

**MINUTES OF THE REGULAR BI-MONTHLY MEETING OF DIRECTORS
OF THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM
November 17, 2021**

A regular meeting of the directors of The Water Works Board of the City of Birmingham was held on Wednesday, November 17, 2021 at 11:30 a.m.

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

Others present were: Michael Johnson, General Manager; Derrick Murphy, and Iris Fisher, Assistant General Managers; Cynthia Williams, Board Administrator; Anitra Clark, Corporate Governance Specialist; Rick Jackson, Terrell Jones, Jeff Wade, Paul Lloyd, Rosalind Jones and Colandus Mason, BWWB Employees; K. Mark Parnell, Parnell Thompson, LLC; Byron Perkins, Perkins Law, LLC; Kelvin Howard, Esq.; Patrick Flannelly, ARCADIS U.S., Inc.; Michael Bell, Birmingham Construction Industry Authority; Martha Bozeman, Agency 54; Mark Johnson and Kristy Sheffer, FBB Insurance; Theo Johnson, Jacobs; Earl Hilliard, Hilliard Smith & Hunt; Pat Lynch, Pat Lynch & Associates; Alan Collins, WBRC; and Mauricka McKenzie, Nehemiah Engineering.

Chairman Mims declared a quorum in attendance.

Chairman Mims called the meeting to order at 11:34 a.m. and General Manager Michael Johnson opened with prayer.

Following, Chairman Mims asked the Board to approve the agenda. Director Ward then made a motion to approve the agenda and Director Munchus 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 Mr. George Munchus, that the Board hereby approves the agenda for the November 17, 2021 Regular Board of Directors’ Meeting. Resolution No. 8921 is hereby adopted by unanimous vote.”

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Following, Chairman Mims asked to hear Reports of Committee. Director Huffman recognized Rick Jackson, Public Relations Manager, to give a Communications Committee update. Mr. Jackson gave an overview of a meeting he attended with the Utilities Committee of the Birmingham City Council. He stated the Board’s budget for FY 2022 was presented to the committee.

Following, Chairman Mims asked to hear Reports of Officers. There were no reports presented.

Following, the Board moved to the first item on the agenda, Request 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” attached hereto for the following purposes (1) add language to clarify that certificate programs may be covered under the Policy; (2) raise the maximum allowable lifetime reimbursement from \$34,000 to \$60,000; and (3) adds language that allows the General Manager to make minor procedural deviations from the Policy that are consistent with the overall objective and requirements of the Policy, as recommended by the Human Resources Committee. The General Manager stated there was a question as to when an employee would qualify for the assistance and he indicated the six-month period of qualification was added back to the policy. Director Rice stated this change was being used to pay upfront for certain skilled jobs and questioned whether that was still included in the policy. Director Rice requested the General Manager to define minor procedural deviations mentioned in the policy. The General Manager responded the minor procedural changes could be related to a late submittal from an employee to be approved for classes to avoid denial of receiving assistance. Director Rice stated he felt like item 3 in the policy should go back to the Human Resources Committee for review and be presented again to the Board. He stated that was his only amendment for this item. Director Blankenship stated the item has been before the Board several times and he is prepared to move forward with the item as is; however, he indicated he was not opposed to the recommendation from Director Rice. Director Rice stated the item did not have to go back to the Human Resources Committee, but the item could simply be amended, and the Board could approve the item. Director Rice stated the language in the policy could include “any minor procedural changes would have to go back to the Human Resources Committee to review”. Director Rice then made a motion to amend item 1.3 in the policy to state if there are any minor procedural deviations from the policy that they be presented to the Human Resources Committee for review and recommendation and Director NeSmith seconded the motion. Director Ward questioned the General Manager whether there would be a situation he would need to respond to quickly before it could be presented to the Human Resources Committee. The General Manager responded that type of situation does not occur often. Director Henderson recommended removing the word “minor” from 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. Chris Rice, and seconded by Mr. Dalton NeSmith, that the Board hereby approves 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” attached hereto for the following purposes (1) add language to clarify that certificate programs may be covered under the Policy; (2) raise the maximum allowable lifetime reimbursement from \$34,000 to \$60,000; and (3) adds language that allows the General Manager to make procedural deviations from the Policy that are consistent with the overall objective and requirements of the Policy, once the deviation is then referred back to the Human Resources Committee for review and recommendation to the Board for approval, as recommended by the Human Resources Committee. Resolution No. 8922 is hereby adopted by unanimous vote.”

Following, the Board moved to the second item on the agenda, Request Board to approve expenditures with SHI for COT Software and Services to provide Microsoft services and support throughout the BWWB's system, at an out-of-pocket cost to the Board of \$733,085.93, as recommended by the Engineering and Maintenance Committee. Director NeSmith then made a motion to approve the item and Director Munchus 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. Dalton NeSmith, and seconded by Mr. George Munchus, that the Board hereby approves expenditures with SHI for COT Software and Services to provide Microsoft services and support throughout the BWWB's system, at an out-of-pocket cost to the Board of \$733,085.93, as recommended by the Engineering and Maintenance Committee. Resolution No. 8923 is hereby adopted by unanimous vote.”

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Following, the Board moved to the third item on the agenda, Request Board to approve its budgets for fiscal year 2022: the Operating and Maintenance Budget totaling \$115,324,045.00; and the Capital Budget totaling \$77,089,198.00. Director Munchus made a motion to discuss the item and Director Burbage seconded the motion. Director Munchus stated he was voting to approve the item; however, he was concerned about the customer assistance program being defunded for 2022 and those funds being moved to paygo. He recommended keeping \$1.2 million in the customer assistance fund. The General Manager stated Director Munchus’ suggestion could be reviewed. He indicated consideration would have to be given to whether using \$1.2 million for such a program is legal. Director Munchus also recommended a social worker be hired by BWWB. Chairman Mims stated he received three phone calls from directors with concerns to postpone approving the budget. He indicated he would not postpone approving the budget; however, he would go along with the pleasure of the Board. Director NeSmith then made a motion to approve the item and Director Burbage seconded the motion. Director Rice stated the matrix for rate increases should be reviewed and he questioned whether the rate increase was discussed with wholesale customers. The General Manager responded no and stated the public hearing helps to communicate that information as well as BWWB staff being in constant communication with wholesale customers. Director Munchus questioned whether one class of customers can be treated differently and is there a cost for each class. The General Manager stated each class impacts the overall budget. He stated customers are charged based on the cost to deliver water to them. Director Munchus questioned why the raw water rate would be delayed. The General Manager stated there was an increase in consumption, resulting in there not needing to be a rate increase for raw water. Director Blankenship questioned what the impact on paygo would be. The General Manager stated if there was no rate increase it would reduce revenue by \$1.5 million. Director Blankenship questioned what the impact on bonds would be. The General Manager stated the impact would cause a reduction in the amount of paygo for the capital program. Director Ward stated there was no rate increase in 2021; however, there is a rate increase of 2 percent for 2 years. The General Manager stated staff is looking at federal funding; however, in effect the process is slow. Director Blankenship stated he understands the difficulties; however, he was unready and could not support the budget. Board Attorney Mark Parnell stated if the Board does not pass the budget before November 30, 2021 there would be no rate increase on January 1, 2022. He stated not approving the budget could affect rate coverage and the Board has to give the public 30-day notice. Director Rice stated he was not sold on the rate increase; however, it was too far along to delay the budget. The General Manager stated rates aren’t raised for no reason but are related to debt service coverage. Chairman Mims stated he would abstain because he trusts the General Manager’s recommendation. A discussion then ensued. Director Rice indicated the budget could be amended later. On a motion duly made and seconded, the following resolution was adopted:

“WHEREAS, The Water Works Board of the City of Birmingham (the “Board”) properly noticed and conducted a public hearing on Thursday, November 10, 2021, at 5:30 p.m., pursuant to Ala. Code § 11-50-303(c) (1975); and,

WHEREAS, the Board has prepared its 2022 Operations and Maintenance Budget with expenditures totaling \$115,324,045.00; and

WHEREAS, The Board has prepared its 2021 Capital Budget with expenditures totaling \$77,089,198.00; and

WHEREAS, as part of its plan to maintain a robust Capital Budget, The Board wishes to transfer \$1,200,000.00 from the Customer Service Assistance Program to supplement funding for its Capital Budget for FY 2022; and

WHEREAS, The Board desires to approve said Operations and Maintenance and Capital budgets for 2021.

NOW, THEREFORE, BE IT RESOLVED By The Water Works Board of the City of Birmingham, on a motion duly made by Mr. Dalton NeSmith and seconded by Mr. William Burbage, that:

1. The Board hereby approves its Operations and Maintenance, and Capital budgets for 2022 in the amounts as more particularly set forth above.
2. In accordance with Ala. Code § 11-50-303(c) (1975) and Resolution No. 4166, which was adopted on December 23, 2003, as amended, (adoption of the Rate Stabilization and Equalization Procedure (RSE Model)), notice is hereby given that the adoption of this resolution will result in a rate adjustment of 3.9% effective January 1, 2022.

Resolution No. 8924 is hereby adopted by roll call vote: Director Burbage, Yes; Director Huffman, Yes; Director NeSmith, Yes; Director Ward, Yes; Director Munchus, No; Director Mims, Abstain; Director Rice, Yes; Director Henderson, Yes; and Director Blankenship, No.”

Following, the Board moved to the fourth item on the agenda, Request Board to approve the effective date of the phase in for raw water rates effective January 1, 2022 to be delayed until January 1, 2023, due to the materially increased raw water consumption relative to the projection used for the cost of service study. Director Ward made a motion to approve the item and Director NeSmith seconded the motion. Director Blankenship questioned whether delaying the rate increase would affect the Board’s bond indenture. The General Manager responded there would be an increase in raw water rates effective January 1, 2022 which would be beyond what is needed to capture cost of service. He indicated based on cost of service there does not need to be a raw water rate increase effective January 1, 2022 and it could be delayed until 2023. Director Munchus requested the amount of money over collected from raw water. The General Manager stated he would supply that information to the Board. On a motion duly made and seconded, the following resolution was adopted:

“WHEREAS, on June 10, 2020, Resolution No. 8391 was adopted by the Board to amend Resolution No. 8163 to revise the rate structure to increase the period to phase in raw water rates to an effective date of January 1, 2021; and,

WHEREAS, on November 19, 2020, Resolution No. 8571 was adopted to provide the phase in for the raw water rates to an effective date of January 1, 2022; and

WHEREAS, due to materially increased raw water consumption relative to the projection used for the cost of service study, the effective date of the phase in for raw water rates effective January 1, 2022, is due to be delayed until January 1, 2023.

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

1. The Board hereby further amends Resolution Numbers 8163, 8391 and 8571 to change the period to phase in raw water rates to an effective date of January 1, 2023.

Resolution No. 8925 is hereby adopted by Directors Mims, Burbage, Ward, NeSmith, Henderson, Blankenship, and Rice; Director Munchus voted No; and Director Huffman abstained from voting.”

Following, the Board moved to the fifth item on the agenda, Request Board to approve payment of invoices from Dominick Feld Hyde, P.C. for work performed in October 2021 in the amount of \$1,604.00. Chairman Mims requested the Board to consider agenda items 5 through 11. Director NeSmith made a motion to approve items 5 through 11 and Director Ward seconded the motion. Director Rice requested the Board to consider agenda items 5 through 10 and to consider agenda item 11 separately. Director NeSmith then amended his motion to consider agenda items 5 through 10 and to consider agenda item 11 separately and Director Burbage seconded the motion. Chairman Mims questioned whether staff had reviewed the invoices and the General Manager responded yes. Director Blankenship stated there was not enough detail from consultants for lobbying. He indicated The Jones Group and Hilliard, Smith & Hunt laid out a plan and he indicated Pat Lynch & Associates was doing the same work as the General Manager. He stated he needs to see the impact these consultants have in this space. Director Ward left the meeting at 12:31 p.m. Director Rice stated the General Manager needs to come up with a clear plan for the lobbyist consultants. A discussion then ensued. Director Ward returned to the meeting at 12:33 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. Dalton NeSmith, and seconded by Mr. William Burbage, that the Board hereby approves payment of invoices from:

- Dominick Feld Hyde, P.C. for work performed in October 2021 in the amount of \$1,604.00.
- Pat Lynch & Associates for work performed October 1, 2021 through October 31, 2021 in the amount of \$10,000.00.

- The Jones Group, LLC for work performed in October 2021 in the amount of \$10,000.00.
- Hilliard, Smith & Hunt, LLC for work performed October 2021 n the amount of \$13,000.00.
- Raftelis Financial Consultants, Inc. for work performed in October 2021 in the amount of \$30,155.00.
- Parnell Thompson, LLC for professional services rendered October 2021 in the amount of \$43,338.75.

Resolution No. 8926 is hereby adopted by Directors Mims, Munchus, Burbage, Ward, Henderson, NeSmith, and Rice; Director Blankenship voted No; and Director Huffman abstained from voting.”

Next, the Board moved to the eleventh item on the agenda, Request Board to approve payment of invoice from ARCADIS U.S., Inc. for professional services performed during the month of June 2021 in the amount of \$110,579.25. Director Burbage made a motion to approve the item and Director NeSmith seconded the motion. Director Rice questioned why this bill is behind. Assistant General Manager Derrick Murphy stated the consultant is responsible for submitting their bill and staff goes through a process to review it before submitting for Board approval. He indicated this review may include returning the bill to the consultant to answer questions regarding their bill. Director Rice stated late payments should not put historically underutilized businesses (HUBs) in a position to not be paid timely. He indicated the HUBs should be paid in 30 to 45 days. Assistant General Manager Murphy stated there have been discussions with ARCADIS and they have made modifications to their processes to pay HUBs timely. Director Huffman questioned the ARCADIS representative whether they can confirm the HUBs have been paid. Patrick Flannelly, ARCADIS, stated there was some invoices related to the Shades Mountain Filter Plant project that were behind by HUBs. He stated he reached out to the HUBs and his company to get the HUBs paid. He indicated payment to the HUBs have been caught up to their satisfaction and they are continuing discussions. 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 Burbage, and seconded by Mr. Dalton NeSmith, that the Board hereby approves payment of invoice from ARCADIS U.S., Inc. for professional services performed during the month of June 2021 in the amount of \$110,579.25. Resolution No. 8927 is hereby adopted by unanimous vote.”

Following, the Board moved to the twelfth item on the agenda, Request Board to approve an agreement with Amwins/TransAmerica to provide 2022 Post 65 Health Insurance coverage at a projected annual cost of \$912,877.00; and to authorize the General Manager and/or Assistant

General Manager to execute said agreement. 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. George Munchus, that the Board hereby approves an agreement with Amwins/TransAmerica to provide 2022 Post 65 Health Insurance coverage at a projected annual cost of \$912,877.00; and authorizes the General Manager and/or Assistant General Manager to execute said agreement. Resolution No. 8928 is hereby adopted by unanimous vote.”

Following, the Board moved to the thirteenth item on the agenda, Request Board to approve a change order for B.L. Harbert to install a force main, and an 8-inch ductile iron gravity sewer line and associated appurtenances as part of the Shades Mountain Filter Plant - Filter Improvements Project at an out-of-pocket cost to the Board of \$495,213.72; and to authorize the General Manager and/or the Assistant General Manager to execute the change order. Chairman Mims requested this item be tabled until after agenda item 14. 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. George Munchus, that the Board hereby tables a change order for B.L. Harbert to install a force main, and an 8-inch ductile iron gravity sewer line and associated appurtenances as part of the Shades Mountain Filter Plant - Filter Improvements Project at an out-of-pocket cost to the Board of \$495,213.72. Resolution No. 8929 is hereby adopted by unanimous vote.”

Following, the Board moved to the fourteenth item on the agenda, Request Board to enter into Executive Session to discuss legal matters. Board Attorney Mark Parnell certified that the Executive Session would be to discuss pending litigation regarding the Shades Mountain Filter Plant project and agenda item 13 is related to that issue. He stated the Board would need to take action on agenda item 13 after Executive Session and he indicated BWWB Staff and ARCADIS would need to be present for that discussion. He also certified that the General Manager would need to discuss real estate issues with the Board 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 Ms. Tereshia Huffman, and seconded by Mr. Lucien Blankenship, that the Board hereby approves to enter into Executive Session to discuss legal matters. Resolution No. 8930 is hereby adopted by unanimous vote.”

Following, the Board entered Executive Session at 12:46 p.m. Director Huffman left the meeting at 12:46 p.m.

Next, Director Blankenship made a motion to come out of Executive Session and Director Munchus seconded the motion. The Board voted unanimously to come out of Executive Session. The Board came out of Executive Session at 1:16 p.m.

Following, the Board moved to the thirteenth item on the agenda, Request Board to approve a change order for B.L. Harbert to install a force main, and an 8-inch ductile iron gravity sewer line and associated appurtenances as part of the Shades Mountain Filter Plant - Filter Improvements Project at an out-of-pocket cost to the Board of \$495,213.72; and to authorize the General Manager and/or the Assistant General Manager to execute the change order. 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. George Munchus, that the Board hereby approves a change order for B.L. Harbert to install a force main, and an 8-inch ductile iron gravity sewer line and associated appurtenances as part of the Shades Mountain Filter Plant - Filter Improvements Project at an out-of-pocket cost to the Board of \$495,213.72; and authorizes the General Manager and/or the Assistant General Manager to execute the change order. Resolution No. 8931 is hereby adopted by Directors Mims, Munchus, Burbage, Blankenship, Ward, NeSmith, Henderson and Rice.”

Next, Director Blankenship then made a motion to adjourn the meeting and Director Rice seconded the motion. On a motion duly made and seconded, the motion was approved, and the meeting was adjourned at 1:17 p.m.

/s/
Ronald A. Mims
Chairman/President

Attest:

/s/
William Burbage, Jr.
Secretary-Treasurer