

# METRO WATER RECOVERY

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

August 15, 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, August 15, 2023 at 5:30 p.m. in the Boardroom.

Chair Johnston stated it was wonderful to see newer Directors on the Board and encouraged all to learn from each other.

Chair Johnston called the meeting to order.

### 1. 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  
Mike Barrett, Crestview  
Travis Bogan, Denver  
Phil Burgi, Wheat Ridge\*  
Nadine Caldwell, Aurora  
John Chavez, Berkeley  
David Councilman, Pleasant View  
Deborah Crisp, East Lakewood  
Clark Davenport, Northwest Lakewood  
James DeHerrera, Aurora  
Mary Gearhart, Denver  
Joan Iler, Westridge  
Sharon Israel, Arvada  
Janet Kieler, Denver  
Craig Kocian, Arvada  
Laura Kroeger, Lakewood\*  
Doug Lazure, Denver\*

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

#### Directors Absent:

Greg Baker, Aurora  
Jennifer Williams, 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

**2. PUBLIC COMMENT**

There was no comment.

**3. APPROVAL OF MINUTES**

3.a Minutes of the Board of Directors Meeting on July 18, 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 July 18, 2023.

Director Davenport moved and Director DeHerrera seconded the motion to approve the minutes of the Regular Meeting of the Board of Directors held July 18, 2023.

The motion carried unanimously.

**4. PROGRESS AND PROJECTION REPORTS**

4.a Report by CEO

CEO Conway reviewed his written report, highlighting the selection of Tanja Rauch-Williams as Metro Water Recovery's new Chief Innovation Officer who will join Metro later this month, the successful METROGRO Farm (Farm) tour, and Metro's sponsorship at the Reception on the River where he and Laura Kroeger, Metro Director and Executive Director of the Mile High Flood District, spoke. He also noted the Farm update will be given in September and the Robert W. Hite Treatment Facility and Northern Treatment Plant won the National Association of Clean Water Agencies Gold and Silver Peak Performance Awards. Mr. Conway reminded Directors of the upcoming New Director Orientation on August 21, 2023 and the Fall Workshop on October 26, 2023.

Director Kroeger stated Mr. Conway did a fabulous job representing Metro Water Recovery at the Reception on the River.

Mr. Conway answered questions on possible wind and solar sustainability options at the Farm and setting aside a small portion of the Farm for growing food for those in need.

4.b Report by General Counsel

General Counsel Jackson highlighted the new Director Refresher section of her report and provided an update on the recent developments concerning the discovery phase

in the litigation matters, the Todd Creek Village Metropolitan District's interest in joining Metro Water Recovery as a Special Connector, and the two-year process for the new SB23-274, Water Quality Control Fee-setting By Rule.

Chair Johnston appreciated Ms. Jackson's Director Refresher section of the report.

## 5. REPORTS OF OFFICERS AND COMMITTEES

### 5.a Meeting Minutes

There were no additions to the following meeting minutes:

Operations Committee	August 1, 2023
Finance Committee	August 3, 2023
Executive Committee	August 8, 2023

## 6. NEW BUSINESS

### Consent Agenda

#### 6.a Consideration of Revisions to the Estimated 2023 Annual Charges for Service

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

WHEREAS, it is desirable to adjust and revise the Estimated Annual Charges for Service for 2023 of Metro Water Recovery, hereinafter referred to as "Metro;" and

WHEREAS, in 1980 the Board of Directors of Metro adopted a procedure to allow, but not require, the adjustment of Annual Charges for Service mid-year to reduce the impact of normal variability in estimating such charges; and

WHEREAS, the Chief Executive Officer and staff of Metro have prepared the 2023 Annual Charges for Service Revised Estimate based largely on the actual 2022 flows and loadings; and

WHEREAS, the Operations and Finance committees, after having reviewed the matter, recommend approving and certifying the Revised Estimated Annual Charges for Service for 2023; and

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

NOW, THEREFORE, BE IT RESOLVED these revisions and adjustments, as contained in the 2023 Annual Charges for Service Connector Flows, Loadings and Charges—Revised Estimate (Attachment A) be and hereby are approved; and

BE IT FURTHER RESOLVED the Chief Executive Officer be and hereby is authorized to certify and deliver to each Member Municipality, Special Connector, and

Special Corporate Connector, on or before September 1, 2023, the Revised Estimate for 2023 Annual Charges for Service as provided in Attachment A.

The motion carried unanimously.

#### **6.b Consideration of Estimated 2024 Annual Charges for Service**

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

WHEREAS, Article VI, Section 602, of the *Sewage Treatment and Disposal Agreement (Service Contract)* and the *Special Connectors Agreement* provide that on or before the first day of September next preceding each fiscal year, Metro Water Recovery, hereinafter referred to as “Metro,” shall make and deliver to each Member Municipality, Special Connector, and Special Corporate Connector subject to payment to Metro of any service charge or any annual charge fixed thereby for such fiscal year, Metro’s Certificate stating the estimated amount of the charge; and

WHEREAS, the Chief Executive Officer and staff of Metro have prepared such an estimate of Annual Charges for Service for 2024; and

WHEREAS, the Operations and Finance committees, after having reviewed the matter, recommend adopting and certifying the 2024 Estimated Annual Charges for Service; and

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

NOW, THEREFORE, BE IT RESOLVED the 2024 Annual Charges for Service Connector Flows, Loadings, and Charges—Certified Estimate (Attachment A) be and hereby are adopted and certified; and

BE IT FURTHER RESOLVED the Chief Executive Officer be and hereby is authorized and instructed to deliver on or before September 1, 2023 to each Member Municipality, Special Connector, and Special Corporate Connector subject to payment to Metro of any service charge or annual charge, the Certified Estimate of 2024 Annual Charges for Service as provided in Attachment A.

The motion carried unanimously.

#### **6.c Consideration of Annual Charges Customer Category Assignments and Customer Equivalent Connection Unit Values**

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

WHEREAS, Section 4 of the *Metro Water Recovery Rules and Regulations Governing the Operation, Use, and Services of the System (Rules and Regulations)* dictates the Chief Executive Officer shall recommend customer category assignments and Customer Equivalent Connection Unit (CECU) values to the Board of Directors for certification by September 1 each year; and

WHEREAS, Metro staff reviews flows and loadings on a regular basis for all connections and uses this information to recommend changes to customer categories; and

WHEREAS, Metro staff reviewed flows and loadings of all customer connections and determined no changes were needed to the customer categories and CECU values as of January 1, 2024; and

WHEREAS, the Operations and Finance committees, after having reviewed the matter, recommend certifying the Annual Charges Customer Category Assignments and CECU Values effective January 1, 2024, as shown on the 2024 Chart of Category Assignments (Attachment A); and

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

NOW, THEREFORE, BE IT RESOLVED the Annual Charges Customer Category Assignments and Customer Equivalent Connection Unit (CECU) Values, as shown on the 2024 Chart of Category Assignments (Attachment A), be and hereby are certified and are effective January 1, 2024.

The motion carried unanimously.

#### **6.d Consideration of an Intergovernmental Agreement with the City and County of Denver**

Director Younger moved and Director Iler 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 enter into an Intergovernmental Agreement (IGA) with the City and County of Denver (Denver) to relocate a portion of Metro's West and Southside Interceptor (Interceptor) in the vicinity of I-25 and Broadway associated with the Interceptor Relocations 2020-2022 Project (PAR 1370) (Project); and

WHEREAS, Metro owns and operates an Interceptor, which is located within Denver's roadway project site and is in conflict with Denver's roadway improvement project, and therefore must be relocated; and

WHEREAS, the parties have negotiated an IGA for the relocation of the Interceptor where Denver performs all work to Metro's specifications with Metro's approval, and Metro will reimburse one-half (1/2) of the actual costs of the relocation up to \$115,000; and

WHEREAS, the Operations and Finance committees, after having reviewed the matter, recommend authorizing the Chief Executive Officer to enter into an IGA with Denver to relocate a portion of Metro's Interceptor in the vicinity of I-25 and Broadway associated with the Project and appropriate \$125,000 from the Fixed Asset Replacement Fund Capital Project Account 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 enter into an Intergovernmental Agreement with the City and County of Denver to relocate a portion of Metro's West and Southside Interceptor in the vicinity of I-25 and Broadway associated with the Interceptor Relocations 2020-2022 Project (PAR 1370); and

BE IT FURTHER RESOLVED \$125,000 (100 percent) be and hereby is appropriated from the Fixed Asset Replacement Fund Capital Project Account as a not-to-exceed upper limit (with contingencies) to cover Metro's reimbursement of one-half of the cost for this purpose; and

BE IT FURTHER RESOLVED the Chief Executive Officer be and hereby is authorized to enter into additional amendments to the Intergovernmental Agreement which do not involve the transfer of land, require additional appropriations, or exceed the Chief Executive Officer's spending authority.

The motion carried unanimously.

**6.e Consideration of Annual Fixed Asset Replacement Priorities Project (PAR 1379) – 2023 Scope (Year 4) Job Order Contracting Services Agreement Amendment and Appropriation**

Director Younger moved and Director Iler 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 replace fixed assets at the Robert W. Hite Treatment Facility which have reached the end of their useful life to ensure reliable process treatment; and

WHEREAS, in 2020, Metro staff recommended Metro enter into Job Order Contracting (JOC) Service Agreements with Moltz Construction, Inc. (Moltz) and Sturgeon Electric Company, Inc. (Sturgeon) to provide on-call civil/mechanical and electrical construction work, respectively, for Year 1 work for the Annual Fixed Asset Replacement Priorities Project (PAR 1379) (Project); and

WHEREAS, in 2021 and 2022, Metro staff recommended Metro extend these agreements for Year 2 and Year 3 work, respectively; and

WHEREAS, Year 4 work for the Project has been identified and prioritized; and

WHEREAS, the Operations and Finance committees, after having reviewed the matter, recommend authorizing the Chief Executive Officer to amend the JOC Services Agreements with Moltz and Sturgeon by one additional year to provide on-call civil/mechanical and electrical construction work, respectively, for the Year 4 work for the Project such that the combined upper limit of both contracts will not increase by more than \$6,500,000, and to appropriate \$6,500,000 from the Fixed Asset Replacement Fund Capital Project Account for this Project; 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 Job Order Contracting Services Agreements with Moltz Construction, Inc. and Sturgeon Electric Company, Inc. by one year to provide on-call civil/mechanical and electrical construction work, respectively, for the Annual Fixed Asset Replacement Priorities Project (PAR 1379) (Project) such that the combined upper limit of both contracts will not increase by more than \$6,500,000; and

BE IT FURTHER RESOLVED \$6,500,000 (100 percent) be and hereby is appropriated from the Fixed Asset Replacement Fund Capital Project Account for this Project.

The motion carried unanimously.

**6.f Consideration of Robert W. Hite Treatment Facility Underground Conduit Study (PAR 1413) Professional Services Agreement Amendment and Appropriation**

Director Younger moved and Director Iler 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 study phase services for the Robert W. Hite Treatment Facility (RWHTF) Underground Conduit Study Project (PAR 1413) (Project); and

WHEREAS, the condition of much of the existing underground infrastructure at the RWHTF is currently unknown and to avoid unexpected failures, Metro initiated the Project to identify critical underground conduits and prioritize them for inspection; and

WHEREAS, pursuant to Metro's *Purchasing and Contracts Policy*, a Request for Proposal (RFP) was posted on March 15, 2022 and Metro staff selected HDR Engineering Inc. (HDR) and negotiated a contract for study phase services; and

WHEREAS, HDR has identified the conduits needing specialty attention which require specialty inspection contractors; and

WHEREAS, HDR and Metro staff have negotiated an amendment to the Professional Services Agreement in the amount of \$1,278,968; 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 HDR in the amount of \$1,278,968 to provide study phase services for the Project and appropriate \$1,725,000 from the Fixed Asset Replacement Fund Capital Project Account 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 HDR Engineering Inc. in the amount of \$1,278,968 to provide study phase services for the Robert W. Hite Treatment Facility Underground Conduit Study Project (PAR 1413) (Project); and

BE IT FURTHER RESOLVED that the sum of \$1,725,000 (100 percent) be and hereby is appropriated from the Fixed Asset Replacement Fund Capital Project Account for this Project.

The motion carried unanimously.

**6.g Consideration of Northern Treatment Plant (NTP) Effluent Temperature Project (PAR 1416) Job Order Contract Services Amendment, Construction Manager-at-Risk Agreement, Engineering Services Amendment, and Appropriation**

Director Younger moved and Director Iler 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 Professional Services Agreement for design and construction support services, amend the Job Order Contracting (JOC) Agreement for preconstruction and construction services, and enter a Construction Manager-at-Risk (CMAR) Agreement for preconstruction services for preliminary design of the full-scale demonstration for the Northern Treatment Plant (NTP) Effluent Temperature Project (PAR 1416) (Project); and

WHEREAS, Metro staff are working toward the objective of meeting the temperature reduction requirements at both the Robert W. Hite Treatment Facility (RWHTF) and NTP; and

WHEREAS, since there are currently no known wastewater facilities in cold weather climates employing cooling tower technology for effluent temperature reduction and no Water Quality Control Division approved design criteria, Metro staff will use this Project to determine whether this is a viable solution for thermal pollution reduction in this region; and

WHEREAS, if shown to be technically, environmentally, and economically feasible, the data collected during the Project will facilitate the design of these cooling systems and help optimize the operation and maintenance of effluent cooling systems for both the RWHTF and NTP; and

WHEREAS, Metro staff, in collaboration with Stantec Consulting Services, Inc. (Stantec) and Hensel Phelps (Hensel), completed the design, construction, and operation of the secondary effluent cooling small-scale demonstration which occurred between January 2023 and May 2023, also referred to as Work Package 1 (WP1); and

WHEREAS, additional data is now required for the operations of the cooling tower in the tertiary effluent to inform the placement of the full-scale cooling demonstration; and



WHEREAS, Metro staff has negotiated an amendment to Stantec's Professional Services Agreement for the scope of work and associated fees to provide design and construction support services for the tertiary effluent small-scale demonstration, also referred to as Work Package 1A (WP1A) and preliminary design services and early procurement services for the full-scale demonstration, also referred to as Work Package 2 (WP2); and

WHEREAS, Metro staff has negotiated Task Orders in the amount of \$428,000 for the preconstruction services and construction services for WP1A with Hensel; and

WHEREAS, Metro staff has also negotiated a standard CMAR Agreement with Hensel in the amount of \$92,000 for preconstruction services for WP2; and

WHEREAS, the Operations and Finance committees, after having reviewed the matter, recommend authorizing the Chief Executive Officer to:

1. Amend the Professional Services Agreement with Stantec in the amount of \$543,500 to provide design and construction support services for Work Package 1A and preliminary design and early procurement services for Work Package 2 for the Project,
2. Amend the JOC Services Agreement with Hensel by a not-to-exceed upper limit amount of \$428,000 to provide preconstruction and construction services for Work Package 1A of the Project,
3. Enter into a CMAR Agreement with Hensel in the amount of \$92,000 to provide preconstruction services for preliminary design of Work Package 2 for the Project,
4. Appropriate \$1,280,000 from the General Fund Capital Project Account 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:

1. Amend the Professional Services Agreement with Stantec Consulting Services, Inc. in the amount of \$543,500 to provide design and construction support services for Work Package 1A and preliminary design and early procurement services for Work Package 2 for the Northern Treatment Plant Effluent Temperature Project (PAR 1416) (Project),
2. Amend the Job Order Contracting Services Agreement with Hensel Phelps by a not-to-exceed upper limit amount of \$428,000 to provide preconstruction and construction services for the small-scale tertiary effluent cooling demonstration (Work Package 1A) of the Project,
3. Enter into a Construction Manager-at-Risk Agreement with Hensel in the amount of \$92,000 to provide preconstruction services for preliminary design of the full-scale demonstration (Work Package 2) for the Project; and

BE IT FURTHER RESOLVED the sum of \$1,280,000 (100 percent) from the General Fund Capital Project Account be and hereby is appropriated for this purpose.

The motion carried unanimously.

**6.h Consideration of Phosphorus Recovery Facility Reliability Improvements Project (PAR 1426) Job Order Contracting Services Agreement and Appropriation**

Director Younger moved and Director Iler 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 enter into a Job Order Contracting (JOC) Services Agreement to provide construction services through issuance of individual task orders for the Phosphorus Recovery Facility Reliability Improvements Project (PAR 1426) (Project); and

WHEREAS, phosphorus reduction in the effluent is required at Metro's Robert W. Hite Treatment Facility (RWHTF), and in 2016, a pilot evaluation of MagPrex™ post-digestion phosphorus recovery at the RWHTF was conducted through the Nuisance Struvite and Dewaterability Improvements Project (PAR 1280); and

WHEREAS, results from this pilot evaluation were part of a larger phosphorus management evaluation, and ultimately informed the decision to move forward with the design and construction of a full-scale MagPrex™ reactor as part of the new Phosphorus Recovery Facility (PRX); and

WHEREAS, on September 15, 2022, a small project was initiated to develop a design to mitigate the operational challenges of the PRX; and

WHEREAS, Metro staff issued a task order to Stantec Consulting Services, Inc. (Stantec) under the existing general engineering on-call services agreement for the design of improvements to provide operational redundancy and improve the maintainability of this critical process; and

WHEREAS, pursuant to Metro's Purchasing and Contract Policy, Metro issued a Request for Proposal (RFP) posted on May 22, 2023, and Moltz Construction (Moltz) was determined to provide the best value; and

WHEREAS, Metro staff has negotiated a JOC Services Agreement with Moltz for a not-to-exceed upper limit amount of \$1,500,000 for the Project; and

WHEREAS, the Operations and Finance committees, after having reviewed the matter, recommend authorizing the Chief Executive Officer to enter into a JOC Services Agreement with Moltz for a not-to-exceed amount of \$1,500,000 to provide construction services through issuance of individual task orders for the Project and appropriate \$2,100,000 from the General Fund Capital Project Account 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 enter into a Job Order Contracting Services Agreement with Moltz Construction for a not-to-exceed amount of \$1,500,000 to provide construction services through issuance of individual task orders for the Phosphorus Recovery Facility Reliability Improvements Project (PAR 1426) (Project); and

BE IT FURTHER RESOLVED that the sum of \$2,100,000 (100 percent) be and hereby is appropriated from the General Fund Capital Project Account for this Project.

The motion carried unanimously.

**6.i Consideration of NTP Post Digestion Sidestream Improvements (PAR 1434) Construction Manager-at-Risk Agreement and Appropriation**

Director Younger moved and Director Iler 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 enter into a Construction Manager-at-Risk (CMAR) Agreement to provide preconstruction and procurement services for the Northern Treatment Plant (NTP) Post Digestion Sidestream Improvements Project (PAR 1434) (Project); and

WHEREAS, Metro requires the experience of a qualified CMAR to provide preconstruction services for the necessary modifications to the post digestion process’ chemical storage and feed, aeration, and temperature control systems to mitigate sidestream nitrogen and phosphorus loading; and

WHEREAS, on May 16, 2023, Metro issued a Request for Proposals (RFP) for the first phase of the project which includes preconstruction services and received three proposals, of which two were recommended be invited for interviews by a review committee of Metro staff; and

WHEREAS, a Selection Committee of Metro staff and Board Directors directed Metro staff to negotiate an agreement with Archer Western Construction, LLC (Archer Western); and

WHEREAS, Metro staff has negotiated a standard CMAR Agreement with Archer Western in the amount of \$150,000 for preconstruction and procurement services; and

WHEREAS, the Operations and Finance committees, after having reviewed the matter, recommend authorizing the Chief Executive Officer to enter into a CMAR Agreement with Archer Western in the amount of \$150,000 to provide preconstruction and procurement services for the Project and appropriate \$168,000 from the Fixed Asset Replacement Fund Capital Project Account 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 enter into a Construction Manager-at-Risk Agreement with Archer Western Construction, LLC in the amount of \$150,000 to provide preconstruction and procurement services for the Northern Treatment Plant Post Digestion Sidestream Improvements Project (PAR 1434) (Project); and

BE IT FURTHER RESOLVED the sum of \$168,000 (100 percent) be and hereby is appropriated from the Fixed Asset Replacement Fund for this Project.

The motion carried unanimously.

## **Roll Call Agenda**

### **6.j Consideration of Multi-District Litigation**

Director Susman moved and Director Sekera 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 participate in the pending per- and polyfluoroalkyl substances (PFAS) aqueous film-forming foams (AFFF) multi-district litigation number 2873 (MDL) pending before the United States District Court for the District of South Carolina; and

WHEREAS, Metro filing its claims for PFAS AFFF contamination at the Robert W. Hite Treatment Facility in the MDL would preserve Metro's claims against both the PFAS manufacturers and against Suncor Energy USA Inc. (Suncor), for the application of AFFF; and

WHEREAS, pursuant to the Board's Guidelines for Litigation Procedures paragraph 2.c, initiation of the lawsuit requires approval by the Board; and

WHEREAS, the Operations and Finance committees, after having reviewed the matter, recommend authorizing Metro to:

1. Participate in the PFAS AFFF MDL pending before the United States District Court for the District of South Carolina to pursue the following claims:
  - a. Any and all available claims against Suncor, and/or its parent, affiliate, or subsidiary companies, arising out of, or relating to, Suncor's use of PFAS-containing AFFF firefighting foam at its Commerce City refinery and the resulting contamination of Metro's property,
  - b. Any and all available claims against companies that manufacture PFAS-containing AFFF firefighting foam for the property damage, sampling, analysis, and treatment costs, and other damages resulting from (a) Suncor's use of AFFF at its Commerce City refinery, and (b) the presence of PFAS from AFFF in Metro's influent, effluent, and biosolids,
2. Enter into any and all agreements with other parties necessary or appropriate related to the aforementioned claims, including without limitation: any tolling and/or standstill agreement with parties against whom Metro may have claims related to

the use of AFFF; any common interest agreements with parties who may have claims related to Metro's, and with whom it would be beneficial to pursue a joint legal strategy (including parties against whom Metro may ultimately have claims); and any appropriate settlement agreement to resolve Metro's claims,

3. Retain the MDL co-counsel group on a contingency fee basis to pursue the claims described in the AFFF MDL which includes the following firms: Taft Stettinius & Hollister, LLP; Douglas & London, P.C.; Levin, Papantonio, Rafferty, Proctor, Buchanan, O'Brien, Barr, Mougey, P.A.; SL Environmental Law Group, PC; Law Office of Kevin Madonna, PLLC; and

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

NOW, THEREFORE, BE IT RESOLVED Metro Water Recovery be and hereby is authorized to:

1. Participate in the per- and polyfluoroalkyl substances (PFAS) aqueous film-forming foams (AFFF) multi-district litigation number 2873 (MDL) pending before the United States District Court for the District of South Carolina to pursue the following claims:
  - a. Any and all available claims against Suncor Energy USA Inc. (Suncor), and/or its parent, affiliate, or subsidiary companies, arising out of, or relating to, Suncor's use of PFAS-containing AFFF firefighting foam at its Commerce City refinery and the resulting contamination of Metro's property,
  - b. Any and all available claims against companies that manufacture PFAS-containing AFFF firefighting foam for the property damage, sampling, analysis, and treatment costs, and other damages resulting from (a) Suncor's use of AFFF at its Commerce City refinery, and (b) the presence of PFAS from AFFF in Metro's influent, effluent, and biosolids,
2. Enter into any and all agreements with other parties necessary or appropriate related to the aforementioned claims, including without limitation: any tolling and/or standstill agreement with parties against whom Metro may have claims related to the use of AFFF; any common interest agreements with parties who may have claims related to Metro's, and with whom it would be beneficial to pursue a joint legal strategy (including parties against whom Metro may ultimately have claims); and any appropriate settlement agreement to resolve Metro's claims,
3. Retain the MDL co-counsel group on a contingency fee basis to pursue the claims described in the AFFF MDL which includes the following firms: Taft Stettinius & Hollister, LLP; Douglas & London, P.C.; Levin, Papantonio, Rafferty, Proctor, Buchanan, O'Brien, Barr, Mougey, P.A.; SL Environmental Law Group, PC; Law Office of Kevin Madonna, PLLC.

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

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

## **7. INDIVIDUAL DIRECTOR COMMENTS**

There was none.

## **8. OTHER INFORMATION**

Chair Johnston reminded Directors to RSVP in BoardEffect for the August 21, 2023 New Director Orientation, the September 19, 2023 tour of the National Western Center, and the November 2, 2023 tour of Denver International Airport. He also noted the 2024 joint Operations and Finance Committee meetings in January and July, and in September for the discussion on annual wages.

## **9. ADJOURNMENT**

Chair Johnston adjourned the meeting at 5:52 p.m.

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