BWSO”), based on initial observations, approximately 22% of staff time is “wrench time” in which BWSO workers are fully engaged in operation and maintenance activities, while the rest of the time involves administrative tasks or driving time to work sites.

Mr. Lawitts said that meetings have been held with union leaders who are on board with the program despite some reluctance to have third parties conduct “ride along” observations of union workers.

Presentation: Service Line Protection Program

Mr. Lawitts described the proposed service line protection program. He said that homeowners are responsible for repairing broken service lines to their property. For the last Fiscal Year, 73% of DEP responses to water infrastructure leaks were to private service lines, requiring DEP to inspect, issue a repair notice, and if necessary terminate service. DEP’s cost to shut-off service is approximately \$3,700 per shut-off and the homeowners’ cost averages approximately \$3,750 per repair. It is proposed that DEP offer customers an optional service-line protection plan to be provided by a private company at no net cost to DEP. Customers would pay only a small monthly protection premium which would be added to the water bill,

collected by DEP, and paid over to the service line protection provider. DEP has issued a Request for Proposals to select a contractor to provide the protection plan.

Presentation: Financial Update

The last item on the agenda was a financial update provided by Mr. Lawitts.

Mr. Lawitts said that revenues are currently \$3 million ahead of the plan target amount. Year-over-year changes in billed consumption for Fiscal Year 2012 have been negative but are still on target with the Fiscal Year 2012 plan.

Mr. Lawitts then described the status of DEP's electronic payment initiatives: paperless billing and direct debit billing. He said that approximately 20,000 customers have enrolled in these programs receiving a 2% discount or \$1 million in the aggregate. He said the aggregate discount expected to be provided over the life of the program is estimated to be \$2-3 million which is 0.1% of total revenue.

Adjournment

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

SECRETARY