

**MINUTES OF THE MEETING OF THE  
NEW YORK CITY WATER BOARD  
JANUARY 26, 2018**

A meeting of the New York City Water Board (the “Board”) was held on January 26, 2018 starting at approximately 9:30 a.m. at 255 Greenwich Street, 8th Floor, Room 8-S1S2, New York, New York 10007. The following members of the Board attended the meeting:

Alfonso Carney,

Evelyn Fernandez-Ketcham<sup>1</sup>

Adam Freed,

Jonathan Goldin and

Jukay Hsu

constituting a quorum. Mr. Carney chaired the meeting, and Albert Rodriguez served as Secretary of the meeting.

**Approval of the Minutes**

The first item on the agenda was approval of the minutes of the Board’s previous meeting held on October 23, 2017. There being no further discussion, upon motion duly made and seconded, the minutes of the meeting held on October 23, 2017 were unanimously adopted.

**Introductory Remarks**

Chair Carney welcomed everyone and provided a summary of the recent events that led to the necessity of today’s meeting. On May 20, 2016, the Board adopted a rate schedule that included, among other things, a rate increase of 2.1%, and a compliance deadline of December 31, 2016 for the Board’s Multiple-Family Conservation Program (“MCP”). In June 2016, a New York State Supreme Court invalidated the Board’s May 20, 2016 resolution adopting that

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<sup>1</sup> Member Fernandez-Ketcham joined the meeting during Adoption of the Amended Budget.

rate schedule. Ultimately, in December 2017, The New York State Court of Appeals decided in the Board's favor and reversed the court order invalidating the Board's May 20, 2016 resolution. Chair Carney also noted that prior to today's meeting a hearing was held to receive public testimony on two items for consideration – (a) repealing the 2.1% water rate increase originally adopted in May 2016 and (b) revising the Multiple-Family Conservation Program penalty deadline from the original date of December 31, 2016, which was not enforced due to the lawsuit to December 31, 2018.

### **Update on System's Financials and Adoption of the Amended Fiscal Year 2018 Annual Budget**

The next item on the agenda was an update on the System's financial condition and adoption of an Amended Fiscal Year 2018 ("FY 18") annual budget in light of the favorable appeal outcome resulting in the adoption of the previous rate schedule. Joseph Murin, Executive Director of the Board, noted the system's financial strengths, highlighting Mayor Bill de Blasio's elimination of the rental payment. Next, the system's rate consultant, Ed Marcus of Amawalk Consulting, confirmed that the system's finances are trending favorably. Mr. Marcus pointed out that revenues for the current fiscal year are above plan, that debt service costs are less than previously projected, and that the cash balance at the end of Fiscal Year 2017, which rolled forward into FY 18 as a prepayment toward FY 18 debt costs was higher than forecasted. Mr. Marcus noted that even with the application of the bill credit, which will result in a revenue reduction, the system is actually projected to have more cash at FY 18 year-end than projected in the original plan. Accordingly, Mr. Marcus determined that the 2.1% increase originally planned for Fiscal Year 2017 is not necessary at this time to meet the Board's current FY 18 obligations.

Member Freed questioned whether there are cascading effects of not raising the rates this year. Mr. Marcus explained that the bill credit is a one-time reduction in revenue, which will not affect the long-term revenue base and that there will be no significant effect on long-term cash flows. Executive Director Murin added that the systems Fiscal Year 2019 projected budget is currently being analyzed and will be presented to the Board in April 2018 as part of the Board's typical annual rate setting processing. Next, Executive Director Murin explained the MCP requirements and the proposal to amend the deadline to December 31, 2018 in order to properly engage the affected properties with clear guidance on compliance with the program terms. A discussion ensued regarding the necessity of effective public outreach regarding the MCP deadline, and Executive Director Murin stated that DEP would provide an update to the Board at a subsequent meeting. Upon motion duly made and seconded, the following resolution adopting the Amended Fiscal Year 2018 annual budget of the Water Board was unanimously approved by the Board.

### **RESOLUTION**

**WHEREAS**, pursuant to a Financing Agreement dated as of July 1, 1985, as amended, between the New York City Water Board (the “Board”), the New York City Municipal Water Finance Authority (the “Authority”), and The City of New York (the "City"), the Board is required to adopt or amend an annual budget; and

**WHEREAS**, on May 18, 2017, the Board adopted an annual budget for the fiscal year commencing July 1, 2017 (“Fiscal Year 2018”), which was based on the rate schedule first effective July 1, 2015 (the “FY 2016 Rate Schedule”); and

**WHEREAS**, a December 19, 2017 decision by the New York State Court of Appeals in *In the Matter of Prometheus Realty Corp., et al. v. New York City Water Board, et al.*, reversed a

lower court order and put into effect the Board's Rate Schedule first intended to be effective as of July 1, 2016 (the "FY 2017 Rate Schedule"); and

**WHEREAS**, that decision created the need for the Board to re-examine its annual budget and to amend the annual budget as necessary; and

**WHEREAS**, the Board has received an amended certification from the Authority dated January 19, 2018 regarding the Authority's Budget for Fiscal Year 2018 reflecting Authority Expenses and estimated Aggregate Debt Service (as such terms are defined in the Authority's General Revenue Bond Resolution); and

**WHEREAS**, the Board has received an amended certification dated January 19, 2018 from the Director of Management and Budget of the City regarding the amounts that the City reasonably anticipates it will have expended during Fiscal Year 2018 in connection with the operation and maintenance of the water and wastewater system as described in paragraphs (a) through (e) of Section 8.1 of the Agreement of Lease dated as of July 1, 1985, as amended, between the Board and the City (the "Lease"), and the rental payment, if any, requested by the City for Fiscal Year 2018 pursuant to Section 8.2 of the Lease; and

**WHEREAS**, the Board has received certification from AECOM USA, Inc., Consulting Engineer, pursuant to Section 8.3(a)(ii) of the Lease to the effect that amounts certified by the City for costs incurred or to be incurred in connection with paragraphs (a) and (b) of Section 8.1 of the Lease are reasonable and appropriate; and

**WHEREAS**, the Board has reviewed the budget for the Board's own anticipated expenses for Fiscal Year 2018, and combined with the proposed expenses for the Authority and the City, the Board has prepared an annual budget for the ensuing fiscal year (the "Annual Budget"); and

**WHEREAS**, the Board has received certification from Amawalk Consulting Group LLC (“Amawalk”), Rate Consultant to the Board, regarding the amended forecasted cash flows and anticipated revenues for Fiscal Year 2018; and

**WHEREAS**, the Board has reviewed the Rate Consultant’s amended forecasted cash flows and the Board’s amended Annual Budget for Fiscal Year 2018 and has determined that such provision for anticipated expenditures is reasonable and appropriate to enable the Board to exercise its powers and carry out its purposes in accordance with the New York City Municipal Water Finance Authority Act; it is therefore

**RESOLVED**, that the amended Annual Budget of the Board for Fiscal Year 2018, a copy of which is attached hereto, is hereby adopted.

**Adoption of Rate Schedule Effective January 26, 2018.**

The next item on the agenda was adoption of the Board’s Rate Schedule effective January 26, 2018. There being no further discussion, upon motion duly made and seconded, the following resolution was unanimously approved.

**RESOLUTION**

**WHEREAS**, the Board is authorized pursuant to Section 1045-g(4) of the New York City Municipal Water Finance Authority Act (the “Act”) to establish, in accordance with Section 1045-j of the Act, fees, rates, rents or other charges for the use of, or services furnished, rendered or made available by the water and wastewater system of the City of New York (the “City”); and

**WHEREAS**, in accordance with Section 1045-j (3) of the Act, a public hearing concerning certain proposals regarding water and wastewater system rates and charges was held

immediately prior hereto, and a summary of the hearing and all written statements submitted by January 25, 2018 have been received and reviewed by the Board; and

**WHEREAS**, in accordance with certifications received from (i) the New York City Municipal Water Finance Authority (the “Authority”) with respect to the Authority's amended annual budget for the fiscal year commencing July 1, 2017 (“FY 2018”), (ii) the City with respect to (a) the amounts which the City reasonably anticipates it will expend during FY 2018 in connection with the operation and maintenance of the water and sewer system and (b) rental payments requested from the Board, if any, and (iii) AECOM USA, Inc., Consulting Engineer, with respect to the reasonableness of the City's certification of certain expenses, the Board has on this day adopted an amended annual budget for FY 2018; and

**WHEREAS**, a December 19, 2017 decision by the New York State Court of Appeals in In the Matter of Prometheus Realty Corp., et al. v. New York City Water Board, et al., reversed a lower court order and put into effect the Board's Rate Schedule first intended to be effective as of July 1, 2016 (the “FY 2017 Rate Schedule”); and

**WHEREAS**, the FY 2017 Rate Schedule included, among other things, a 2.1% increase over the rate that was in effect for the fiscal year commencing July 1, 2015 (“the FY 2017 rate increase”); and

**WHEREAS**, based on the requirements set forth in the Board's amended annual budget for FY 2018 and the testimony and statements submitted at the aforementioned public hearing, the Board has determined to rescind the FY 2017 rate increase in its entirety, back to the originally intended effective date of July 1, 2016; and

**WHEREAS**, the Board has further determined that the billing policy proposal of an extension of the compliance grace period for properties that were automatically enrolled in the

Multi-family Conservation Program from December 31, 2016 to December 31, 2018 and various clarifications to existing policies and procedures set forth in the Board's revised Water and Wastewater Rate Schedule effective January 26, 2018, as publicly noticed, should be approved as recommended by staff; it is therefore

**RESOLVED**, that the 2.1% rate increase adopted by the Board in the FY 2017 Rate Schedule is hereby rescinded in its entirety; and it is further

**RESOLVED**, that the Water and Wastewater Rate Schedule dated January 26, 2018, a copy of which is attached hereto, which reflects the rescission of the 2.1% increase, as well as the extension of the grace period for compliance with the Multi-family Conservation Program as described above is hereby approved.

### **Executive Session**

Pursuant to New York Public Officers Law, section 105 (d), and upon motion duly made and approved, the Board conducted an executive session to discuss litigation matters. After the executive session, the Board reconvened publicly and reported it had taken no action during the executive session.

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**