

**MINUTES OF A SPECIAL MEETING OF DIRECTORS  
OF THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM  
October 19, 2022**

A special meeting of the directors of The Water Works Board of the City of Birmingham was held on Wednesday, October 19, 2022, at 11:30 a.m., at 3600 First Avenue North, Birmingham, Alabama.

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

Others present were: Michael Johnson, General Manager; Iris Fisher, Derrick Murphy and Jeffrey Thompson, Assistant General Managers; Cynthia Williams, Board Administrator; Anitra Clark, Corporate Governance Specialist; Vanessa Washington, Executive Assistant; Colandus Mason, Rick Jackson, Rosalind Jones, Jeff Wade, Charles McGee, David Walker, Board Employees; K. Mark Parnell, Parnell Thompson Law, LLC; Byron Perkins, Perkins Law, LLC; Peiffer Brandt, Raftelis Financial Consultants, Inc; Patrick Flannelly, ARCADIS US, Inc; Matthew Arrington, Terminus Municipal Advisors, LLC; Olivia Martin, George Ford and Hal Novak, State of Alabama Attorney General’s Office; Jasmine Jennings and William Canty, Agency 54; Phillip Moultrie, Valent Group, Inc; Jeff Drew, Alexander Insurance Agency; Bill Todd, Angela Riley and Shekeydrah Robinson, O2 Ideas; Jonathan Hardison, WBRC Fox 6 News; Cynthia Gould, ABC 33/40; Johnny Brunson, Brunson Barnett and Sherrer, P.C; Kim Bivins, Birmingham Construction Authority; and William R. Muhammad, Former Board Member.

Inasmuch as six of the directors were present, Vice Chairman Burbage declared a quorum in attendance. Vice Chairman Burbage called the meeting to order at 11:32 a.m., and Assistant General Manager Iris Fisher opened the meeting with prayer.

Next, the Board proceeded to approve the amended agenda. On a motion duly made and seconded, the following resolution was adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Mr. Carl Dalton NeSmith and seconded by Mr. Tom Henderson, that the Board of Directors hereby approves the Regular Board of Directors’ Meeting Agenda, as amended, by moving the Speakers after the Reports of Officers and per Director Munchus’ request, the budget workshop agenda item was moved to the end of the agenda. Resolution No. 9145 is hereby adopted by unanimous vote.”

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Following, the Board proceeded to Committee Reports and Scheduled Meetings, which read as follows:

- Regular Board of Directors’ Meeting - Wednesday, October 26, 2022, at 11:30 a.m.

- Engineering and Maintenance Committee Meeting - Wednesday, October 26, 2022, at 12:30 p.m., or immediately following the Regular Board of Directors' Meeting.

Next, the Board proceeded to the Reports of Officers. Director Ward stated that based on the information he received, the Board gained an \$800,000.00 increase by switching its two Certificate of Deposits (CD) to Guaranteed Investment Contracts (GIC). In addition, he requested staff to run two additional scenarios and look at expenses to determine where adjustments could be implemented. Director Blankenship replied that it was not always about revenue being generated. Per Director Blankenship, the two banks that the CDs were switched from were staples of the community and the board should reconsider. Director Ward stated that he supports giving money to minority banks; however, the Board must look after the rate payers. Then, Director Munchus asked Board Attorneys Mark Parnell and Byron Perkins to prepare a resolution supporting Governor Kay Ivey in declaring October historically black colleges and universities month. Director Munchus also commented that he supports the report from Underwood Financial Consultants, Inc., but he regrets voting for it. He asked General Manager Johnson to share the report from Underwood Financial Consultants. General Manager Johnson said the report would be discussed at the next meeting. Director Burbage stated that he had not seen the final report and requested to see a resolution prior to the report being added to the agenda. Following, Rick Jackson, Public Relations Manager announced that the company's education initiative "*Imagine a Day Without Water*" would be the following day (October 20, 2022) at Railroad Park between 10:00 a.m. and 12:00 noon in support of the American Water Association's annual advocacy and education campaign. Also, he stated that the Birmingham Water Works' System Development Department would be displaying old water main pipes extracted from the ground to educate the customers.

Following, the Board proceeded to the Speakers. Mr. Johnny Brunson, Brunson Barnett and Sherrer, P.C, spoke regarding agenda item four (a request to consider action regarding the notice of termination between the Birmingham Water Works and The Lewis Group, d/b/a Agency 54). He stated that The Lewis Group's notice of termination was presented under false pretense and not consistent with paragraph four of the existing agreement. He indicated that Dr. Jesse Lewis, Founder of The Lewis Group, would like to rescind his signature on a document that was recently signed. Subsequently, Mr. Brunson requested the Board vote to continue the working relationship with The Lewis Group. Also, he announced that he would provide a copy of the contract if any board members wanted it. Director Munchus requested a copy of said document.

Next, the Board proceeded to the next item on the agenda, Request Board to approve the Board's Property and Liability Insurance Plan (the Plan) for November 1, 2022 to October 31, 2023 at an amount not to exceed \$3,019,127.66 and payment of an Agency fee to Valent Group, LLC., in the amount of \$150,000.00 for broker of record services related to the Plan, at a total cost not to exceed \$3,169,127.66; and to authorize the General Manager and/or Assistant General Manager to execute any necessary documents. Mr. Phillip Moultrie, Valent Group, Inc, was acknowledged to update the Board on its property and liability insurance. Director Blankenship asked if the presentation was the same as the one from a previous meeting. General Manager Johnson replied that there were some changes made to the Plan and the numbers had been finalized. Mr. Moultrie stated that the change included the Birmingham Water Works purchasing an

additional layer of liability insurance, which increased coverage from \$20,000,000.00 to \$30,000,000.00. 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 Dr. George Munchus and seconded by Mr. Tom Henderson, that the Board hereby approves the Board’s Property and Liability Insurance Plan (the Plan) for November 1, 2022 to October 31, 2023 at an amount not to exceed \$3,019,127.66 and payment of an Agency fee to Valent Group, LLC., in the amount of \$150,000.00 for broker of record services related to the Plan, at a total cost not to exceed \$3,169,127.66; and authorizes the General Manager and/or Assistant General Manager to execute any necessary documents. Resolution No. 9146 is hereby adopted by unanimous vote.”

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Following, the Board proceeded to the next item on the agenda, Request Board to adopt a resolution authorizing the settlement of a lawsuit presently pending against The Water Works Board of the City of Birmingham, et. al., Jefferson County bearing Civil Action Number 01-CV-2019-900145.00. Director Munchus inquired as to whether said lawsuit was related to Birmingham Water Works suing Jefferson County. Board Attorney Parnell responded that the lawsuit was regarding an accident. Director Henderson pointed out that there was a typo on the resolution. Director Burbage stated that the amount should indicate \$80,000.00 not \$800,000.00 and asked General Manager Johnson to correct the amount. General Manager Johnson agreed and indicated the typo would be corrected. On a motion duly made and seconded, the following resolution was adopted:

“WHEREAS, there is presently pending against The Water Works Board of the City of Birmingham, (“the Board”), et, al., Jefferson County Civil Action Number 01-CV-2019-900145.00 (“the Lawsuit”); and,

WHEREAS, a settlement of said lawsuit has tentatively been reached, subject to approval by the Board of Directors for the Water Works Board; and,

WHEREAS, the Water Works Board should be reimbursed a portion of the settlement proceeds from the Water Works Board’s insurance carrier.

NOW THEREFORE, on a motion duly made by Mr. Carl Dalton NeSmith and seconded by Dr. George Munchus as follows:

The Water Works Board’s General Manager and the Water Works Board Legal Counsel, Tiffanie Agee of Agee Law, are authorized to take such actions as needed to complete the settlement for the sum of \$80,000.00, with a portion of said settlement to be reimbursed to the Water Works Board in accordance with the terms and conditions of the Water Works Board’s insurance policies; and to cause said lawsuit to be dismissed with prejudice. Resolution No. 9147 is hereby adopted by unanimous vote.”

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Next, the Board proceeded to the next item on the agenda, Request Board to consider action regarding the Notice of Termination of that certain Agreement between The Water Works Board of the City of Birmingham and the Lewis Group, Inc., d/b/a Agency 54, dated October 11, 2022. Board Attorney Parnell clarified that August 22, 2013, was the original date of said agreement. Director Munchus stated that the item should be tabled and that there was a place in the FY2023 budget under the consultants' budget that could allow the board to keep The Lewis Group. Director Henderson inquired as to whether the resolution complied with the 90-day termination clause. Board Attorney Parnell answered yes if the board decides to adopt said item. Director Munchus asked whether terminating the referenced contract would mitigate a lawsuit. Per Board Attorney Parnell, no one can determine what someone's action might be. Also, Director Ward asked whether the termination of the contract would save the board \$300,000,00. General Manager Johnson responded yes. 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. Tom Henderson and seconded by Mr. Carl Dalton NeSmith, that the Board hereby authorizes the following:

1. Pursuant to Paragraph 4, of the agreement dated August 22, 2013, between The Water Works Board and the Lewis Group, now doing business as Agency 54, notice is hereby authorized and directed to be given that effective 90 days herewith this agreement shall terminate.
2. The General Manager is authorized to pay The Lewis Group such sums that Lewis Group shall be entitled to pursuant to the terms of the agreement.
3. The General Manager is authorized to take such action and to sign any and all documents as may be needed to terminate the agreement.

Resolution No. 9148 is hereby adopted by Directors Burbage, Henderson, NeSmith and Ward. Directors Blankenship and Munchus voted no.”

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Subsequently, the Board proceeded to the next item on the agenda, Request Board to hold a workshop on the Preliminary FY2023 Operations and Maintenance (O&M) and Capital Budgets. Director Burbage commented that this was the first presentation to the board; therefore, the budget would not be adopted at this Special Board Meeting. General Manager Johnson responded that the goal is to acquire a recommendation at the October 26, 2022, Regular Board of Directors' Meeting, which would be presented at the Public Hearing on November 9, 2022. General Manager Johnson began the presentation with the rate setting overview. He stated that the rates are determined by revenue requirements for the O&M and Capital Budgets, Demand Projections and financial policies that the board has in place. General Manager Johnson also highlighted the RSE Model key inputs and outputs, RSE Targets, and the Board's financial goals and policies. Director Burbage commented that the rate increase for 2021 was 0% based on the economic conditions; however, Birmingham Water Works was not given credit for maintaining the rate at 0%. In addition, he

would like the public to know that the Board is taking the economic conditions of this current time in consideration, as the Board discusses a rate increase. Director Munchus stated that during 2021, when the rate increase was 0%, he had inquired whether that would cause the next year's rate to double, and that General Manager Johnson replied no because every year was separate. General Manager Johnson stated that the Board tries to keep the budget level and not have large rate increases. Director Burbage stated that there are always various factors involved that determines the rate. General Manager Johnson stated that previously the company's PayGo's policy had been adjusted to accommodate a 0% rate increase. He indicated that an adjustment to the PayGo policy was currently being considered for FY2023. Next, Assistant General Manager Fisher was acknowledged to present the Proposed FY2023 O&M Budget (*the FY2023 Preliminary Budget Presentation is on file in the Diligent Board Book*). She stated that the proposed FY2023 O&M budget is \$127,220,413.00, which is a difference of a 9.77% increase based on the FY2022 Approved Amended O&M Budget. Per Assistant General Manager Fisher, there have been adjustments made to the budget since the original budget that was presented on September 28, 2022. The current adjustments include an increase in consumption and changes in the O&M expenses (net) regarding the Capital Expenses, Public Relations and the Property and Casualty Insurance. Then, she referenced the updated handouts: (1) *The Top 10 Preliminary O&M Budget Variances* and (2) *the FY2023 Preliminary O&M and Capital Budgets Budget Book (copies are on file in the Diligent Board Book)*. She highlighted the top ten budget items and variances, including several that were over one million dollars. Per Assistant General Manager Fisher, there has been a decrease in the amount budgeted for positions to be filled by 50%. Director NeSmith inquired as to the number of positions decreased. Assistant General Manager Fisher answered that it was 100 positions. Then, she stated that the consultants budget increased by \$1,514,070.02, because expenses were transferred from a capital expense to an O&M expense. Afterwards, Director NeSmith clarified with staff that the funds were assigned from the Capital Budget to the O&M Budget. He inquired about the consultants' budget and as to whether there were proposals for consultants that had not been brought before the board in the budget? Assistant General Manager Fisher replied that the decrease in consultants was based on removing a public relations firm. General Manager Johnson responded that The Organizational Assessment position was part of the consultant's budget. Then, Peiffer Brandt, Raftelis Financial Consultant, presented information on Demand. He gave an overview of the FY2023 Consumption Projections, Volumetric Rate Changes, Base Charge Rate Changes and Historical Rate Trends. He also gave an overview on the Updated Scenarios and referenced a handout entitled *Scenario Summary for 2 Add-Ons (a copy is on file in the Diligent Board Book)*. Director Blankenship left the meeting at 12:48 p.m. Mr. Brandt discussed Debt Service Coverage and concluded his presentation. Following, General Manager Johnson stated that there was a stream survey and customer care consultant listed in the consultants' budget, which relates to one of six goals in the Strategic Plan. Assistant General Manager Fisher stated that the Internal Audit and CBG were the two consultants removed from the consultants' budget. Next General Manager Johnson highlighted the action required from the Board which involves amending RSE targets for the Senior Debt Service Coverage and amending the Pay-As-You-Go (PayGo) Policy. He also reviewed the Proposed Budget Schedule with the Board. Then, Matthew Arrington, Terminus Municipal Advisor, presented his handout entitled *Review of Historical Debt Coverage and Liquidity Metrics (a copy is on file in the Diligent Board Book)*. He began with an Executive Summary. He stated that the Board has maintained a healthy financial position with strong debt service coverage and liquidity. Per Mr. Arrington, the Board has not borrowed money to fund its Capital Improvement Program

since 2018. He highlighted the Board’s financial strength and operating performance. Mr. Arrington stated that the company’s financial profile was set to take on debt, because it was borrowing funds; however, the board has more than enough reserves and PAYGO and no longer needs to borrow funds. Next, Assistant General Manager Derrick Murphy presented an update on the Proposed FY2023 Capital Budget. He reviewed the Board’s current assets and the Pipeline Replacement Program. Per Assistant General Manager Murphy, galvanized steel is the main focal point, and the company has been aggressively replacing it. In addition, he stated that the Capital Budget decreased by \$5 million dollars. Director NeSmith inquired as to the amount of money allocated in the budget for the Automatic Meter Infrastructure (AMI) Program. Assistant General Manager Murphy stated that the funds for AMI and the company’s meter change out program are listed under budget line item 1C. Afterwards, Director NeSmith inquired as to whether studies had been done on AMI in the previous years, which Assistant General Manager Murphy responded yes, the study included six-inch meters and larger. He added that there was discussion of evaluation of meters, but he does not know if a Request for Proposal (RFP) was ever presented to the Board. Director Ward left the meeting at 1:21 p.m. Director NeSmith commented that when he became part of the board there was a projection in the capital budget to implement automatic meter reading in 2023. Assistant General Manager Murphy confirmed that it was part of the strategic planning goal. Following, General Manager Johnson reiterated that there are six scenarios for a rate increase, which includes the options of a 0%, 3.9%, 4.9%, 5.9%, 6.9% and 8.3%. Director Blankenship returned to the meeting at 1:25 p.m. General Manager Johnson reviewed the proposed budget schedule. Director Ward returned to the meeting at 1:25 p.m. General Manager Johnson stated that goal is to present the O&M and Capital Budgets at the Public Hearing scheduled for November 9, 2022, at 5:30 p.m., and to approve said budgets at the November 30, 2022, Regular Board of Directors Meeting.

As there was no further business before the Board, Director Munchus made a motion to adjourn the meeting and Director Blankenship seconded the motion. On a motion duly made and seconded, the meeting adjourned at 1:25 p.m.

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William “Butch” Burbage, Jr., Esq.  
First Vice Chairman

Attest:

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