July 3, 2019

Commissioner Stephen J. Fiala  
Charter Revision Commission 2019  
250 Broadway, 26th Floor  
New York, NY 10007

Dear Commissioner Fiala,

On behalf of the Citizens Budget Commission (CBC), I thank you for your essential and tireless support of a Rainy Day Fund (RDF) Charter amendment. Creating the fund would improve New York City's already strong budgeting and financial management framework, enhance short-term and long-term fiscal stability, and protect New Yorkers from potentially harmful service cuts and tax increases.

Attached please find the forward guidance you requested on the RDF ballot proposal and charter amendment language. The language reflects the recommendations in CBC’s report to:

- Establish the RDF;
- Specify that RDF deposit and withdrawal rules should be codified in City law; and
- Permit use of the RDF, as defined in the Charter and City law, without violating the City Charter and the State Financial Emergency Act for the City of New York balanced budget requirements.

In taking these recommendations under advisement, CBC recommends that the Charter Revision Commission have language reviewed and modified as appropriate by those with deep expertise in drafting legislation. CBC welcomes the opportunity to consult with Charter Commission staff and others reviewing the proposed language.

Sincerely,

Andrew S. Rein  
President
Suggested Language for the Rainy Day Fund Ballot Proposal

This proposal would amend the City Charter to:

Permit the City of New York to establish and use a Rainy Day Fund to save resources during times of economic expansion and revenue growth and use them to mitigate spending reductions and tax increases during economic downturns or severe emergencies. The current requirement to balance the annual budget in accordance with generally accepted accounting principles will be modified to allow the City to use Rainy Day Fund resources saved during prior periods. After the Charter is modified, in order to start using the Rainy Day Fund, rules regarding deposits and withdrawals to the Fund should be codified in City law and the New York State Financial Emergency Act for the City of New York would need to either be amended to allow the City to use the Fund without violating that law’s balanced budget requirements, be repealed, or expire.

Shall this proposal be adopted?

Suggested Charter Amendments for the Rainy Day Fund

Chapter 6: Expense Budget is amended to add Section 112, which reads as follows:

Section 112. Rainy Day Fund

a. The purpose of the Rainy Day Fund is to permit New York City to accumulate resources during periods of economic expansion and revenue growth that will be used to mitigate spending reductions and tax increases during economic downturns or severe emergencies.

b. The City shall establish within the general fund, as defined in section one hundred and nine, a Rainy Day Fund.

c. The City may begin to use the fund once any of the following events occur:

1. An amendment to the New York State Financial Emergency Act for the City of New York permitting the establishment and use of such a fund, as defined in this section, or

2. The expiration of the New York State Financial Emergency Act for the City of New York, or


d. Rules governing how and when monies will be retained in the Rainy Day Fund shall be established in the New York City Administrative Code.

e. Rules governing how and when monies retained in the Rainy Day Fund may be used to support the City budget shall be established in the New York City Administrative Code.

1. Monies retained in the Rainy Day Fund may be used to fund expenditures, as detailed in section two hundred and fifty-eight, only in the event of an economic recession or
severe emergency that is accompanied by significant unanticipated revenue loss or expenditure need, as these are defined by criteria specified in the New York City Administrative Code.

f. A resource shortfall resulting from an economic recession or severe emergency, which meets specified criteria, as described in subsection (d)(1) of this section, which is supported with monies retained in the Rainy Day Fund, in accordance with its governing rules, as defined in this section, shall not be considered a deficit for the purpose of determining the City’s compliance with the requirements in section two hundred and fifty-eight of the New York City Charter.

Chapter 10. Budget Process, Section 258. Standard for budget and financial plan is amended as follows:

a. The operations of the city shall be such that, at the end of the fiscal year, the results thereof shall not show a deficit, other than a deficit that is supported by revenue from prior periods that has been retained in the Rainy Day Fund, as defined in section one-hundred and twelve of Chapter 6, as described in subdivisions b(7) and b(8) of this section, when reported in accordance with generally accepted accounting principles. The mayor shall take all actions necessary in accordance with the provisions of the charter, including but not limited to section one hundred six, or other applicable law to ensure that the city is in compliance with this subdivision.

b. Pursuant to the procedures contained in subdivision c of this section, each year the mayor shall develop, and from time to time modify, a four year financial plan. Each such financial plan and financial plan modification shall comply with the requirements of subdivision d of this section and shall conform to the following standards:

1. For each fiscal year, the city's budget covering all expenditures other than capital items shall be prepared and balanced so that the results thereof would not show a deficit, other than a deficit that is supported by revenue from prior periods that has been retained in the Rainy Day Fund, as defined in section one-hundred and twelve of Chapter 6, as described in subdivisions b(7) and b(8) of this section, when reported in accordance with generally accepted accounting principles and would permit comparison of the budget with the report of actual financial results prepared in accordance with generally accepted accounting principles.

2. The city shall issue no obligations which shall be inconsistent with the financial plan prepared in accordance with this section.

3. Provision shall be made for the payment in full of the debt service on all bonds and notes of the city and for the adequate funding of programs of the city which are mandated by state or federal law and for which obligations are going to be incurred during the fiscal year.

4. All projections of revenues and expenditures contained in the financial plan shall be based on reasonable and appropriate assumptions and methods of estimation. All cash flow projections shall be based upon reasonable and appropriate assumptions as to sources and uses of cash (including but not limited to the timing thereof), and shall provide for operations of the city to be conducted within the cash resources so projected.

5. A general reserve shall be provided for each fiscal year to cover potential reductions in projected revenues or increases in projected expenditures during each such fiscal year. The amount provided for
such general reserve shall be estimated in accordance with paragraph four of this subdivision, but in no event shall it be less than one hundred million dollars at the beginning of any fiscal year.

(6) In the event that the results of the city's operations during the preceding fiscal year have not comported with subdivision a of this section, the first fiscal year included in any financial plan shall make provision for the repayment of any deficit incurred by the city during the preceding fiscal year.

(7) Monies that have been retained in the Rainy Day Fund, as established in section one-hundred and twelve of Chapter 6, in any fiscal year shall be considered expenditures of that same fiscal year when determining whether the budget is balanced in accordance with generally accepted accounting principles.

(8) Expenditures supported by monies retained in the Rainy Day Fund, as established in section one-hundred and twelve of Chapter 6, shall be excluded from the budget when determining whether the budget is balanced in accordance with generally accepted accounting principles for the purpose of this Charter and the New York State Financial Emergency Act for the City of New York.

c. The financial plan shall be developed and may from time to time be modified, in accordance with the following procedures:

(1) The mayor shall, in conjunction with the preliminary budget prepared pursuant to section one hundred one, prepare a financial plan covering the four ensuing fiscal years (the first year of which is the year for which such preliminary budget is being prepared) as well as updating the current fiscal year.

(2) After the preparation by the mayor of a financial plan in accordance with the preceding paragraph, the mayor shall reexamine, at least on a quarterly basis, the projections of revenues and expenditures and other estimates contained in the financial plan, and shall prepare modifications in accordance with the following procedures:

(a) The budget message, issued pursuant to section two hundred fifty of this chapter, shall include an update of the financial plan covering the four ensuing fiscal years (the first year of which is the year for which such budget message is being prepared) as well as an update for the current fiscal year.

(b) Not later than thirty days after the budget is finally adopted, the mayor shall issue an update of the financial plan covering the four ensuing fiscal years (the first year of which shall be the year for which such budget has been adopted) as well as an update for the fiscal year that is ending or has just ended. Such update shall reflect changes which were made in the budget in accordance with sections two hundred fifty-four and two hundred fifty-five; provided, however, that the budget adopted in accordance with such sections shall be consistent with the standards applicable to the financial plan set forth in this section.

(c) During the second quarter of the fiscal year, the mayor shall issue an update of the financial plan covering the fiscal year in which such quarter occurs and the three ensuing fiscal years.

(d) In addition, on such schedule as the mayor deems appropriate, the mayor may issue further updates of the financial plan during the fiscal year.

d. The financial plan shall include projections of all revenues, expenditures and cash flows (including but not limited to projected capital expenditures and debt issuances) and a schedule of projected capital commitments of the city. Rainy Day Fund monies retained or used to support expenditures, as defined in subdivision (b)(7) and (b)(8) of this Section, shall be separately itemized. In addition, each financial plan
and financial plan modification shall include a statement of the significant assumptions and methods of estimation used in arriving at the projections contained therein.

e. Notwithstanding any inconsistent provision of this charter, in the event of any change in generally accepted accounting principles, or change in the application of generally accepted accounting principles to the city, if the mayor determines that immediate compliance with such change will have a material effect on the city's budget over a time period insufficient to accommodate the effect without a substantial adverse impact on the delivery of essential services, the mayor may authorize and approve a method of phasing the requirements of such change into the budget over such reasonably expeditious time period as the mayor deems appropriate.

f. The powers, duties, and obligations set forth in this section shall be subject to the powers, duties, and obligations placed upon any state or local officer or agency, including but not limited to the New York state financial control board, by or pursuant to the New York State Financial Emergency Act for the City of New York, while such act remains in effect.