

**MINUTES OF THE REGULAR BI-MONTHLY MEETING OF DIRECTORS  
OF THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM  
August 11, 2021**

The regular bi-monthly meeting of the directors of The Water Works Board of the City of Birmingham was held on Wednesday, August 11, 2021, at 11:30 a.m., in-person and electronically [via teleconference/telephone-Public].

The following Directors were present via a roll call: Ronald A. Mims, George Munchus, Lucien Blankenship, William “Butch” Burbage, Jr., Tereshia Huffman, Tom Henderson, Dalton NeSmith, Chris Rice and Larry Ward.

Others present: Michael Johnson, General Manager; Iris Fisher, Derrick Murphy and Jeffrey Thompson, Assistant General Managers; Cynthia Williams, Board Administrator; Vanessa Washington, Executive Assistant; Anitra Clark, Valencia Delaney, Colandus Mason, Terrell Jones, Jeff Wade and Charles McGee, Board Employees; K. Mark Parnell, Parnell Thompson Law, LLC; Emory Anthony, Esq.; Zac Wilson, AGO; Byron Perkins, Perkins Law, LLC; Michael Bell, BCIA; Clinton Woods, Birmingham City Council District 1 and Patrick Flannelly, ARCADIS.

Inasmuch as all Board members were present, a quorum was declared in attendance.

Chairman Mims called the meeting to order at 11:31 a.m. General Manager Michael Johnson opened the meeting with prayer.

Chairman Mims called for a motion and second to approve an amended agenda to move agenda item 12, to the first item on the agenda and to table agenda item 11 due to questions some directors needed answered. Director Munchus made a motion to approve the amended agenda. Director NeSmith seconded the motion. On a motion duly made and seconded, the following resolution was adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Dr. George Munchus and seconded by Mr. Dalton NeSmith, that the Board hereby approves the Regular Board of Directors’ Meeting Agenda, as amended, by moving agenda item 12 to the first item on the agenda, which requests approval for revisions to the BWWB by-laws and tabling agenda item 11, which requests approval of revisions to the Education Assistance Program. Resolution No. 8820 is hereby adopted by unanimous vote.”

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Next, GM Johnson requested the Board to approve revisions to BWWB by-laws, as set forth in agenda item 12. Director NeSmith made a motion to approve the agenda item, and Director Henderson seconded the motion. Director Blankenship expressed concerns relating to the votes required to change the by-laws (*2/3 vote v majority vote*). Director Blankenship stated that since this matter was not addressed in the by-laws, Robert Rules of Order would take precedent. Per Director Blankenship, one of the board’s attorneys also provided an opinion. Director Blankenship stated that

there were several meetings outlining the proposed by-laws; the board reviewed the by-laws and the attorneys did a presentation on the amendments to the by-laws. He indicated BWWB meets the notice requirement regarding the by-laws per Robert Rules of Order; thus, it would take a 2/3 vote according to Robert Rules of Order. Director Munchus read from Robert Rules of Order 12<sup>th</sup> edition, page 11 under constitutional by-laws, section 2.8 paragraph 4. Director Munchus stated based on his understanding of the reading, a 2/3 vote is required to amend/change the by-laws. There was an inquiry on who requested the said agenda item. Director NeSmith clarified for the group that he was not involved with the proposed changes to the by-laws. He indicated that the request came through the attorney from Chairman Mims. However, Chairman Mims stated the changes were proposed by senior staff. Per GM Johnson, revising the by-laws was not initiated by senior staff only. The intent was to revise certain items that might need clarification. He stated the attorney indicated there had been changes in the laws and the number of board members, which justified a revision to the by-laws. Director Munchus stated that the by-laws were revised after the legislation was passed, therefore he does not understand the need for the current revisions. Director Blankenship reiterated that he wants to make sure from a procedural standpoint that the board proceeds appropriately in terms of voting and the proper vote requirement. Therefore, he asked the chairman to require the 2/3 vote. He stated that the requested revisions to the by-laws were not brought properly before the board, because the request was not made by an authorized party. Attorney Parnell responded that said agenda item is being brought forth because the number of board members substantially changed from 5 to 9 members and, there have been various changes to the laws that effect the BWWB. Secondly, his firm prepared the draft of the by-laws only after being asked by the chairman to draft them. In addition, relative to the number of votes, the preference would be that all or a large majority would vote. Per Attorney Parnell, he wrote an opinion letter quoting Robert Rules of Order (*latest edition*) on the vote required and if said agenda item is voted on today it will take 5 votes to pass, which is a majority vote of the entire membership of the board of directors. However, if the policy is approved with the revisions, then a 2/3 vote would be required in the future. Attorney Anthony stated that hopefully the vote on the by-laws would be a unanimous consent. He stated the proposed new by-laws lack language on how to amend the by-laws. Attorney Parnell confirmed that the process for amending the by-laws is included in the new proposed by-laws. There was much discussion on said topic. Subsequently, Chairman Mims called for a vote on said agenda item. The agenda item passed with 5 votes in favor and 4 votes against. On a motion duly made and seconded, the following resolution was adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Mr. Dalton NeSmith, and seconded by Mr. Tom Henderson, that the Board hereby adopts the by-laws attached hereto as Exhibit “A” and repeals the previous by-laws, as amended. Resolution No. 8821 is hereby adopted as follows: Director Mims, No; Director Munchus, No; Director Blankenship, No; Director Burbage, Yes; Director Huffman, No; Director Henderson, Yes; Director NeSmith, Yes; Director Rice, Yes and Director Ward, Yes.”

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Following, Director Blankenship asked the Chairman to state the formal process for challenging the vote. Per Director Blankenship, the vote was inappropriate, and he intends to contest. Chairman Mims indicated an opinion was needed from the Attorney General’s Office (AGO) on said matter. Attorney Parnell clarified that his opinion stated that if the proposed motion is with “previous notice” as defined by Robert Rules, a 2/3 vote is required and if it is without “previous notice” as

defined by Robert Rules, a majority vote of the entire membership of the board of directors is required. He recommended a resolution be passed to specifically request an official opinion from the AGO. Director Munchus indicated his preference is for the General Counsel to draft the letter to the AGO. Attorney Anthony stated that Attorney Parnell made an opinion on the matter and that the vote should be based on the substance not Attorney Parnell’s opinion. Director Blankenship stated that the policy needs to be followed; he left the meeting at 12:06 p.m. Afterwards, Director Ward made a motion to authorize Attorney Parnell to draft a letter to the AGO for an opinion on said matter, and Director NeSmith seconded. Director Munchus opposed, and Director Blankenship was not present for the vote. On a motion duly made and seconded, the following resolution was adopted by Directors Mims, Henderson, Ward, NeSmith, Burbage, Huffman and Rice:

“**WHEREAS**, at its regularly scheduled board of directors’ meeting held on August 11, 2021, The Water Works Board of the City of Birmingham (the “Water Works Board”) considered and voted on approving revised By-Laws; and

**WHEREAS**, there was a disagreement among the directors at the time of the vote to approve the revised By-Laws over whether the required vote was by 2/3 or by a vote of the majority of entire membership of the Water Works Board; and,

**WHEREAS**, the Board of Directors for the Water Works Board consists of nine (9) directors and at the time of the vote to approve the revised By-Laws all nine (9) directors were present meaning that a 2/3 vote would be six (6) out of nine (9) and a vote of the majority of entire membership of the Water Works Board would be five (5) out of (9); and,

**WHEREAS**, Resolution No. 8821 approving the revised By-Laws was adopted with a vote of five (5) in favor of adoption and four (4) opposed; and,

**WHEREAS**, the Board of Directors desire to obtain an Attorney General’s opinion pursuant to Ala. Code § 36-15-1 (1975) to determine if the By-Laws voted on at its August 11, 2021 board of directors’ meeting were validly adopted.

**NOW THEREFORE, BE IT RESOLVED** on a motion made by Mr. Larry Ward and seconded by Mr. Dalton NeSmith as follows:

The Water Works Board of the City of Birmingham’s legal counsel, K. Mark Parnell, is hereby authorized and directed to seek an Attorney General’s opinion as to whether Resolution No. 8822 approving the revised By-Laws was validly adopted.”

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Next, GM Johnson requested the Board to approve minutes of the June 23, 2021 Regular Board of Directors’ meeting, as set forth in agenda item 1. Director Munchus made a motion to approve the item, and Director Huffman seconded the motion. On a motion duly made and seconded, the following resolution was adopted:

“BE IT RESOLVED BY The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Dr. George Munchus and seconded by Ms. Tereshia Huffman, that the Board hereby approves minutes of a Regular Board of Directors’ Meeting held on June 23, 2021. Resolution No. 8823 is hereby adopted by unanimous vote. Director Blankenship was not present for the vote.”

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Following, GM Johnson requested the Board to adopt a resolution authorizing monthly retirement benefits from the Board's Retirement Trust Fund for Billy Perkins, Meter Repair Technician, Meter Shop Department for 25 years of service, as stated on the respective calculation, effective September 1, 2021, and commending Mr. Perkins for his years of service, as set forth in agenda item 2. Chairman Mims made a motion to approve the agenda item, and Director Munchus seconded the motion. On a motion duly made and seconded, the following resolution was adopted:

“WHEREAS, Billy Perkins, an employee of The Water Works Board of the City of Birmingham (“the Board”), is retiring, effective September 1, 2021, at an age of 60, and

WHEREAS, Billy Perkins has 25 years of continuous service with the Board at his retirement date, and in accordance with the terms of the Trusteed Pension Plan, is entitled to receive a monthly Retirement payment from the Board’s Retirement Trust Fund in the amount of \$2,508.38; and

NOW, THEREFORE, BE IT RESOLVED By the Board of Directors of The Water Works Board of the City of Birmingham, on motion duly made by Mr. Ronald A. Mims and seconded by Dr. George Munchus, that the Trustee be, and is hereby instructed to pay monthly benefit payments of \$2,508.38 to Mr. Perkins from the Board’s Retirement Trust Fund, in accordance with the terms of the Pension Plan, with the first payment to be made September 1, 2021. Resolution No. 8824 is hereby adopted by unanimous vote. Director Blankenship was not present for the vote.”

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“WHEREAS, Billy Perkins, an employee of The Water Works Board of the City of Birmingham, is retiring, effective September 1, 2021, after 25 years of service with the Board; and

WHEREAS, management has informed the Board of Billy Perkins’ efficiency, reliability, and loyal service which contributed to the effective operation and growth of The Water Works Board of the City of Birmingham; and

WHEREAS, Billy Perkins, leaves behind a record which deserves a sincere word of gratitude for a job well done; and the Board does hereby express its best wishes for many happy years ahead.

NOW, THEREFORE, BE IT RESOLVED, By the Board of Directors of the Water Works Board of the City of Birmingham, Billy Perkins is hereby commended for his efficiency, reliability, and loyal service to the Board.

BE IT FURTHER RESOLVED, that in recognition of Billy Perkins’ services to the Board, a copy of this resolution be spread upon the minutes of The Water Works Board of the City of Birmingham and an official resolution presented to Mr. Perkins. Resolution No. 8825 is hereby adopted by unanimous vote. Director Blankenship was not present for the vote.”

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Next, GM Johnson requested the Board to approve reimbursement to the Operating Account for the period ended June 30, 2021 in the amount of \$4,069,511.69, as set forth in agenda item 3. Director Munchus made a motion to approve the agenda item, and Director Huffman seconded the motion. On a motion duly made and seconded, the following resolution was adopted:

“WHEREAS, ARCADIS US, Incorporated, in a Certificate dated July 29, 2021, certified that during the period ending June 30, 2021 that there were expenditures for the cost of system improvements, which were paid out of the Operating Account and reimbursement of that account is now due in the preliminary amount of \$4,069,511.69 and;

WHEREAS, transfers to the Operating Account can be made from any, or a combination, of the following: the 2019 Special Acquisition Fund, the Construction Fund, the Improvement Fund, and/or the Revenue Account.

NOW, THEREFORE, BE IT RESOLVED By The Water Works Board of the City of Birmingham, on a motion duly made by Dr. George Munchus and seconded by Ms. Tereshia Huffman, that the Trustee be, and is hereby instructed to immediately transfer \$4,069,511.69 to the Operating Account from any, or a combination, of the following: The 2019 Special Acquisition Fund, the Construction Fund, the Improvement Fund, and/or the Revenue Account. Resolution No. 8826 is hereby adopted by unanimous vote. Director Blankenship was not present for the vote.”

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Following, GM Johnson requested the Board to approve payment of invoice to Dominick Feld Hyde, PC for professional services related to the Pension Plan performed July 22, 2021 in the amount of \$854.40, as set forth in agenda item 4. Director Munchus made a motion to approve said item, and Director Ward seconded the motion. On a motion duly made and seconded, the following resolution was adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Dr. George Munchus and seconded by Mr. Larry Ward, that the Board hereby authorizes staff to execute payment to Dominick Feld Hyde, PC for professional services related to the Pension Plan performed July 22, 2021 in the amount of \$854.40. Resolution No. 8827 is hereby adopted by unanimous vote. Director Blankenship was not present for the vote.”

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Next, GM Johnson requested the Board to approve payment of invoice to Pat Lynch & Associates for work performed July 1, 2021 through July 31, 2021 in the amount of \$10,000.00, as

set forth in agenda item 5. A director inquired whether there were any lobbyist reports. GM Johnson stated that each of the government affairs professionals will make a presentation at the upcoming Executive Committee Meeting. Director Munchus made a motion to approve the agenda item, and Director Huffman seconded the motion. On a motion duly made and seconded, the following resolution was adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Dr. George Munchus and seconded by Ms. Tereshia Huffman, that the Board hereby authorizes staff to execute payment to Pat Lynch & Associates for work performed July 1, 2021 through July 31, 2021 in the amount of \$10,000.00. Resolution No. 8828 is hereby adopted by unanimous vote. Director Blankenship was not present for the vote.”

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Following, GM Johnson requested the Board to approve payment of invoices to The Jones Group, LLC., for professional services performed May 2021 in the amount of \$10,000.00 and June 2021 in the amount of \$10,000.00, as set forth in agenda item 6. Director Munchus made a motion to approve the agenda items. Director Huffman seconded the motion. On a motion duly made and seconded, the following resolution was adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Dr. George Munchus and seconded by Ms. Tereshia Huffman, that the Board hereby authorizes staff to execute payment to The Jones Group, LLC., for professional services performed May 2021 in the amount of \$10,000.00 and June 2021 in the amount of \$10,000.00, respectively. Resolution No. 8829 is hereby adopted by unanimous vote. Director Blankenship was not present for the vote.”

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Next, GM Johnson requested the Board to approve payment of invoice to Agee Law, LLC for professional services rendered July 2021 in the amount of \$11,550.00, as set forth in agenda item 7. Chairman Mims inquired about the billing cap for said attorney. GM Johnson replied it was \$10,000.00. Director Munchus made a motion to approve the agenda item, and Director Huffman seconded the motion. On a motion duly made and seconded the motion, the following resolution was adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Dr. George Munchus and seconded by Ms. Tereshia Huffman, that the Board hereby authorizes staff to execute payment to Agee Law, LLC for professional services rendered July 2021 in the amount of \$11,550.00. Resolution No. 8830 is hereby adopted by unanimous vote. Director Blankenship was not present for the vote.”

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Following, GM Johnson requested the Board to approve payment of invoice to Hilliard, Smith and Hunt, LLC, for work performed June 2021 in the amount of \$13,000.00, as set forth in agenda

item 8. Director Munchus made a motion to approve the agenda item, and Director NeSmith seconded the motion. On a motion duly made and seconded the motion, the following resolution was adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Dr. George Munchus and seconded by Mr. Dalton NeSmith, that the Board hereby authorizes staff to execute payment to Hilliard, Smith and Hunt, LLC, for work performed June 2021 in the amount of \$13,000.00. Resolution No. 8831 is hereby adopted by Directors Mims, Munchus, Burbage, Henderson, NeSmith, Rice and Ward. Director Huffman abstained. Director Blankenship was not present for the vote.”

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Next, GM Johnson requested the Board to approve payment of invoice to Raftelis Financial Consultants, Inc., for professional services related to BWWB Strategic Plan for the period of July 1, 2021 – July 31, 2021 in the amount of \$13,394.00, as set forth in agenda item 9. Director Munchus made a motion to approve the agenda item, and Director Huffman seconded the motion. On a motion duly made and seconded the motion, the following resolution was adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Dr. George Munchus and seconded by Ms. Tereshia Huffman, that the Board hereby authorizes staff to execute payment to Raftelis Financial Consultants, Inc., for professional services related to BWWB Strategic Plan for the period of July 1, 2021 – July 31, 2021 in the amount of \$13,394.00. Resolution No. 8832 is hereby adopted by unanimous vote. Director Blankenship was not present for the vote.”

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Following, GM Johnson requested the Board to approve payment of invoice to Birmingham Construction Industry Authority (BCIA) for professional services related to Contract Compliance Program Services Retainer Agreement-June 30, 2021 in the amount of \$25,000.00, as set forth in agenda item 10. Director Munchus made a motion to approve the agenda item, and Chairman Mims seconded the motion. On a motion duly made and seconded the motion, the following resolution was adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Dr. George Munchus and seconded by Mr. Ronald A. Mims, that the Board hereby authorizes staff to execute payment to BCIA for professional services related to Contract Compliance Program Services Retainer Agreement-June 30, 2021 in the amount of \$25,000.00. Resolution No. 8833 is hereby adopted by unanimous vote. Director Blankenship was not present for the vote.”

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Next, Agenda Item 11, which requested the Board to approve revisions to the Education Assistance Program in Section 7.9 of the Employee Handbook and in Section 7090 in the HR Management Guide as set out in Exhibits “A” and “B”, was tabled at the beginning of the board meeting.

Subsequently, Attorney Parnell certified the Executive Session for three pending lawsuits and one real estate transaction regarding land in Blount County. Per Attorney Parnell, one lawsuit requires the directors' approval after the Executive Session. He anticipated that the Executive Session would last approximately thirty minutes and action would need to be taken regarding a settlement. GM Johnson clarified that there were two real estate matters. Afterwards, Chairman Mims recognized the presence of Councilman Clinton Woods, District 1. He called for a motion to enter Executive Session. Director Munchus made a motion to enter Executive Session, and Director Huffman seconded the motion. On a motion duly made and seconded the motion, the following resolution was adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Dr. George Munchus and seconded by Ms. Tereshia Huffman, that the Board hereby approves an Executive Session to discuss three pending lawsuits and two real estate items. Resolution No. 8835 is hereby adopted by unanimous vote. Director Blankenship was not present for the vote.”

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At 12:17 p.m., the Board, the Board’s Attorneys and Executive Management entered into Executive Session. Director Rice left meeting at 12:52 p.m.

At 1:06 p.m., Director NeSmith made a motion to end Executive Session and Director Munchus seconded the motion. Afterwards, action was taken to settle a legal case. On a motion duly made and seconded the motion, the following resolution was adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Dr. George Munchus and seconded by Mr. Dalton NeSmith, that the Board hereby approves that the General Manager and Board’s legal counsel, Parnell Thompson, LLC, are authorized to settle the case Cummings v. The Water Works Board of the City of Birmingham, Civil Action Number: CV-2019-904924 for \$65,000.00. Resolution No. 8836 is hereby adopted by unanimous vote. Directors Rice and Blankenship were not present for the vote.”

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As there was no further business before the Board, a motion and second was made to adjourn. The meeting was adjourned at 1:10 p.m.

\_\_\_\_\_/s/\_\_\_\_\_  
Ronald A. Mims  
Chairman/President

Attest:

\_\_\_\_\_/s/\_\_\_\_\_  
William “Butch” Burbage, Jr.  
Secretary-Treasurer