

**MINUTES OF THE REGULAR BI-MONTHLY MEETING OF DIRECTORS
OF THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM
June 23, 2021**

The regular bi-monthly meeting of the directors of The Water Works Board of the City of Birmingham was held on Wednesday, June 23, 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, William “Butch” Burbage, Jr., George Munchus, Lucien Blankenship (via telephone), 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; K. Mark Parnell, Parnell Thompson Law, LLC; Emory Anthony, Esq.; Cynthia Williams, Board Administrator; Vanessa Washington, Executive Assistant; Anitra Clark, Rick Jackson, Terrell Jones and Colandus Mason, Board Employees; Olivia Martin, AGO; Matthew Arrington, Terminus Municipal Advisors; 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 11:34 a.m. Information Technology Manager Colandus Mason opened the meeting with prayer.

Chairman Mims called for a motion and second to approve the agenda as printed. Director NeSmith made a motion to approve the printed agenda. Director Ward seconded. GM Johnson reminded the chairman of the need for an Executive Session. Thus, Chairman Mims stated that Executive Session would be the last item on the agenda and that it would take place in the Ronald A. Mims Boardroom. Director Nesmith amended his motion to include the Executive Session as part of the agenda. Director Huffman seconded. 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 Ms. Tereshia Huffman, that the Board hereby approves the Regular Board of Directors’ Meeting Agenda, as amended, to include Executive Session as the last item on the agenda to take place in the Ronald A. Mims Boardroom. Resolution No. 8772 is hereby adopted by unanimous vote.”

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Next, Director Rice made a motion to move and consent agenda items two, three, four, five and six for approval. Director NeSmith seconded the motion. There was a short discussion on the consent process. Director Blankenship stated that if there is a concern related to one of the items for consent, said agenda item can be asked to be removed from consent. He added, if there is an objection to one of the items, the item cannot be on the consent agenda. Director NeSmith disagreed with the statement. Per Director NeSmith, the body must vote to approve or not approve Director Rice’s

motion. Attorney Parnell advised the Board that Director Rice’s motion to consent said items had been second; therefore, the Board must vote. If the vote is a majority, the motion passes. Director Blankenship expressed further concerns about the matter and stated that it is not a consent agenda/items if everyone is not in agreement. Afterwards, Chairman Mims asked if any board member had questions or wanted any of the items being considered for consent removed from consent. No one indicated removing any of the items. Chairman Mims called for a vote. He suggested the process be worked out for future board meetings. 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. Chris Rice and seconded by Mr. Dalton NeSmith, that the Board hereby consents to approval of the following:

1. Reimbursement to the Operating Account for the period ended April 30, 2021 in the amount of \$2,561,574.87; necessary to perform essential minimum functions of the governmental body.
2. Payment of invoice to Pat Lynch & Associates, for professional services rendered April 15, 2021 – May 31, 2021 in the amount of \$15,000.00; necessary to perform essential minimum functions of the governmental body.
3. Payment of invoice to Raftelis Financial Consultants, Inc., for professional services rendered May 2021 (WIFIA Loan) in the amount of \$615.00 and for professional services rendered May 2021 (Consolidated Invoice) in the amount of \$24,660.66; necessary to perform essential minimum functions of the governmental body.
4. Payment of invoice to Agency 54, for professional services rendered May 2021 in the amount of \$25,000.00; necessary to perform essential minimum functions of the governmental body.
5. Payment of invoice to Parnell Thompson, LLC., for professional services rendered May 2021 in the amount of \$42,540.00; necessary to perform essential minimum functions of the governmental body.

Resolution No. 8773 is hereby adopted as follows: Director Mims, Yes; Director Munchus, Yes; Director Blankenship, Abstain; Director Burbage, Yes; Director Huffman, Yes; Director Henderson, Yes; Director NeSmith, Yes; Director Rice, Yes; and Director Ward, Yes.

Following, GM Johnson asked the Board to approve minutes of the April 14, 2021 and April 28, 2021 Regular Board of Directors’ meetings, as set forth in agenda item one; necessary to perform essential minimum functions of the governmental body. Director NeSmith made a motion to approve the item, and Director Henderson seconded the motion. On a motion duly made and seconded, the following resolution was adopted:

“BE IT R ESOLVED BY The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made Mr. Dalton NeSmith and seconded by Mr. Tom Henderson, that the Board hereby approves minutes of the following meetings:

- Regular Board of Directors’ Meeting held April 14, 2021
- Regular Board of Directors’ Meeting held April 28, 2021

Resolution No. 8774 is hereby adopted by unanimous vote.”

Next, GM Johnson asked the Board to approve payment of invoice to ARCADIS, US, Inc., for professional services rendered per February 2021 progress report in the amount of \$420,979.52, as set forth in agenda item 7; necessary to perform essential minimum functions of the governmental body. Director Burbage made a motion to approve the agenda item, and Director Rice 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 Mr. William “Butch” Burbage, Jr., and seconded by Mr. Chris Rice, that the Board hereby authorizes staff to execute payment to ARCADIS, US, Inc., for professional services rendered per February 2021 progress report in the amount of \$420,979.52; necessary to perform essential minimum functions of the governmental body. Resolution No. 8775 is hereby adopted by unanimous vote.”

Following, Director Munchus indicated that there were questions he needed to ask Attorney Parnell during the Executive Session related to two items on the Parnell Thompson, LLC invoice about litigation. Attorney Anthony advised him that Executive Session involves specific issues; therefore, his questions needed to be disclosed in advance to be certified for Executive Session. Director Munchus declined to ask the questions in public and stated he is precluded from asking the questions in Executive Session. He stated he would go about the issue in another manner since it is prevented from being discussed in Executive Session.

Next, GM Johnson asked the Board to approve expenditures for security services with Vision Security Technologies Inc., a sole source provider, to replace all card readers in the BWWB system to accept SMART Card technology at an out-of-pocket cost to the Board of \$72,676.58, as set forth in agenda item 8; and to authorize the General Manager and/or the Assistant General Manager to execute any documents; necessary to perform the essential minimum functions of the governmental body. This expenditure is exempt from the bidding under the Alabama Competitive Bid Law because it is related to security and a sole source provider. Director Munchus asked AGM Murphy to provide some information on the topic as it did not come before the Engineering and Maintenance Committee. AGM Murphy commented that for the sake of time said item is being presented to the Board today to keep the project on schedule. Director Munchus cautioned AGM Murphy on any information he was about to disclose relating to said agenda item due to security reasons. AGM Murphy acknowledged the caution and stated BWWB needs to ensure it has the appropriate devices to access

our facilities. Director NeSmith inquired on whether the vendor was new and if the cost was the same as last year. AGM Murphy confirmed that BWWB had previously done business with the vendor and that the contract was separate. In addition, he stated the vendor is local. They are located in Pelham, AL. Afterwards, Director Munchus made a motion to approve said item, and 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 expenditures for security services with Vision Security Technologies Inc., a sole source provide, to replace all card readers in the BWWB system to accept SMART Card technology at an out-of-pocket cost to the Board of \$72,676.58; and to authorize the General Manager and/or the Assistant General Manager to execute any documents; necessary to perform the essential minimum functions of the governmental body. Resolution No. 8776 is hereby adopted by unanimous vote.”

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Following, GM Johnson asked the Board to approve a one-time purchase from Tractor & Equipment Company for 3-New Komatsu PC 35MR-5 Mini Excavators, at an estimated out-of-pocket cost to the Board of \$145,695.00 (\$48,565.00 each - Pricing comes from Sourcewell NJPA purchasing cooperative) - NO BID is required, as set forth in agenda item 9 and as recommended by the Engineering and Maintenance Committee; necessary to perform essential minimum functions of the governmental body. Chairman Mims inquired whether this purchase would replace existing tractors, which AGM Murphy replied yes. Director Rice asked what happens to the retired equipment. AGM Murphy stated that the items are evaluated to see if they can be combined for spares, if not, they are auctioned on govdeals.com. Director Ward 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 Mr. Larry Ward and seconded by Ms. Tereshia Huffman, that the Board hereby approves a one-time purchase from Tractor & Equipment Company for 3-New Komatsu PC 35MR-5 Mini Excavators, at an estimated out-of-pocket cost to the Board of \$145,695.00 (\$48,565.00 each - Pricing comes from Sourcewell NJPA purchasing cooperative) - NO BID is required, as recommended by the Engineering and Maintenance Committee; necessary to perform essential minimum functions of the governmental body. Resolution No. 8777 is hereby adopted by unanimous vote.”

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Next, Chairman Mims asked that agenda items ten and eleven be voted on together, as they were similar. GM Johnson asked the Board to award bids to Tren-Tay, the lowest responsible and responsive bidder, for the replacement of pipe and related appurtenances along Meadow Court; Meadow Lane; 64th Street Ensley; Court "O" Ensley; 59th Street Ensley; Avenue "Q" Ensley; 60th Street Ensley; and Court "N" Ensley located in the City of Birmingham, Alabama at a bid amount of \$675,134.20; plus estimated cost of materials and Water Board labor in the amount of \$273,475.54; for an estimated out-of-pocket cost to the Board of \$948,609.74, in addition to pipe and related appurtenances along 2nd Avenue North; 3rd Avenue North; 4th Avenue North; 72nd Street North;

74th Street North and 76th Street North located in the City of Birmingham, Alabama at a bid amount of \$1,139,180.40; plus estimated cost of materials and Water Board labor in the amount of \$442,509.20; for an estimated out-of-pocket cost to the Board of \$1,581,689.60, as set forth in agenda items 10 and 11 respectfully, as recommended by the Engineering and Maintenance Committee; and to authorize the General Manager and/or the Assistant General Manager to execute the agreements; necessary to perform essential minimum functions of the governmental body. Director Burbage commented that replacing 2” pipe with 4”, 6”, and 8” pipe is going to provide a good increase in water pressure. Director Munchus asked whether the homes could handle the increase in water pressure. AGM Murphy stated that generally if the pressure is not above 80 psi, customers will be fine. Also, his team led by Doug Stockham, gets information out to customers about whether regulators or certain devices are needed. Director NeSmith made a motion to approve the agenda items. Director Munchus seconded. 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 Dr. George Munchus, that the Board hereby authorizes staff to execute purchase orders and/or contracts for procurement of materials, services and supplies needed for the operation, construction, and maintenance of the water system as follows:

- Award bid to Tren-Tay, the lowest responsible and responsive bidder, for the replacement of approximately 3,790’ of 2” cast iron cement lined (CICL) pipe with approximately 3,400’ of 6” DICL pipe; 480’ of 4” DICL pipe and related appurtenances; and 82 water services along Meadow Court; Meadow Lane; 64th Street Ensley; Court "O" Ensley; 59th Street Ensley; Avenue "Q" Ensley; 60th Street Ensley; and Court "N" Ensley located in the City of Birmingham, Alabama at a bid amount of \$675,134.20; plus estimated cost of materials and Water Board labor in the amount of \$273,475.54; for an estimated out-of-pocket cost to the Board of \$948,609.74, as recommended by the Engineering and Maintenance Committee; and to authorize the General Manager and/or the Assistant General Manager to execute the agreements; necessary to perform essential minimum functions of the governmental body.
- Award bid to Tren-Tay, the lowest responsible and responsive bidder, for the replacement of approximately 6,320’ of 2” galvanized steel pipe / 2” unlined cast iron pipe with approximately 2,580’ of 8” DICL pipe; 3,400’ of 6” DICL pipe; 660’ of 4” DICL pipe and related appurtenances; and 114 water services along 2nd Avenue North; 3rd Avenue North; 4th Avenue North; 72nd Street North; 74th Street North and 76th Street North located in the City of Birmingham, Alabama at a bid amount of \$1,139,180.40; plus estimated cost of materials and Water Board labor in the amount of \$442,509.20; for an estimated out-of-pocket cost to the Board of \$1,581,689.60, as recommended by the Engineering and Maintenance Committee; and to authorize the General Manager and/or the Assistant General Manager to execute the agreements; necessary to perform essential minimum functions of the governmental body.

Resolution No. 8778 is hereby adopted by unanimous vote.”

Following, GM Johnson asked the Board to approve an amendment to the COVID-19 Employee Assistance Policy to extend the ending date of this Policy to September 30, 2021, as set forth in agenda item 12 and as recommended by the Human Resources Committee; necessary to perform essential minimum functions of the governmental body. Director Munchus asked whether said item should be extended to December 31, 2021 due to the pandemic. Chairman Mims stated that September 30, 2021 gives an additional 90 days, which should be adequate. Director Blankenship stated that the HR Committee supports the item. Director Rice asked if there was additional cost associated with the request. AGM Fisher replied yes (*similar to PTO*) and she stated that staff would be requesting reimbursement as it relates to COVID expenses. AGM Fisher indicated that the reimbursement focus has been with Jefferson County. Director Munchus suggested staff continue to pursue city, state and federal reimbursements. GM Johnson added that staff has continued to pursue funding from the City, State, and Federal as well. Afterwards, Director Munchus made a motion to approve the agenda item, and Director Henderson 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. Tom Henderson, that the Board hereby approves an amendment to the COVID-19 Employee Assistance Policy to extend the ending date of this Policy to September 30, 2021, as recommended by the Human Resources Committee; necessary to perform essential minimum functions of the governmental body. Resolution No. 8779 is hereby adopted by as follows: Director Mims, Yes; Director Munchus, Yes; Director Burbage, Yes; Director Huffman, Yes; Director Henderson, Yes; Director NeSmith, Yes; Director Rice, Yes; and Director Ward, Yes. There was no response from Director Blankenship.”

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Next, GM Johnson asked the Board to approve the reimbursement of legal fees incurred by directors and former employees for the purpose of defending and having legal representation, while acting in the proper interest of The Water Works Board of the City of Birmingham, as allowed under Article VI, paragraph 6.05, of The Water Works Board of the City of Birmingham’s Certificate of Amendment and Restatement of Certificate of Incorporation, as set forth in agenda item 13; necessary to perform essential minimum functions of the governmental body. Director Munchus expressed concerns about whether this was proper and that approving said item would set a dangerous precedent. Attorney Anthony recommended that a separate resolution be drafted for the Board under Article 6.05 and another resolution for former employees. Director Munchus confirmed with GM Johnson that the total legal fees amount is \$78,000.00, which does not include the invoices for Chairman Mims. Director Munchus voiced further concerns on said matter and inquired whether it had been cleared through the Alabama Ethics Commission. He also stated he would be testifying to the State Ethics Commission on things he knows to be factual. Attorney Parnell was recognized to speak. Per Attorney Parnell, the matter has been discussed on numerous occasions, but this is the first time the issue has come before the Board. He stated that he has written a legal opinion, which has been provided to all of the directors. It sets forth the law and reasons for support. Also, Attorney Parnell stated he drafted said resolution for this agenda item and submitted it with a recommendation, as it is legal and appropriate. Then, Attorney Anthony reiterated that the Board distinguish themselves with a separate resolution, because they are citing Articles 6.05, which applies to the Board. Also, Director Blankenship stated that the resolutions should be separated. Per Director Blankenship, the items were

presented to the Board separately, thus, the fees were easily identifiable. However, the resolutions presented to the Board combines everything and does not allow for different action to be taken if a Board member felt inclined to do so. He stated he is in favor of reimbursement for board members but may feel differently about employees being reimbursed. Director Rice expressed concerns related to not having a policy in place for the issue. He indicated a clear and defined policy should be put in place. Afterwards, Director NeSmith made a motion to approve the agenda item, and Director Henderson seconded the motion. On a motion duly made and seconded, the following resolution was adopted:

“WHEREAS, The Water Works Board of the City of Birmingham (the “Board”) has received requests from former directors Anne Florie, and Brett King and former employees, Mac Underwood, Darryl Jones, T.M. “Sonny” Jones and Grace Amison and former employee and current director Ron Mims for reimbursement of certain legal fees and expenses, copies of which are attached hereto as Exhibit “A”:

NOW, THEREFORE, BE IT RESOLVED by the Board, on a motion duly made by Mr. Dalton NeSmith and seconded by Mr. Tom Henderson as follows:

1. The Board hereby states and finds as follow:

(a) That the former directors Ann Florie and Brett King and former employees, Mac Underwood, Darryl Jones, T.M “Sonny” Jones and Grace Amison and former employee and current directors Ron Mims were requested to be interviewed as part of various investigations based on actions growing or arising out of the performance of their duties in connection with their respective offices or employment.

(b) That while the investigation involved possible violations of criminal statutes, none of said directors and former employees were personally implicated in any criminal offense.

(c) That the Board believes that it is in the proper interest of The Water Works Board of the City of Birmingham to expend funds for the purpose of defending and having legal representation for said directors and former employees as allowed under Article VI, paragraph 6.05, of The Water Works Board of the City of Birmingham’s Certificate of Amendment and Restatement of Certificate of Incorporation.

(d) That in addition, the Board has also concluded that paying the legal fees would be proper and necessary to the good morale of The Water Works Board of the City of Birmingham and employees and for recruitment and retention purposes, as the cost of defending and providing such legal representation was substantial.

(e) That on information and belief, the Board believes that said directors and former employees acted honestly and in good faith.

(f) That based on the foregoing, the General Manager is authorized to pay to said directors and former employees the respective legal fees attached hereto as Exhibit “A”.

Resolution No.8780 is hereby adopted as follows: Director Mims, Abstain; Director Munchus, No; Director Blankenship, No; Director Burbage, Yes; Director Huffman, No; Director Henderson, Yes; Director NeSmith, Yes; Director Rice, Abstain; and Director Ward, Yes.”

Following, agenda item 14, which addressed new business, was presented; necessary to perform essential minimum functions of the governmental body. Director Rice requested a draft resolution relating to agenda item thirteen and a draft of the bylaws be provided in an Executive Committee Meeting prior to the second board meeting in July. Attorney Parnell stated that the request for the by-laws’ approval would be on the agenda for the last board meeting for July and that the resolution addressing the payment of legal fees relating to agenda item thirteen should be added to the by-laws. In addition, he informed the Board that a PowerPoint would be presented at the Executive Committee meeting in July. Afterwards, Director Rice asked for an update on the bonds. GM Johnson provided a brief update regarding the bonds process.

Subsequently, Attorney Parnell certified the Executive Session. Per Attorney Parnell, the reason involved two pending legal matters, which one of those matters may possibly lead to litigation. He anticipated that the Executive Session would last approximately thirty minutes and that no action would need to take place. At 12:32 p.m., Director Blankenship indicated via telephone, that he would not be participating in the Executive Session and his call was ended. Director Munchus stated that he did not want management in the Executive Session due to the sensitive nature of one of the items. Attorney Parnell stated that management would need to be present to discuss one of the matters. Thus, at 12:34 p.m., Director NeSmith made a motion to enter Executive Session, and Director Henderson seconded the motion.

“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 approves an Executive Session to discuss two pending legal matters with one becoming a possible litigation matter. Resolution No. 8781 is hereby adopted by Directors Mims, Munchus, Burbage, Huffman, Henderson, NeSmith, Rice and Ward. Director Blankenship did not participate in the Executive Session.”

At 12:34 p.m., the Board, the Board’s Attorneys and Executive Management entered into Executive Session.

At 1:28 p.m., Director Burbage made a motion to end Executive Session and to adjourn the meeting, and Director Ward seconded the motion.

As there was no further business before the Board, the meeting was adjourned at 1:28 p.m.

_____/s/_____
Ronald A. Mims
Chairman/President

Attest:

_____/s/_____
William "Butch" Burbage, Jr.
Secretary-Treasurer