

**MINUTES OF THE REGULAR BI-MONTHLY MEETING OF DIRECTORS  
OF THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM  
May 25, 2022**

A regular bi-monthly meeting of the directors of The Water Works Board of the City of Birmingham was held on Wednesday, May 25, 2022, at 11:30 a.m., at 3600 First Avenue North, Birmingham, Alabama.

The following Directors were present: Christopher B. Rice, Lucien B. Blankenship, William “Butch” Burbage, Jr., Raymond “Larry” Ward, Carl Dalton NeSmith, Thomas E. Henderson and George Munchus. Directors Tereshia Q. Huffman and Ronald A. Mims participated via telephone.

Others present were: Michael Johnson, General Manager; Iris Fisher, Derrick Murphy and Jeffrey Thompson, Assistant General Managers; Anitra Clark, Corporate Governance Specialist; Vanessa Washington, Executive Assistant; Colandus Mason, Rick Jackson, Ed Travis, Paul Lloyd, David Walker, Jeff Wade and David King, Board Employees; K. Mark Parnell, Parnell Thompson Law, LLC; Byron Perkins, Perkins Law, LLC; Kelvin Howard, KWH, LLC; Martha Bozeman, Agency 54; Olivia Martin, Attorney General’s Office; Theo Johnson, Jacobs; Terri Reynolds, Levitate; Daymeon Fishback and Greg Burchell, Morgan Stanley; Jacob Hughes, Nehemiah Engineering; Kirk Mills, Kimley-Horn; Hal Humphrey, Gresham Smith; and Michael Bell, Birmingham Construction Industry Authority; Thomas Bills, BWWB Customer.

Inasmuch as seven of the directors were present, Chairman Rice declared a quorum in attendance. Chairman Rice called the meeting to order at 11:33 a.m. and General Manager Johnson opened the meeting with prayer.

Following, Chairman Rice asked the Board to approve the agenda. 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. Carl Dalton NeSmith and seconded by Mr. William “Butch” Burbage, Jr., that the Board of Directors hereby approves the agenda for the May 25, 2022 Regular Board of Directors’ Meeting. Resolution No. 9046 is hereby adopted by unanimous vote.”

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Next, Chairman Rice asked the board to hear the Reports of Officers. He introduced Attorney Terri Reynolds to discuss the Government Affairs team competitive grant funding. Attorney Reynolds discussed a handout that was distributed regarding Bipartisan Infrastructure Law Funding Opportunities, Other Grant Opportunities and Fund Development & Government Affairs. A copy of the handout is on file in Diligent. Ms. Reynolds indicated her team will look at non-profit funding for water infrastructure. She stated, Alabama is the only state without a Dam Safety Program, which is a missed opportunity for funding. Director Blankenship expressed concerns that the information provided from Ms. Reynolds should be part of the BWWB’s lobbyists duties. Director Blankenship indicated he had concerns regarding how rate payers’ money is spent. Chairman Rice stated that Ms.

Reynolds purpose is to coordinate within the Government Affairs team, and he indicated the lobbyists decide the money to pursue and Ms. Reynolds assists with the application process. Chairman Rice invited Director Blankenship to attend the meetings and be part of the process. Director Blankenship stated he is disturbed about the information the Board is receiving from its lobbyists.

Next, Morgan Stanley presented the Pension and OPEB performance report as of March 31, 2022. A copy of the handout is on file in Diligent. Dameon Fishback, Morgan Stanley, gave an overview of the market outlook. He indicated market returns have been a challenge, including bonds having bad returns. Director Blankenship left the meeting at 11:52 a.m. Mr. Fishback stated the first 100 days of the year were the worst trading days. He stated inflation is affecting the market. Director Blankenship returned to the meeting at 11:56 a.m. Mr. Fishback stated the market is projected to stay at 50 basis points. Greg Burchell, Morgan Stanley, then gave an overview of the Pension Plan performance. He stated the current value of the portfolio is \$188 million with 25 percent in fixed income and 75 percent in equities. He stated the portfolio finished at \$200 million in 2021 and the Plan paid \$11 million in pension payments. Mr. Burchell indicated the return expectation for the next 20 years in the portfolio is around 6 percent. He indicated Morgan Stanley recommends taking some risk in the portfolio by moving 35 percent to fixed income, 60 percent in equities and 5 percent in cash as this would take some stress off equities. Mr. Burchell stated Morgan Stanley also recommends updating the investment policy. Director Munchus questioned whether Morgan Stanley does asset allocation study work with the Board's actuarial for its reporting. He indicated 46 percent of the portfolio is managed by minority firms and the plan has made \$73 million since Morgan Stanley took over in February 2017. Next Mr. Burchell gave an overview of the Other Post Employment Benefits (OPEB) Plan. He indicated the portfolio is at \$35 million and the plan has made 14.5 million since Morgan Stanley took over in February 2017.

Subsequently, Human Resources Manager Paul Lloyd gave an overview of the BWWB's summer jobs program, which is to take place from June 22, 2022 – July 15, 2022. Mr. Lloyd stated BWWB is partnering with the City of Birmingham Kids & Jobs Program. He stated there are 50 positions available to students in the BWWB's service area. Mr. Lloyd stated the students would work 5 hours per day and paid \$12 per hour. Director Ward questioned whether insurance coverage would be made available to the students. Mr. Lloyd stated the students would be covered under employee liability coverage in the BWWB Workers Compensation Program. Director Blankenship questioned the budget for this program. Mr. Lloyd stated the budget is \$360,000.00, which is significantly lower than past budgets; however, there was not enough time to do the summer jobs program on a full scale. Chairman Rice questioned whether information regarding the program is being communicated to the community. Mr. Lloyd confirmed that the summer jobs program was being communicated through outreach to schools.

Following, the Board moved to the first item on the agenda, Request Board to approve payment of invoices. 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. Carl Dalton NeSmith, and seconded by Mr. William “Butch” Burbage, Jr., that the Board hereby authorizes staff to execute payments to the following:

- 1.1 Dominick Feld Hyde, P.C., for professional services rendered March and April 2022 relative to the Pension and OPEB Plans in the amount of \$2,424.00.
- 1.2 Terminus Municipal Advisors for the following:
  - 1.2.1 For professional services rendered March 2022 in the amount of \$8,500.00.
  - 1.2.2 For professional services rendered April 2022 in the amount of \$8,500.00.
- 1.3 Raftelis Financial Consultants, Inc., for professional services rendered April 2022 in the amount of \$18,031.25.
- 1.4 Kelvin Howard, LLC, for professional services rendered April 2022 in the amount of \$19,340.44.
- 1.5 Agency 54, Inc., for professional services rendered April 2022 in the amount of \$25,000.00.
- 1.6 Parnell Thompson, LLC for professional services rendered April 2022 in the amount of \$69,660.88.
- 1.7 ARCADIS, U.S., Inc. for the following:
  - 1.7.1 For professional services rendered January 2022 in the amount of \$214,652.71.
  - 1.7.2 For professional services rendered February 2022 in the amount of \$237,505.86

Resolution No. 9047 is hereby adopted by Directors Rice, Burbage, Ward, NeSmith, Henderson, Munchus; and Director Blankenship voted no.”

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Next, the Board moved to the second item on the agenda, Request the Board to approve payment of \$2,300.00 in legal fees and \$962.50 in filing fees to Armstrong Law, LLC, which includes paying one-half of the employee’s filing fees for the I-140 Petition and the I-485 Application fee for the permanent employment application; and to authorize the General Manager and/or Assistant General Manager to approve future legal fees and filing fees for H1-B Visas and Permanent Residency Employment Processing, upon review by the Board's General Counsel. Director Blankenship requested that the Board be notified on these types of matters. Director Burbage suggested emailing the Board on such matters going forward. Director Ward left the meeting at 12:21 p.m. 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 Mr. Thomas E. Henderson, that the Board hereby approves an engagement letter with Armstrong Law, LLC, in the amount of \$2,300.00 to pay one-half of the employees legal fees and one-half of the employee’s filing fees the I-140

Petition and the I-485 Application fee for the permanent employment application; and to authorize the General Manager or the Assistant General Manager to approve future legal fees and filing fees for H1-B Visas and Permanent Residency Employment Processing, upon review by the Board's General Counsel. Resolution No. 9048 is hereby adopted by Directors Rice, Burbage, Munchus, Henderson, Blankenship and NeSmith.”

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Following, the Board moved to the third item on the agenda, Request Board to award bid to Wade, Sand & Gravel, the lowest responsible and responsive bidder, for estimated quantities of Crushed Limestone - Backfill Material (Annual), at an estimated out-of-pocket cost to the Board of \$827,620.00; and to authorize the General Manager and/or the Assistant General Manager to execute said contract, as recommended by the Engineering and Maintenance Committee. Chairman Rice requested staff to follow up on this item with Birmingham Construction Authority. 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. Carl Dalton NeSmith, and seconded by Mr. Christopher B. Rice, that the Board hereby authorizes staff to award bid to Wade Sand & Gravel, the lowest responsible and responsive bidder, for estimated annual quantities of Crushed Limestone - Backfill Material (Annual), at an estimated out-of-pocket cost to the Board of \$827,620.00; and authorizes the General Manager and/or the Assistant General Manager to execute said contract, as recommended by the Engineering and Maintenance Committee. Resolution No. 9049 is hereby adopted by Directors Rice, Burbage, Munchus, Henderson, Blankenship and NeSmith.”

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Next, the Board moved to the fourth item on the agenda, Request Board to reject all bids related to BID22-00-09, regarding Janitorial Services, and to re-bid said services, as recommended by the Engineering and Maintenance Committee. Director Ward returned to the meeting at 12:23 p.m. Director Blankenship questioned the background on this item. Chairman Rice stated that Director Blankenship would be updated on the matter in Executive Session. 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. Carl Dalton NeSmith, and seconded by Mr. Thomas E. Henderson, that the Board hereby authorizes staff to reject all bids related to BID22-00-09, regarding Janitorial Services, and to re-bid said services, as recommended by the Engineering and Maintenance Committee. Resolution No. 9050 is hereby adopted by Directors Rice, Burbage, Ward, NeSmith, Henderson; and Directors Blankenship and Munchus abstained from voting.”

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Following, the Board moved to the fifth item on the agenda, Request Board to award bid to Badger Meter, Inc., the lowest responsible and responsive bidder, for estimated quantities of Cold-Water Meters, at an estimated out-of-pocket cost to the Board of \$206,800.00; and to authorize the

General Manager and/or the Assistant General Manager to execute said contract. Director NeSmith stated this item did not come before the Engineering and Maintenance Committee; however, the Committee supports this item because there is a major shortage. 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 Mr. Carl Dalton NeSmith, that the Board hereby authorizes staff to award bid to Badge Meter, Inc., the lowest responsible and responsive bidder, for estimated quantities of Cold-Water Meters, at an estimated out-of-pocket cost to the Board of \$206,800.00; and authorizes the General Manager and/or the Assistant General Manager to execute said contract. Resolution No. 9051 is hereby adopted by unanimous vote.”

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Next, the Board moved to the sixth item on the agenda, Request Board to ratify and approve quote with Allen Printing Co., Inc., for Printing and Mailing of the 2022 Consumer Confidence Reports (CCR) at an out-of-pocket cost to the Board of \$110,132.87 (Printing - \$79,366.12 and Mailing -\$30,766.75); and to authorize the General Manager and/or the Assistant General Manager to execute said contract. Chairman questioned the urgency for said item and why it was not brought to the Board before being an expenditure. The General Manager stated the item should have been brought to the Board before being an expenditure and prior to this meeting. Chairman Rice stated he wants to compare the costs for the last three years and requested staff to provide the information. 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 Mr. Carl Dalton NeSmith, that the Board hereby ratifies and approves a quote with Allen Printing Co., Inc., for Printing and Mailing of the 2022 Consumer Confidence Reports (CCR) at an out-of-pocket cost to the Board of \$110,132.87 (Printing - \$79,366.12 and Mailing -\$30,766.75); and authorizes the General Manager and/or the Assistant General Manager to execute said contract. Resolution No. 9052 is hereby adopted by Directors Rice, Burbage, Ward, NeSmith, Henderson, Munchus; and Director Blankenship abstained from voting.”

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Following, the Board moved to the seventh item on the agenda, Request Board to amend The World Games 2022 budget to include the payment of labor, at an amount not to exceed \$30,000.00 by reallocating \$20,000.00 from lunch expense and \$10,000.00 from scheduler expense, after which the total budget will remain at \$166,435.00, as recommended by the Finance Committee. Chairman Rice stated items were reallocated in the budget to cover labor costs with non-rate payer funds. On a motion duly made and seconded, the following resolution was adopted:

“WHEREAS, pursuant to Resolution No. 8907, The Water Works Board of the City of Birmingham has established a Community Educational Program (the “Program); and,

WHEREAS, pursuant to the Program, funding for the Program must be included in the Water Works Board’s approved annual Operational and Maintenance Budget; and,

WHEREAS, pursuant to the Program funding for the Program shall not exceed the lesser of 20% of the County Funds or \$500,000 (hereinafter referred to as “Community Educational Program Funds”); and,

WHEREAS, pursuant to the Program any expenditure of the Community Educational Program Funds must be authorized by a resolution that sets forth the Corporate Purpose that will be addressed and approved by a roll call vote of 5 directors; and,

WHEREAS, pursuant to Resolution No. 9017, the Water Works Board authorized expenditures relating to The World Games 2022, not to exceed \$166,435.00, to be paid from non-ratepayer funding; and,

WHEREAS, the Board of Directors desire to amend the World Games 2022 budget to include the payment of labor for \$30,000.00, by reallocating expenses, after which, the total budget will remain at \$166,435.00.

NOW, THEREFORE, BE IT RESOLVED by the Water Works Board of the City of Birmingham, on a motion duly made by Mr. Raymond “Larry” Ward and seconded by Mr. William “Butch” Burbage, Jr., as follows:

The World Games budget for 2022 is hereby amended as follows:

1. By an additional \$30,000.00 of non-ratepayer funds for labor expenses.
2. By a reduction of \$20,000.00 of non-ratepayer funds for lunch expenses.
3. By a reduction of \$10,000.00 of non-ratepayer funds for scheduler expenses.
4. The additional \$30,000.00 for labor expenses, the reduction of \$20,000.00 for lunch expenses and the reduction of \$10,000.00 for scheduler expenses will have a net impact of zero, which will result in the World Games Budget for 2022 remaining at \$166,435.00.
5. Attached hereto as Exhibit “A is a copy of the amended budget covering the reallocation of expenses, after which, the total budget will remain at \$166,435.00.
6. This resolution to be posted on the Water Works Board’s website.

Resolution No. 9053 is hereby adopted by unanimous vote.”

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Next, the Board moved to the eighth item on the agenda, Request Board to approve Raftelis Financial Consultants, Inc., to conduct a billing cost allocation study to determine an allocation of the mutually agreed upon joint billing costs associated with the billing and collection of sewer service charges for Jefferson County, at an amount not to exceed \$43,140.00, of which the cost shall be shared proportionally between BWW and Jefferson County, as recommended by the Finance Committee. Director Blankenship question when the last study was conducted and how is the information used. The General Manager stated the last study was conducted in 2017 and the

information is used to determine how much BWWB will be reimbursed from Jefferson County for sewer collection. Director Ward questioned whether BWWB is required to commission the study. The General Manager responded yes and stated per contract with Jefferson County the study must be conducted every four years. 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. Raymond “Larry” Ward and seconded by Mr. William “Butch” Burbage, Jr., that the Board approves Raftelis Financial Consultants, Inc., to conduct a billing cost allocation study to determine an allocation of the mutually agreed upon joint billing costs associated with the billing and collection of sewer service charges for Jefferson County, at an amount not to exceed \$43,140.00, of which the cost shall be shared proportionally between BWB and Jefferson County, as recommended by the Finance Committee. Resolution No. 9054 is hereby adopted by unanimous vote.”

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Following, the Board moved to the ninth item on the agenda, Request Board to rescind Resolution No. 7879 and amend Section 5.6 (Employee Job Transition for Injury / Medical Reasons) in the Employee Handbook and Section 5060 (Employee Job Transition for Injury / Medical Reasons) in the HR Management Guide to allow for additional time if injured on the job to transition to another position and to administer a transition process for those employees who are unable to perform the duties of their position with or without a reasonable accommodation due to an injury or medical reason. 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 made by Mr. William “Butch” Burbage, Jr., and seconded Mr. Thomas E. Henderson as follows:

1. Resolution No. 7879 is hereby rescinded.
2. To allow for additional time for an employee to transition to another position and to administer a transition process for any such employee who may be unable to perform the duties of their position, with or without reasonable accommodation, due to an injury or medical reason, Section 5.6 (Employee Job Transition for Injury/Medical Reasons) in the Employee Handbook is hereby amended as reflected on Exhibit “A” attached hereto and Section 5060 (Employee Job Transition for Injury/Medical Reason) in the Human Resource Management Guide is hereby amended as reflected on Exhibit “B” attached hereto.

Resolution No. 9055 is hereby adopted by unanimous vote.”

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Next, the Board moved to the tenth item on the agenda, Request Board to rescind Resolution No. 8181 and No. 8169 regarding employee arrest and to follow Guideline #10 (Employee Arrest) as listed under Section 8060 (Education and Other Leaves of Absence) in the HR Management Guide. Chairman Rice questioned whether this item has been discussed with the Employee Association. The General Manager stated the item was not discussed with the Employee Association;

however, the Employee Association want to leave the policy as is. Director Blankenship questioned the impact a change to the policy would have on employees. Human Resources Manager Paul Lloyd gave an overview of the existing policy and explained that flexibility was being requested to allow the General Manager discretion relating to said policy to minimize the liability to BWWB. Chairman Rice expressed concerns about allowing discretion. He also stated that the Board would need to be notified of any incidents relating to this matter. A discussion then ensued. 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 made by Mr. William “Butch” Burbage, Jr., and seconded by Mr. Thomas E. Henderson, that Resolution No. 8169 and Resolution No. 8181, which address when an employee may be placed on leave after having been arrested, are hereby rescinded and Guideline Number 10 as listed in Section 8060 in the Human Resource Management Guide is reinstated. Resolution No. 9056 is hereby adopted by Directors Rice, Burbage, Ward, NeSmith, Henderson; and Directors Blankenship and Munchus voted no.”

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Following, Chairman Rice asked the Board to hear from Speakers. As there were no speakers, the Board moved to the eleventh item on the agenda, Request Board to enter Executive Session to discuss legal matters. Board Attorney Parnell stated there was one lawsuit to discuss with the potential for a resolution and an update from staff relating to The World Games 2022 security issues. He indicated that he expected action to be taken after Executive Session. Attorney Parnell stated that the Executive Session should last approximately twenty minutes. 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 Mr. Thomas E. Henderson, that the Board hereby enters Executive Session to discuss legal matters. Resolution No. 9057 is hereby adopted by unanimous vote.”

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The Board entered Executive Session at 12:49 p.m.

Following, Director Ward made a motion for the Board to come out of Executive Session and Director Nesmith seconded the motion. The Board came out Executive Session at 1:14 p.m.

Subsequently, Board Attorney Parnell read a resolution for the Board’s consideration regarding a lawsuit. On a motion duly made and seconded, the following resolution was adopted:

“WHEREAS, there is presently pending against The Water Works Board of the City of Birmingham, et. al., Jefferson County Civil Action Number CV-2021-901197; and,

WHEREAS, pursuant to a Court ordered mediation, the parties have reached a resolution to said lawsuit.



NOW THEREFORE, on a motion made by Mr. Carl Dalton NeSmith and seconded by Mr. William “Butch” Burbage, Jr., as follows:

The Water Works Board’s General Manager and General Counsels are authorized to take such action as needed to effectuate the terms and provisions set forth in the Mediation Agreement reached between the parties at the mediation conducted on May 12, 2022; and, to cause said lawsuit to be dismissed with prejudice.

Resolution No. 9058 is hereby adopted by Directors Rice, Burbage, Ward, NeSmith, Henderson, and Munchus; and Director Blankenship abstained from voting.”

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As there was no further business before the Board, Chairman Rice made a motion to adjourn the meeting and Director Blankenship seconded the motion. On a motion duly made and seconded, the meeting adjourned at 1:16 p.m.

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Christopher B. Rice  
Chairman

Attest:

\_\_\_\_\_/s/\_\_\_\_\_  
Raymond “Larry” Ward  
Secretary-Treasurer