

RESPONSIBILITIES OF MEMBERS (REVISED DECEMBER 2018)

Monroe County Water Authority (the “Authority”) constitutes a public benefit corporation of the State of New York. The Authority fulfills a public mission and must comply with applicable laws, including the New York Public Authorities Law. The following guidelines have been prepared to assist current and future Members of the Authority to understand and carry out their fiduciary responsibilities. These materials are in addition to applicable laws and offer suggestions for fulfilling the Authority’s and the individual’s public mission.

I. What Should a Prospective Member Know Before Joining the Board?

Anyone considering accepting a position as a Member of the Authority is encouraged to do the following before joining:

- Read the Authority’s enabling legislation; by-laws; 1991 trust indenture and all amendments thereto; Rules for the Sale of Water and the Collection of Rents and Charges; and board and committee minutes for at least the last year to learn about the Authority’s governance, stated purposes, activities and concerns.
- Obtain a current list of Members and committee members and find out from the chair and the Authority’s Executive Director what is expected of Members. Try to determine the relationship between board and staff. Talk to current and recent former Members to learn about the roles and responsibilities of Members.
- Review the Authority's audited financial statements for at least the last two (2) years as well as its current internal financial reports to see how it uses its assets and to evaluate its financial health. Is its auditor's report on the Authority’s financial statements unqualified?
- Evaluate whether the filings, audit reports and other compliance requirements appear to be completed on a timely basis. Find out whether there are any tax issues or concerns, or notices received from governmental authorities. Find out what other filings might be required, including filing appropriate payroll tax forms and paying the appropriate taxes.
- Obtain an understanding of the internal control structure of the organization and the processes in place to monitor it. Determine whether the Authority has adopted and follows a current accounting policies and procedures manual. Review the past two (2) years’ management letters received from the public accountants and find out what has been done to remedy any problems.
- Understand the Authority’s mission, learn about its programs, read its publications, visit its program sites, look at its website and talk to key staff. Find out about its reputation in the community.

- Review the organizational chart and understand the accountability structure. Find out the backgrounds of key management. Understand the employee evaluation and compensation processes. Review due diligence procedures for material contracts and procurement.
- Make sure there is a conflict of interest policy and a code of ethics policy in place and that they are updated annually.
- Closely review Section 1107 of the New York Public Authorities Law. This provides that any Member, officer, employee or other such person will be guilty of a misdemeanor if they are in any way or manner interested directly or indirectly in the furnishing of work, materials, supplies or labor, or in any contract therefor.
- Determine whether the Authority has been reviewed by the Authorities Budget Office or audited by the Office of the State Comptroller or the Office of the Attorney General, and read any reports prepared in conjunction therewith.
- Determine the organization's auditors, their reputation and their performance of the audit process.
- Find out if materials to be considered by the Members or their committees are distributed in advance of meetings and whether they provide sufficient information.
- Obtain the current year's budget. Find out how it compares to actual income and expenses and what processes are in place to monitor these comparisons.
- Find out whether the insurance coverage appears to be appropriate, including Members and Officers' liability and employee fidelity insurance.
- Confirm the prospective Member can devote the time expected of a Member. Understand any responsibilities expected of Members. Participate in annual training provided to Members. Joining a board without sufficient time to devote to its business is often at the root of troubles faced by many boards.
- Understand that each Member will complete an annual self-evaluation in the form prescribed by the Authority's Governance Committee and furnish to the Authority biographical information that (except for confidential information) will be submitted to other governmental agencies as part of annual reporting by the Authority.

II. What are the Duties of Members?

While the Members do not participate in the day-to-day activities of the Authority, they manage the Authority and must make crucial decisions, such as hiring and firing key officers and employees, engaging auditors and other professionals and authorizing significant financial

transactions and new program initiatives. In carrying out such responsibilities, Members must fulfill fiduciary duties to the Authority and the public it serves. These primary legal duties include the duties of care, loyalty and obedience.

A. **Duty of Care**

The duty of care requires a Member to be familiar with the Authority's finances and activities and to participate regularly in its governance. In carrying out these duties, Members must act in "good faith" using the "degree of diligence, care and skill" that "ordinarily" prudent people would use in similar positions and under similar circumstances. Ultimately, each Member must apply independent judgement in the best interest of the Authority, its mission and its ratepayers. The Authorities Budget Office requires each member to execute an acknowledgement of this duty upon taking his or her oath of office.

In exercising the duty of care, responsible Members should, among other things:

- Attend Member and committee meetings and actively participate in discussions and decision-making such as setting of policies. Carefully read the materials before the meetings and ask all relevant questions.
- Attend all compulsory training required for Members pursuant to Subsection 2 of Section 2824 of the New York Public Authorities Law.
- Read the minutes of prior meetings and all reports provided, including financial statements and reports by employees. Make sure their votes are completely and accurately recorded. Do not hesitate to suggest corrections, clarification and additions to the minutes or other formal documents.
- Obtain copies of the minutes of any missed committee or Member meeting and read them timely, suggesting any changes that may be appropriate.
- Make sure there is a clear process for approving major obligations and contracts pursuant to the Authority's By-Laws.
- Make sure that monthly financial reports prepared for management are available to the Members or finance and audit committees, and that they are clear and communicate proper information for stewardship. Make sure there is an ongoing actual to budget comparison with discrepancies explained.
- Participate in risk assessment and strategic planning discussions for the future of the Authority.
- As part of its oversight of the Authority, Members should confirm that the Authority has sufficient internal controls. Members should review annually and update, as necessary, every significant policy – many of

which are required by law or recommended as best practices by the Office of the State Comptroller or the Authorities Budget Office.

- Make sure the Authority has policies for records retention, whistleblower protection, and background checks for prospective employees.
- Be involved in the selection and periodic performance reviews of the Executive Director, Director of Finance and Business Services and other key employees responsible for the Authority's day-to-day activities. Members must ascertain whether these individuals have the appropriate education, skills and experience to assume a key position and then evaluate their performance.

B. Duty of Loyalty

Members shall be subject to the Authority's written "conflict of interest" policy and should identify the types of transactions that would prohibit them from becoming or continuing to serve as Members.

The conflict of interest policy is in addition to the rules set forth in Section 1107 of the Public Authorities Law. This statute makes it a misdemeanor for a Member to engage in certain transactions. Given the criminal penalties for violating these rules, Members must identify any potential conflicts before they occur, so that an appropriate solution can be found.

Members and officers are charged with the duty to act in the interest of the Authority. This duty of loyalty requires that any conflict of interest, real or possible, always be disclosed before joining a board and when they arise. Members should avoid transactions in which they or their family members benefit personally. If such transactions are unavoidable, disclose them fully and completely to all Members.

To exercise this *duty of loyalty* Members must be careful to examine transactions that involve Members or officers. Members must not approve any transaction that is not fair and reasonable, and a conflicted Member may not participate in the board vote. Members should also confirm the Authority has a code of ethics that is updated annually.

Transactions involving conflicts should be fully documented in the board minutes, and conflicts policies and disclosure statements should be discussed with the organization's auditors, attorneys and, when necessary, its independent Ethics Board.

C. Duty of Obedience

Members have the *duty of obedience* to make sure the Authority complies with applicable laws and regulations and its internal governance documents and policies, including:

- Dedicating the Authority's resources to its mission.
- Insuring that the Authority carries out its purposes and does not engage in unauthorized activities.

- Notifying the Authority if the Member moves his or her primary residence outside Monroe County; any such change in residence will disqualify the Member from further service.
- Notifying the Authority whenever a Member changes his or her political party.
- Within thirty (30) days after notice of appointment as a Member or the commencement of such Member's new or renewal term, signing an oath of office and having it acknowledged by and filed with the Monroe County Clerk. The Member shall immediately thereafter notify the Authority that the foregoing requirements have been satisfied.
- Filing annual financial disclosure statements in the format provided by the Authority, including providing updates if a material change occurs before the next annual filing date. The Authority or its independent Ethics Board will file all annual financial disclosure statements and updates with the Monroe County Ethics Board, which filing may be made for the Authority by its outside legal counsel.
- Complying with all appropriate laws, including complying with registration and reporting laws, filing any required financial reports with the Office of the Comptroller, the Attorney General, the State Worker's Compensation Board, the State Department of Taxation and Finance and the Internal Revenue Service, and paying all taxes such as Social Security and income tax withholding (federal, state and local). Members may be personally liable for failing to pay employees' wages and benefits and withholding taxes on employees' wages.

III. Identify, Understand and Update the Authority's Mission

The Authority's mission statement reads as follows: *The Monroe County Water Authority is a not-for-profit public benefit corporation that reliably provides quality, affordable water that fosters economic vitality and enhanced quality of life for Monroe County and area communities who request service.*

Additional information regarding the Authority's purposes and public mission can be found in the Authority's enabling legislation. Members should understand the Authority's mission, confirm that the Authority's actions further its mission and periodically update the mission statement and all related policies and procedures.