

**MINUTES OF THE REGULAR BI-MONTHLY MEETING OF DIRECTORS
OF THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM
September 23, 2020**

A regular board meeting of the directors of The Water Works Board of the City of Birmingham was held on Wednesday, September 23, 2020 at 11:30 a.m. via video conference.

The following Board members were present: Ronald A. Mims, Tommy J. Alexander, Brenda J. Dickerson, Deborah Clark, William “Butch” Burbage, Jr., Lucien Blankenship, William Muhammad, Brett A. King, and George Munchus.

Others present were: Michael Johnson, General Manager; Derrick Murphy, Jeffrey Thompson and Iris Fisher, Assistant General Managers; Grace Amison, Executive Assistant to the Board of Directors; Cynthia Williams, Board Administrator; Anitra Hendrix, Executive Assistant to the General Manager; Terrell Jones, Tim Garrett, Jeff Wade, and Colandus Mason, BWWB Employees; K. Mark Parnell, Parnell Thompson Law, LLC; Kelvin Howard, Kelvin Howard, LLC; Emory Anthony, Esq.; and Matthew Arrington, Terminus Municipal Advisors.

Chairman Mims declared a quorum in attendance.

Chairman Mims called the meeting to order at 11:34 a.m. and Information Technology Manager Colandus Mason opened with prayer.

Following, Director Muhammad made a motion to move New Business to agenda item 11, to move Executive Session to agenda item 12, and to remove item 3 from the agenda. The General Manager stated agenda item 3 is important to the Board’s Strategic Plan. He stated staff is conscious of the Historically Underutilized Business (H.U.B.) participation related to the item. Director Munchus then seconded item. Chairman Mims questioned Director Muhammad the reason for removing agenda item 3. Director Muhammad stated the baseline has not been met for the H.U.B. participation. A discussion then ensued. Chairman Mims questioned the effects of delaying agenda item 3. The General Manager stated time would be needed to coordinate meetings. He indicated he has pushed to get 30 percent H.U.B. participation. Director Blankenship stated his concern is that a proposal was presented by The Novak Group and he thought they understood some of the things that needed to be considered, including their pricing. He stated he is concerned that it appears the pricing has increased despite what the Board has already approved. Director Blankenship stated The Novak Group may have mispriced their proposal and should have just “eaten” the cost. Director Clark stated The Novak Group presented themselves as if they did this type of work all of the time. She indicated she is concerned they are asking for more money halfway through the process. She stated the entire initiative should be reviewed. The General Manager stated he feels confident what has been allocated in the budget will be sufficient for a strategic plan. Director Muhammad stated he feels other disadvantaged businesses could be used to achieve the 30 percent. Chairman Mims then called for a vote for the removal of item 3 from the agenda. The General Manager clarified that this item would be tabled. 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 R. Muhammad and seconded by Mr. George Munchus, that the Board hereby approves moving agenda item 12 before agenda item 11 and to

remove agenda item 3 from the agenda. Resolution No. 8482 is hereby adopted by a roll call vote: Director Blankenship, Aye; Director Alexander, Aye; Director Clark, Aye; Director Burbage, Aye; Director Mims, Aye; Director Munchus, Aye; Director Muhammad, Aye; Director King, Aye; and Director Dickerson, Aye.”

Following, Chairman Mims called for a vote 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. George Munchus and seconded by Dr. Brenda Dickerson, that the Board hereby approves the agenda for September 23, 2020 Regular Board of Directors’ Meeting with the recommended changes. Resolution No. 8483 is hereby adopted by unanimous vote.”

Following, the Board moved to the first item on the agenda, Request Board to approve the starting salary for the Corporate Governance Specialist – Grade Level 19 - \$80,369.00, necessary to perform essential minimum functions of the governmental body; as set forth in agenda item 1. Director Munchus made a motion to approve the item and Director Muhammad seconded the motion. Director Muhammad stated there was no position titled Corporate Governance Specialist. He stated Director Burbage, when he was Chairman, requested the Executive Assistant to the Board of Directors to write down her duties. He stated she came back with two new positions, Board Administrator and Corporate Governance Specialist. He indicated a Committee was set up to hire for these positions which resulted in background checks showing untruthfulness on resumes. He stated the Board then authorized Chairman Mims to hire for these positions. He expressed his disdain for the way the process has been handled regarding this position. Director Burbage stated he didn’t believe the Human Resources Manager initiated the grade level for this position. He stated the grade for this position was at a lower level. He stated Chairman Mims designated the grades for both positions and that is what he has an issue with. He indicated the system that is in place was not used and they were changed outside of the system. On a motion duly made and seconded, the item failed on a roll call vote of 5-3-1.

Following, the Board moved to the second item on the agenda, Request Board to approve payments of invoices, necessary to perform essential minimum functions of the governmental body; as set forth in agenda items 2.1 through 2.9. A request was made to vote on these items individually. Director Blankenship stated whether the issue regarding item 2.1 could be addressed in house. The General Manager stated the questions related to this item had to be answered by a tax attorney; therefore, this issue could not be addressed in house. On a motion duly made and seconded, the following resolutions were adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Mr. George Munchus, and seconded by Dr. Brenda Dickerson, that the Board hereby authorizes staff to execute payments to the following:

- 2.1 Dominick, Feld, Hyde, P. C.
 - 2.1.1 Cafeteria Plan performed August 20, 2020 through

August 26, 2020	\$ <u>252.00</u>
2.1.2 Other Benefit Plans (Longevity, Education, Etc.) performed August 18, 2020 through August 20, 2020	\$ <u>2,705.60</u>

Resolution No. 8484 is hereby adopted by unanimous vote.”

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Mr. George Munchus, and seconded by Mr. William R. Muhammad, that the Board hereby authorizes staff to execute payments to the following:

2.2 <u>Terminus Municipal Advisors, LLC</u> For professional services rendered for August 2020	\$ <u>6,500.00</u>
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Resolution No. 8485 is hereby adopted by unanimous vote.”

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Mr. George Munchus, and seconded by Mr. William R. Muhammad, that the Board hereby authorizes staff to execute payments to the following:

2.3 <u>Hilliard, Smith & Hunt, LLC</u> For professional services rendered for August 2020	\$ <u>7,500.00</u>
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Resolution No. 8486 is hereby adopted by unanimous vote.”

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Mr. George Munchus, and seconded by Mr. William R. Muhammad, that the Board hereby authorizes staff to execute payments to the following:

2.4 <u>The Jones Group, LLC</u> For professional services rendered during August 2020	\$ <u>10,000.00</u>
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Resolution No. 8487 is hereby adopted by unanimous vote.”

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Mr. George Munchus, and seconded by Mr. William R. Muhammad, that the Board hereby authorizes staff to execute payments to the following:

2.5 <u>Raftelis Financial Consultants, Inc.</u> For professional services rendered during August 2020	\$ <u>14,780.00</u>
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Resolution No. 8488 is hereby adopted by Directors Alexander, Clark, Burbage, Mims, Munchus, Muhammad, King, and Dickerson; and Director Blankenship abstained from voting.”

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Mr. George Munchus, and seconded by Mr. William R. Muhammad, that the Board hereby authorizes staff to execute payments to the following:

2.6 Agency 54
For professional services rendered during August 2020 \$ 25,000.00

Resolution No. 8489 is hereby adopted by unanimous vote.”

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Mr. George Munchus, and seconded by Mr. William R. Muhammad, that the Board hereby authorizes staff to execute payments to the following:

2.7 Birmingham Construction Industry Authority
For BWWB Compliance Program Contract Services - August 2020 \$ 25,000.00

Resolution No. 8490 is hereby adopted by unanimous vote.”

Next, the Board moved to agenda item 2.8. Director Blankenship stated there are two separate invoices being paid to two different firms. He stated he is not opposed to paying the invoice; however, he questioned whether the amount exceeds the cap. Board Attorney Emory Anthony stated all of the agreements for the panel of attorneys have not been fulfilled. He indicated at this time Parnell Thompson is not under a cap. He indicated the work for Attorney Kelvin Howard was paid under Parnell Thompson; therefore, that resulted in the two invoices. 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 duly made by Mr. George Munchus, and seconded by Mr. William R. Muhammad, that the Board hereby authorizes staff to execute payments to the following:

2.8 Parnell Thompson, LLC
For professional services rendered during August 2020 \$ 42,561.25

Resolution No. 8491 is hereby adopted by: Directors Alexander, Clark, Burbage, Mims, King, Dickerson, and Munchus; Director Muhammad voted no; and Director Blankenship abstained from voting.”

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Mr. George Munchus, and seconded by Mr. Brett King, that the Board hereby authorizes staff to execute payments to the following:

2.9 ARCADIS, U.S.

For professional services rendered during June 2020

\$ 220,657.38

Resolution No. 8492 is hereby adopted by: Directors Blankenship, Alexander, Burbage, Mims, Munchus, Muhammad, King, and Dickerson; and Director Clark abstained from voting.”

Following, the Board moved to the fourth item on the agenda, Request Board to adopt a resolution to hire Attorney Tiffanie Agee to provide legal services at an hourly rate of \$300.00 and a monthly budgeted amount not to exceed \$10,000.00; and to authorize the General Manager to execute the agreement; necessary to perform essential minimum functions of the governmental body. Director Munchus made a motion to approve the item and Director Dickerson seconded the motion. Director Muhammad stated attorneys could be rolled in and out of the legal panel. A brief description regarding Ms. Agee’s background was given. On a motion duly made and seconded, the following resolution was adopted:

“WHEREAS, as more fully set forth below, the Water Works Board of the City of Birmingham desires to hire a panel of attorneys to meet its legal service needs.

NOW THEREFORE, on a motion made by Mr. George Munchus and seconded by Dr. Brenda Dickerson it is hereby resolved as follows:

1. The Water Works Board hereby hires Attorney Tiffanie Agee at a monthly budgeted amount not to exceed \$10,000.00 per month the following attorney, as part of its panel to provide its legal service need.
2. The above referenced attorney will execute a written agreement with the Water Works Board. Said written agreement will establish: (a) the firm’s hourly rate to be \$300.00; (b) that the attorney will be reimbursed for necessary expenses at cost; (c) a term of a 12-months, with either party having the right to terminate the agreement upon 30 days’ notice; and (d) that the attorney must maintain professional liability insurance. The form of said agreement shall be substantially the same as the Water Works Board has previously used. The General Manager is authorized to execute said agreement on behalf of the Water Works Board.
3. The legal services needed will be approved by the Water Works Board’s Chairperson or the Chairperson’s designee. General Counsel Emory Anthony will then assign all legal work and approve it before it is submitted.
4. To ensure that the Water Works Board’s legal needs are fully met, the Chairperson or the Chairperson’s designee may authorize a law firm or attorney to exceed the budgeted amount set forth in paragraph 1 above only after the legal work is assigned by Emory Anthony the General Counsel.

Resolution No. 8493 is hereby adopted by a roll call vote: Director Blankenship, No; Director Alexander, No; Director Clark, Abstain; Director Burbage, No; Director Mims, Aye;

Director Munchus, Aye; Director Muhammad, Aye; Director King, Aye; and Director Dickerson, Aye.”

Following, the Board moved to the fifth item on the agenda, Request Board to approve a Letter of Interest to the U. S. Environmental Protection Agency seeking Water Infrastructure Finance and Innovation Act (WIFIA) funding assistance; necessary to perform essential minimum functions of the governmental body. Director Muhammad made a motion to approve the item and Director Munchus seconded the motion. Director Blankenship questioned who would handle the preparation of this letter. The General Manager indicated staff would be handling the preparation and if needed they would consult with the Board’s financial advisor and independent engineer. Director Muhammad stated this is a great opportunity for a utility to receive a grant from the State of Alabama. The General Manager clarified these funds would not be a grant, but it would be a loan. He indicated no entities in the State have ever been awarded this loan. A discussion then ensued regarding the percentage of the amount of the loan BWWB would receive. Matthew Arrington, Terminus Municipal Advisors, stated there are several benefits and advantages of the loan for BWWB. He indicated the WIFIA loan allows 50 percent of the money to be borrowed at 80 basis points, half of what is borrowed is at a lower interest rate. 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 R. Muhammad, and seconded by Mr. George Munchus, that the Board hereby approves a Letter of Interest to the U. S. Environmental Protection Agency seeking Water Infrastructure Finance and Innovation Act (WIFIA) funding assistance. Resolution No. 8494 is hereby adopted by unanimous vote.”

Following, the Board moved to the sixth item on the agenda, Request Board to approve a proposal to reinvest \$20 million with Citizens Trust Bank at an interest rate of 0.14% for one year; and to authorize the General Manager and/or the Assistant General Manager to execute said proposal; necessary to perform essential minimum functions of the governmental body. The General Manager stated BWWB has a Certificate of Deposit with Citizens Trust Bank that is about to mature, and they would like to reinvest with Citizens Trust Bank at a rate of 0.14 percent. Director King questioned why the rate is so low on a large amount of money. The General Manager stated this is based on the current state of the market. Director Blankenship made a motion to approve the item and Director Muhammad 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. Lucien Blankenship, and seconded by Mr. William R. Muhammad, that the Board hereby approves a proposal to reinvest \$20 million with Citizens Trust Bank at an interest rate of 0.14% for one year; and authorizes the General Manager and/or the Assistant General Manager to execute said proposal. Resolution No. 8495 is hereby adopted by unanimous vote.”

Following, the Board moved to the seventh item on the agenda, Request Board to hear an update on the Social Security Tax Deferral in IRS Notice 2020-65; necessary to perform essential minimum functions of the governmental body. Assistant General Manager Fisher stated President Trump issued an order on August 8, 2020 to defer withholding tax on social security wages. She indicated there were no clear directives given on the order from the U. S. Treasury Department until August 28, 2020 and the order was to go into effect on September 1, 2020. She indicated this order would result in a negative impact on employees. She also stated if an employee was to leave BWWB, BWWB would be financially responsible for the withholding tax. She indicated after several discussions, including consulting with other entities, it is management’s recommendation to opt out and not implement this order. Director Blankenship requested a written legal opinion be given to the Board.

Following, the Board moved to the eighth item on the agenda, Request Board to discuss terms of the proposed agreement with Environmental Litigation Group, P.C.; necessary to perform essential minimum functions of the governmental body. Director Munchus made a motion to hear this item and Director Dickerson seconded the motion. The General Manager stated it was understood there would be no cost associated with this agreement; however, Term #9 in the agreement stated BWWB would incur costs. Board Attorney Emory Anthony stated if BWWB chose to terminate the agreement with Environmental Litigation Group, the Board would incur expenses; however, the Board would have had to receive compensation from the work the firm performed. Director Clark stated she had a concern with Term #13 in the agreement. Director King left the meeting at 1:01 p.m.

Following, the Board moved to the ninth item on the agenda, Request Board to approve a Water Agreement with Water Works Board of the City of Helena, and to authorize the General Manager and/or the Assistant General Manager to execute the agreement, as recommended by the Engineering and Maintenance Committee; necessary to perform essential minimum functions of the governmental body. Director Munchus made a motion to approve the item and Director Dickerson seconded the motion. The Chairman questioned whether this is the same agreement that has been used in the past with other entities. The General Manager responded yes. Director Blankenship questioned the background information regarding this item. Assistant General Manager Thompson stated the City of Helena has had an issue with receiving a consistent supply of water from their current provider. Director King returned to the meeting at 1:03 p.m. Director Muhammad suggested pursuing the City of Helena as a permanent customer for BWWB. 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. George Munchus, and seconded by Dr. Brenda Dickerson, that the Board hereby approves a Water Agreement with Water Works Board of the City of Helena, and authorizes the General Manager and/or the Assistant General Manager to execute the agreement. Resolution No. 8496 is hereby adopted by: Directors Alexander, Clark, Burbage, Mims, Munchus, Muhammad, King, and Dickerson; and Director Blankenship abstained from voting.”

Following, the Board moved to the tenth item on the agenda, Request Board to grant an easement to Shelby County Water Services to cross BWWB property with an underground water line for the sum of \$1.00; and to authorize the General Manager and/or the Assistant General Manager to execute the agreement, as recommended by the Engineering and Maintenance Committee; necessary to perform essential minimum functions of the governmental body. Director Munchus made a motion to approve the item and Director Dickerson seconded the motion. Assistant General Manager Murphy stated the Alabama Department of Transportation is doing expansion work in this area. Chairman Mims questioned whether this work will cross BWWB lines and Assistant General Manager Murphy responded no. 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. George Munchus, and seconded by Dr. Brenda Dickerson, that the Board hereby grants an easement to Shelby County Water Services to cross BWWB property with an underground water line for the sum of \$1.00; and authorizes the General Manager and/or the Assistant General Manager to execute the agreement. Resolution No. 8497 is hereby adopted by unanimous vote.”

Following, the Board moved to the twelfth item on the agenda, New Business. Director Munchus questioned where management is in hiring for the position of Security Manager. He indicated he is impressed with the current interim manager. The General Manager stated staff is working as fast as possible and asked the Board to allow BWWB’s internal process to handle the hiring of this position.

Next, Director Muhammad made a motion to discontinue employing the Blount County Sheriff’s Office to provide security at Inland Lake and the resolution would go into effect 60 days after its passage and Director Dickerson seconded the motion. A discussion then ensued regarding time being allowed to evaluate this issue, including amending the motion to allow more time to evaluate the issue. Director Clark recommended BWWB Security Department be engaged to bring back a solution for the Board to consider. Director King stated he was embarrassed by the racist comments made by a commissioner in Blount County and indicated the commissioner does not speak for the residents of Blount County. 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 duly made by Mr. William R. Muhammad, and seconded by Dr. Brenda Dickerson, that the Board hereby discontinues employing the Blount County Sheriff’s Office to provide security at Inland Lake and said resolution would go into effect 60 days after its passage. Resolution No. 8498 is hereby adopted by a roll call vote: Director Blankenship, Yes; Director Alexander, No; Director Clark, Yes; Director Burbage, No; Director Mims, Aye; Director Munchus, Aye; Director Muhammad, Aye; Director King, No; and Director Dickerson, Aye.”

Director Blankenship then made a motion to amend the previous motion to include an opportunity for BWWB staff to speak with representatives from Blount County to give them

consideration for a plan going forward but that does not exclude the termination of the contract in 60 days should BWWB not reach an agreement and Director Clark seconded the motion. On a motion duly made and second 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. Lucien Blankenship, and seconded by Ms. Deborah Clark, that the Board hereby amends the resolution related to discontinuing employing the Blount County Sheriff’s Office to provide security at Inland Lake and said resolution would go into effect 60 days after its passage; and approves including an opportunity for BWWB staff to speak with representatives from Blount County to give them consideration for a plan going forward but that does not exclude the termination of the contract in 60 days should BWWB not reach an agreement. Resolution No. 8499 is hereby adopted by unanimous vote.”

Director Dickerson left the meeting at 11:47 p.m. Director Blankenship requested the Board take a recess from the meeting. The Board agreed to a 5-minute recess at 1:47 p.m. The recess ended at 2:01 p.m.

Following, the Board moved to the eleventh item on the agenda, Request Board to enter Executive Session to discuss ongoing litigation; necessary to perform essential minimum functions of the governmental body. Board Attorney Mark Parnell stated there were three items to discuss in Executive Session, pending litigation, legal ramifications, and options. Director Blankenship made a motion for the Board to enter Executive Session and Director Dickerson 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. Lucien Blankenship, and seconded by Dr. Brenda Dickerson, that the Board hereby enters Executive Session to discuss ongoing litigation. Resolution No. 8500 is hereby adopted by unanimous vote.”

The Board entered Executive Session at 2:02 p.m. Director King left the meeting during Executive Session.

Next, the Board came out of Executive Session at 3:16 p.m. Director Blankenship then made a motion to accept the restitution offered in the case dealing with Jerry Jones that will be ordered as a part of the case resolution and naming BWWB as a victim and Director Burbage 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. Lucien Blankenship, and seconded by Mr. William Burbage, that the Board hereby accept the restitution that was offered in the legal case involving Jerry Jones that will be ordered as a part of the case resolution and naming BWWB as a victim. Resolution No. 8501 is hereby adopted a roll call vote: Director Blankenship, Aye; Director Alexander, Aye; Director Clark, No; Director Burbage, Aye; Director Mims, No; Director Munchus, No; Director Muhammad, Aye; and Director Dickerson, Aye.”

Next, Director Alexander then made a motion to adjourn the meeting and Director Muhammad seconded the motion. The motion was approved by unanimous vote and the meeting was adjourned at 3:19 p.m.

/s/
Ronald A. Mims
Chairman/President

Attest:

/s/
William R. Muhammad
Secretary-Treasurer