

# METRO WATER RECOVERY

## Minutes of the Regular Meeting of the Board of Directors

July 18, 2023

The Board of Directors of Metro Water Recovery, in the Counties of Adams, Arapahoe, Douglas, Jefferson, and Weld, and the City and County of Denver, State of Colorado, met in regular session at 6450 York Street, Denver, Colorado, Tuesday, July 18, 2023 at 5:30 p.m. in the Boardroom.

Chair Johnston called the meeting to order.

### 1. OATH OF OFFICE

The following Directors have been appointed by their Member Municipalities to complete two-year terms of office which expire June 30, 2025.

#### **Appointed Director**

Travis Bogan  
Sharon Israel  
Marena Lertch  
Joshua Redman  
Thomas Roode

#### **Member Municipality**

City and County of Denver  
City of Arvada  
City of Aurora  
City of Thornton  
City and County of Denver

The following Directors have been reappointed by their Member Municipalities to complete two-year terms of office which expire June 30, 2025.

#### **Reappointed Director**

Mary Gearhart  
Andrew Johnston  
Doug Lazure  
Peter Spanberger  
Jennifer Williams

#### **Member Municipality**

City and County of Denver  
City and County of Denver  
City and County of Denver  
City and County of Denver  
City and County of Denver

### 2. ROLL CALL

Secretary Giddings called the roll.

#### **Officers Present:**

Andrew Johnston, Denver  
Sarah Niyork, South Adams  
Jo Ann Giddings, Aurora  
Del Smith, Bancroft-Clover

Chair  
Chair Pro Tem  
Secretary  
Treasurer

#### **Directors Present:**

Curt Aldstadt, Westminster  
Greg Baker, Aurora  
Mike Barrett, Crestview  
Travis Bogan, Denver  
Phil Burgi, Wheat Ridge\*  
Nadine Caldwell, Aurora  
John Chavez, Berkeley

Bob LeGare, Aurora  
Marena Lertch, Aurora  
Martin Majors, Fruitdale\*  
Charlie Miller, Fort Lupton\*  
Jamie Miller, North Table Mountain\*  
Steve Pott, Applewood  
Josh Redman, Thornton

David Councilman, Pleasant View  
Deborah Crisp, East Lakewood  
Clark Davenport, Northwest Lakewood  
James DeHerrera, Aurora  
Joan Iler, Westridge  
Sharon Israel, Arvada  
Janet Kieler, Denver  
Craig Kocian, Arvada  
Laura Kroeger, Lakewood  
Doug Lazure, Denver\*

Thomas Roode, Denver  
Kim Schoen, Brighton  
Greg Sekera, Lakewood  
Peter Spanberger, Denver\*  
Mary Beth Susman, Denver  
Amerigo Svaldi, North Washington Street  
Dennis Towndrow, North Pecos  
Scott Twombly, Thornton  
Jennifer Williams, Denver

**Directors Absent:**

Mary Gearhart, Denver  
Ronald Younger, Denver  
\*Attended virtually

**Others Present:**

Mickey Conway  
Emily Jackson  
Liam Cavanaugh  
Ruth Kedzior  
Molly Kostelecky\*  
Yvonne Kohlmeier  
Lydia Nkem

Chief Executive Officer (CEO)  
General Counsel  
Deputy CEO/Chief Operating Officer (COO)  
Assistant to the CEO  
Chief Financial Officer  
Senior Administrative Assistant  
Executive Assistant

**3. PUBLIC COMMENT**

There was no comment.

**4. APPROVAL OF MINUTES**

4.a Minutes of the Board of Directors Meeting on June 20, 2023

Chair Johnston asked if there were any corrections, deletions, or additions to the minutes of the Regular Meeting of the Board of Directors held June 20, 2020.

Director Kieler moved and Director Iler seconded the motion to approve the minutes of the Regular Meeting of the Board of Directors held June 20, 2020.

The motion carried unanimously.

**5. PROGRESS AND PROJECTION REPORTS**

5.a Report by CEO

CEO Conway gave an update on permit monitoring at the Robert W. Hite Treatment Facility (RWHTF). He then reviewed the rest of his report, highlighting the 2023 Rocky Mountain Rivalry Operations Challenge hosted by Metro Water Recovery, which was won by Metro's Elevated Ops team who, along with the Double Duty team, qualified for the national challenge later this year at the 2023 Water Environment Federation Technical Exhibition and Conference (WEFTEC). He also reminded Directors to sign up via BoardEffect for his one-on-one discussions and the new Director orientation

open to all Directors on August 21, 2023. Mr. Conway congratulated General Counsel Jackson on receiving this year's President's Award from the National Association of Clean Water Agencies (NACWA).

Mr. Conway and Ms. Jackson explained they do not anticipate further action associated with the state issued compliance advisory letter.

5.b Report by General Counsel

Ms. Jackson provided an update on the recent litigation developments regarding discovery phase in the Farmers Reservoir and Irrigation Company, Burlington Ditch Reservoir and Land Company, and Henrylyn Irrigation District, the Motion for Summary Judgment filed in the MWH Contractors matter, and explained why it was to Metro Water Recovery's benefit to join the multi-district litigation number 2873 (MDL) pending before the United States District Court for the District of South Carolina which contains more than 500 cases involving varied causes of action and claims relating to per- and polyfluoroalkyl substances (PFAS) aqueous film-forming foams (AFFFs).

Ms. Jackson answered questions on South Carolina's court assignment as the venue for the MDL and if there were any concerns on the United States Supreme Court's decision in the *County of Maui* decision, stating there were none.

**6. REPORTS OF OFFICERS AND COMMITTEES**

6.a Meeting Minutes

There were no additions to the following meeting minutes:

Joint Operations and Finance Committees	July 6, 2023
Executive Committee	July 11, 2023

**7. NEW BUSINESS**

**Consent Agenda**

**7.a Consideration of Cost Allocation Percentages for the 2024 Annual Charges for Service**

Director Councilman moved and Director Baker seconded the motion to adopt the following resolution:

WHEREAS, it is necessary the Board of Directors of Metro Water Recovery, hereinafter referred to as "Metro," adopt the Cost Allocation Percentages for the 2024 Annual Charges for Service; and

WHEREAS, Section 508 of the *Sewage Treatment and Disposal Agreement (Service Contract)* and Section 506 of the *Special Connectors Agreement* require Metro to annually review its total costs, including operation, maintenance, replacement, and capital costs, to determine the percentage of those costs associated with parameters used for the allocation of Annual Charges for Service;

WHEREAS, in accordance with Schedule B of the *Service Contract* and Exhibit B of the *Special Connectors Agreement* staff conducted the annual review of Metro's costs to determine the percentage of total 2024 costs associated with annual flow, biochemical oxygen demand, suspended solids, and total kjeldahl nitrogen; and

WHEREAS, the Operations and Finance committees, after having reviewed the matter, recommend adopting the 2024 Cost Allocation Percentages; and

WHEREAS, the Executive Committee, after having reviewed the matter, concurs in the recommendation of the other committees;

NOW, THEREFORE, BE IT RESOLVED Schedule B of the *Sewage Treatment and Disposal Agreement (Service Contract)* between Metro and its Member Municipalities, attached hereto, be and hereby is amended effective January 1, 2024; and

BE IT FURTHER RESOLVED as a result of this amendment to the *Service Contract*, Exhibit B of the *Special Connector Agreement* between Metro and its Special Connectors be and hereby is similarly amended effective January 1, 2024.

The motion carried unanimously.

#### **7.b Consideration of the 2024 Sewer Connection Charge**

Director Councilman moved and Director Baker the motion to adopt the following resolution:

WHEREAS, Metro Water Recovery, hereinafter referred to as "Metro," has established a Sewer Connection Charge (SCC); and

WHEREAS, Section 509 of the *Sewage Treatment and Disposal Agreement (Service Contract)* between Metro and its Member Municipalities, and Section 507 of the *Special Connector Agreement* between Metro and its Special Connectors, provide the SCC may be changed by resolution duly enacted by action of Metro's Board of Directors; and

WHEREAS, it is necessary the SCC be established for 2024 for each Single Family Residential Equivalent (SFRE) and such charge to be effective January 1, 2024; and

WHEREAS, based on the Board's current buy-in methodology, Metro staff recommends increasing the SCC from \$5,120 to \$5,520 for 2024; and

WHEREAS, the Operations and Finance committees, after having reviewed the matter, recommend adopting a SCC of \$5,520 per SFRE for 2024; and

WHEREAS, the Executive Committee, after having reviewed the matter, concurs in the recommendation of the other committees;

NOW, THEREFORE, BE IT RESOLVED Metro's Sewer Connection Charge be and hereby is increased to \$5,520 for each Single Family Residential Equivalent, effective January 1, 2024.

The motion carried unanimously.

### 7.c Consideration of 2024 Large-User Exception Capital Investment Fractions

Director Councilman moved and Director Baker seconded the motion to adopt the following resolution:

WHEREAS, Metro Water Recovery hereinafter referred to as “Metro,” has established a Sewer Connection Charge (SCC) and a Large-User Exception to the SCC; and

WHEREAS, Section 509 of the *Sewage Treatment and Disposal Agreement (Service Contract)* between Metro and its Member Municipalities, and Section 507 of the *Special Connectors Agreement* between Metro and its Special Connectors, provide for adoption of an SCC and implementation of a Large-User Exception; and

WHEREAS, the Service Contract and Section 7.5.1 of the *Metro Water Recovery Rules and Regulations Governing Operation, Use, and Services of the System* provide for reviewing the Large-User Exception Capital Investment Fractions annually; and

WHEREAS, Metro staff recommends adopting the Large-User Capital Investment Fractions for 2024; and

WHEREAS, the Operations and Finance committees, after having reviewed the matter, recommend adopting the Large-User Capital Investment Fractions for 2024; and

WHEREAS, the Executive Committee, after having reviewed the matter, concurs in the recommendation of the other committees;

NOW, THEREFORE, BE IT RESOLVED the Capital Investment Fractions for flows and loadings used to calculate Metro’s Sewer Connection Charges for a Large User, effective January 1, 2024, be and hereby are adopted as follows:

Annual Flow	=	0.5313
Biochemical Oxygen Demand	=	0.1740
Suspended Solids	=	0.2037
Total Kjeldahl Nitrogen	=	0.0910

The motion carried unanimously.

### 7.d Consideration of the 2024 Reactivation Charge

Director Councilman moved and Director Baker seconded the motion to adopt the following resolution:

WHEREAS, Metro Water Recovery, hereinafter referred to as “Metro,” has established a Reactivation Charge to reactivate an inactive connection to the Metro System; and

WHEREAS, Section 7.6.3 of the *Metro Water Recovery Rules and Regulations Governing Operation, Use, and Services of the System (Rules and Regulations)* provides the Reactivation Charge shall be set by the Board of Directors and may be

adjusted from time to time by resolution of the Board in accordance with the approved methodology; and

WHEREAS, it is necessary the Reactivation Charge be established for 2024; and

WHEREAS, the methodology approved by the Board for calculating the Reactivation Charge and the historic practice of rounding to the nearest \$5 results in a Reactivation Charge for the year 2024 of \$140 per Single Family Residential Equivalent (SFRE) for each year, beyond ten years, a connection has been inactive as defined by Metro's *Rules and Regulations*; and

WHEREAS, the Operations and Finance committees, after having reviewed the matter, recommend adopting a Reactivation Charge for 2024 of \$140 per SFRE; and

WHEREAS, the Executive Committee, after having reviewed the matter, concurs in the recommendation of the other committees;

NOW, THEREFORE, BE IT RESOLVED the Reactivation Charge for 2024 as set forth in Section 7.6.3 of the *Metro Water Recovery Rules and Regulations Governing Operation, Use, and Services of the System (Rules and Regulations)* be and hereby is established at \$140 per Single Family Residential Equivalent for each year beyond ten a connection has been inactive as defined by the *Rules and Regulations*.

The motion carried unanimously.

**7.e Consideration of HVAC High Priority Improvements Project (PAR 1392) Consultant Agreement Amendment and Appropriation**

Director Councilman moved and Director Baker seconded the motion to adopt the following resolution:

WHEREAS, it is in the best interest of Metro Water Recovery, hereinafter referred to as "Metro," to amend the Agreement for Professional Services to provide design phase services for the Heating, Ventilation, and Air-Conditioning (HVAC) High Priority Improvements Project (PAR 1392) (Project); and

WHEREAS, Metro initiated the Project study in 2020 to evaluate aging HVAC equipment at the Robert W. Hite Treatment Facility (RWHTF) and concerns at the Northern Treatment Plant (NTP) which have emerged since startup of the plant in 2016; and

WHEREAS, based on the recommendation of the study, Metro is now ready to design the improvements needed; and

WHEREAS, RMH Group, Inc. (RMH) and Metro staff have negotiated an amendment to its standard Professional Services Agreement in the amount of \$1,750,000 to provide design phase services; and

WHEREAS, the Operations and Finance committees, after having reviewed the matter, recommend authorizing the Chief Executive Officer to amend the Professional Services Agreement with RMH in the amount of \$1,750,000 to provide design phase services for this Project and appropriate \$2,145,000 for this purpose; and

WHEREAS, the Executive Committee, after having reviewed the matter, concurs in the recommendation of the other committees;

NOW, THEREFORE, BE IT RESOLVED the Chief Executive Officer be and hereby is authorized to amend the Professional Services Agreement with RMH Group, Inc. in the amount of \$1,750,000, to provide design phase services for the Heating, Ventilation, and Air-Conditioning High Priority Improvements Project (PAR 1392) (Project); and

BE IT FURTHER RESOLVED the sum of \$2,145,000 (100 percent) be and hereby is appropriated from the Fixed Asset Replacement Fund for this Project.

The motion carried unanimously.

#### **7.f Consideration of On-Call Electrical Services**

Director Councilman moved and Director Baker seconded the motion to adopt the following resolution:

WHEREAS, it is in the best interest of the Metro Water Recovery, hereinafter referred to as "Metro," to enter into five-year, on-call services agreements to provide miscellaneous electrical services; and

WHEREAS, Metro has historically contracted with multiple "on-call" engineering firms to provide a wide variety of consulting services on an as-needed basis; and

WHEREAS, Metro has identified a need for on-call electrical services for miscellaneous projects or responding to emergency situations quickly and efficiently; and

WHEREAS, on May 25, 2023, a Request for Statements of Qualifications (SOQ) to perform on-call electrical services was advertised on *BidNet* with five contractors submitting applications on June 15, 2023; and

WHEREAS, pursuant to Metro *Purchasing and Contracting Policies*, after Metro staff review of the Statements of Qualifications, Guarantee Electric Contracting, Intermountain Electric, Inc., McDade-Woodcock, Inc., and Sturgeon Electronic Company, Inc. were determined to be best qualified; and

WHEREAS, Metro staff recommends contracting with four companies to allow Metro to solicit bids and award task orders from each to provide the best value to Metro; and

WHEREAS, the Operations and Finance committees, after having reviewed the matter, recommend authorizing the Chief Executive Officer to enter into five-year, on-call electrical services agreements with Guarantee Electric Contracting, Intermountain Electric, Inc., McDade-Woodcock, Inc., and Sturgeon Electronic Company, Inc. to provide on-call electrical services; and

WHEREAS, the Executive Committee, after having reviewed the matter, concurs in the recommendation of the other committees;



NOW, THEREFORE, BE IT RESOLVED the Chief Executive Officer be and hereby is authorized to enter into five-year, on-call electrical services agreements with Guarantee Electric Contracting, Intermountain Electric, Inc., McDade-Woodcock, Inc., and Sturgeon Electronic Company, Inc. to provide on-call electrical services.

The motion carried unanimously.

#### **7.g Consideration of Litigation Funding**

Director Councilman moved and Director Baker seconded the motion to adopt the following resolution:

WHEREAS, it is in the best interest of Metro Water Recovery, hereinafter referred to as “Metro,” to appropriate funds for ongoing litigation; and

WHEREAS, on March 15, 2021, the Farmers Reservoir and Irrigation Company, Burlington Ditch Reservoir and Land Company, and Henrylyn Irrigation District (collectively, Ditch Companies) filed a civil action in Adams County District Court against Metro; and

WHEREAS, on August 26, 2022, MWH Contractors (MWHC) filed a civil action in Denver County District Court against Metro concerning the Solids Processing Building Improvements Project (PAR 1244); and

WHEREAS, the litigations have nearly used all funds previously appropriated for these efforts; and

WHEREAS, the Chief Executive Officer and Chair of the Board have approved the defenses of the actions under the Board’s Guidelines for Litigation Procedures which require funding to support the defense; and

WHEREAS, the Operations and Finance committees, after having reviewed the matter, recommend appropriating \$750,000 from the General Fund for the ongoing litigations with the Ditch Companies and MWHC; and

WHEREAS, the Executive Committee, after having reviewed the matter, concurs in the recommendation of the other committees;

NOW, THEREFORE, BE IT RESOLVED the sum of \$750,000 (100 percent) be and hereby is appropriated from the General Fund for the ongoing litigations.

The motion carried unanimously.

#### **Roll Call Agenda**

#### **7.h Consideration of Appointments to the Defined Benefit Plan Retirement Board**

Director Crisp moved and Director Caldwell seconded the motion to adopt the following resolution:



WHEREAS, the terms of two members of the Defined Benefit Plan Retirement Board (DB Retirement Board) of Metro Water Recovery, hereinafter referred to as “Metro,” expire on July 31, 2023; and

WHEREAS, the terms of two members of the DB Retirement Board of Metro expire on July 31, 2024 and both members have retired; and

WHEREAS, members of the DB Retirement Board continue to serve until they are reappointed or replaced, and it is necessary appointments be made to fill these positions; and

WHEREAS, the Chair of the Board, Andrew Johnston recommends reappointing Director Kocian and Director Smith for two-year terms expiring on July 31, 2025 and appointing Metro Director Davenport and Director Spanberger to the DB Retirement Board to complete two-year terms expiring on July 31, 2024; and

WHEREAS, the Chair of the Board also recommends reappointing Metro Director Papke and Director West to the DB Retirement Board for two-year terms expiring on July 31, 2025;

NOW, THEREFORE, BE IT RESOLVED Metro Director Kocian and Director Smith be and hereby are appointed to the Defined Benefit Plan Retirement Board (DB Retirement Board) for the term of August 1, 2023 through July 31, 2025;

BE IT FURTHER RESOLVED Director Davenport and Director Spanberger be and hereby are appointed to the DB Retirement Board for the term of August 1, 2023 through July 31, 2024;

BE IT FURTHER RESOLVED Metro Director Papke and Director West be and hereby are reappointed to the Defined Benefit Plan Retirement Board for the term of August 1, 2023 through July 31, 2025.

Chair Johnston called for a roll call vote which carried with 37 Directors voting Yes:

Curt Aldstadt	Sharon Israel	Steve Pott
Greg Baker	Andrew Johnston	Josh Redman
Mike Barrett	Janet Kieler	Thomas Roode
Travis Bogan	Craig Kocian	Kim Schoen
Phil Burgi	Laura Kroeger	Greg Sekera
Nadine Caldwell	Doug Lazure	Del Smith
John Chavez	Marena Lertch	Peter Spanberger
David Councilman	Bob LeGare	Mary Beth Susman
Deborah Crisp	Martin Majors	Amerigo Svaldi
Clark Davenport	Charlie Miller	Dennis Towndrow
James DeHerrera	Jamie Miller	Scott Twombly
Jo Ann Giddings	Sarah Niyork	Jennifer Williams
Joan Iler		

## 7.i Consideration of Appointments to the Defined Contribution Plan Retirement Board

Director Schoen moved and Director Iler seconded the motion to adopt the following resolution:

WHEREAS, the term of one member of the Defined Contribution Plan Retirement Board (DC Retirement Board) of Metro Water Recovery, hereinafter referred to as "Metro," expires on July 31, 2023; and

WHEREAS, members of the DC Retirement Board continue to serve until they are reappointed or replaced, and it is necessary appointments be made to fill these positions; and

WHEREAS, the Chair of the Board, Andrew Johnston recommends reappointing Metro Director Kieler to the DC Retirement Board for a two-year term expiring on July 31, 2025;

NOW, THEREFORE, BE IT RESOLVED Metro Director Kieler be and hereby is reappointed to the Defined Contribution Plan Retirement Board for the term August 1, 2023 through July 31, 2025.

Chair Johnston called for a roll call vote which carried with 37 Directors voting Yes:

Curt Aldstadt	Sharon Israel	Steve Pott
Greg Baker	Andrew Johnston	Josh Redman
Mike Barrett	Janet Kieler	Thomas Roode
Travis Bogan	Craig Kocian	Kim Schoen
Phil Burgi	Laura Kroeger	Greg Sekera
Nadine Caldwell	Doug Lazure	Del Smith
John Chavez	Marena Lertch	Peter Spanberger
David Councilman	Bob LeGare	Mary Beth Susman
Deborah Crisp	Martin Majors	Amerigo Svaldi
Clark Davenport	Charlie Miller	Dennis Towndrow
James DeHerrera	Jamie Miller	Scott Twombly
Jo Ann Giddings	Sarah Niyork	Jennifer Williams
Joan Iler		

Chair Johnston and CEO Conway expressed appreciation for the Directors serving on the two Retirement Boards.

## 8. ELECTION OF OFFICERS

### 8.a Election of Officers per Metro Water Recovery Bylaws

Chair Johnston reviewed the slate of Officers recommended by the Nominating Committee at the June 20, 2023 Board of Directors meeting for the upcoming term of office:

Andrew Johnston	Chair of the Board	City and County of Denver
Sarah Niyork	Chair Pro Tem	South Adams County Water and Sanitation District
Jo Ann Giddings	Secretary	City of Aurora
Del Smith	Treasurer	Bancroft Clover Water and Sanitation District

Chair Johnston thanked the Directors who served on the Nominating Committee and asked if there were any nominations from the floor; there were none. He closed the nominations.

Director Aldstadt moved and Director Twombly seconded the motion to elect the slate of Officers recommended by the Nominating Committee.

The motion carried unanimously.

**8.b Consideration of Resolution Memorializing the Election of Officers**

Director Bogan moved and Director Lertch seconded the motion to adopt the following resolution:

WHEREAS, it is necessary the Board of Directors of Metro Water Recovery, hereinafter referred to as “Metro,” elect a new slate of Officers as required by the *Bylaws of Metro Water Recovery* (Bylaws); and

WHEREAS, the Bylaws provide the Board of Directors elect new Officers annually during the regular meeting of the Board of Directors in the month of July; and

WHEREAS, the Board of Directors has held such election and wishes to memorialize by resolution the following Board Members have been elected as Officers for the 2023-2024 term:

Andrew Johnston	Chair of the Board
Sarah Niyork	Chair Pro Tem
Jo Ann Giddings	Secretary
Del Smith	Treasurer;

NOW, THEREFORE, BE IT RESOLVED the slate of Officers elected by the Board of Directors of Metro Water Recovery be and hereby are memorialized by resolution.

Chair Johnston thanked Directors, on behalf of the Officers, for the vote of confidence.

The motion carried unanimously.

## **9. INDIVIDUAL DIRECTOR COMMENTS**

Director Bogan appreciated the work being done by Metro Water Recovery for the community.

Director Smith expressed interest in getting to know the new Board members and remarked on how smoothly and professionally meetings are conducted at Metro Water Recovery.

## **10. OTHER INFORMATION**

There was none.

## **11. ADJOURNMENT**

Chair Johnston adjourned the meeting at 6:06 p.m.

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